I-COFFEES 2019

Proceedings of the 2nd International Conference on Fundamental Rights

Bandar Lampung, Lampung, Indonesia
5-6 August 2019

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Proceedings of the 2\textsuperscript{nd} International Conference on Fundamental Rights (I-Coffees) 2019

5-6 August, Bandar Lampung, Lampung, Indonesia

\textit{I-COFFEES 2019}

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Preface

The International Conference on Fundamental Rights (I-COFFEES) is an international conference organized by the Faculty of Law, Universitas Lampung, to be an international scientific forum for researchers, academics, and practitioners. The first I-COFFEES were held in 2018 at the Novotel Hotel, Bandar Lampung, Indonesia. In 2019, the Second I-COFFEES were held on 5-6 August at the Faculty of Law, Universitas Lampung, Indonesia.


The conference was attended by national and international delegates from university academics, researchers, and practitioners. In total, there are 71 papers presented, with only 29 papers published.

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## Contents

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Neglect Protection: Policies and Strategies</td>
<td>1</td>
</tr>
<tr>
<td><em>Yusrnani Hasyimzoem, Yulia Neta, Bismo Jiwo Agung</em></td>
<td></td>
</tr>
<tr>
<td>The Existence of Financial Services Authority in Handling Illegal Financial Technology Companies</td>
<td>9</td>
</tr>
<tr>
<td><em>Sunaryo Sunaryo</em></td>
<td></td>
</tr>
<tr>
<td>Judicial Corruption: A Paradox of the Criminal Justice System in the Law Enforcement on Corruption Crime in Indonesia</td>
<td>20</td>
</tr>
<tr>
<td><em>Slamet Haryadi, Nurlaili Husna</em></td>
<td></td>
</tr>
<tr>
<td>The Dynamic of Inhabitant Identity Card Policy of Indonesia in 2006-2018</td>
<td>29</td>
</tr>
<tr>
<td><em>Shintya Gugah Ash Theffidy, Muhammad Burhan, Lusita Anjelina</em></td>
<td></td>
</tr>
<tr>
<td>Business and Disruptive Innovation in Philosophy of Technology and Innovation Support Center</td>
<td>40</td>
</tr>
<tr>
<td><em>Raden Arum Setia Priadi, Andani Achmad, Ansar Suyuti</em></td>
<td></td>
</tr>
<tr>
<td>National Health Insurance: Realizing A Better Public Service and Guaranteeing the Citizens' Constitutional Rights</td>
<td>47</td>
</tr>
<tr>
<td><em>Agus Triono, Bayu Sujadmiko</em></td>
<td></td>
</tr>
<tr>
<td>Destructive Fishing Treatment Policy Based on Community Supervision in Lampung Province</td>
<td>56</td>
</tr>
<tr>
<td><em>Maya Shaifira, Mashuril Anwar</em></td>
<td></td>
</tr>
<tr>
<td>Juridical Analysis of Indonesian Migrant Workers From The Perspectives of Labor and Immigration Law</td>
<td>68</td>
</tr>
<tr>
<td><em>Yasmine Soraya</em></td>
<td></td>
</tr>
<tr>
<td>Indonesia’s Combat for Peace and Justice: A Bird’s Eye View of Sustainable Development Goals (SDGS) 16</td>
<td>77</td>
</tr>
<tr>
<td><em>Wicpito Setiadi</em></td>
<td></td>
</tr>
<tr>
<td>Maladministration in Land Dispute Resolution Services in the Lampung Provincial National Land Agency</td>
<td>87</td>
</tr>
<tr>
<td><em>Shandi Patria Airlangga, HS Tisnanta, FX Sumarja</em></td>
<td></td>
</tr>
<tr>
<td>Identity of Muslims in India as Marginalized community: Special Focus on Minorities of Gujarat State</td>
<td>95</td>
</tr>
<tr>
<td><em>Salu Dsouza</em></td>
<td></td>
</tr>
<tr>
<td>The Possibility of Village Development: Village Regulation Formulation and Its Challenges</td>
<td>101</td>
</tr>
<tr>
<td><em>Rudy Rudy, Yusrnani Hasyimzum, Siti Khoiriah, Roro Rukmi W P</em></td>
<td></td>
</tr>
<tr>
<td>Non-Custodial Sanctions Policy in Renewing the Criminal System in Indonesia (Study of Non-Custodial Sanction Approaches in Draft Law of the Criminal Law)</td>
<td>108</td>
</tr>
<tr>
<td><em>Rini Fathonah, Sunarto Sunarto, Mashuril Anwar</em></td>
<td></td>
</tr>
<tr>
<td>Assignments Method in Infrastructure Development: Opportunities And Challenges</td>
<td>120</td>
</tr>
<tr>
<td><em>Ricca Anggraini, Cipta Indra Lestari Rachman, Indah Mutiara Sari</em></td>
<td></td>
</tr>
</tbody>
</table>
Legal Protection of Violence Against Women in Semarang City, Indonesia
Ratna Herawati, Sekar Anggun Gading Pinilih, Ani Purwanti
128

Doctor Authority in Online Health Consultation
Radian Pandhika, Maisyur Arif, Bintari `Anggre Yeni, Dwi Retno Wulandari
138

Organizational Restructuring of Regional Apparatus of Sleman Regency, Yogyakarta, Regarding Spatial Planning
Pradipta Wijonugroho, FX. Sumarja
147

Misconception on the Implementation of Diversion System Within Child Criminal Justice System in Indonesia
Nikmah Rosidah, Chaidir Ali
153

Telemedicine’s Patients and Their Protection: What Does The International Law Offer? (A Perspective From Indonesia)
Melly Aida, Orima Davey
158

Legal Sanctions on Corporation That Do Corruption
Khairul Imam
166

The Online Purchasing Contract Done by Students of Faculty of Law in Lampung University
Kasmawati Kasmawati, Dewi Septiana
174

Reconstruction of Criminal Law Protection Policy for Credit Consumers Based on Financial Technology
Eko Raharjo, Emilia Susanti
179

Legal Protection for Bitcoin Users in Criminal Acts of Fraud in Indonesia
Desia Rakhma Banjarani, Shandi Patria Airlangga, Sri Sulastuti
187

Role of Interreligious and Intercaste Marriages in Achievement of the Constitutional Goal of Unity and Integrity in India
Deepti Khubalkar
196

Community Satisfaction on The Performance of Public Services in Lampung Tengah
Dedy Hermawan, Robi Cahyadi Kurniawan, Rudi Wijaya, Chaidir Ali
202

Legal Protection of Ulayat Rights: Contextualization and Policies
Candra Perbawati, Malicia Evendia
215

Fuel Oil Distribution in Regional Level in Indonesia
Arnelis Jessika, Bani Immanuel Ginting
227
Child Neglect Protection: Policies and Strategies

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{yus_zoem@yahoo.com¹, bismojiwoagung05@gmail.com³}

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Abstract. Indonesia is a country with a high number of neglected children. One of the causes of neglect of children in Indonesia is divorce which often motivated by low status of economic, educational and awareness of parents. The aftermath of divorce is often impact on children’s situation. In some cases, the consequences of divorce may lead to children neglect which force children to be displaced and some of them ended up living on the streets. There are also possibilities which might turn the children to be perpetrators or victims of crime on the streets. The method used is a normative juridical method and analyzed using qualitative methods. Currently, the government has established a set of rules to prevent child neglect through Indonesia’s Constitution 1945, Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 35 of 2014 concerning Child Protection. The law categorizes child neglect as abandoning households that are prohibited and subject to sanctions for perpetrators. Nonetheless, in reality the act of neglecting households is clearly prohibited as if ignored by the government. The applicable system of fines and prisons is no longer effective, so government should consider other possible strategic policies.

Keywords: Neglect; Children; Policy; Protection

1 Introduction

1.1 Background

Marriage is one way for humans to live their lives and develop. The marriage bond creates a small group consisting of husband and wife or husband and wife and children, or father and child, or mother and child, or blood family in a straight line up or down to the third degree. The ideal family structure is a family consisting of a husband as a family head, a wife as a housewife, and a child as a family member. Family is defined as an important primary group in the community order that is fused from the relationship between men and women. Every family member has their own rights and obligations.

However if one family member violates the rights of other family members and does not carry out their obligations, a problem may arise in the family. The consequences of the problems that arise may trigger an act of violence against other family members or commonly referred to as domestic violence (DV) which often ends in punishment or divorce. Although Indonesia is known as a country with diversity and uphold religious values, it has high divorce rates from year to year; this can be seen in table 1. Below:
Table 1. Figures on Divorce in Indonesia

<table>
<thead>
<tr>
<th>Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>344,237</td>
<td>353,853</td>
<td>365,654</td>
<td>374,516</td>
</tr>
</tbody>
</table>

According to authors findings, the high divorce rate in Indonesia is one of the causes of neglect of children. Child neglect might be due to economic instability due to divorced parents or one parent who has a new couple so the child from a previous marriage is abandoned. These phenomenon’s may further trigger the increasing number of neglected children along with the number of displaced children in several regions in Indonesia.

Table 2. Number of neglected children in several provinces in Indonesia

<table>
<thead>
<tr>
<th>Region</th>
<th>West Java</th>
<th>Lampung</th>
<th>East Java</th>
<th>Central Java</th>
<th>Central Kalimantan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>135,787</td>
<td>17,636</td>
<td>14,702</td>
<td>113,859</td>
<td>2907</td>
</tr>
</tbody>
</table>

1.2 Problem Formulation

1. What are the aftermaths of child neglect to children?
2. What efforts could be done in protecting and rehabilitating children who has neglected?

1.3 Research Objectives

1. Knowing the aftermaths of child neglect to children.
2. Finding the new strategic efforts to protect and rehabilitate child who became the victims of children neglect.

2 Research Method

This study uses a normative juridical method, namely research that examines a problem based on applicable laws and regulations. The method of assessment used is a qualitative method. The Authors use reports which downloaded from internet and did interview to some parents to support this findings.

3 Results and Discussion

3.1 Children Neglect in Indonesia

According to Herkutanto, neglect is negligence in providing the necessities of life for someone who has dependence on other parties, especially in the household environment. Neglect acts are defined as any form of disregarding one’s obligations and responsibilities in a household according to law, the person has been designated as the holder of responsibility for the life of the person who is in his family environment. One of the factors that may lead to neglect of children is economic factors, where the poverty rate in Indonesia is still high, reaching 25.95 million people or 9.82% (nine point eighty two percent) of the total population in 2018. Many children who are abandoned by parents are caused by poverty and the economic burden they bear but this may not justify child neglect.
These are the triggers which may result household neglect:

1. Divorce;
2. Parents are not able to provide needs according to the rights that children have in the form of physical, emotional, educational or medical;
3. Economic conditions that are classified as incapable;
4. Parents with different domiciles with children;
5. One parent who remarries;
6. Don't have a family; or

Those triggers may be the reason why the children neglect may occur. According to authors’ findings, there are parents that so busy to work in order to fulfill their needs but forget to give attention to their children. In addition, the lack of parent awareness and knowledge about parenting might causes children neglect unconsciously. There are various forms of neglect experienced by children in Indonesia such as:

1. Physical neglect
   For example, the delay in seeking medical assistance, inadequate supervision and the unavailability of the need for security in the family.
2. Education neglect
   Occurs when the child seems to get an appropriate education even though the child may not perform optimally. Over time this might result in children's school performance decreasing
3. Emotional Neglect
   This neglect may occur for example when parents do not realize the presence of children when noisy with their partners. Or parents give different treatment and affection among their children.
4. Neglect of Medical Facilities.
   This happens because when parents fail to provide medical services for children even though they are financially adequate. In some cases parents, parents give traditional treatment first, if it hasn't healed, then go back to doctor services.

Moreover, these following figures show the data of other forms of child neglect and the detail of the neglected children’s status:

**Fig 1.** Forms of neglect experienced by children in Indonesia
Fig 2. Characteristics of Children Victims of Violence by Age Group and Education Level in Indonesia

As a result of neglect, children who have not been treated might become victims of crime (sexual, physical, exploitation, trafficking) or even become perpetrators of crime (theft, drug abuse, murder and others). Furthermore, abandoned children often become street children. This is what ultimately drives up the number of street children. In August 2017 there were 16,290 street children in Indonesia which very vulnerable to being victims of crime on the streets.

Table 3. Crimes Against Street Children in Indonesia in 2017

<table>
<thead>
<tr>
<th>Revocation</th>
<th>Theft</th>
<th>Abuse</th>
<th>Rape</th>
<th>Neglected</th>
<th>Abandoned Babies</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.117</td>
<td>1.244</td>
<td>1.115</td>
<td>1.108</td>
<td>989</td>
<td>243</td>
</tr>
</tbody>
</table>

These crimes may occur due to lack of attention and protection of street children by the government and parents. KPAI stated that the reasons for street children are voluntarily become the victims of sexual abuse or prostitution is due to economic factors, where abandoned children need money for their daily needs.

3.2 The Existing Policy in Protecting Victims of Neglect in Indonesia

The state guarantees the protection and fulfillment of children's rights in Article 28 B paragraph (2) of the 1945 Constitution and Law Number 35 of 2014. Child protection in question is all activities to guarantee and protect children and their rights to live, grow, develops, and participates optimally in accordance with the dignity and human dignity, and gets protection from violence and discrimination. Legal protection for neglected children is contained in Article 34 of the 1945 Constitution which states that neglected children are cared for by the State.

Furthermore, efforts to prevent child neglect are regulated in Article 76B of Law Number 35 of 2014 concerning Child Protection which states that, “Every person is prohibited from placing, allowing, involving, and ordering to involve the child in situations of mistreatment and neglect”. If one or both parents of children commit neglect, then based on Article 77B of the Law a quo, one or both of these persons may be threatened with imprisonment of a maximum of 5 (five years) and / or a maximum fine of Rp.100,000,000 (one hundred million rupiah). Criminalization is the last choice to solve the problem, but the effects caused by punishment may foster fear and deterrent to the perpetrators.

In addition, living in a household is also regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence which regulates the prohibition and punishment of husbands or wives who commit violence against their spouses or children. According to
Article 49 of the Law a quo, states that everyone who abandons another person in the household sphere is sentenced to a maximum of 3 (three) years imprisonment or a maximum fine of Rp.15,000,000 (fifteen million rupiah).

The New Strategic Policies for the Government in Protecting Child Victims of Household Neglect

The act of neglecting parents towards their children has an impact on the disruption of child development where lack of attention and affection of parents towards children causes children to have insecurity, fail to develop familiar behavior, experience problems of adjustment in the future and cause psychological effects where children do not know to complain about the problems faced. In addition, there are still many cases of neglect of children that are not visible, and are reported likely because they could not determine who the victims were, and where violence occurred.

Therefore, one way to reduce the rate of neglect of children is by create an empowerment program and increase community awareness and participation in fulfilling the rights to care, health, education, clothing, food and shelter which will be useful to avoid children as victims neglect, exploitation, violence, child pornography and other mistreatment. Moreover, the government is also able to provide socialization and advocacy related to domestic violence, so that there are no more situations where parents who are working unconsciously abandon their children. The government should take concrete steps as soon as possible in responding to neglect actions that are victims of children in the form of:

1. Educating prospective parents or parents who already have children about the consequences and causes of neglect of the household by making subjects on the prevention of violence against children. For the material to be delivered in school, university or offices could coordinate with the Ministry of Education, Ministry of Social Affairs and Ministry of Women Empowerment and Children Protection. Examples such as the class “preparing to become parents”. Students will learn about childcare and development, and gain hands-on experience by working with children in a child and preschool education center.

2. Implement Home visitation program which provides services in improving skills and increasing the sensitivity of parents to their child’s condition. Such as the policy of making a Consultation Center for Parents which the Program officers are recruited from the community, trained by the center and supervised by professional social workers. Families are visited every month during the prenatal period, weekly for the first 2 months after birth, from that time every 2 weeks to 2 months and then every month until the baby reaches 6 months. The program will later be under the authority of the Ministry of Women Empowerment and Children Protection, the Ministry of Social Affairs in collaboration with the Indonesian Doctors Association. So that young doctors or those who have specialists in the field of maternal and child health could be empowered.

3. In collaboration with the Supreme Court to appeal to the judges in deciding cases of neglecting the household to impose penalties in the form of compensation to the victim with changing the system of fines imposed on neglected persons, where the fine paid will not be entirely included in the state treasury, but will be given all or a portion of the money to the abandoned victims or their guardian. This is due to the core purpose of compensation none other than to develop justice and the welfare of victims as members of the community and the measure of its implementation is by giving victims the opportunity to develop their rights and obligations as human
beings. So that when referring to the theory, the fine should be partially or wholly given to the victim.

4. In order to maximize the benefits of the compensation for neglected victims, the Ministry of Empowerment and Protection of Women and Children, the Ministry of Social Affairs and the Ministry of Law and Human Rights must provide guidance, training and supervision for the victims in investing the money to improve welfare and continue their life.

5. Furthermore, imprisonment sanctions also do not guarantee resolving this issue. The authors argues that neglect perpetrators could be subject to sanctions in the form of city detention compared to detention centers or prisons that do not allow perpetrators to make a living for victims. As a result, abandoned victims could become increasingly displaced. City prison sanctions could also be accompanied by the obligation of the perpetrator to fulfill all the basic needs of the victim. In order to safeguard the safety of victims from perpetrators who have anger or revenge, the perpetrator could be threatened with a more severe crime if they commit violence against the victim during the probationary period and / or repeat the same thing in the future.

4 Conclusion and Recommendation

4.1 Conclusion
From the explanation and conditions, finally the conclusions from this paper are:

1. The impact on neglected child victims will be very damaging to their survival. It is evident from the data presented earlier, that victims of neglect are very vulnerable to becoming street children or victims of rape, harassment, or other violence that will damage mental health and physically injure victims.

2. Need for changes which must be taken by law enforcement and policy makers. The existing sanctions did not also reduce the rate of decline in household neglect. Therefore there needs to be alternatives such as sanctions in the form of compensation that require the perpetrators to fulfill all the needs of families who are victims of neglect based on court decisions in order to have binding and coercive power.

4.2 Suggestions

1. The government must look for other ways to fulfill the rights and welfare of victims through prevention such as further coordination by the related Ministry about the determination of alternative sanctions imposed on the neglected perpetrators and make curriculum related to self-protection and prevention of neglect of child abuse from an early age coordinated by schools and the Ministry of Social Affairs, Ministry of Education and Ministry of Women's Empowerment and Child Protection.

2. The government must also improve the infrastructure of rehabilitation facilities and provide training and assistance to victims of neglect so that victims could continue to live and have the skills to be able to make a living independently.
References


The Existence of Financial Services Authority in Handling Illegal Financial Technology Companies

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Abstract. Financial technology (fintech) companies grow rapidly in Indonesia. Besides the existence of fintech which can help society in accessing financial products, it can also give the negative impacts that can harm society, for example the high number of infringement complains towards illegal fintech companies. This status quo is not consentient with the aims of Law Number 21 of 2011 about Financial Services Authority (FSA) which focuses on sustainability and stability of financial services sector growth and protecting consumer and society’s interest. The aim of this study is to fully elaborate the existence of FSA that contains FSA’s duties, authorities, and obstacles in handling illegal fintech companies. The design of this study is an empiric normative law with a descriptive type and applied law approach. The result of this study shows that FSA has duty and function in organizing system setting and controlling financial services sector. FSA not only has authority to establish operational policy and administrative penalty for the companies who break laws, but also to prevent disadvantages, give service to the consumer’s denunciation, and give law defense for consumer’s behalf. The obstacles which face FSA in handling the existence of illegal fintech companies is coming from both internal and external side.

Keywords: authority; financial services authority; illegal fintech; obstacles

1 Introduction

Financial technology (fintech) companies grow rapidly in all around the world, including Indonesia. The existence of fintech aims to help society in accessing financial products easily, giving an ease transaction, and increasing financial literacy. Fintech is one of the startup world which focuses in maximize technology to change, accelerate, or improve many aspects of finance service. Finance service starts from payment method, fund transfer, loan, fundraising, up to asset management in the implementation of targeting society’s interest in accessing credit online system in Indonesia. Related to fund service, in Article Number 1 paragraph (3) Law of Financial Services Authority Number 77/POJK.01/2016 of Fund Loan of Information Technology Based Service stated that fund loan of information technology service is a financial services as a bridge between fund donors and fund recipients in the term of loan agreement holding in rupiahs directly with electronic system by internet data.

Financial Service Authority (FSA) is a the highest authority holding institution and called extraordinary institution which means FSA have setup removal function and control towards financial institution. All financial business in Indonesia is under FSA’s regulation and monitor which free from every interventions. One bad thing from the existence of super power
institution can bring worries about its authority. The base of FSA formation is from amendment of Article 34 Law Number 3 of 2004 about Modification of Law Number 23 of 1999 about Bank Indonesia. According to Article 34, FSA is independent in the term of doing its job and its status is beyond the government also has obligation to deliver the report to The Audit Board of Indonesia and Parliament.

The existence of FSA institution nowadays is important and needed, retrieving many illegal fintech companies which can harm consumers. Illegal fintech companies can be named because of its existence is not listed and do not have permission to run its business in the finance service sector from FSA. Refer to data from FSA Custodian that said there are 635 fintech companies which not registered yet. From these companies, the license of 231 fintech companies have closed by FSA due to these existence is not registered and do not have license from FSA based on Law of FSA Number 77/POJK.01/2016 which means it can potentially harm society. The high number of illegal fintech shows that the existence of FSA institution is needed and has important role to protect society from the existence and activity of financial institution especially illegal fintech which spread and grow rapidly in Indonesia.

The fintech companies blooms and grows the popularity in Indonesia due to several reasons, there are:

1. Internet usage through smartphone spreads fast so online fund transaction is needed;
2. Fintech is considered more practical when it is compared to the rigid-conventional finance industry;
3. Digital technology based business grows;
4. Online finance industry as a simple method used by startup businessmen; and
5. Social media usage enable fintech industry grows due to the data which uploaded by user to social media can be used to society risk analysis.

Anikina et al. as quoted by Svetlana Saksonova and Irina Kuzmina-Merlino stated, there are two main reasons for the emergence of fintech companies. First, the global financial crisis of 2008, has vividly demonstrated to consumers the shortcomings of the traditional banking system that led to the crisis. Second, the emergence of new technologies that helped provide mobility, ease of use (visualization of information), speed and lower cost of financial services.

The accretion of fintech companies gives the advantages for businessmen who unaware of banking service as well. The development of fintech companies are expected to expand business in finance service sector. On the other hand, in the practical, there are a huge number of the existence of unregistered and licensed fintech by FSA and disobeying the Law of FSA. POJK Nomor 77/POJK.01/2016 had assigned that every finance companies need to register and has the license from FSA to ran their companies’ programs. This law is not only aiming for legality from fintech companies which already need to have, but also aiming for protecting society from every shape of trespass which will cause disadvantages for consumer. Refer to those explanation, it shows that FSA is needed for the presentation of illegal fintech companies.

Based on those background, things that would be discussed are:

1. How is the task and authority of Financial Services Authority in handling and controlling implementation of fintech companies?
2. What are the obstacles that face Financial Services Authority in handling the existence of illegal fintech companies?

This study has aim to get exact, full, and systematic description of:

1. Task and authority of Financial Services Authority in handling and controlling implementation of fintech companies.
2. Obstacles that face Financial Services Authority in handling the existence of illegal fintech companies.

The usage or benefit from this study is theoretical and practical purposes. Theoretically, this study is expected to increase the effort of jurisprudence, especially in the scope of economical law which related to the existence of FSA institution in handling and controlling financial institutions’ activity in Indonesia. Practically, this study is expected to be a comprehensive information in studying financial institution law, especially for FSA related to its task, authority, and law construction for disobeyed companies. This study is also expected to be a suggestion in the term of getting improvement for a few slackness nowadays. At the end, this study is expected to be useful for company law’s reference enrichment, especially for FSA which seemed to be helpful nowadays.

2 Method

The type of this study is an empiric-normative law study with descriptive type. The problem approach in this study is an applied law approach. An applied normative approach type is live case study, which means normative law provision applied for on-going or unfinished law occasion. The data in this study is coming from primary and secondary data’s. The primary data are collected from interview, meanwhile the secondary data which is used in this study contains of primary and secondary law material. The data in this study is collected by interview and research library. After the data is collected, it is processed by the data selection, classification, and systematization, then qualitative analyzed by elaborating data to the complete, clean, detailed, and systematic sentence for getting answer about the problem so it can be concluded.

3 Result and Discussion

3.1 Task and Authority Finance Service Authority in Handling and Controlling Fintech Company Implementation

In Indonesia, finance service sector’s development have important transformation along with the existence of Financial Service Authority (FSA) with Law Number 21 of 2011 about Financial Service Authority. Financial Service Authority is formed by the aims of all financial service activities in financial service sector can be done in order, fair, transparent, and accountable, also can create financial system which grows sustainable and stable and can protect consumer and society’s interest. With all this aims, FSA is expected to support national financial service sector’s interest and increase national competitiveness. Financial Service Authority need to protect national interest such as human resource, management, control, and ownership in financial service sector with considerate positive aspects of globalization.

Financial Service Authority is an institution in financial service which is free and independent from every party intervention. Related to the aim of this institution formed, FSA has an important position along with task and authority switchover which at the first owned by Bank Indonesia. In Law of FSA it is also regulate the relation between institution and its cooperation, retrieve at some significant problems towards this switchover. Related to the innovation of financial service that developed in the society, it feels important to know the
By looking at the development of regulation about financial technology service in Indonesia nowadays, there are two institutions included, there are Bank Indonesia and FSA. The regulations related to fintech which coming from Bank Indonesia, such as:

1. Regulation of Bank Indonesia Number 18/40/PBI/2016 about Process of Payment Transaction.
2. Regulation of Bank Indonesia Number 19/12/PBI/2017 about Financial Technology.
3. Regulation of Member of Governors Number 19/14/PADG /2017 about Regulatory Sandbox of Financial Technology.
4. Regulation of Member of Governors Number 19/15/PADG /2017 about the Regulation of Registration, Information Delivery, and Financial Technology Controller.

Meanwhile, the regulation made by FSA related to the innovation in financial service until nowadays is Regulation of FSA Nomor 77/POJK.01/2016 about Fund Loaning Information Technology Based Service. This regulation controls things which have to obey by peer to peer lending business. It is expected to protect consumer interest related to fund and data security and national interest of prevention of fund and terrorism fund, and financial system stability. The consequence of that regulation is the provider of information technology based loan service need to register membership to FSA by providing escrow account and virtual account in banking and put center data in Indonesia as a condition. The existence is legal when it is already registered.

Related to Law of Bank Indonesia Number 19/12/PBI/2017 about Financial Technology Implementation said that financial technology is the usage of technology in financial system that produce products, services, technologies, and/or new business model and can give impact to monetary stability, financial system stability, and/or efficiency, continuity, security, and payment system reliability. Ones that included in financial technology category are financial system, market support, investment management, and risk, loan, financing, and modal provision management, also the other financial service.

The existence of FSA in financial service sector need to be done integrated, independent, and accountable. As an independent institution, FSA need to run the task and authority based on these aspects:

1. Independent aspect, the independency in decision making and run the function, task, and authority of FSA, by stick on the ongoing law;
2. Law certainty aspect, as a state law where prioritize law and justice in every FSA policy;
3. Public interest aspect, to stand up and protect consumer and society interest and increase welfare;
4. Clarity aspect, to give a explication towards society right to get true, fair, not discriminative information about FSA on the security of personal, group, and state secret rights, included the secret which is set in the law;
5. Professionalism aspect, this aspect prioritize the proficiency in doing task and authority of FSA with stick on code of ethical and law;
6. Integrity aspect, which strongly stick on the moral value in every action and decision towards FSA; and
7. Accountability aspect, to decide that every activity and final result from every FSA activities need to be accounted to public.

Independency aspect of FSA is stated in Article 2 Paragraph (2) in FSA law, that FSA is an independent institution in doing task and authority, free from the other intervention, except for points that strongly ruled in this law. Related to that task and authority, in Article 5 of FSA
Law stated that FSA has function to organize integrated set up and control system toward all sector in financial service. The scope of set up and control task, such as:

1. financial service in banking sector;
2. financial service in capital market sector; and
3. financial service in assurance, pension fund, banking institution, and other financial service sector.

The set up task above is implemented by board of commissioners, by assigning FSA law, board of commissioners law, and/or board of commissioners decision. Financial Service Authority has some authority to success its institution aims. Related to the set up task in every financial services, so FSA has authority to:

1. assign this law implementation;
2. assign law in the financial service sector;
3. assign FSA law and decision;
4. assign the law of control in the financial service sector;
5. assign the policy of FSA task implementation;
6. assign the law of written law regulation towards financial service institution and other party;
7. assign the law of stature manager regulation in financial service institution;
8. assign organization and infrastructure structure and manage, maintain, and administer wealth and responsibility; and
9. assign the law of penalty regulation based on the law in financial service sector.

In the term of supervision task towards financial services activity, in Article 9, FSA is given the authority to:

1. assign supervision operational policy towards financial service activity;
2. super visioning the supervision task by head of executive;
3. carry out the supervision, checker, investigation, consumer safety, and other proceeding toward financial service institution, perpetrator, and/or financial service action supporter that referred in the law of financial service sector;
4. give written command to financial service institution and/or certain party;
5. appoint a statutory manager;
6. set the use of the statutory manager
7. establish administrative penalty against those who violate the laws and regulations in the financial services sector; and
8. give and/or revoke
   a. permission of business;
   b. permission of individuals;
   c. effectiveness of the registration statement;
   d. certificate of registered letter;
   e. approval to conduct business activities;
   f. endorsement;
   g. approval or stipulation of dissolution; and
   h. other stipulations, as referred to the law in the financial services sector.

The authority above provides a large role and influence for FSA in financial sector service activities including law enforcement efforts to protect consumers in financial services. In addition, in an effort to protect consumers, the FSA Law regulates the consumer and community protection. Several regulations and/or policies as a derivative of FSA Law that support the implementation of integrated consumer services, while strengthening the
implementation of complaints and dispute handling through the Internal Dispute Resolution and Alternative Dispute Resolution mechanisms, such as:

1. FSA law Number 1/POJK.07/2013 about Consumer Protection in Financial Service Sector.
2. FSA law Number 1/POJK.07/2014 about Alternative Institution of dispute resolution in Financial Service Sector.
3. Board of Commissioner Law about LAPS in Financial Service Sector, such as:
   b. Circular letter of FSA Number 7/SEOJK.07/2015 about Regulation of Alternative Institution Settle Scoring in Financial Service Sector.
   d. Standard policy of IDR in Financial Service Institution.

Consumer protection which provided by FSA includes loss prevention, consumer complaint services, and legal defense. Regarding to the loss prevention for consumers, FSA has the authority to take consumers and the public loss prevention, which includes:

1. provide information and education to the public on the characteristics of the financial services sector, services, and its products;
2. ask the financial services institution to stop its activities if the activity has the potential to harm the community; and
3. other actions deemed necessary in accordance with statutory provisions in the financial services sector.

For the implementation of the complaints service carried out by FSA such as giving facilitation of the settlement of consumer complaints that are disadvantaged by the financial services institution. In an effort to prevent violations of the provisions in FSA Law, there are several instruments for the service of consumer complaints on violations committed by business actors, which include:

1. prepare adequate tools for consumer complaints services that have been disadvantaged by actors in financial services institutions;
2. create a mechanism for consumers complaints who have been harmed by actors in the financial services institution; and
3. facilitate the resolution of complaints of consumers who have been harmed by actors in the financial services institution in accordance with the laws and regulations in the financial services sector.

Financial Service Authority has another authority beside of carry out loss prevention and consumer complaint services. There are two authorities which are included in the defense of law for consumers, there are:

1. order or take certain actions to financial service sector business actors to settle complaints from consumers who have been harmed by financial service sector business actors;
2. file a lawsuit:
   a. to recover the assets from the party who caused the loss, whether it is under the control of the party causing the loss and is under the control of another bad party; and/or
   b. to obtain compensation from parties who caused losses to consumers and/or financial services institutions as a result of violations of laws and regulations in the financial services sector.
Referring to the authority scope of the FSA especially in providing legal protection for consumers and the community as described above, so the authority of FSA in the consumer protection legal system is not limited not only to facilitate consumer protection that accommodates and becomes a mediating institution, but also to become an institution that takes sides to consumers in form of legal defense activities. In addition, the forms of protection carried out by the FSA include the protection to prevent violations and the restoration of consumer rights in the event of losses suffered by consumers.

The efforts that FSA can do toward an accrualment of complaint are very wide, ranging from receiving complaints, facilitating the resolution of complaints, examining and investigating financial services institutions, perpetrators, and/or financial services supporters, filing a lawsuit for returning the assets of the injured party, filing a claim for compensation until set the administrative penalty and order or take certain actions to the financial services institutions to resolve complaints from consumers who have suffered by that financial services institutions.

3.2 Obstacles Faced by the Financial Services Authority in Handling the Existence of Illegal Fintech Companies

As an independent institution, FSA has a vision and mission that is always strived for to be realized in the community. The vision is to become a trustworthy financial services industry supervisory institution, protect the interests of consumers and the community, and be able to turn the financial services industry into a pillar of the national economy that is globally competitive and can advance public welfare. While the mission of FSA are:

1. Realizing the implementation of all activities in the financial services sector in an orderly, fair, transparent and accountable manner;
2. Creating a financial system that grows in a sustainable and stable manner;
3. Protect the interests of consumers and society.

Efforts to realize the missions above and its role in super visioning and handling financial services, especially illegal fintech’s are not without obstacles. The existence of these constraints basically cannot be separated from the existence of inhibiting factors so that the objective of the FSA's existence cannot be achieved as expected. Broadly speaking, the obstacles faced by FSA in dealing with the existence of illegal fintech can be distinguished between internal and external constraints.

The internal constraints are the existed obstacles originating from within the FSA itself, such as:

1. Limited human resources. The scope of financial services that must be regulated and supervised by the FSA is very much. FSA must be able to cover all of its tasks and roles in both bank financial institutions, non-bank financial institutions, and financing institutions while the number of human resources in FSA is still limited. The imbalance between workload with the amount of human resources will certainly affect the smoothness and success of the task at hand.
2. Infrastructure facilities that are still implanted with Bank Indonesia. The existence of FSA which is relatively new, resulting in the lack of available infrastructure and facilities, both in the form of offices or other facility infrastructure which will ultimately affect the comfort and fluency of staff in carrying out their duties.
3. Lack of socialization to the public about the existence of fintech companies. This obstacle is inseparable from the still limited human resources and infrastructure facilities as mentioned above. The extent of the area and the many layers of society that must be given socialization are also factors not yet maximized this activity. Lack
of socialization to the public results in the level of literacy about the financial industry, especially regarding fintech, which is very minimal so that it will be very risky for fraud that will harm the public.

4. Difficulties in coordination. There are 13 institution who are included as supervisors to supervise fintech companies especially for illegal fintech in investment alert security, there are:
   a. Financial Service Authority
   b. Ministry of Trade
   c. Coordinating Board of Capital Investment
   d. Ministry of Cooperatives and Small Business
   e. Ministry of Communication and Information
   f. Attorney General's Office
   g. Police Headquarters
   h. Bank Indonesia
   i. Center for Financial Transaction Reporting and Analysis
   j. Ministry of Religion
   k. Ministry of Home Affairs
   l. Ministry of Education and Culture
   m. Ministry of Research Technology and Higher Education.

The high number of agencies and institutions involved in the investment alert security is a special factor in coordinating. This is happen due to its own task and activities which must be carried out. This difficulties in coordinating will affect the effectiveness to tackle illegal fintech companies. However, at the end, FSA will handle by making a coordination to all members of the investment alert security, for example in the case of illegal fintech closure, it will also be disseminated in the media so public knows and can get the information related to the existence of illegal fintech.

In addition to the internal constraints above, the handling of the existence of illegal fintech companies is also constrained due to external factors. Some of the external constraints are:

1. A low level of public understanding (literacy) of the financial services industry and financial products/services. The lack of public literacy in the financial services industry including fintech may be due to the lack of socialization carried out by FSA. Financial literacy is a knowledge, skills, and beliefs, which influence attitudes and behaviors to improve the quality of decision making and financial management in order to prosper. Based on the survey results of the 2016 by FSA and released in early 2017 related to the level of financial literacy, information is obtained if the level of financial literacy in the public is still low and uneven.

   The survey results state that Indonesia's financial literacy index is only 29.66%. This result is still far below the financial literacy index of Malaysia which reached 65%, especially Singapore which has reached the index of 98%. In addition to the low literacy index, its distribution is also not evenly distributed where four of the five provinces with the highest literacy rates are found on Java.7 Seeing the connection between literacy and the decision making above, the delivery of information through the socialization program needs to be improved.

2. The regulation and policy of consumer protection in financial sector are not integrated yet. Differences in the characteristics of the financial services sector require an integrated regulation and supervision including consumer protection aspects. This is a challenge for FSA which has the function of making integrated arrangements and
supervision in the financial services sector. In addition, FSA synergizes regulations and/or financial consumer protection policies for financial service institutions that provide payment system services that are also supervised by Bank Indonesia. With integrated regulations and policies it will become clearer and better guarantee legal certainty.

3. Uncertainty of the company's legality status that have been known in the public. The certainty of the legal fintech company can actually be known and accessed by the public on the FSA official website, there is information about the legal and illegal companies. Sometimes the problems that occur in the financial industry are not entirely caused by the company but also by consumers' mistakes. Therefore, if the public wants to borrow through fintech, public should know beforehand whether the company has been registered or licensed by FSA or not. The public should be more careful with the increasingly massive financial product offering activities carried out by companies that are not registered or licensed by FSA that have the potential to harm the public.

4. The inhibiting factors that cause fintech companies to not register and take fintech company licenses to FSA are:
   a. lack of literacy
   b. the licensing process takes long time (6 months)
   c. must be a legal entity
   d. capital administrative requirements that are too high.

Referred to Article 4 FSA Law Number 77 / POJK.01 / 2016, providers in the form of limited liability companies must have paid up capital of at least IDR 1,000,000,000.00 (one billion rupiahs) when registering and at least IDR 2,500,000,000.00 (two billion five hundred million rupiahs) when applying for a permit. The amount of capital that must be deposited is the reason that caused illegal fintech’s to be reluctant to register and arrange permits to FSA. In addition, the registration procedure to obtain a permit is not easy and must be gradual, if the fintech company does not meet the fintech requirements, it cannot be accepted or rejected.

5. Victims of illegal fintech companies do not report. There are many communities with various considerations who do not report violations committed by illegal fintech companies. In the absence of reports from the public, FSA has difficulty to find out and crack down on illegal fintech companies that are detrimental to the community. Therefore, the participation of the community or victims from fintech companies is needed to report to FSA with a very easy reporting system, which can contact FSA call center and can also come directly to FSA office.

The obstacles above, both the obstacles from FSA's own internal and external will ultimately determine the optimization of FSA's success in handling the existence and activity of illegal fintech companies. This means that in an effort to deal with the existence of illegal fintech companies, it cannot be done partially or incidentally. These efforts must be carried out comprehensively and continuously as well as the existence of synergy by involving all stakeholders involved in the operation of the illegal fintech company.
4 Conclusion and Recommendation

Based on the results of research and discussion as described above, it can be concluded, that:

1. The Financial Services Authority (FSA) has the tasks and functions to carry out a system of regulation and supervision that are integrated to all activities in the financial services sectors. To support these tasks and functions, FSA has the authority to draw up regulations and set operational policies in order to effectively carry out their duties. In the field of law enforcement, FSA also has the authority to set administrative penalty for companies that violate the provisions of the legislation. Regarding protection to the public, FSA has been given the authority to take preventive measures and consumer complaints services and to conduct legal defense for the interests of consumers.

2. Obstacles that faced by the Financial Services Authority (FSA) in handling the existence of illegal fintech companies include both the internal and external of FSA. Internal obstacles are caused by limited human resources, insufficient infrastructure, lack of intensity of socialization, and difficulties in coordination among investment task security. While external obstacles are caused by a low level of understanding (literacy) of the community on the financial services industry and financial products/services, regulations and consumer protection policies in the financial sector that have not been integrated. In addition, other obstacles in the form of uncertainty about the legality status of the company known to the public and the unwillingness of victims from illegal fintech companies did not report. In the absence of reports from victims, the FSA has difficulty to find out and crack down on illegal fintech companies that are detrimental to the community

Based on the results of the discussion and conclusions as stated above, it is recommended to:

1. To the Financial Services Authority (FSA) to further enhance the education program to the community through socialization so the level of public literacy is better and it will be precise and safe in determining and utilizing the fintech financial industry.

2. The consumer community is expected to increase their literacy on fintech and be careful and vigilant in selecting fintech companies, ensuring that the fintech companies are licensed or registered by FSA.

3. The financial services business actor or fintech company is expected to take the registration and permit to FSA as a business legality so its existence is declared valid and at the same time as an effort to provide legal protection to consumers or the public

References


Judicial Corruption: A Paradox of the Criminal Justice System in the Law Enforcement on Corruption Crime in Indonesia

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Abstract. The criminal justice system in Indonesia today illustrates a paradoxical situation in law enforcement on corruption. On the one hand, the society have great expectation that the criminal justice system can eradicate corruption, on the other hand, law enforcement officers such as national police investigator, public prosecutor, and judge, in their own way continue to weaken law enforcement by committing judicial corruption. The basic problem is how the natures of characters of judicial corruption crime that lead to the paradox of law enforcement on corruption are. Judicial corruption in the criminal justice system can be interpreted as a crime committed by law enforcement officers, such as police investigator, public prosecutor, or judge, who is handling a corruption case, by plotting the case as if the suspect was innocent though he/she is guilty, it is then plotted as if it was a trifle. Therefore, the legal process is reduced as a means of gaining benefit and personal wealth. Some of them are just formal procedure for implementing the law. This is the paradox of the criminal justice system in law enforcement on corruption in Indonesia. Judicial corruption has mostly affected law enforcement officers’ life by deviating from law enforcement. The results of the analysis, the natures of judicial corruption crime committed by law enforcement officers in the criminal justice system form mental constructions which tend to damage and weaken the law, namely: (1) disregard of the law, (2) cherry-picking, (3) limiting the legal’s reach, (4) narrowing the meaning of the law, (5) exploiting the severity of the sentence.

Keywords: Crime; Judicial Corruption; Criminal Justice System

1 Introduction

Transparency International (TI) defines corruption as “the abuse of entrusted power for private gain.” (TI) based on a survey in 2017, Indonesia’s Corruption Perception Index/CPI (corruption perception index) was at a score of 37 and ranked 96th out of 180 countries. CPI is very important indicator which can reflect inhabitants’ opinions (perception of corruption). Thus, Indonesia is considered highly corrupted while corruption is a crime against humanity which destroys the country and infects every level of government. However, the eradication of corruption by the criminal justice system has not progressed (stagnant). Even, the biggest corruption practices in Indonesia, besides being committed by executive and legislative sectors, it is also committed by judicial institution.
Data sourced from Corruption Eradication Commission (KPK) that in 2017-2018 there were 18 governors and 75 regents/mayors caught in corruption, 81 people from the central to regional representatives and law enforcement officers in the criminal justice system of all hierarchy in the last five years, 28 law enforcement officers, 17 judges and two judges in the South Jakarta District Court, are caught in the act (OTT) by KPK, while the report/complaint to the Judicial Commission (Komisi Yudisial) and Supervisory Commission of Supreme Court submitted to the Honorary Judges’ Council for bribery and gratuity of 22 people. The criminal justice system according to Mardjono and Muladi is a means of law enforcement, ideally being a stronghold and preventing corruption. However, in many corruption cases decided by the Corruption Court in Indonesia show the fact that the law enforcement officers do not fully carry out their duty and authority and tend to create deviance. Previous scholarship has consistently shown that low self-control is the key in understanding deviance. Low self-control serves as a dispositional prerequisite for engaging in norm-violating or criminal behavior. Thus, some of its authority has been reduced as a procedural legal activity, while some gain benefit by corruption and bribery from the cases handled.

Bribery is common form of corruption. Bribe reported, the number of prosecutions brought or court cases directly linked to corruption. Additionally, the law enforcement officer who commits bribery is the same as committing two crimes at once, namely (1) enriching themselves, sucking nation’s money by manipulating its institution; (2) damaging the image of the institution by subverting noble values, truth, honesty, and justice. Various terms are used to explain bribery in law enforcement such as judicial mafia, legal mafia, judicial corruption, and others. All these terms are related to bribery and considered as condemned crime because it destroys the pillars part of democratic government and legal state.

In short, the current condition of the criminal justice system in Indonesia illustrates a paradox in law enforcement on corruption. While the society have great expectation of the criminal justice system, however, the law enforcement officers continue to weaken law enforcement by committing judicial corruption.

2 Problem

Based on the background, the basic problem intended to find out is how the natures or character of judicial corruption crime that leads to a paradox of law enforcement on corruption are.

3 Research Method

The subjects of the research are the law enforcement officers from police investigator, public prosecutor, judge, and advocate, as well as some people who have ever experienced and interacted socially in matters of corruption. The research on judicial corruption crime is conducted in jurisdiction of Tanjung Karang Corruption Court, Bandar Lampung because Lampung is one of the regions that has received national attention related to the practice of judicial corruption. The data collected from observation, interview, and documents analysis from law enforcement officers (police officer, prosecutor, judge, and lawyer) and several informants who are involved in judicial corruption practice, as well as collecting of legal
action products from law enforcement officer such as the letter of detention suspension, indictment, letter of demand, and court decision letter.

Interpretation and reflection of legal hermeneutics is used to understand the context of the conversation and its legal context in analyzing the meanings of all aspects that are the essence of the conversation and the legal text of the legal action of officer, whereas to guarantee the credibility of data/fact, a source triangulation technique is used, the technique of checking the validity of data through re-checking and comparing the degree of reliability of information obtained through different sources.

4 Discussion

4.1 Judicial Corruption in Justice System of Law Enforcement on Corruption

Judicial Corruption

Bribery in criminal justice belongs to the term judicial corruption or judicial mafia. The International Commission of Jurists (ICJ) classifies it as an insidious and odious judicial corruption, as stated:

"...of all types of corruption, judicial corruption is perhaps the most insidious and odious because this type of corruption gnaws and destroys a most important pillar of a democratic government. Much has been written about the topic of corruption, but judicial corruption tops the list of the condemned. Corruption adulterates, clogs, pollutes, perverts and distorts the dispensation of justice".

Judicial corruption in the criminal justice system can be interpreted as a crime committed by law enforcement officers, such as police investigator, public prosecutor, judge, on a case being handled, by plotting the case as if the suspect was innocent, though it is guilty, indeed, it is then plotted as if it was a trifle.

Criminal Justice System in Law Enforcement on Corruption

The implementation of justice system in law enforcement on corruption as a special court refers to Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) and Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning Amendment of Law Number 31 of 1999 concerning Eradication of Corruption Crime. Court examination refers to Law Number 20 of 2003 concerning the Eradication Commission for Criminal Crime and Law Number 46 of 2009 concerning the Corruption Criminal Court inaugurated on April 28th, 2011.

The success of justice system in law enforcement on corruption in enforcing law and justice is highly dependent on the intellectual and moral aspects of law enforcement officers as a major component of law enforcement. If the moral and intellectual of the law enforcement officers are good, they will certainly carry out their duty and authority seriously and fully responsibly. Conversely, if they lack of moral values termed as moral impurity (lack of integrity, selfishness, greed, and temptation, as well as lack of principles and religion), they will tend to lead the law to chaos, dishonesty, and problem.

Concerning fact, the moral and intellectual of law enforcement officers do not get better. They reduce the law as a means of gaining personal benefit. This is the paradox of the criminal justice system in law enforcement on corruption. Judicial corruption has mostly affected law enforcement officers’ life by deviating from law enforcement.
4.2 The Natures or Forms of Judicial Corruption in Law Enforcement

The results of the analysis on judicial corruption that causes the paradox of the criminal justice system in law enforcement on corruption are explained as follows:

Disregard of the Law

The term Disregard of the Law is derived from the word “gampang” (easy) with the addition of suffix and prefix meaning “menganggap enteng” (underestimate/disregard). Disregard of the law means underestimating the law showing that the mental construction of law enforcement officers is not wholehearted in carrying out their duty and function, as police, prosecutor, or judge, and in enforcing the law (examining and studying deeply). It is common knowledge that corruption erodes the rule of law. Besides, the term also refers to an unwillingness to examine and review the facts deeply associated with their knowledge of criminal law. Another term which has also similar meaning to disregard of the law is cursory generalization meaning a strong desire to simplify something complex.

Disregard of the law is caused by: (a) sluggish mentality which is unwilling to examine the facts or explore a complicated corruption case due to the formal legal perspective understood. In this sense, the officer’s knowledge and understanding about criminal law are considered linear and narrow, and the effort to enforce law is formed by the officers’ limited knowledge of law in revealing truth and justice; (2) profit-loss or bribery mentality. In this sense, it does not mean the officer has low ability regarding criminal law, but an orientation to the interest of gaining benefit or personal wealth is more dominant in influencing the officers’ performance. Such mentality implication assumes that the corrupted officer is very much needed by the suspect or defendant to be asked for relief for his/her mistake. If the suspect or defendant does not bribe the officer for the case, even a simple case can be complicated, instead. Conversely, if a corruption case is potentially profitable, the officer will manipulate the law to justify the suspect or defendant’s crime. Such condition leads the officer’s mental and way of thinking to ignore the truth and justice which should actually be the main concern. The implication of disregard of the law in the level of investigation can be seen from the minutes of examination of witnesses, experts, evidence, and incomplete and undetailed legal relations on the corruption case committed. At the level of prosecution, it can be seen from the indictment and claim letters which are considered sufficient to fulfill the indictment, although it does not describe the details of the event that must be revealed from the series of legal relationship of the suspect’s action, fault, and accountability from the witnesses and evidence available.

At the trial level, this mentality does not appear because in judging, the judge is not alone, but there are three to five judges. Thus, the mentality of disregard of the law is covered by the other judges in investigation at court, adjudication discussion, or in considering adjudication. At the appeal level, the adjudication of Supreme Court only takes over the legal consideration of first level court’s adjudication without giving consideration to aspects of action, fault, and accountability. Supreme Court’s adjudication should straighten the essence of the law against matters that are objections to justice seeker, not add to the obscurity by strengthening the adjudication and by taking over the legal consideration of first level court.

Cherry-picking

The term cherry-picking in law has a negative connotation because it contains an unfair meaning and there is element of favoritism in adjudication of corruptor. It also disregards the equality before the law, the principle that all persons should be treated the same before the law without regard to wealth, social status, or political power. Besides, cherry-picking is also used
to describe the law enforcement officer’s action which abuses power and authority through reasons and formal legal ground for personal interest of gaining personal benefit from the corruption case handled.

Besides, cherry-picking can also be interpreted as two things, namely (1) in the same event; one case is temporarily handled while another one is not, (2) in the same case, a defendant is named a suspect while another one is released. Therefore, from a process standpoint, those who have the right to do cherry-picking is only the police investigator and public prosecutor, while judge do not, because in handling case, judge acts as a recipient of delegation from public prosecutor. The practice of cherry-picking can be carried out by police investigator on a case that will be submitted to the public prosecutor. However, the public prosecutor handling the case can find out because there will always be irregularity or deficiency in the case file regarding the legal subject and its legal relationship with the event involved in the process of corruption such as lack or incomplete suspects submitted.

Likewise, if the cherry-picking is carried out by a public prosecutor, the judge appointed to examine and hear the corruption case can feel and find that there is something wrong in the indictment. In the process of examining at the court, the judge usually knows it. Therefore, the incomplete legal subject will be questioned both to legal subject who is the witness and to the public prosecutor. One of cherry-picking case is on the corruption of special allocation fund of Education Board of the North Lampung District in 2010 which was handled by the Lampung Regional Police. In this case, five suspects were determined, namely the former Head of Education Board of North Lampung District, Chair of the Project Committee, Treasurer of the Office, Official of Technical Implementation Activity (PPTK) of the Physical Development Project, and a civil servant (PNS) in North Lampung. The five suspects were not detained by the Regional Police, but were only required to report every Monday and Thursday. However, in its development, only two suspects were submitted to attorney for trial, namely Z and UM.

**Limiting the Legal’s Reach**

Limiting or keeping away from the legal’s reach can be interpreted that in a criminal event, legal’s reach is limited to certain mage, so it cannot reach certain event that should still be related. Limiting legal’s reach is a reflection of the legal action of police investigator and or public prosecutor. The difference between the act of limiting the legal’s reach and cherry-picking lies in the identity of the legal subject. In the act of limiting or distancing from the legal’s reach, the identity of the legal subject is people who have important position or high official and the like. In the act of cherry-picking, the identity of the legal subject does not have to be an important person, but it can be anyone who has economic capacity and access to law enforcement officers.

A concrete case of practice limiting legal’s reach can be found in the examination of corruption case in Lampung's East Coast Road (Jalpinatim), Road and Bridge Construction Projects of Lampung Province for the Construction of Roads and Bakauheni Bridges — Ketapang — Way Jepara in 2008. The state losses caused were Rp. 25,881,117,762. The public prosecutor in the indictment did not touch the intellectual actors, but only the executors. The judge handling the case could find out by looking at the capacity of the three defendants who were tried only to carry out work based on orders and assignments given by their superiors. The intended civil servant, namely MN (Defendant I), civil servant in the project was appointed as Head of Administrative Affairs and as Holder of Work Advances (Retainer Work). Y (Defendant II), civil servant in the project was appointed as Engineering Administration. H (Defendant III), civil servant who in the project were appointed as Treasurers.
People who were supposed to be responsible for criminal law, such as the Chairperson of the Land Procurement Committee (P2T) and AH as the Head of the Lampung Provincial Non-specific Work Unit (SNVT) as the power of budget users were not touched in the public prosecutor's charge. However, in the trial, the dominant role of the two legal subjects was revealed as actors who should be responsible for the activities of the country's projects. But in the prosecutor's charges, the legal's reach of the legal subject was limited to only three defendants.

Narrowing the Meaning of the Law

Narrowing the meaning of the law can be termed as canalization of the meaning of the law which means an effort to limit the legal meaning to special interests which are usually adjusted to the interest of certain parties. The canalization of legal meaning comes to the surface in the form of differences in legal interpretation, for example the meaning in interpreting the meaning against the law, jointly carrying out deeds, suspending detention, and so forth. Narrowing the meaning of the law tends to refer to the interests of law enforcement actors in constructing or protecting case by using legal themes as symbols. It seems to be part of an event or discourse that has the right, intact, and true meaning.

In a concrete case, narrowing the meaning of the law committed by police investigator can be seen in the case of suspending the detention of corruption suspects which cost the state finances Rp. 1,558,498,420 on routine road maintenance work activities in East Lampung Regency in 2011. DM underwent a two-week detention period, by the police investigator, the detention of a suspect was suspended based on the suspect's request submitted by the attorney for cooperative reasons and with the guarantee that the suspect would not flee and would not remove the evidence. Taking into account the reasons stated, further legal action was taken by issuing a warrant for suspension of detention.

The suspension of DM’s detention in the proposition is interpreted by the investigator as a procedural legal action. Corruption crime by police investigators is positioned and interpreted as being similar to conventional crimes, such as mild persecution, unpleasant acts, and so on. The procedural legal argument grants suspension of detention which actively weakens the main objects of corruption crime that is detrimental to state finances and removes people's rights to development and welfare. In some cases of corruption investigation, forced efforts are made through: (a) summons, (b) arrests, (c) detention, flavored profit-loss model legal action as stated by Lawrence M. Friedman and becoming the mode of judicial corruption.

This was factual when the DM as the suspect and the legal counsel reported to the Jakarta Police Headquarters that the suspect was extorted by East Lampung Police Investigator.

Substantially, the suspension of detention by police investigator to DM is a canalization of legal meaning, such as the statement of the Chief of Police and the Public Relations of the Lampung Police, "Surely all of them are in accordance with applicable rules and it is the people's right to refuse. More importantly, the police have carried out in accordance with applicable rules". Suspension of appropriate detention is a reflection of legal action in form of narrowing the meaning of the law into a hiding place for profit-loss legal behavior that causes judicial corruption.

Exploiting the Severity of the Sentence

Exploiting the severity of the sentence implies that the judge in determining action and fault is only based on procedural law. Provisions for the severity of sentence are used and exploited by judges not only to implement procedural law, but also to gain personal benefit by committing judicial corruption (the practice of bribery). The defendant never knows the
severity of the sentence according to the action and fault made. However, fear and anxiety to lead a life in prison cause the defendant to try to negotiate with the judge through a lawyer or substitute clerk, in essence, to be free or lightly punished by giving bribes.

The judge who knows the severity of the defendant's act, in fact, even though it is a light sentence, but on the grounds of the threat of severe punishment, the judge receives money from the defendant or its family. Conversely, there is also a judge who gives a severe sentence to the defendant because there is no demand for reduced sentence and no promising or giving money. This situation makes the defendant's sentence more severe. According to Guntur Purwanto, judge who is oriented towards material benefit will play at strafmaat (criminal sanctions) imposed . The meaning of playing at strafmaat implies that a judge with such mentality reflects legal action using heavy and light threat or sentence as a mode of gaining economic benefit from the accused.

Provisions on the severity of criminal threat by some law enforcement officers can be exploited or abused to gain material benefits by making statements that incriminate or alleviate the accused / defendant, as if judicially the sentence would be heavy or light. Even though it is done, the reasons for legal consideration tend to be less legal. As in some cases of corruption that the suspect / defendant is a chief of service. In the subjectivity of law as an official (respected person), he/she should be given a heavier sentence for committing a corruption. However, the judge is looking for a reversed legal reason, “Because the defendant as an official and a public figure, being a defendant has borne a heavy burden. Shame is a very severe psychological punishment, so the minimum sentence has been very heavy for him.” In essence, the profit judge wants to reduce the serious criminal sentence that is imposed as a light criminal. Personal subjectivity seems to be the reason given by the profit judge.

The profit judge who behaves like that sometimes does not reduce the crime, but tells the lawyer or defendant that the sentence to be handed down has been lowered / alleviated. Therefore, he receives money from the defendant who does not know anything about the sentence. Some of the profit Judges are determined to free the defendant because they see the economic potential faced for any reason, despite overturning the truth.

Though mental and relational process that makes a corrupt act not be seen or rationalized, to improve mental models like that requires multiple physical strengths through changes in mental habits (mindset) which are grouped into three mentalities, namely (1) visionary mentality, the ability to look forward through systemic thinking and breadth of insight, (2) full consistency mentality, a mentality that familiarizes work methods, thought, policy, and action to accumulate knowledge, and structured actions in an effort to achieve greater goal, and (3) a disciplined mentality, consistency between willingness and action to be achieved.

5 Closing

Based on the explanation of the discussion above, the conclusions that can be put forward are as follows:

1. The law enforcement of corruption by some police investigators, public prosecutors, and judges in Indonesia has raised the paradox of law enforcement which actually reflects the practice of judicial corruption, not fair law enforcement.

2. The natures and characters of judicial corruption crime are constructed by mental activities that weaken the law enforcement of corruption through legal actions, namely disregard of the law, cherry-picking, limiting the legal’s reach, narrowing the meaning of the law, and exploiting the severity of the sentence.
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The Dynamic of Inhabitant Identity Card Policy of Indonesia in 2006-2018

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Abstract. Public service in the Department of Population Administration and Civil Registration is one of the mandatory functions of the government as regulated in The Law of The Republic of Indonesia Number 23 of 2014 concerning Regional Government. E-KTP is a form of administrative service whereby the state is obliged to provide protection and recognition of the determination of personal status and legal status of any Population and Important Events experienced by Indonesia Peoples as mandated in The Constitution of Republic of Indonesia in 1945. However, various problems continue to occur, ranging from corruption of e-KTP cases, unrecognized temporary identity certificates and many more. The dynamics of inhabitant Policy is done to overcome the problems related to e-KTP that have existed so far, this is influenced by Four I factors (Ideas, Interests, Institutions, Individuals) and time. Through the inductive approach method through primary and secondary data sources in the form of legal study material and technical analysis of qualitative analysis, this research describes the factors of new ideas, key actors in policy making, the role of institutions, interests and time in the dynamics of the inhabitant policy in Indonesia. Period of 2006-2018. The dynamics of policies related to e-KTP occur as a form of adjustment to create policies that are relevant to the continuity of service in the field of the occupation administration, therefore strengthening supervision is not only the responsibility of law enforcement institutions or authorized institutions but all of the Indonesian Peoples.

Keywords: Administrative Services; e-KTP; Dynamic of Policy; Regulation; Four I

1 Introduction

Organizing public services is the government's responsibility to Indonesia Peoples The purpose of providing public services is to fulfill the needs of the rights of every citizen and resident of an item and administrative service provided by the government related to the public interest. One type of public service which is the obligation of the government and has a strategic role because it is one of the obligatory functions of the government is public service in the department of population and civil registration. The State is obliged to provide protection and recognition of the determination of personal status and legal status of any Population and Important Events experienced by the Population and/or Indonesian Peoples as mandated in The 1945 Constitution of the Republic of Indonesia.

Referring to The Law of Republic of Indonesia Number 24 of 2013 concerning Amendments to The Law of Republic of Indonesia Number 23 of 2006 concerning Inhabitant Administration, regulating that Inhabitant Administration is a series of structuring and
controlling activities in the issuance of documents and Inhabitant Data through Population Registration, Civil Registration, Inhabitant Administration information management and the utilization of the results for public services and the development of other sectors. Previously, non-electronic Identity Cards were valid in Indonesia until December 31, 2004, which were eventually replaced by Electronic Identity Cards. In the Law, it is also explained that Electronic Identity Cards (hereinafter referred to as e-KTP) is Identity Cards equipped with chips which constitute the official identity of the inhabitant as self-proof issued by the Implementing Agency.

E-KTP is an integral part of inhabitant administration and its implementation must be orderly. Orderly population administration is intended as protection and recognition of the certainty of personal status and legal status of the inhabitant in the life of the community, nation and state, therefore the focus of this policy study focuses on the dynamics of the e-KTP policy, as diagram follows:

![Fig 1. The Map of Administrative Policy with the focus of the e-KTP study](image)

Prior to the issuance of Law Number 23 of 2006 concerning Inhabitant Administration, arrangements regarding Inhabitant Administration, including arrangements for Inhabitant Identity Cards (KTP) were regulated by the regulations of the Dutch East Indies Colonial Government (Staatsblad) and the Ministerial regulation Then The Law of Republic of Indonesia Number 23 of 2006 concerning Population Administration was only issued after 61 years of independent Indonesia. In its development, The Law of Republic of Indonesia Number 24 of 2013 was published amendments to the Law of Republic of Indonesia Number 23 of 2006 concerning Population Administration.

In its journey, the implementation of the e-KTP program was inseparable from various obstacles, namely the corruption case of the e-KTP congregation which until now is still in the handling of the Corruption Eradication Commission (KPK), rejection of e-KTP Substitute Certificate in various banks. Issuance of Circular Letter (SE) from Minister of Home Affairs of the Republic of Indonesia Number: 471.13 / 10231 / Dukcapil, Subject: Format of Certificate of Substitution as e-KTP as a result of scarcity of e-KTP, network problems, and much more. Therefore, referring to the complexity of the e-KTP problem in Indonesia, there needs to be a study that shows the dynamics of policies related to Inhabitant Identity Cards (e-KTP) as the basic needs of Indonesian people for their personal status and legal status for each incident and important events.

1.1 Literature Review

**Policy Dynamics**

Dynamics always occur over time, in any aspect. Dynamics means that one person's behavior directly influences the other citizens reciprocally, therefore dynamics means that there are interaction and interdependence between members of one group with the other group
members reciprocally and between members and the group as a whole. Dynamics occur over time because of various factors. There are 4 (four) factors that influence the context of policy change. These 4 factors are 4I: ideas, interests, institutions, and individuals as policymakers. In addition, as research that spans a period spanning more than half a century, the effect of time becomes very important. Further explained as follows:

1. Ideas and Individuals:
   There is a main factor, namely the presence of new ideas that enter and are absorbed into the interests and institutions that bring about a paradigm shift in policy. In the process of new ideas, there are key individuals/actors who will carry out various roles, especially their role as responsible actors. These new ideas can emerge from the political elite (Stakeholders, Leaders, Leaders) and from the community itself.

2. Ideas and Interests:
   New ideas that arise are also influenced by various interests in order to push the issue of a paradigm shift in policy. In the political sphere, this is done by people who have influence. Usually, it can also be influenced by cultural changes or new adaptations, which then arise from the interest groups who fight for it.

3. Institutions:
   Institutions are a forum for delivering new ideas related to policy changes. In terms of institutions, the policy will be influenced by an idea that is indeed considered to be time to apply. Then the institution encourages the idea to be legitimate by submitting it to the authorities (government). Changes in policy from an institutional perspective are caused by conflicts between current regulations and conditions, therefore, they are deemed necessary to adapt with more relevant policies applied.

4. Individual Roles:
   Individuals are the main actors as the key to policy change. Individuals have a role in incorporating new ideas in policy either as a giver of ideas, forming ideas or as recipients of new ideas that are proposals from other actors. Individuals who act as key actors have the authority to determine policy changes while being responsible for changing those policies.

5. Time as an important element in policy dynamics:
   Policies are also influenced by time, both regarding policies that are deemed necessary to change because they have been long enough or at times that cannot be predicted because they need to be applied at that time. This proves that the time factor is one of the important elements of policy dynamics.

From the explanation above, it can be seen that policy dynamics can occur due to various factors. First, new ideas (policies can be influenced by new ideas that are considered more strategic). Second, Individuals / Actors (have an important role in setting and taking a policy), Third Institutions (Policies are influenced by laws, norms, rules, by institutions that authority to do so), Fourth Interest (political lobbying occurs, certain interests arise from certain groups). Last is time, policies also follow developments from time by time so that they remain relevant.

**e-KTP Public Services**

Public policy must be developed by prioritizing change in the public sector so that the reform movement in the public sector can move faster than previously attempted by public policy. Public policy must thus avoid the orthodox mindset to solve public problems that are increasingly complex and complicated. Therefore public policy requires adjustment and experiencing dynamics. Policy as a behavior that is permanent and repetitive in relation to the
business that is inside and through the government in order to solve common problems that occur. It can be concluded that the policy is an action taken to achieve the goal.

Service basically be defined as the activity of a person, group and/or organization both directly and indirectly to meet needs. E-KTP service is part of Administrative Services as referred to in Article 5 paragraph (7) letter a of The Law Number 25 of 2009 concerning Public Services, namely government administrative actions that are required by the state and regulated in legislation in order to realize personal protection, family, honor, dignity and property of citizens.

2 Methods

The research writing method is normative jurisdiction, which is supported by the inductive approach method. This research was carried out with the new regulations specifically to more general rules of character. By using data sources, primary data and secondary data, namely in the form of primary, secondary legal materials. The analysis used is a technique of qualitative normative analysis.

3 Results and Discussion

Since 2006 until 2018, the dynamics of the Inhabitant Identity Card (KTP) policy has occurred in Indonesia, from the change of KTP to e-KTP, changes in the validity period of the KTP which was previously only 5 years and must be displayed, afterward, it changes to be valid for lifetime. The dynamics of the policy regarding the Inhabitant Identity Card (KTP) does not only stop when the change to become e-KTP, but there are also various other factors that cause adjustments to other related regulations. Therefore, over time the population administration policy, especially e-KTP, continued to be adjusted. In addition to experiencing changes from time by time, in policy dynamics, it is possible for a policy to also change. This can be seen through the description of the changes in the setting substance and the change of setting substance as shown in the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Initial Regulation</th>
<th>Change Regulation</th>
<th>Changed in Substitution arrangements</th>
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<tbody>
<tr>
<td>1.</td>
<td>The Law Number 23 of 2006 concerning Inhabitant Administration</td>
<td>-</td>
<td>1. The validity of e-KTP is changed to a lifetime; 2. The Inhabitant Identity Card (KTP) is changed to Electronic Identity Card (E-KTP); 3. Indonesian Citizens and Foreigners who have Permanent Stay Permits who have obtained 17 (seventeen) years or have married or have been married must have an E-KTP; 4. Ratification and Issuance of Inhabitant Documents at no charge (Free); 5. Add sanctions; 6. Benefits and Uses of Birth</td>
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</table>
|    | Additional Regulation:  
1) The Law Number 24 of 2013 concerning Amendments to The Law Number 23 of 2006 concerning Inhabitant Administration;  
2) The Circular Letter (SE) of the Minister of Internal Affairs of the Republic of Indonesia Number: 470/296 / SJ, Regarding | | |
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<tbody>
<tr>
<td><strong>1.</strong></td>
<td><strong>Electronic KTP (e-KTP) Valid for Lifetime</strong></td>
<td>Certificate.</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>The Government Regulation Number 37 of 2007 concerning Implementation of The Law Number 23 of 2006</td>
<td><strong>1.</strong> Additions to SIAK (Inhabitants Administration Information System); <strong>2.</strong> Maintenance, security, and supervision, including data in the database, hardware, software, data communication networks, data centers, data backup, and backup data centers; <strong>3.</strong> Distribution of authority for funding allocation by the Government, provincial government and regional / city government, as well as financing data communication networks.</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>The Presidential Regulation of the Republic of Indonesia Number 25 of 2008 concerning Requirements and Procedures for Inhabitant Registration and Civil Registration</td>
<td><strong>1)</strong> The Presidential Regulation Number 25 of 2008 concerning Requirements and Procedures for Inhabitant Registration and Civil Registration is revoked and declared invalid; <strong>2)</strong> Adjustment to The Law Number 24 of 2013 concerning Amendments to The Law Number 23 Year 2006 concerning Population Administration; <strong>3)</strong> Inhabitant registration consists of recording population data, issuance of family cards, issuance of E-KTP (Electronic Identity Card), Child Identity Card, issuance certificate of residence and inhabitant registration of vulnerable inhabitant Administration; <strong>4)</strong> The Electronic Inhabitant Identity Card (e-KTP) does not require an RT / RW and Village Head certificate anymore.</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td>Presidential Regulation Number 26 of 2009 concerning Application of Inhabitant Identity Cards Based on National Population Number</td>
<td><strong>1)</strong> The description of the E-KTP and the validity period of the Non-electronic KTP only until December 31, 2004; <strong>2)</strong> Government agencies, local governments, banking institutions, and the private sector must provide services to the public based on the E-KTP by not considering the E-KTP publishing place; <strong>3)</strong> Government Agencies, Regional Governments, and Banking Institutions must report on the implementation of services to the President through the</td>
</tr>
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</table>
Inhabitant Identity Cards Based on National Population Number

2) The Presidential Regulation of the Republic of Indonesia Number 67 of 2011 concerning the Second Amendment to Presidential Regulation Number 26 of 2009 concerning Application of Inhabitant Identity Card Based on National Population Number

3) Presidential Regulation of the Republic of Indonesia Number 126 of 2012 concerning the Third Amendment to Presidential Regulation Number 26 of 2009 concerning Application of Inhabitant Identity Card Based on National Population Number

4) Presidential Regulation of the Republic of Indonesia Number 112 of 2013 concerning Fourth Amendment to Presidential Regulation Number 26 of 2009 Application of Inhabitant Identity Cards Based on National Population Number

5. The Minister of Home Affairs Regulation Number 9 of 2011 concerning Guidelines for Issuance of Inhabitant Identity Cards Based on National Population Number

<table>
<thead>
<tr>
<th>1) The Minister of Home Affairs Regulation Number 69 of 2014 concerning Amendments to Minister of Home Affairs Regulation Number 9 of 2011 concerning Guidelines for Issuance of Inhabitant Identity Card Based on National Population Number</th>
<th>1) Minister of Home Affairs Regulation Number 69 of 2014 concerning Amendment to Minister of Home Affairs Regulation Number 9 of 2011 concerning Guidelines for Issuance of Inhabitant Identity Card Based on National Population Registration Numbers revoked and declared invalid;</th>
<th>Minister every 6 (six) months up to December 31, 2014.</th>
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<tr>
<td>2) Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 8 of 2016 concerning Second Amendment to Minister of Home Affairs Regulation Number 69 of 2014 concerning Electronic Inhabitant Identity Card (E-KTP);</td>
<td>3) Inhabitant Identity Card (KTP) changed to Electronic Inhabitant Identity Card (E-KTP);</td>
<td>Central Server Integrated Database Management System, hereinafter referred to as the Central IDMS server;</td>
</tr>
<tr>
<td>3) Central Server Integrated Database Management System, hereinafter referred to as the Central IDMS server;</td>
<td>4) Requirements and procedures for issuing E-KTP for Indonesian citizens do not have an E-KTP;</td>
<td></td>
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35

Idea and Individual

Previously, arrangements regarding Population Administration, including arrangements for the Inhabitant Identity Card (KTP), were governed by the regulations of the Dutch East Indies Colonial Government (Staatsblad) and at the level of Ministerial Regulations. Until new idea emerged to provide protection and recognition of the determination of personal status and
legal status of anyone and Significant Events experienced by Indonesian Citizens as mandated in the 1945 Constitution of Republic of Indonesia with the issuance of The Law Number 23 of 2006 concerning Population Administration.

Nowadays, The Law Number 23 of 2006 concerning Population Administration has been amended by The law Number 24 of 2013 concerning Amendment to The Law Number 23 of 2006 concerning Population Administration which changes the policy on non-electronic KTP to Electronic KTP that are valid for a period of life, the role of the actor responsible in this case is the Minister of Home Affairs. Including the issuance of Circular Letter (SE) of the Minister of Home Affairs of the Republic of Indonesia Number: 470/296 / SJ, Regarding Electronic KTP (e-KTP) Valid for Life.

Idea and Interests
Policy changed related to The Law Number 24 of 2013 concerning Amendments to The Law Number 23 of 2006 concerning Population Administration which emphasize the existence of sanctions for the administration of population administration services, in order to encourage interests built by the Government to administer population administration as applicable regulations. Another thing is that the application of E-KTP is acknowledged to be corrupted in congregation, as if this policy was made for malicious purposes, the impact when the scarcity of blank is issued Circular (SE) Minister of Home Affairs of the Republic of Indonesia Number: 471.13 / 10231 / Dukcapil, Regarding: Format of Certificate as Substitute for E-KTP, when the situation requires that the E-KTP form be empty (2016) even though many citizens have obtained PRR status (Print Ready Record).

Institutions and Ideas
Amendment Policy Number 102 of 2012 Amendments to Government Regulation Number 37 of 2007 concerning Implementation of The Law Number 23 of 2006 which shows policy changes that are encouraged by institutions. Distribution of the authority of the financing budget by the Government, the provincial government and the regional / city government, as well as financing the data communication network. Furthermore, the Presidential Regulation of the Republic of Indonesia Number 96 Year 2018 concerning Requirements and Procedures for Registration of Population and Civil Registration which eliminates policies related to cover letters from RT / RW, so that the public can immediately record the nearest residence. There is an institutional push on top of it (executive) related to the elimination/cutting of complicated bureaucracy in the administrators of population administration services.

Furthermore, related to the Republic of Indonesia Number 112 of 2013 concerning the Fourth Amendment to Presidential Regulation Number 26 of 2009 Application of Inhabitants Identity card Based National Number Identity, that mandating Government Agencies, Regional Governments, Banking Institutions, and Private Services must provide services to residents with the basis of E-KTP by not considering the place of issue of E-KTP, therefore that regulation is binding on concerned institutions.

Role of Individuals
Substitute Certificate of E-KTP used for the purposes of Elections, Banking, Immigration, Police, Insurance, BPJS, Marriage and other needs according to regional needs, based on Circular (SE) Minister of Home Affairs of the Republic of Indonesia Number: 471.13 / 10231 / Dukcapil, Regarding: Format of Certificate of Substitution for E-KTP which shows the existence of individuals (in this case the Minister of Home Affairs) as policymakers for relevant institutions. Furthermore, in the Minister of Home Affairs Regulation No. 19 of 2018
concerning Improving the Quality of Inhabitant Services, it requires the Regent / Mayor to provide a means of improving service quality. Regents / Mayors as individuals who play a role (key actors) in accelerating the improvement of the quality of population services.

**Time as Important Element of Policy Dynamics**

Time also has a strong factor in policy dynamics. For example, Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 8 of 2016 concerning Second Amendment to Minister of Home Affairs Regulation Number 9 of 2011 concerning Guidelines for Issuance of Inhabitant Identity Cards Based on National Population Identification Numbers which regulates further National-Based Registration by utilizing the E-KTP chip, as well as the Central Server Integrated Database Management System, hereinafter referred to as the IDMS Central server as a population data center that adapts to the development of the digitalization world. Furthermore, the issuance of the Presidential Regulation of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Registration of Inhabitant and Civil Registration, as an adjustment to the issuance of The Law 24 of 2013 concerning Population Administration also Minister of Home Affairs Regulation Number 19 of 2018 concerning Quality Improvement of Population Services which requires to issue E-KTP within 1 (one) hour and no later than 24 (twenty four) hours since the requirements are declared complete, including announcing the names printed and the number of blanks every day. This policy is relevant to the current situation, considering the many demands of the community for quality services, as well as the certainty of public information.

### 4 Conclusion and Recommendation

The dynamics of the policy on population administration in Indonesia. occur in several ways, both related to the Population Administration Law, Government Regulations, Presidential Regulations, and the Minister of Home Affairs Regulation. Policy dynamics arise as a result of various factors, namely 4I (Ideas, Individuals, Institutions, Interest). First, new ideas (policies can be influenced by new ideas that are considered more strategic), Second, individuals/actors (have an important role in setting and taking a policy). Third, Institution (policy rules by law, norms, rules, and related institutions without commitment). Fourth Interest (political lobbying occurs, certain interests emerge from certain groups), The last is time. The policy also follows developments from time by time to keep them relevant.

The dynamics of the E-KTP policy need to be understood that the emergence of new ideas should be purely a public need so that it is not a product of the interests of certain groups. For this reason. First, public awareness must be built to safeguard this problem. The second is related to the role of the individual as a key factor in taking policy must be seen from the beginning, so that the motive for making clear decisions is in the interests of citizens. In addition, the background and competencies of these key actors must be experts both scientifically and in the field so that there is no longer a dynamic term of "trial and error" policy. The third is related to institutions. It is necessary to conduct joint escort and improve coordination relations between institutions so that each policy product does not overlap with each other, on the contrary, it reinforces each other. Fourth, regarding the importance of the need for strengthening supervision, especially for individual law enforcers who are also supported by the community. How can a policy be full of lobbying and certain interests, therefore the institutional strengthening of supervision and strict sanctions is highly recommended.
Last time as a supporting element, certain adjustments need to be made as soon as possible considering that currently entering the industrial 4.0 error example, E-KTP services via digital, mobile recording E-KTP, and transparency of people who have obtained status (PRR) so that there is legal certainty regarding administrative services. The dynamics of policies related to E-KTP occur as a form of adjustment for the creation of policies that are relevant to the continuity of services in the field of the occupation administration, therefore supervision is not only the responsibility of authorized institutions but all Indonesian peoples. It can support the creation of legal certainty and recognition of the personal status of each resident in the territory of the Unitary Republic of Indonesia.

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Business and Disruptive Innovation in Philosophy of Technology and Innovation Support Center

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Abstract. Abstract contains research problem, The problem arose when there were only a few universities as a place to gather all inventors, designers, and creators who had intellectual property centers. Of the not many Intellectual Property Centers, fewer have implemented Technology and Innovation Support Centers with a legal umbrella of memorandum of understanding with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. Aims of the study, This study seeks to map the problems and current conditions of 17 universities that have implemented the Technology and Innovation Support Center. The picture sought is focus on information technology infrastructure in the form of a computer system that has been built by the 17 leaders of the university. A classification of the quality of the computer system and boosting method will be made that makes it easy for beginner colleges in intellectual property affairs to adopt its Intellectual Property Center and Technology and Innovation Support Center. Research method, Large amounts of data include intellectual property data managed by Intellectual Property Centers in all forms and levels. The data is obtained from all inventors, designers, and creators it serves. Improvement of service quality can be obtained by installing the Technology and Innovation Support Center, which was initiated by the World Intellectual Property Organization. Data science is the extraction of knowledge from large volumes of structured or unstructured data which is a continuation of mining field data and predictive analysis, also known as knowledge discovery and data mining. Results, The presence of informatics philosophers is needed so that the stakeholders' understanding will occur in order to handle business and disruptive innovation using technology and innovation support centers. And recommendation, Recommended to the Directorate General of Intellectual Property, the Indonesian Intellectual Property Center Association, and the Directorate General of Innovation Strengthening to meet in order to form a shared philosophy regarding technology and innovation support centers.

Keywords: Philosophy; TISC; business; disruptive

1 Introduction

Details of background (research significance): The dissertation research /research field is planned to focus on the topic /theme of research, namely research challenge on the development of internet-based data science systems with cloud computing technology and virtualization in the form of Technology and Innovation Support Centers (TISC), namely: program schemes that provide innovators /inventors in countries developing countries with local resource-based access, high-quality information technology and related services as
needed, help them to exploit their innovative potential and create, protect and regulate their intellectual property.

Formulation of problems/questions (preliminary research): Computer-based systems that are examined are the Technology and Innovation Support Center (TISC). The World Intellectual Property Organization mandates that in each country there is one government agency that takes care of the institution, in the context of Indonesia, the agency intended is the Directorate General of Intellectual Property. The related problem can be formulated here is how is a comprehensive review of data science with big data keywords, data analysis, data analytics, from many Indonesian universities that have built the institution can facilitate the needs of the Intellectual Property Center? How is the sustainable development knowledge platform suitable (for each regional Indonesian university, for example, each specific island: Sumatra, Java, Sulawesi, Kalimantan, Papua) facing business and disruptive innovation?

Theory and related work (journal review): Which is considered good and which is considered bad (ethics)? There are intellectual property ethics from Tech Terms, Media Smarts, Titania, Investopedia. Ethics is a set of moral principles governing the habit of a group or individual. So computer ethics can be interpreted the moral rules that manage computer use. Some common issues include intellectual property rights (such as electronic content copyrights), privacy matters, and how do computers affect society? (Ethics and Intellectual Property n.d.). Theory and related work (journal review): Computer-Based Information System (CBIS) refers to information systems developed based on computer technology. The term comes from a book entitled Analysis & Design of Information Systems for Competitive Advantages of Companies & Modern Organizations, by Hanif Al Fatta, STMIK AMIKOM Yogyakarta. The formulation is known as follows (Fatta 2007):

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\text{CBIS} = \text{hardware} + \text{software} + \text{stake holder} + \text{procedure} + \text{information}
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The complex system where the computer plays the main role consists of physical system and software system can help people live healthier and favors. Failure of this system can result in disaster loss of money, time, and life (example of Bank Mandiri case). The complexity of this system relates to the integration of information technology into physical and human activities. Integration dramatically increases interdependence among components, people, and processes, generating complex dynamics. Engineers with a detailed understanding of the application domain and electronics computer, software, human factors, and communication are needed to provide holistic approach to system development so that disaster can be avoided. (White 2014)

Hypothesis (optional), and research objectives (short term)? Hypothesis (optional): Details of the philosophy of informatics science can be built which is proposed to improve the reliability of TISC implementation through several ways to obtain knowledge of data science from a collection of IPR information data so that knowledge is useful for facilitating inventors, creators, designers, and their families and society in general. Research objectives (short term): In the context of electrical engineering, philosophy can be interpreted as a friend / friend of wisdom in solving life problems, examples of Gojek and Grab applications solve the problems of motorcycle taxi drivers. Dissertation Context, Philosophy Is A Friend / Friend Of Friends In Completing Data Science Problems In Technology And Innovation Support Center (Tisc).

Since the appearance of the computer, the system, innovation has been greatly helped. Many inventors are facilitated by the invasion process, which can help the beneficiaries of their discoveries, for example vehicles (land, sea, air), are called disruptive innovation, which is innovation that helps. In business theory, disruptive innovation is innovation that creates
new markets and valuable networks. All of this can be related to the business at the IPR Office that manages intellectual property in the form of innovations that need to be created with a valuable market network so as to bring benefits to all stakeholders.

2 Methods

Detailed time and research context can be arranged in a fish bone diagram. Data collection and translation methods use search engines and translators such as Google.com, Bing.com, Yahoo.com, Translate.com, PROMT-Online, Babylon NG. Social media is also used to find out the response of netizens like Facebook.com, Twitter.com, Instagram.com, LINE.me. All material is arranged on a computer using Mendeley Desktop. The analytical method uses philosophical science material.

Fish bone diagrams or also called cause and effect diagrams are arranged starting from the first time the author conducted research writing from school to college. The experience of researching gives wisdom in the form of the need for us to know the architecture of the philosophy of informatics first. After that, it is necessary to think about the identification system automatically to facilitate the process of introducing TISC stakeholders. To facilitate the parties’ transaction process, an auction mechanism needs to be considered to access the resources and products needed. Early research is needed to map problems in the intellectual property center. All the processes support dissertation research to develop data science in TISC.

3 Results and Discussion

Result and Discussion presents and analyses the findings thoroughly. Describe in this section the research findings clearly. The philosophy of informatics can be explained by the following pictures:
The philosophy of informatics can be traced from the kauniah verses to science / exact to the plate of science integration, aiming at specialization in informatics. So with the philosophy of science can be integrated the science of divinity and science / exact. (Mustopo 2017)

Seen in the picture that the humanities / social sciences are also mixed in the dish. This is in accordance with the fact that users of informatics are human beings or groups of people that need to be studied as well. So like that disc, TISC can soon be established after a complete philosophy of informatics science with moral principles compiled to provide guidance for the recruitment of some experts who develop useful data science for communities that Care by IPR Office.
Fig 3. Informatics is grown from natural sciences with three main constituents namely biology (humans who studied ergonomics), chemistry (composition of composing materials of computers as the main tools of informatics), physics (physical computer materials and electrical phenomena), [please use Google Translate /Bing Translator].

At the level of doctoral programs, the philosophy of science must be studied before embarking on a series of in-depth and detailed research because researchers are human beings as well as philosophies which enable the incorporation of divine science, humanities, and science / exact.

Fig 4. Part a (left) shows how philosophy recognizes the source of knowledge, namely God and describes the process of the occurrence of knowledge that results in business innovations and innovations that create new markets, disrupt or damage existing markets. Part b (right) states the process of knowing objects, namely business & disruptive innovation, starts from the ability to identify problems that require innovation to master the new market. (Achmad 2019)

Knowledge as a capital in innovating, has been demonstrated by part-A, as the process of occurrence. Knowledge that accumulates into science. With knowledge, innovators are able to do many things on the B. resulting in a business and disruptive innovation.

Fig 5. Seen in part a (left), disruptive innovation has applied new technology to existing markets, causing disruption to existing business people. (Lopez 2015) Seen in section b (right), disruptive innovation has defined the domain well even though the definition of the problem has not been done well. (Kristóf 2016)
Can be modeled here innovations such as Gojek, Grab, and Uber. All these applications interfere with base Ojek which eventually gets eliminated. Even Uber was eliminated for the Indonesian case. All the applications interfere with the Ojek market already in many bases. They have not been resolved to define the problems faced even though the domain definition is final is the driver Ojek and car. Another case is an intermediary trading business or a realtor. Now with the innovation of the Internet marketplace, many middlemen traders are on the mat because the end users directly buy directly to the manufacturer. It also improves the business of freight delivery services. The latest case is the learning guidance Business (Bimbel) has transformed into an online world such as RuangGuru that just celebrated its existence for five years in Indonesia. This significantly spits a private bimbel. Only the major Bimbel businesses still remain in the world of education.

Here is the significance of the Indonesian Intellectual Property Center Association (ASKII) which needs to develop technology and innovation support centers (TISC). The shareholders of all disruptive innovation applications that develop their business innovations need to contact ASKII and the closest university to the head office and branch offices of the company to resolve the problem definitions that are always emerging. Usually, business innovations have a parent company that operates as a global Multi National Corporation, able to solve macro problems but fail to solve the micro problems faced by its stakeholders, especially Ojek drivers and cars even though they already have Internet devices and social media devices.

![Fig 6. Mapping of Industry Competitiveness](image)

TISC is assisting IPR Offices in transforming the registered intellectual property into a business and disruption innovation that is beneficial to the intellectual property community. For each business that TISC developed need to develop measuring instrument to create Mapping of Industry Competitiveness periodically for example annually. Unfortunately it is still limited to the concept that WIPO developed, not really applied especially by 17 colleges that have signed memorandum of Understanding with the Directorate General of Intellectual Property. It is evidenced that there is not a single TISC Indonesia registered in the WIPO Directory. Still happening in the DJKI level, there is confusion at the level of intellectual property centers of many universities. It is a sign of the unexplained philosophy that is held to develop all that.
4 Conclusion and Recommendation

Because of the lack of universities with the necessary organ that is the center of intellectual property that develops technology and innovation Support Center (TISC), many industries that are listed in many companies need to coordinate with the science and technology Park which corresponds to the area of the line and nearest to the head office and branch of the company. Colleges with doctoral program students will certainly start work by formulating a philosophy of science related to their fields of work if they get assignments in intellectual property centers that develop technology and innovation support centers (TISC). Focus on each study program, student Doctor program can develop informatics science philosophy from business and disruptive innovation with Computer-Based Information System refers to information systems developed Based on Computer technology. Higher education levels should be centered in the technology and Innovation Support Center.

References

National Health Insurance: Realizing A Better Public Service and Guaranteeing the Citizens' Constitutional Rights

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Abstract. National health insurance based on Law No. 24 of 2011 implemented on January 1, 2014 is a manifestation of the state's responsibility to fulfill the health care rights for all citizens. Nevertheless, this national policy has not been well received by the community. Not only because it has just started so that the service provided is not optimal, but also it is stated to contain elements of usury, which is contrary to Islamic law followed by a majority of the population in Indonesia. This article will discuss whether national health insurance is an alternative towards better public services or interventions of religious freedom, and how to implement a national health insurance program that can be well accepted by the whole community. National health insurance as an alternative in fulfilling the right to health care services has not been implemented optimally and even tend to discriminate against the poor people. It happens because of limited funding from both government and local governments influencing the lack of accessibility of the poor in this program. In addition, this program also contains an element of uncertainty, an element of gambling, and usury, which is contrary to the teachings of Islam. Therefore, the government should implement this program by using the excellent service standard as a general principle of the new public services and doing synchronization with Islamic law as the religious norms that followed by the largest population in Indonesia. It is important to protect the right in implementing the teachings of religion as a constitutional right.

Keywords: National Health Insurance; Public Service; Citizens' Constitutional Rights

1 Introduction

Health is a fundamental right which is the responsibility of the State to fulfill it. In Indonesia Constitution in Article 28H (1) states that every person has the right to live with physical and spiritual prosperity, residue, and get a good environment and healthy and receive medical care. Furthermore, in Article 34 (3) stated that the State is responsible for the provision of health care facilities and public service facilities. Therefore, the government as a public service provider must carry out this constitutional mandate without discrimination. In Law No. 36 of 2009 on Health, “health” means good health, both physically, mentally, spiritually and socially to enable more people to live socially and economically productive. According to this law, health development aims to increase awareness, willingness, and ability to live a healthy life for everyone in order to realize the degree of public health as high, as an investment for the development of human resources are socially and economically productive.
Policies on health care through the national health insurance started on January 1, 2014 based on Law No. 24 of 2011 on Social Security Organizing Body will be an alternative in fulfilling the right to health for the community as a basic right of every citizen without exception. The goal or participants of this program are everyone, including foreigners who work for a minimum of 6 (six) months in Indonesia, which has been paying dues. So, the existence of a health insurance policy is expected to promote the establishment of better health care and to reach all citizens in Indonesia.

Nevertheless, in implementing health care we often encounter discrimination detrimental to the public service, especially the poor. The government efforts to provide health care to the poor through the national health insurance makes people difficult to access health services. Many patients on the national health insurance is only compounded by the administrative affairs of the membership to start taking care of the administration of health services at the health center. Poor communities often do not get a decent service and are discriminated against because of their low ability to pay. Several cases, including the case of disposal of a patient by some hospitals in Jakarta. This case occurred on January 5, 2019 when some patient using national health insurance card were refused by the hospital officer. (Lova, 2019)

Furthermore, there are several cases of late treatment of patients that cause death. (Hutauruk, 2018) Some similar cases in the other areas are also happens. It shows poor health services and discrimination against the poor people who cannot afford the cost of the treatment. Even after the launch of the health care insurance program, though, even more cases of neglect of poor patients who use a national health insurance card.

The cases that occurred showed that health programs initiated by the government is still far from the expectations of society. In addition, another controversy is about the status of the national health insurance that is not in accordance with the principles of Islam, especially problematic considering that the people of Indonesia are predominantly Islamic. Incompatibility of national health insurance program with the principles of Islam as the opinion or fatwa of Indonesian Ulema Council stating that the national health care insurance system applied contains an element of uncertainty, gambling and usury are contrary to the teachings of Islam causing a lack of public acceptance. However, the government did not seem to care about the interests of the majority community. The absence of alternative insurance policy on national health insurance, according to the teachings of Islam and the obligation to participate in this program can be considered as government interference in the free exercise of religion as part of the religious freedom which is also guaranteed by the constitution. These problems are then interesting to be discussed as to whether the national health insurance is an alternative to the better services or even the intervention of religious freedom in Indonesia.

2 Method

This study is a normative legal research using a statue and conceptual approach. The statute approach is to analyze various regulations on the national health insurance. The conceptual approach is used to answer the problems on how the implementation of national health insurance in the community.
3 Results and Discussion

3.1 The Role of Government in Realizing a Better Health Service

Health is a human right that must be fulfilled and protected by the Government. In addition, health is also one indicator of public welfare in a country. With fulfilled and protection of health services for the people it will have implications for improving the productivity of society and can reduce State expenditure in the health sector so that the state budget can be optimized in the areas of strategic development that leads to prosperity. The right to health care is one of the rights to welfare. Economic rights, social and cultural human rights are the type associated with material prosperity, sociality and culture. These kinds of rights are originally set forth in article 16, 22 to article 29 of the Universal Declaration of Human Rights, and further stipulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. The rights are included in the category economic, social and cultural rights is one of them is enjoying the standard of physical and mental health are high.

Article 2 (1) of the Covenant states that any State party to the present Covenant undertakes to take steps, both individually and through international assistance and cooperation, especially technical and economic assistance, up to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant using all adequate facilities, including taking legislative measures. This Covenant indicates that the State duty is not only to actively take action, but also take certain measures to protect the rights of its citizens. Indonesia has ratified the ICESCR in 1966 by Law No. 11 of 2005 and should take action in providing better health services. The right to health in fair, equitable and non-discrimination is also in accordance with the values of the Pancasila as the state philosophy, especially in verse 5 stating that social justice for all Indonesian people. Social justice in this case also includes equity in gaining access to good health and without any distinction based on social status in society.

In the constitution of the Republic of Indonesia and the Law No. 39 of 1999 on the Human Rights, has set up the same thing in Article 71 that the government is obliged and responsible to respect, protect, uphold and promote human rights stipulated in this Law, regulations other legislation and international law on human rights ratified by the Republic of Indonesia. Article 72 states that the government's obligations and responsibilities include the implementation of effective measures in the areas of legal, political, economic, social, cultural, defense and security, and other fields. Indonesian government's efforts to achieve better health services appear on the amount of regulation that supports it. However, in practice, there are many obstacles in the field faced particularly in implementing the regulation. As we know that the budget funds allocated to the health sector until 2015 are only around 2%, while according to the provisions of Article 171 (1) of Law No. 36 of 2009 on Health requires the government budgeted as much as 5%. It is also still far from other countries in Southeast Asia that have been budgeted sufficiently high public health costs, such as Malaysia, Thailand, and Timor-Leste which have been budgeted at 12 percent health.

According to the law on local government, health affair is obligatory functions of local government that can be carried out jointly with the government. The local government should allocate a budget for health affairs at least 10% of the total budget expenditure excluding salaries. But the facts show that based on data from 2012 there were only 11 provinces that allocate budgets for health above 10% for health. These provinces are Aceh, Babel, Banten, West Java, Central Java, Yogyakarta, East Java, Gorontalo, Sulawesi, Bali, Jakarta. Based on these data, it appears that most of the provinces in Indonesia have not accommodated health matters as an obligation of the local government. Moreover, in practice it appears that the
national health insurance program has not been able to cover all levels of society, especially the poor, because in 2015 the public participation in the new national health insurance only covers 60% of the 250 million people in Indonesia. Administration difficulty for citizens to get a national health insurance card is visible from the fact that there are 40% of the population who have not been registered under the national health insurance.

In practice, health care providers have not been oriented to good service to the community, they are still busy with the paperwork so that ignore the rights of patients. This happens because not all hospitals, both public hospitals and private hospitals have cooperated with the national health insurance agency guaranteeing the costs of treatment, so they are very concerned about the costs to provide services to the poor. Moreover, differences in grade and service facilities applied also led to discrimination in delivering healthcare services. All these facts indicate that the government's commitment in realizing health care services for the people has not been reflected in the national health insurance program. Application of the insurance system in the national health insurance impress a hands-off government action in the health sector, which is the constitutional right of the citizens who should be the responsibility of the government. Implementation of the national health insurance program enlarges the space discrimination and have not led to better public services.

3.2 Government Policy and Intervention on Religious Freedom

The government policy to implement a national health insurance program using the insurance system in which the entire society is required to be participants started on January 1st, 2014 and 2015 according to the Chairman of the National Social Security Council Chazali H. Situmorang, in Banjarmasin, has reached 150 million people, and it is becoming the largest in the world. Law No. 24 of 2011 explained that the participants of the national health insurance are that everyone, including foreigners who work for a minimum of 6 (six) months in Indonesia, which has been paying dues. As a national program that covers all Indonesian citizens and foreigners as the provisions of the legislation, national health insurance policy should also take into consideration the interests of the people both in terms of product quality and level of public acceptance. In the view of Islam, halal status and benefits of a product is an important element that should be considered include the national health insurance system implemented by the government. The argument about the benefits of this policy may be acceptable, but with non-adherence to the teachings of Islam, it becomes a problem for Muslims as the majority of the population in Indonesia.

As we know that the Indonesian Ulema Council has given the view that a national policy on health insurance organized by the Agency for social health insurance carrier does not comply with Islamic law. Chairman of Fatwa of the Indonesian Ulema Council confirmed the existence of a fatwa declaring that the national health insurance does not conform to Islamic law. This fatwa is a consensus decision or forum Fatwa Committee meeting in Boarding Schools At-Tauhidiyah Cikura, Bojong, Tegal, Central Java, 8-10 June 2015. The Fatwa of the Indonesian Ulema Council stated that the national health insurance system is not in accordance with Islamic law because it is considered to contain gharar (uncertainty), maisir (gambling) and riba (usury). Other reasons, participation in the national health insurance is also considered to be unfair because they discriminate background of participants.

According to the Indonesian Ulema Council, the implementation of national health insurance is considered not in accordance with Islamic principles because it contains elements gharar (vagueness), gambling (having elements of betting), and usury. In turn, the contract is not clear which will lead to gambling. More specifically, in Arabic, al-maisir have meaning: "to obtain something very easily without any hard work or earn a profit without working."
While usury can be seen from the 2% penalty for late payment of the national health insurance contributions. The commission fatwa of Indonesian Ulema Council then makes a number of recommendations addressed to the government as follows:

1. The government should create minimum standards or decent living standard in terms of health insurance that is applicable to every resident as a form of public service as the basic capital for the creation of a conducive atmosphere in society regardless of their background;
2. The government should establish rules, systems, and format of national health assurance providers to conform with Islamic principles.

In the legal system of Indonesia, the fatwa of The Indonesian Ulema Council does not have binding legal force, but this fatwa is very important to be a reference in making policies that will have implications for the entire society in Indonesia are mostly Muslim. If we see references used by The Indonesian Ulema Council, this means that the government should hold an insurance program to follow directions or fatwa that Muslims avoid the dangers and evils, because the fatwa was already decided before the national health insurance program. Because if the government ignored the recommendations of the Indonesian Ulema Council, which represents the interests of the majority of people, it will make the loss of many people and indicates that the government has intervened in the freedom to practice religion as a part of religious freedom.

Guaranteeing the protection of religious freedom from interference and abuse of power by the government is the essence of the concept of humanity (or fundamental) rights that has been accepted as a general principle. This has been confirmed in various international human rights instruments. Article 18 of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights provides the basis for rights that everyone is entitled to freedom of thought, conscience and religion. The article consists of four principal; first, everyone is entitled to freedom of thought, conscience and religion includes the freedom to establish a religion or belief of his choice, and freedom, either alone or jointly with others, whether in public or closed, to practice religion and belief in the activities of worship, observance, practice and teaching. Second, no one can be forced so disturbed liberty to adopt or establish a religion or belief of his choice.

Third, the freedom to manifest one's religion or belief may only be restricted by legal regulations, and are necessary to protect public safety, order, health, or morals or the rights and fundamental freedoms of others. Fourth, the state party promises to respect the liberty of parents and, when applicable, legal guardians, to ensure that the religious and moral education for their children in accordance with their own convictions.

Indonesia is one of the countries that ratified the international covenant through Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights. Indonesian Constitution also guarantees the right to freedom of religion or belief, the right to protection from discriminatory actions and equality before the law. Article 28 of the Indonesian Constitution states that freedom of religion is a human right that cannot be reduced under any circumstances. Furthermore, the Law No. 39 of 1999 on Human Rights, Article 4 mentions that the freedom of religion, is a human right that cannot be reduced under any circumstances and by anyone. Described in Article 22 that everyone is free to embrace their religion and to worship according to their religion or belief was, and the state guarantees the freedom of every person to embrace their religion and to worship according to their religion or belief was.

So, in the context of protection of the right to freedom of religion or belief, there are various regulations which oblige states to protect freedom of religion or belief, without any
discrimination through laws and policies that guarantee in accordance with the Covenant, including policy of public health insurance program.

3.3 Realizing an Acceptable National Health Insurance

Indonesia is the rule of law in which government and communities should uphold the rule of law as part of the development of law. But it is undeniable that the development of the law has caused an atmosphere asymmetry between law and society laden with injustice and inequality in social, economic, and political. Inequality between the legal and social conditions manifested in the form of powerlessness, isolation, vulnerability, security, and sustainability of livelihood. This occurs as a result of differences in religious beliefs, ideology, legal culture, political interests grow and thrive in a community. In addition, in certain cases between a community with other communities in conducting activities to meet their needs to have elements in common when it made the Qur'an and Hadist as signposts in activities to meet their needs. Signs settings in the activity in question, either in the form of banking law, selling, insurance, mortgage, debts, as well as in other forms in the field of economic law or sharia economics.

There are three reasons that cause an imperfect correlation between the law and the norms/social value. First, although the law is often regarded as the relation of social norms and values, the formal legal system may be too slow in adapting to changes in the social norms and values of society. Second, the legal system is based on consistency, while the norm might be contradictory. Third, the community may tolerate certain behavior, but does not want the behavior listed in the rule of law. Thus, it is very natural that there is a difference of views between positive law with the law adopted by the public as in the implementation of national health insurance program. But the general principle is that the State must guarantee the rights of every citizen in a fair and equitable manner.

In the modern legal system, equity is a principle that is fundamental to create prosperity. According to Oscar Schachter, the use of equity can be divided into five, namely; a) Equity as a base individualization of justice is meant to dilute the rigid law. b) Equity as a basis for the use of the principle of fairness, reasonableness, and trust or good faith. c) Equity as a basis of certain principles contained in legal reasoning connected with fairness and reasonableness, d) fair standards for the allocation and distribution of resources and benefits. e) Equity broadly as a synonym for the concept of distributive justice, which is used to justify the request arrangements and economic and social distribution of the wealth.

In the context of the implementation of the national health insurance policy, the State should not only achieve justice for all citizens, but should also avoid actions that lead to the intervention of human rights. Implementation of this concept is that the State is required to integrate the various interests, including laws or norms developed in the community in formulating national policy implications, because it will determine the level of public acceptance. So, the regulation is made also must obtain legitimacy from the people. Suchman said that “Legitimacy is a generalized perception or assumption that the action of an entity is desirable, proper or appropriate within some socially constructed system of norms, value, believed, and definitions. Johnson et al explained that the legitimacy of the collective construction of social reality. Legitimacy based on the norm is adherence to the norms and values that are accepted widely and informally.

According to Syaukani and Thohari, when the law was built on a foundation that is not in accordance with the spiritual structure of society, we can be sure that the people's resistance to that law will be very strong. Hart also argued that the existence of a legal system is a social phenomenon which always presents two aspects. These aspects include the attitudes and
behavior as a recognition of the regulations and also the attitude and behavior of more simple such as compliance or acceptance. With the recognition embodied in the attitudes and behavior, this means that a rule of law can be accepted by society and has achieved complete form in the sociological aspects.

To achieve national health insurance that can be accepted by everyone, the government also has to accommodate the participation of the community that contains the values of kindness. In the actual contexts, those values are the quality of services as a general principle in the new paradigm of public services and the system avoided from uncertainty, gambling and usury as the religious norms. In fact, Law No. 36 of 2009 on Health has also set them properly. Article 2 states that the health system is based on the principles of humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discriminatory and religious norms. These principles are described below:

1. The principle of humanity means that health development must be based on humanity which is based on the Almighty God by not distinguishing religious groups and nations.
2. The principle of balance means that health development should be implemented between the interests of individuals and society, between physical and mental, as well as between the material and spiritual.
3. The principle of benefits means that the development of health benefits should provide maximum benefits to humanity and healthy livelihood for every citizen.
4. The principle of protection means that health development should be able to provide protection and legal certainty to providers and recipients of health services.
5. The principle of respect for the rights and obligations means that health development by respecting the rights and obligations of the community as a form of equality before the law.
6. The principle of justice means that the organization of health services should provide fair and equitable to all walks of life with affordable financing.
7. The principle of gender and non-discriminatory means that health development does not differentiate treatment of women and men.
8. The principle of religious norms means healthy development must consider and respect and do not distinguish between the religious affiliations of the people.

In the implementation of the above principles, government administrators should be able to increase their ability to formulate and implement policies that have implications for the society at large. Increasing the ability of the government administrators will expand the public arena to make the choice of goods and services available. Furthermore, these conditions will contribute to the realization of the individual value and the public welfare. In this context, it is clear that the people should also participate actively and be allowed to submit their aspirations either individually or in groups to the government when there is a policy that does not fit or even violate the rights of society. Public participation is a manifestation of openness and inclusiveness that are the values of democracy and a key component of the legitimacy of democratic government.

When people realize the importance of participation in the government program and the government wants to open up space public participation, the government policies will have a strong legitimacy since the decision to take the policy also deals with the problems of society itself, including in the national health insurance policy. So, the national health insurance program as a grand design in fulfilling the citizen constitutional rights can lead to better public services and free from the intervention of religious freedom.
4 Conclusions

Based on the discussion above, it can be concluded that the implementation of a national health insurance policy which began on January 1st, 2014 has not led to better public services. Health care providers have not been oriented to the fulfillment of the right to health care but are still preoccupied with the problems of administration and finance. In addition, the national health insurance system has not accommodated the religious norms as one of the principles in health development. As a government policy that requires all Indonesian citizens to be participants, incompatibility with the principles of Islam as a doctrine professed by the majority of Indonesia's population is a form of intervention in the freedom to practice religion as a part of religious freedom. Therefore, to achieve national health insurance that can be received well by all the people, the government should use the excellent service standard oriented to the fulfillment of the right to public health services and synchronize with religious norms adopted by most of Indonesian people to gain legitimacy and the high acceptance rate of the whole society.

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Destructive Fishing Treatment Policy Based on Community Supervision in Lampung Province

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Abstract. The escalation of biodiversity damage has occurred in the Lampung Province sea area along with the increase in capture fisheries production. This condition is one of them caused by destructive fishing activities. Destructive fishing is still a problem in the sea area of Lampung Province due to the lack of community role, especially in terms of supervision. Tackling destructive fishing based on community supervision is one form of community empowerment to play an active role and directly involved in efforts to combat damage to fishery resources. Therefore, this article discusses the problem of how the condition of the case of destructive fishing in Lampung Province? How are efforts to tackle destructive fishing in Lampung Province? And what is the policy model for controlling community-based destructive fishing? The results showed that from 2016 to 2019, there were 27 cases of the destructive fishery that were tried at the District Court A-Class Tanjung Karang. Efforts in overcoming destructive fishing in Lampung Province have so far tended to be a means of punishment or a repressive action with a criminal law approach. But in fact, this effort has not been able to solve the problem of destructive fishing. Therefore, this research offers a model of destructive fishing management based on community supervision through penal and non-penal means.

Keywords: Lampung; destructive fishing; community surveillance

1 Introduction

Lampung Province is the southernmost province on the island of Sumatra, well as the gateway to the island of Sumatra that connects with the island of Java. Lampung Province has a large area of sea coast, which is 7 (seven) coastal Regency / City areas. Lampung Province has a land area of 35,288.35 km², including 132 small islands around it. The sea area, which covers a distance of 12 nautical miles from the coastline, which is the authority of the waters of Lampung Province, is estimated to be ± 24,820 km². The strategic geographical location of Lampung Province places Lampung Province as a province with high economic and marine and fishery resources as well as biodiversity and biodiversity.

The geographical condition has used by residents of Lampung, one of which is in the capture fisheries sector in sea waters. Be proven by data from the Ministry of Maritime Affairs and Fisheries, which shows an increase in capture fisheries production in Lampung Province as the following table 1:
Table 1. Capture fisheries production in Lampung Province 2012-2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Production</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>150,342</td>
</tr>
<tr>
<td>2013</td>
<td>169,361</td>
</tr>
<tr>
<td>2014</td>
<td>164,155</td>
</tr>
<tr>
<td>2015</td>
<td>168,943</td>
</tr>
<tr>
<td>2016</td>
<td>171,862</td>
</tr>
<tr>
<td>2017</td>
<td>178,104</td>
</tr>
</tbody>
</table>

As the increase in capture fisheries production, escalation of biodiversity damage occurs at sea, including in Lampung Province. The strategic geographic location makes the waters of Lampung Province vulnerable to various forms of violations, one of which is destructive fishing. The vulnerability of the seas of Lampung Province described in the figure below:

![Vulnerability map Lampung Police Bodies](image)

Destructive fishing practices cause damage to the marine ecosystem, especially coral reefs. Based on data from the Central Statistics Agency, from the year 2010 to 2015, the level of damage to the coral reefs of Lampung Province is quite high, as the following table:

Table 2. The extent and condition of coral reefs in Lampung Province 2012-2015

<table>
<thead>
<tr>
<th>Description of marine resources</th>
<th>The extent and condition of coral reefs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>Area (Ha)</td>
<td>645.98</td>
</tr>
<tr>
<td>Good condition (%)</td>
<td>160.80</td>
</tr>
<tr>
<td>Moderate Condition (%)</td>
<td>238.18</td>
</tr>
<tr>
<td>Bad condition (%)</td>
<td>247</td>
</tr>
<tr>
<td>Not identified</td>
<td>-</td>
</tr>
</tbody>
</table>

Destructive fishing activities in Lampung Province generally use explosives that cause damage to coral reefs and the death of various types of fishes. Based on the results of the coral reef mapping conducted by the Department of Fisheries and Maritime Affairs of Lampung Province, the percentage of live coral cover as an indicator of damage to coral reefs, especially in Lampung Bay included in the criteria of evil to good. One area that is often targeted by destructive fishing is Tangkil Island. The percentage of rubble (rubble) due to the bombing on Tangkil Island reached 35%.
Based on the description above, destructive fishing practices cause damage to the marine ecosystem. Therefore, overcoming harmful fishing practices is a must. The involvement of the community in tackling destructive fishing practices plays an important role, especially in terms of supervision. Involving the community in addressing destructive fishing needs to be done, bearing in mind the subject and object of the response are closely related to the existence of the city, mainly coastal communities. Also, coastal communities have a dependency on the availability of marine resources, especially fisheries. Furthermore, community involvement in the handling of destructive fishing, especially in terms of supervision, has been regulated in Article 67 of Law Number 31 the Year 2004 concerning Fisheries. Therefore, since 2007 the Ministry of Maritime Affairs and Fisheries has formed a Fishery Resources Supervisory Unit for the Supervision of Fisheries Resources, which is carrying out its duties involves the community by creating a community watch group (POKMASWAS). Community involvement in overcoming destructive fishing through the supervision of fisheries resources is essential because the community, especially those living on the coast are in direct contact with the sea.

Tackling destructive fishing based on community supervision is one form of community empowerment to play an active role and be directly involved in efforts to address damage to fishery resources. The existence of POKMASWAS provides direct benefits for the preservation of fisheries resources, especially in overcoming destructive fishing practices, which until now is still a strategic issue of the Indonesian Ministry of Maritime Affairs and Fisheries. The control of destructive fishing based on community supervision can also increase catches without damaging the sustainability of fisheries. Therefore, this article will discuss efforts to tackle community-based destructive fishing in Lampung Province. The problem considered is, what is the condition of the catastrophic fishing case in Lampung Province? How are efforts to tackle destructive fishing in Lampung Province? And what is the policy model for controlling community-based destructive fishing? Based on these problems, this article aims to find out and analyze efforts to overcome community-based destructive fishing in Lampung Province.
2 Methods

The method that used to answer the problem in this study is the normative legal research method based on secondary data. Furthermore, the data obtained were analyzed qualitatively, and the results of the analysis deductively deduced.

3 Results and Discussion

3.1 The Condition of Destructive Fishing Cases in Lampung Province

State losses due to illegal fishing are increasing along with the rise of violations in the field of fisheries. Based on FAO data, Indonesia lost around Rp. 30 trillion per year due to illegal fishing. Destructive fishing is not only a threat to state revenues but also a threat to the sustainability of Indonesia's fisheries resources. Lampung Sea is an area prone to destructive fishing. The practice of the destructive fishery in Lampung Province generally carried out using bombs. Based on the author's search, from 2016 to 2019, there were 27 cases of destructive fishing that tried at the Class I A Tanjung Karang District Court as the following table:

<table>
<thead>
<tr>
<th>No</th>
<th>Case Number</th>
<th>Defendant</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>925/Pid.B/LH/2019/PN Tjk</td>
<td>Junaidi Bin Lukman Alm</td>
</tr>
<tr>
<td>2.</td>
<td>923/Pid.B/LH/2019/PN Tjk</td>
<td>1) Sahrudin Bin Labunga 2) Idi Amin Bin Hasan Basri</td>
</tr>
<tr>
<td>3.</td>
<td>924/Pid.B/LH/2019/PN Tjk</td>
<td>M. Ayub Bin Hambali Alm</td>
</tr>
<tr>
<td>4.</td>
<td>778/Pid.B/LH/2019/PN Tjk</td>
<td>Andi Saputra als Bejo Bin Rasmin</td>
</tr>
<tr>
<td>5.</td>
<td>777/Pid.B/LH/2019/PN Tjk</td>
<td>Syamsudin als Acok Bin H. Rebang alm</td>
</tr>
<tr>
<td>6.</td>
<td>776/Pid.B/LH/2019/PN Tjk</td>
<td>Abas Bin Sunarto</td>
</tr>
<tr>
<td>7.</td>
<td>775/Pid.B/LH/2019/PN Tjk</td>
<td>Edi Yusup Bin M. Yusup</td>
</tr>
<tr>
<td>8.</td>
<td>726/Pid.B/LH/2019/PN Tjk</td>
<td>Markuat Bin Matal alm</td>
</tr>
<tr>
<td>10.</td>
<td>590/Pid.B/LH/2019/PN Tjk</td>
<td>Jamal Bin Ibrohim</td>
</tr>
<tr>
<td>13.</td>
<td>574/Pid.B/LH/2018/PN Tjk</td>
<td>Imron Bin Ito</td>
</tr>
<tr>
<td>14.</td>
<td>546/Pid.B/LH/2018/PN Tjk</td>
<td>Yohanes Hendriyanto atau Ahmad Aiyanto als Anto Bin Markus</td>
</tr>
<tr>
<td>15.</td>
<td>513/Pid.B/LH/2018/PN Tjk</td>
<td>Dedi Bin Suwandi</td>
</tr>
<tr>
<td>16.</td>
<td>512/Pid.B/LH/2018/PN Tjk</td>
<td>Alimuudin Bin Bedu</td>
</tr>
<tr>
<td>17.</td>
<td>969/Pid.B/LH/2017/PN Tjk</td>
<td>Zainal Abidin Bin Nurung</td>
</tr>
<tr>
<td>18.</td>
<td>896/Pid.B/LH/2017/PN Tjk</td>
<td>Sulaeman Bin H. Solong</td>
</tr>
<tr>
<td>19.</td>
<td>697/Pid.B/LH/2017/PN Tjk</td>
<td>Hidayat als Dayat Bin Sulaiman</td>
</tr>
<tr>
<td>20.</td>
<td>648/Pid.B/LH/2017/PN Tjk</td>
<td>Rustam als Udin Bin Hasan</td>
</tr>
<tr>
<td>21.</td>
<td>598/Pid.Sus/LH/2017/PN Tjk</td>
<td>Samsu Alam Bin Sendiri</td>
</tr>
<tr>
<td>22.</td>
<td>571/Pid.B/LH/2017/PN Tjk</td>
<td>Imron Bin Mustofa</td>
</tr>
</tbody>
</table>
The practice of destructive fishing in Lampung Province generally charged with Article 1 paragraph (1) of the Emergency Law No. 12 of 1951 concerning Explosives. Out of a total of 27 cases, 26 cases of destructive fishing charged with Article 1 paragraph (1) of the Emergency Law Number 12 of 1951, and 1 case of the destructive fishery was charged with Article 84 paragraph (2) of Law Number 31 of 2004 as already amended by Law Number 45 of 2009 concerning Fisheries. Destructive fishing practices hurt the preservation of fishery resources in Lampung Province. Also, the quality of the catch with harmful fishing practices is undoubtedly different from the score with environmentally friendly tools. Destructive fishing practices in Lampung Province generally use explosives and also hurt the location of fishing, especially coral reefs.

Based on data from the Central Statistics Agency, damage to coral reefs in the Lampung Sea from 2010 to 2015 tends to increase (table 2). Furthermore, the rampant cases of destructive fishing show a low level of public awareness, especially fishers in Lampung Province. The rise of harmful fishing practices with explosives in Lampung Province will cause by several things, namely the ease of obtaining raw materials, simple assembly, shorter fishing time, and more catches. This made the community, especially fishers in Lampung Province, complete their fishing gear with explosives/bombs.

3.2 Efforts to Overcome Destructive Fishing in Lampung Province

Tackling destructive fishing is part of criminal policy, and attempts to protect fisheries resources. Efforts to tackle devastating fishing crime can broadly divide into two, namely the means of punishment and non-punishment. Countermeasures using penalties focus on eradication (repressive). Furthermore, overcoming criminal acts with non-penal means focuses on prevention (preventive). The factors causing destructive fishing include overlapping management authority, the conflict between fishers, strong patrol-client relations, raw materials for bombs and poisons quickly obtained, opportunities, or opportunities.

Efforts in overcoming destructive fishing in Lampung Province have so far tended to be a means of punishment or repressive action. Repressive actions against harmful fishing perpetrators are law enforcement efforts carried out in the form of prosecution, investigation, prosecution, and trial in court. Based on data from the Criminal Fishing Class I A Tanjung Karang District Court Information System data, there are 27 cases of destructive fishing that have permanent legal force (incraht). Of the 27 causes of the destructive fishery that were tried by the District Court of Class I A Tanjung Karang, 25 cases were sentenced to imprisonment, while two instances sentenced to prison and fines as the following table:

<table>
<thead>
<tr>
<th>No</th>
<th>Case Number</th>
<th>Verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>925/Pid.B/LH/2019/PN Tjk</td>
<td>imprisonment for 2 (two) years and 6 (six) months</td>
</tr>
<tr>
<td>2.</td>
<td>923/Pid.B/LH/2019/PN Tjk</td>
<td>imprisonment for 1 (one) year</td>
</tr>
<tr>
<td>3.</td>
<td>924/Pid.B/LH/2019/PN Tjk</td>
<td>imprisonment for 3 (three) years and 10 (ten) months</td>
</tr>
<tr>
<td>4.</td>
<td>778/Pid.B/LH/2019/PN Tjk</td>
<td>imprisonment for 2 (two) years</td>
</tr>
<tr>
<td>5.</td>
<td>777/Pid.B/LH/2019/PN Tjk</td>
<td>imprisonment for 2 (two) years</td>
</tr>
</tbody>
</table>
6. 776/Pid.B/LH/2019/PN Tjk imprisonment for 1 (one) year
7. 775/Pid.B/LH/2019/PN Tjk imprisonment for 1 (one) year
8. 726/Pid.B/LH/2019/PN Tjk imprisonment for 2 (two) years 6 (six) months
9. 681/Pid.B/LH/2019/PN Tjk imprisonment for 2 (two) years
10. 590/Pid.B/LH/2019/PN Tjk imprisonment for 2 (two) years
11. 664/Pid.B/LH/2018/PN Tjk imprisonment for 1 (one) year 11 (eleven) months
12. 598/Pid.B/LH/2018/PN Tjk imprisonment for 10 (ten) months
13. 574/Pid.B/LH/2018/PN Tjk imprisonment for: 2 (two) years 6 (six) months and a fine of Rp 100,000,000 (one hundred million rupiahs), provided that if not paid, it replaced with a sentence of 6 (six) months
14. 546/Pid.B/LH/2018/PN Tjk imprisonment for 2 (two) years
15. 513/Pid.B/LH/2018/PN Tjk imprisonment for 1 (one) years
16. 512/Pid.B/LH/2018/PN Tjk imprisonment for 1 (one) year and 4 (four) months
17. 969/Pid.B/LH/2017/PN Tjk imprisonment for 1 (one) year and 4 (four) months
18. 896/Pid.B/LH/2017/PN Tjk imprisonment for 1 (one) year 4 (four) months
19. 697/Pid.B/LH/2017/PN Tjk imprisonment for 8 (eight) months
20. 648/Pid.B/LH/2017/PN Tjk imprisonment for 8 (eight) months
21. 598/Pid.Sus/LH/2017/PN Tjk imprisonment for 1 (one) year 8 (eight) months
22. 571/Pid.B/LH/2017/PN Tjk imprisonment for 2 (two) years 6 (six) months
23. 335/Pid.B/LH/2017/PN Tjk imprisonment for 1 (one) year, 6 (six) months
24. 281/Pid.B/LH/2017/PN Tjk imprisonment for 2 (two) years
25. 280/Pid.B/LH/2017/PN Tjk imprisonment for 2 (two) years
26. 1242/Pid.B/LH/2016/PN Tjk imprisonment for 1 (one) year 4 (four) months
27. 482/Pid.Sus-LH/2016/PN Tjk imprisonment for 1 (one) year and 6 (six) months and a fine of Rp. 5,000,000,00 (five million rupiahs) on the condition that the fine not be paid to be replaced with imprisonment for 6 (six) months

The practice of destructive fishing in Lampung Province generally carried out with explosives/fish bombs. Therefore most destructive fishing cases are prosecuted under Emergency Law No. 12 of 1951 concerning Explosives. Since 2016-2019 there have been 27 cases of destructive fishing, of which 25 cases have prosecuted under Emergency Law Number 12 of 1951, and 2 cases have prosecuted under Law Number 31 of 2004 concerning Fisheries. In terms of quantity, the sanctions in the Emergency Law Number 12 of 1951 are more severe than the penalties in the Law Number 31 of 2004. Based on the provisions of Article 1 Paragraph (1) of the Emergency Law Number 12 of 1951, someone who uses explosives punished with a death sentence or life imprisonment or a maximum prison sentence of twenty years.

Whereas, based on the provisions of Article 84 of Law Number 31 the Year 2004, the threat of sanctions for perpetrators of destructive fishing is a maximum of ten years imprisonment and a maximum fine of Rp. 200,000,000 (two hundred million rupiahs). Furthermore, in Lampung Province, there is no Special Court for Fisheries. This condition causes the case of destructive fishing in Lampung Province to be tried by the District Court with a judge who has expertise in the environmental field. In contrast, for fisheries experts, it is limited to expert testimony.
3.3 The Community Oversight Destructive Fishing Countermeasure Policy Model

Based on the provisions of Law No. 23 of 2014 concerning Regional Government, management of the coastal sea area, and small islands as far as 12 miles outside of oil and gas is the authority of the provincial government. Given the vast sea area of Lampung Province, a significant role and responsibility required from the Lampung Province regional government. However, sometimes there are limited infrastructure and human resources so that it becomes a significant obstacle in achieving optimal supervision, especially in the fisheries sector. So based on Article 67 of Law Number 31 the Year 2004 concerning Fisheries, the public can participate in fisheries supervision. Also, Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands mandates the government to recognize and respect community rights.

Furthermore, based on Article 9 paragraph (1) of the Minister of Maritime Affairs and Fisheries Regulation No. 40 / PERMEN-KP / 2014, community participation in monitoring management of coastal areas and small islands, among others, reports losses, suspected pollution, environmental hazards, and damage. In addition to providing opportunities for the community to oversee fisheries activities, community-based supervision can strengthen community togetherness in protecting the potential of their regional fisheries. Destructive fishing practices not only threaten the potential of fisheries but also cause environmental damage, especially marine ecosystems. Therefore, based on the provisions of Article 70 of Law Number 32 the Year 2009 concerning Protection and Management of Life Circles, the community has the same and broadest rights and opportunities to play an active role in the protection and management of the living environment. The part of the city is in the form of social supervision, giving advice, opinions, complaints, and delivering information/reports. Next, Article 3 letter g of Law Number 27 the Year 2007 concerning Management of Coastal Areas and Small Islands, that management of coastal areas and small islands based on community participation. Supervision of the control of the coastal regions and small islands by the community is done through complaints or submitting information to the authorities.

Cooperation in fisheries management has not been practical enough. During this time, participation in fisheries management tends to be competitive so that it causes the failure of fisheries management, which is marked by the rise of violations such as destructive fishing practices that cause environmental damage and poverty. Along with the emergence of the paradigm of marine development, various problems in the fisheries sector become a strategic issue to resolve. Overcoming different fisheries issues, especially destructive fishing in Lampung Province, requires a new model of policy that involves the participation of the community to achieve optimal monitoring performance. The monitoring model for controlling destructive fishing based on community supervision in Lampung Province divided into two, namely the means of punishment and non-punishment as described below:

Penal Facilities

Counter measures using penalties focus on eradication (repressive). The form of public supervision in the handling of destructive fishing through the means of punishment can be in the way of submitting reports to the authorities regarding the alleged practices of destructive fishing. Community-based supervision of destructive fisheries is essential to ensure optimal and sustainable fisheries management. Based on the Decree of the Minister of Maritime Affairs and Fisheries Number: KEP.58 / MEN / 2001 concerning Procedures for the Implementation of Community Oversight Systems in Management and Utilization of Marine and Fisheries Resources, in the form of fisheries supervisory community groups
(POKMASWAS). In 2015 there were 81 POKMASWAS while in 2016 there were 64 POKMASWAS spread across ten Regencies / Cities in Lampung Province, as the following table:

Table 5. Lampung Province POKMASWAS 2015-2017

<table>
<thead>
<tr>
<th>Regency / City</th>
<th>Number of Groups</th>
<th>Coordination Control Range</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>2016</td>
</tr>
<tr>
<td>West Lampung</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>Tulang Bawang</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>Pesawaran</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Pringsewu</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>North Lampung</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>East Lampung</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>South Lampung</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Bandar Lampung</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Way Kanan</td>
<td>23</td>
<td>2</td>
</tr>
<tr>
<td>Mesuji</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

The role of POKMASWAS in overcoming destructive fishing through penal means done through reporting or providing information about alleged harmful fishing practices to the nearest supervisory apparatus such as PPNS, Head of a fishing port, Head of Maritime Affairs and Fisheries Office, Navy and Satpol AIRUD nearby, and port quarantine officers. As table 5 above, Lampung Province is currently under the working area of the Jakarta Maritime and Fisheries Resources Control Base (PSDKP) with the Bid Supervision Unit. Furthermore, the recapitulation of the Jakarta SSDKP Supervision Base fisheries is as follows:

Table 6. Recapitulation of the 2017 Jakarta PSDKP fisheries supervisor

<table>
<thead>
<tr>
<th>Employment status</th>
<th>Base / Station</th>
<th>Scope of Satwas</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jend/dir PSDKP</td>
<td>24</td>
<td>25</td>
<td>49</td>
</tr>
<tr>
<td>Offices</td>
<td>4</td>
<td>19</td>
<td>23</td>
</tr>
</tbody>
</table>

POKMASWAS can report suspected destructive fishing by Indonesian fishing vessels and foreign fishing vessels. The officer who received the report from POKMASWAS followed up by forwarding the information to PPNS, the Navy, SATPOL AIRUD, and fishery inspection vessels. Based on the POKMASWAS information, the authorities will then pursue and arrest the perpetrators of destructive fishing and then investigate and investigate. Based on the general explanation of the Regulation of the Minister of Maritime Affairs and Fisheries Number: KEP.58 / MEN / 2001, in conducting follow-up operations on violations, the Provincial Fisheries Service coordinates with fisheries supervision officers (Indonesian Navy, Indonesian National Police, Indonesian National Police, PPNS, and BAKAMLA).
Non-Penal Facilities

Tackling destructive fishing with non-penal means focuses on prevention (preventive). The handling of the destructive fishery so far has prioritized law enforcement with a fisheries criminal act approach. It has not been able to solve problems in the fishery sector, one of which is destructive fishing practices. This condition caused by various fisheries supervision limitations such as facilities, human resources, and budget. The fisheries supervisory facilities and human resources in Lampung Province are currently in the following chart:

![Chart 1. 2019 Lampung Province fisheries supervisors facilities and human resources](image)

**Fig 2.** Chart 1. 2019 Lampung Province fisheries supervisors facilities and human resources

The fishery control vessel in Lampung Province at the moment is Napoleon 014, with a size of 12 meters, which located at the Pesawaran SDKP Satwas. The human resources of SDK Pesawaran Satwas numbered ten people. On the other hand, the SDK SDK Peswas Satwas has a relatively wide working area of 15 districts/cities in Lampung Province. To means that fishery's supervisory facilities and human resources in Lampung Province are not yet well established when compared to their working area. Therefore, community participation in fisheries supervision has a significant bearing given the various limitations of human resources and the currently limited allocation of fisheries supervision funding. Community oversight in the handling of destructive fishing through non-penal means carried out through coordination and participation in a variety of supervisory programs related agencies such as PSDKP, Navy, Police, PPNS, and BAKAMLA. These programs can be in the form of planning for the prevention of destructive fishing, surveillance operations for fisheries resources, and monitoring fishing vessel compliance. Realize optimal community participation in fisheries supervision, and it is necessary to improve the monitoring facilities and infrastructure, including surveillance posts, speed boats, communication tools, and other surveillance equipment.

Supervision of community-based destructive fishing carried out by distributing responsibilities from the Provincial Government of Lampung to local communities. Local communities have a substantial control role in the prevention of harmful fishing practices in Lampung Province. Also, community involvement in fisheries supervision can reduce community involvement in illegal transshipment on the high seas. Therefore, the Lampung Provincal Government's policy must provide opportunities for local communities to get involved in fisheries surveillance to prevent destructive fishing practices. Furthermore, the Lampung Provincial government policy must prioritize the development of SISMASWAS, which carried out through the empowerment of POKMASWAS. Supervision by empowering
the community can help in overcoming, especially the prevention of destructive fishing practices in Lampung Province. The community-based supervision scheme, namely:

![Image: Community-based supervision schemes](image)

**Fig 3. Community-based supervision schemes**

Considering the various limitations in overcoming destructive fishing practices that have caused the development of the fisheries sector not being maximized, community-based supervision is a solution in overcoming destructive fishing. Community participation in overcoming destructive fishing places more emphasis on non-penal or prevention efforts. It is due to various problems, including the low sanctions given compared to the losses incurred. Supervision of community-based destructive fishing practices through non-penal means carried out through coordination and community involvement in every marine and fisheries supervision program.

**4 Conclusion and Recommendation**

The practice of destructive fishing in the Province generally carried out using bombs. From 2016 to 2019, there were 27 cases of the destructive fishery that tried at the Class A District Court of Tanjung Karang. The practice of destructive fishing in Lampung Province generally charged with Emergency Law No. 12 of 1951 concerning Explosives. Efforts to tackle destructive fishing in Lampung Province are currently more inclined to the means of punishment or repressive actions. Of the 27 causes of the destructive fishery that were tried by the Tanjung Karang Class I District Court, 25 cases were sentenced to imprisonment, while two instances sentenced to prison and fines. Considering various obstacles in achieving optimal fisheries supervision, I was a new model.

It needed that involves the community in tackling destructive fishing practices, especially in Lampung Province, namely the prevention of destructive fishing based on community supervision. The handling of the destructive fishery based on community surveillance divided into two, namely the means of punishment and the means of non-punishment. Community oversight in the processing of destructive fishing through the means of discipline in the form
of submission of reports to the authorities regarding the alleged practices of destructive fishing. Furthermore, community supervision in overcoming destructive fishing through non-penal means carried out through coordination and community participation in various programs of control of related agencies such as PSDKP, Navy, Police, PPNS, and BAKAMLA.

Based on these conclusions, it recommended that the Lampung provincial government address the practice of destructive fishing by prioritizing community participation, especially in terms of supervision.

References


Juridical Analysis of Indonesian Migrant Workers
From The Perspectives of Labor and Immigration Law

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Abstract. The Indonesian information system of immigration management or called as SIMKIM which has been issued since 2013 and applied in 2015 has given a great impact to Indonesian people in particularly for those who live abroad such as migrant workers. The issuing of SIMKIM is in purpose to manage a better system since there were a lot of legal fraud happened in immigration sector such as fraud of passport by using false data as on names, date of birth or other information. With SIMKIM which using an integrated digital system, the false data cannot be done anymore. However, the migrant workers, whose passport has been arranged previously by the employment agency and use such false data, found difficulties to return their data to the original ones and are threatened to be criminalized not only by Indonesian government but also by the state where they live in. This article studies on this issue aimed to explore the real problem between migrant workers and their immigration status. The research uses secondary methods data such as academic books, articles, journals, etc. The research is expected to give recommendation on citizens’ rights of migrant workers to get an original passport.

Keywords: Immigration system; immigration status; undocumented; migrant workers; human rights

1 Introduction

Globalization has brought increasing mobility of people to move from one country to another, and this is also the case with Indonesian migrant workers where movement has not been only within national borders but also beyond these borders. Although international migration of Indonesian workers has occurred since long time ago, the placement and protection of migrant workers began to be regulated in 2004 under Law no. 39 and was amended by Law no.18 year of 2017. Countries in the Middle East and developed countries in Asia, as well as European countries, USA and Canada have become the destination of Indonesian migrant workers.

There are an estimation of 4,5 million Indonesian migrants abroad and most of them are migrant workers. These numbers are not including the undocumented ones which undoubtedly higher. Economy issue is one of motivations for Indonesians to find work abroad. The difficulty to find work or low salary level in Indonesia is one of the reasons of most Indonesians to look for job abroad. High expenses, not only for daily costs, but also for health care and education become also one of many reasons. The social security, though it was regulated since 2004, but it was just applied in 2014. Therefore, the economic situation was difficult particularly to mid and low class society in Indonesia and they have no choice but find work abroad to earn better income.
Most of the departure process of Indonesian migrant workers is conducted by employment agencies. This has been regulated in Law 39/2004 (amended by Law 18/2017). The people trusted employment agencies to proceed the departure because there is no other option. The lack of information on how the procedure is and how complicated the procedure is become reasons why the people depend to do the departure process to the employment agency. The process by employment agencies becomes an issue since they proceed the departure of migrant workers with high cost and provide a passport which includes false data. Such fraud has been applied so many years and migrant workers had no choice besides accepting the condition and the false passport since they have paid a lot of money and need to work as soon as possible to return the loan to the family or friends.

The fraud of passport happened not only because the level of corruption in immigration sector is high but also the system which does not support the data to be connected from one to other immigration offices. Therefore in 2013, Indonesia began to use Information system of immigration management or called as SIMKIM, an integrated digital online system for immigration management. SIMKIM is established to minimize the fraud of passport and give more integrated system of immigration management. However, a lot of migrant workers abroad have already used a passport with false data. This has not been considered by the government before and at the end, the migrant workers become the victim of this new system. Some of migrant workers found difficulties to extend their passport and return the data to the original ones. In Hong Kong, they could also be criminalized by using fake passport. In the Netherlands, some of them cannot get a passport. At the end, they remain live without any identity document.

Most studies on Indonesian migrant workers have conducted research from the point of view of labor or human rights, particularly since the establishment of Law no 39 year of 2004 which deals with the procedure of recruitment and placement as well as protection of migrant workers. There is yet hardly any study focusing on Indonesian migrant workers from the point of view of immigration issues of migrant workers. The working conditions and the bargaining position of migrant workers cannot be separated from their immigration status. And yet existing studies on the immigration status of migrant workers are usually separated from their labor rights. Meanwhile, migrant workers’ social, economic and political positions are always attached to their immigration status, not only the immigration status to the receiving country but also to the country of origin.

The aim of this research is to examine the problem faced by Indonesian migrant workers in Hong Kong and in the Netherlands on their immigration status in particular on the rights of identity such as passport. Passport as identity document which is recognized internationally has a significant role to the person attached to it. Without an identity document, a person could not be recognized as citizens and cannot access his rights such as in doing remittance, opening a bank account, renewing the work contract, and many more.

**Indonesian Migrant Workers and the Misconduct of Employment Agencies**

The departure process of migrant workers is conducted by employment agencies. The agency arranges all the bureaucratic process including providing passport for migrant workers. Most of the time, although the workers depend on the agency, the agency is often unable to provide the original and correct data of passport. Their aim to obtain quick profit has caused the agency to provide passports quickly without providing the correct data of passport. This has happened often with Indonesian migrant workers. They obtain passports but the data is not correct. The low income of a large portion of the population and the high level of corruption in Indonesia, just to obtain basic needs of education, employment, and the bureaucratic
requirements to obtain these resources, are the main reasons why lower class workers try to find jobs abroad. This situation has become a strong factor why workers are forced to trust the agencies to deal with their documents in a short period of time.

Most of the time, the migrant workers accept what the agency gave to them. They pay some amount of money between 15 to 60 million to go abroad and relay on the agency for the departure process. Some of the workers receive the passport in their departure time without having any chance checking the data in the passport. They have no choice to refuse the passport since they have paid and the departure is approaching. The destination country is also chosen by the agency. Some of workers have no intention to go to Europe because European countries are not considered as formal destination countries for migrant workers. However at the end, they have no choice and are stranded in Europe.

The issue of migrant workers using false documents or false data on passport has existed for years. However, the problematic issues of documents and working abroad are not only the responsibility of immigration department. The other departments such as BNP2TKI (National Body for the Placement and Protection of Indonesian Overseas Workers) and the Ministry of Manpower are also responsible because they are the bodies that establish the regulations and procedures for workers to work abroad. The existence of these different bodies creates various spaces for control which do not yet fulfill by each other.

**SIMKIM**

In order to eliminate false documents, in 2013, the Indonesian Department of Immigration has started to introduce the information system of immigration management (called as SIMKIM) and biometric passport. SIMKIM is established to give better and transparent service on the providing of Indonesian passports. It integrates the immigration information in Jakarta and abroad (at embassies or consulate) via online connection. SIMKIM is not yet applied in every Indonesian embassy. Indonesian embassy in Malaysia and Hong Kong started to apply SIMKIM in 2015. In the Netherlands, the application of the system has started in 2017. With a new system of immigration, the false document of passport could be reduced and the state could give more control and protection to its citizens.

With the application of SIMKIM and more control from the state, it will be problematic for the agency to provide documents instantly. There is a transparent procedure that should be followed. Workers cannot easily have documents and work abroad. Some should stay and face their economic problems in Indonesia. Meanwhile abroad, a lot of migrant workers who already use the fake passport found difficulties to extend their passport and return the data to the original ones. Some are also threatened to be criminalized by the receiving country such as the migrant workers in Hong Kong.

SIMKIM could be a very sensitive system to the issue of governance on bureaucracy of departments that are issuing state’s documents for migrant workers. The intervention of government to make a better system is very important. However, it has effect. As Tania Murray Li said government interventions are important because they have effect.

**The Case in Hong Kong**

SIMKIM has been implemented in Hong Kong since 2015. Since then, the problem of passport for Indonesian migrant workers has begun. In Malaysia, it’s possible for migrant workers who use the passport with false data to change the data to the original ones and get new passport. The embassy in Malaysia can give an option to the workers to choose on which data they would like to use. But in Hong Kong, it is not possible. The migrant workers
threatened to be criminalized by Hong Kong government based on the fraud of identity document and they can be jailed.

Based on the circular letter of Indonesian immigration directorate general (Surat Edaran/SE) No. IMI-UM 01.01.2413 July 2016, the workers, whose the residence permit is still valid in Hong Kong, can make data correction of their passport. The correction data is significant to be done since it is important for the workers to have and to use a passport with the correct data. However, when they changed the data, they must also change all the original related documents in Hong Kong such as the work contract, residence permit and so on. This became the reason why they are threatened to be criminalized. The good intention of the workers to obey the regulation of Indonesian immigration becomes a blunder for them because based on the regulation of Hong Kong, they can be charged to do fraud of passport. At the end, some of workers are accused to do fraud and be jailed.

Meanwhile in other hand, based on the above circular letter, the workers, whose the residence permit is not valid anymore or staying as undocumented, cannot get any passport and can only get a laissez passer or a travel document to return to Indonesia and proceed the correct data in Indonesia. This has been regulated by Indonesian government to reduce the undocumented Indonesian people abroad and forced them to return and to process their departure and immigration status legally. However in the practice, it costs a lot for migrant workers and they are threatened to be banned and cannot be returned to the destination country. That is what happened in the Netherlands.

The Case in the Netherlands

Not all workers have intention to go to Europe. Some of them had intention only to go abroad to work. They registered and delivered some amount of money to the employment agency. However the call to leave the country was not coming. The employment agencies promise to place them in formal country of destination of migrant workers. When it comes unsuccessfully, they offer to send the workers to Europe with more requirements of money. Some workers pay up to 80-100 million Rupiah (about 6000 – 8000 Euro). They are willing to make loan or sell all their belongings to pay the cost with consideration to get return shortly after their arrival in the Netherlands. However, the reality is much different than the promises made by the agency. Some of the workers must be ended up staying working in the Netherlands even though as an undocumented, without proper stay permit and work permit, to pay the debt. Some are returned back to Indonesia with burden of debt.

The process done by the employment agency is a same explanation as above. The employment agency, in this matter, provides a passport with false data in order to send the workers quickly and get a lot of profits. Some people use this kind of passport and since this has been happened for so many years, some people have passport with some different names. In 2017, SIMKIM is applied in the Netherlands. The problem of passport began. For those who use passport with different names, they cannot return the data to the original ones and instead of getting passport for their renewal passport, the embassy can only provide laissez passer to return them home.

For many years, there have been existed a lot of Indonesian migrant workers without having proper documents required by the immigration department in the Netherlands such as work permits and stay permits. The Indonesian embassy in the Netherlands also was not taking any measures to protect their citizens in the Netherlands, when these migrant workers’ passports expired. Until 2014, the undocumented Indonesian migrant workers had no rights to renew their Indonesian passport. Instead of giving passport, Indonesian embassy in The Hague provided travel documents with the purpose of sending them back to Indonesia. Meanwhile, a
lot of Indonesian workers (including the undocumented workers based on their Dutch immigration status) still have the intention to stay and work in the Netherlands, because of the debts they had incurred to pay the employment agencies which had promised to arrange jobs and stay permits but who in the end deserted them upon arrival.

For those who stay, they end up having no valid identity card, their ID-less situation brings more vulnerability to the undocumented Indonesian migrant workers. Particularly in the case of illness, they cannot show any identity document to the hospital, and when they need to send money back to their country of origin, they face difficulties to work through the regular money transfer mechanism. Under the government regulation of the Netherlands, there is a huge difference between citizenship and residential status. In the Netherlands, rights to residence became the critical issue in determining access to a basket of other rights and privilege. Therefore it is not easy to get residence permit from the Netherlands. Meanwhile, citizenship status in this case the Indonesian citizenship of these migrants, ensures certain rights and privileges. For many migrant workers, having had their passports expire without it being renewed weakened their positions even more, since they were not acknowledged by both the Indonesian and the Dutch government.

Therefore, after a long struggle of campaign and lobby conducted by Indonesian migrant workers in the Netherlands, in early 2014, a circular letter of directorate general of immigration in Indonesia was issued and stated that the undocumented have the rights to renew their Indonesian passport (No. IMI-0120-GR-01-10 dated 10 January 2014). However, since SIMKIM is applied and the circular letter of Immigration Directorate General has been issued in 2016, some of workers cannot get any passport and offered to have laissez passer to return to Indonesia. The embassy argued in this matter that when the workers return to Indonesia, they could process the new passport with the correct original data. However, since the immigration status of the workers in the Netherlands is undocumented, they are threatened to be banned by the Netherlands or Schengen countries and cannot return to the Netherlands, meanwhile, some of workers have family in the Netherlands and can be forced to be separated from their family.

In 2016, eight of employment agencies were arrested for sending Indonesian migrant workers illegally to the Netherlands. However, the problem of deception by employment agencies remains in the community particularly considering that the wave of migration of Indonesian workers to the Netherlands is quite high. There are still a lot of Indonesian migrant workers coming to Europe/ the Netherlands.

2 Research Method

This research uses secondary data. Secondary data will be obtained by the various case studies dealt with in academic books, published articles in journals, and also from documents regarding state regulations.

3 Results and Discussion

As mentioned above, the circular letter of directorate general of immigration in Indonesia was issued and it stated that the undocumented have the rights to renew their Indonesian passport (No. IMI-0120-GR-01-10 dated 10 January 2014). This regulation was amending the
Letter of Immigration general to Indonesian ambassador in the kingdom of the Netherlands No. IMI-UM 01.01-2579 dated on 18 May 2012 which stated to give laissez passer for the undocumented Indonesian migrants in the Netherlands. However, the regulation stated that the undocumented cannot renew a passport, has reapplied again with the circular letter No. IMI-UM 01.01.2413 July 2016. Only this time, the circular letter is based on the issuance of SIMKIM. The embassy can only give laissez passer or travel document for those who have no proper stay and work permit in the destination country.

In the practice, the application of the last circular letter is different in the countries. In Hong Kong, only those who have proper permit, can extend their passport and return the data to the original ones. The undocumented ones must return to Indonesia to change their data. In the Netherlands, the undocumented who have passport with original data can renew their passport. But for those who have passport with false data, cannot renew their passport and must return to Indonesia for the data correction. The extension or renewal of passport is the form of the protection of Indonesian state to its citizens. This obligation of the state or state responsibility has been regulated on article 35 Government regulation No.31 year of 2013 (PP 31/2013) stated that the state gives identity document for its citizens abroad. However, because of SIMKIM, the issuance of passport for Indonesian people became strict and rigid and has impact to the migrant workers.

In the Netherlands, the immigration attaché has done some interviews to the undocumented migrants in regards to the requirements to get passport. It might be happened since in 2017 there was a circular letter of immigration general No IMI-0277.GR.02.06 on the prevention of the undocumented workers. Based on this law juncto (jo) article 179 (1) PP 31/2013, the immigration officer could give immigration supervision to the people based on article 66 Law No. 6/2011 jo PP 31 year of 2013 article 172 (3). The implementation is in regards of article 67 Law No. 6/2011 (1) a and c jo. article 172 (3) PP No. 31/2013 jo. article 176 (1) PP 31/2013. The interview is purposed to give protection to undocumented workers from human trafficking.

Even though after a strict process, some of undocumented can get the passport, the other cannot get passport because of double data or the false data. The integrated system of SIMKIM cannot accept their data, at the end they must make a correction in Indonesia and offered only to have a laissez passer and return to Indonesia. Not only that they can be deported, these migrant workers are threatened also to be criminalized by Indonesian government. Based on article 126 Law 6 year of 2011, people who use the fake passport is threatened to be jailed for five years. It can be applied to the migrant workers even though the process of the passport was done by the employment agency and the workers have nothing to do with it. The workers are victim of the employment agency. They have no option but to receive this passport and use it to work abroad. If they are criminalized by Indonesian government then the law is rigidly implemented. The one who should be criminalized is the agency in this matter, not the workers.

Unlike in Hong Kong, most of migrant workers in the Netherlands are undocumented. The data correction will not give impact for them to be criminalized by Dutch government. If they keep using the passport with false data, then they can be threatened by Dutch Government to use fake passport. By correcting the data into the good one, the embassy gives a protection to their citizens. The providing of laissez passer is not appropriate because laissez passer is used only for travel document and not for identity document. This is based on law No. 6 year of 2011 article 1 (17) jo article 27 (1) PP 31 year of 2013 jo article 54 PP 31 year of 2013 jo article 26 PP No.36 year of 1994.
The implementation guidelines of Directorate of immigration No. F-1037.IZ.03.10 year of 1994 point III.A (1.b & 1.C) jo Regulation of Ministry of law and human rights No. 8 year of 2014 article 44 stated also that laissez passer is given for those who has no passport. However almost all of the migrant workers in Hong Kong and the Netherlands, they have passport. What they do not have is proper stay permit and work permit. Therefore, the providing of passport will be an appropriate way in this matter. The correction is also allowed to be done in the destination country based on article 24 Regulation of Ministry of law and human rights No. 8 year of 2014.

Laissez passer is not the solution. In fact, it will not only give negative impact to the workers but also to the state. The workers cannot do remittance with laissez passer. They need passport to send money to Indonesia. Therefore, the providing of laissez passer will give also impact to the amount of remittance received by Indonesia. Indonesia could also be considered to support illegal remittance in this matter since the workers cannot send money via legal ways because of the providing of laissez passer and not passport.

Further, a lot of workers will not take the option to use laissez passer because they do not want to return before they are enough earning money. At the end, they live remain without document and threatened to be stateless. Without document of identity or passport, the workers found also difficulties to access the health care. Some institutions in the Netherlands recognize no laissez passer as identity document. So, it brings difficulties for the workers on the field.

4 Conclusion and Recommendation

The immigration status has a significant role to the migrant workers, not only giving rights and identity but also to give protection to migrant workers. By giving passport with correct data, the state gives protection to the workers. However, in Hong Kong, Indonesian government need to do more lobby to the destination state so the workers will not be threatened as criminal and be jailed only because of the correction data. The employment agency should in this regards be chased and arrested in regards to the fake data, and not the workers. The main problem happens in the sending country, Indonesia. With the application of SIMKIM, they real problem should also be solved. It is not only about system problem but the whole problems should be understood.

The application of SIMKIM should also be reviewed. Because even though it is for good purpose, but the impact could be negative for the workers. When it threatened the workers, Indonesia should give opportunity for the workers in Hong Kong who have valid stay and working permit to finish their contract first and correct the data when they return to Indonesia. In other hand, for the undocumented workers, the writer cannot see the reasons why they may not allowed to do data correction and have an original passport since it will not be a problem for the destination country and it will give protection in their vulnerable position. The providing of laissez passer will only breaching the regulations in Indonesia and will not give any benefit for the workers themselves and the state. Therefore, they should be better to be given a passport with original data.

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Indonesia’s Combat for Peace and Justice: A Bird’s Eye View of Sustainable Development Goals (SDGS) 16

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Abstract. This paper aims to distinguish the current progress of SDG 16 implementation in Indonesia from a governance perspective and its interconnectedness with Indonesia’s past, present, and future technocratic plans. Although Goal 16 has numerous benefits to improve the quality of humanity and society itself, Indonesia has managed to synchronize, yet there are still critical dispute on how inclusive and progressive Goal 16 is when implemented in practice. The overall paper was based on desk and literary review from highlighting several standpoints on Goal 16 particularly on: a. Corruption and Bribery, b. Participatory Approach, and c. Institutional Building Capacity. Overall, in the implementation of SDGs Goal 16, there has been progressive achievement due to the collaboration of 4 stakeholders that reflect ‘no one left behind’ principle. Further, Indonesia commitment on actualizing SDGs is reflected on the participation of Voluntary National Review 2017. Surprisingly, Indonesia turns to be one of 6 countries that has outstanding best practice of compares to others. In the future, the commitment is continued to the mainstreaming all SDGs target into National Development Medium Plan (Rancangan Pembangunan Jangka Menengah/RPJMN 2020 – 2024). Though, there are still issues need to be settled, but with SDGs mainstreaming into RPJMN 2020 – 2024 hopefully the sustainability of the agenda is rest assured. The paper presented is based on literature reviews and documents relating to the subject at hand. From this research, systematic writing was produced using a juridical-analytical approach and qualitative results was obtained.

Keywords: Corruption; SDGs; Peace and Justice;

1 Introduction

On 2015 world leaders gather at the historic United Nation Summit to agree on the Sustainable Development Agenda. The prestigious agenda continues on 1 January 2016, when the world leaders agree to adopt the all 17 Sustainable Development Goals (SDGs) of the 2030 Agenda. The commitment under SDGs does not only reflect the interest of develop countries like most of other international treaties. Moreover it offers inclusive approach and method for developing countries as well, through its promising tagline ‘no one left behind’. Taking into account the unfinished business of Millennium Development Goals (MDGs), the new goal of SDGs call the participation for every countries from high income, middle income, and lower income country to develop the world together into a prosperous place. In the millennium era, countries are getting familiar with the complexity of the current problem. In the case empowering economic sector, social issues including education, health, social protection, and
job opportunities must also be addressed. The perplexity is getting real where climate change issue arises and becomes the global concern.

The support of SDGs towards developing country through ‘no one left behind’ principle is reflected on the participation of all stakeholders which are government and parliament, academia and experts, philanthropy and business associate, civil society organization and media. The involvement of multi stakeholder aims to create participatory and transparent platform for all particularly with the focus on the poorest, most vulnerable, and furthest behind. It is clear that the spirit of SDGs does not only become the government ambition since all parties are involved. It states that the ownership SDGs implementation is fully for all stakeholders.

In Indonesia, the government sees other stakeholders as strategic key counterparts. The principle of ‘no one left behind’ is internalized within all stages of SDGs implementation from the document preparation, formulation, implementation, and evaluation. First, the central government formulize National Action Plan (Rencana Aksi Nasional/RAN) as the baseline implementation within national scope. Second, the regional government develops Regional Action Plan (Rencana Aksi Daerah/RAD) as the foundation within regional coverage. Third, in order to strengthen SDGs, central government are currently in the process to finalized SDGs Roadmap. As for the RAN the total number of Non-State Actor involved are 108 which been progressive achievement. In addition currently, the total number of regional government which have formulized RAD are 18 Provinces.

Below are the list of Regional Government which has framed RAD and being actively participate towards SDGs implementation:

1. West Sumatera
2. Riau
3. South Sumatera
4. Bengkulu
5. Lampung
6. West Java
7. Central Java
8. Special Province of Yogyakarta
9. East Java
10. Bali
11. Nusa Tenggara Barat
12. Nusa Tenggara Timur
13. East Kalimantan
14. South Kalimantan
15. Central Sulawesi
16. South Sulawesi
17. North Sulawesi
18. Gorontalo

The Power of Civic Engagement: A View of SDGs and OGP

If we take a deeper look, SDGs and Open Government Partnership (OGP) actually poses the similar principle specifically on civic engagement. On the OGP Summit that was held in Georgia July 17 – 19, 2018 in Tbilisi. More than 2,200 attendees which includes government official, civil society organization, multilateral institution, private sector, academia, and think tank representing 115 countries committed to enforce government transparency. It is on that forum that the representation agrees on 3 key strategic issues as follow:
1. Civic Engagement
2. Anti-Corruption
3. Public Service Delivery

Considering both OGP and SDGs, it presents new phenomenon of civil society’s role and their contribution to the government which are getting more vital. It also conveys the message that the creation of good governance principle cannot be separated with the support of civil society organization (CSO). If the SDGs has included Non-State Actor on every stage of its implementation in Indonesia. Presently, OGP consider civic engagement as one parts of its action plan. Citizen involvement is needed to ensure that people have the opportunity to be involved in the preparation, implementation and supervision of development programs. However, this is only possible if people have a strong awareness of their rights as citizens. Further, the awareness and capability of the people must also be supported by a reachable system that can be easily accessed by them.

At this point the engagement of civic society is an integral aspect of good governance and transparency. The involvement of Non-State Actor mean to empower and stimulate them to understand and obtain their rights, so that they can give back the positive feedback for the community.

Voluntary National Review 2017: Lesson Learned and Challenge for Indonesia

In Indonesia development agenda, SDGs plays important roles as the mainstreaming merit. The vision is internalized and align with Nawa Cita and National Medium Term Development Plan (Rencana Pembangunan Jangka Menengah/RPJMN) 2015 – 2019. The close engagement of SDGs and RPJMN 2015 – 2019 set as basic principle to further define program, line Ministries, non-state actor, and most of importantly state budget (Anggaran Pendapatan dan Belanja Negara/APBN). Thus, by implementing SDGs it also means that the government actualizes the national development agenda.

Last 2017, was the first time for Indonesia to participate on Voluntary National Review (VNR) presented on High Level Political Forum. The forum open wide space for develop and developing countries to share their experience, challenge, as well as best practice on implementing SDGs. The theme for VNR SDGs 2017 is “Eradicating Poverty and Promoting Prosperity in a Changing World”. VNR is a unique document since it shows the cross cutting and the interlinkage of each SDGs goals. On 2017, the VNR focuses on 7 goals as follow; Goal 1. End Poverty, Goal 2. End Hunger, Goal 3. Ensure Health and Well Being, Goal 5. Gender Equality, Goal 9. Infrastructure, Industry, and Innovation, Goal 14. Life below Waters, and Goal 17. Partnership. On its first debut to present the VNR together with other 43 countries, Indonesia was among the first country to send its report to United Nation.

Again on the preparation of VNR, the government applies the ‘no one left behind’ principle emphasizing transparency and participatory approach. On its formulation process, the 4 platforms are working side by side to discuss the issue. In order to strengthen the substance, periodical meetings and Focus Group Discussion been arranged for each goal. Further, to validate the quantitative aspect, the data used on were from 2006 – 2016 collected from Central Statistical Agency (Badan Pusat Statistik/BPS), Ministries, CSO, Think Tank, and Universities. By the end, the result is widely share and can be easily accessed on www.sdgsindonesia.or.id.

In consideration the theme of 2017 VNR, the report focuses on 2 main aspects; 1. Improving the quality of human resource and 2. Enhancing economic opportunities for sustainable live hoods. Those 2 main focuses represent the interlinkage of 7 Goals within VNR 2019. In the case of improving human resource quality several goals matter. The 3 goals
that are contributing most to build human capacity are Goal. 3 Health, Goal. 2 Food Security and Sustainable Agriculture, and Goal. 4 Education. Though, Goal 4. Education is not included within the theme of 2019 but a good education system is important to tackle poverty alleviation.

Additionally, improving economic opportunities is achieved by increasing the capacity of industry, innovation, and infrastructure (Goal.9) that will stimulate various economic sector and preserving marine ecosystem which also one of the challenge of Indonesia as archipelago country (Goal.14). In order to support the main focus, Goal 5. Gender and Goal. 17 Partnership, Data, and Sustainable Financing plays as the enabling factor. The integrated data base is vital aspect for a more effective target.

**Research Question**

What is the main challenge of SDGs 16’s practice in Indonesia?

### 2 Research Method

This research is done by doing literature research, or commonly known as the literature study and uses the juridical approach method. Then the next approach used concept approach.

### 3 Overview

#### 3.1 Target Goal 16

Following the mandate of Sustainable Development Goals (SDGs) that has been ratified as global commitment. Indonesia earnestly carries out the message of all 17 Goals either on national and regional scale. Moreover, progressive effort been done by the government which mainstreamed SDGs goals into National Mid Term Development Plan 2015 – 2019. In implementing SDGs, Indonesia government applies inclusive approach involving all stakeholders.

The paper highlights the efforts been carried out and the upcoming agenda on implementing SDGs particularly on Goal 16 ‘Peace, Justice, and Strong Institution’. The SDGs Goal 16 aims to promote peaceful and inclusive societies, provide access to justice for all, and build effective and inclusive institution at all levels. The goal has 12 main targets which are complementary to each other and covering essential element of justice. In short, the main message of SDGs 16 is to eliminate any form of violence and abuse, stop children exploitation, ensure access to justice for every individual, block any form of illicit financial and arm flow, reduce corruption and bribery, create transparent institution, engage public participation on policy making process, and encourage the participation of developing countries on international scale.

As for this paper, the analysis covers 3 specific targets which are, 1. Corruption and bribery, 2. Participatory approach on policy making process, and 3. Institutional building capacity on Violence, Terrorism, and Crime Prevention within international cooperation framework. In terms of corruption and bribery, Indonesia government gives specific attention not only to eradicate but most importantly to educate the people to have an anti-corruption character.
Anti-Corruption

To take part of this action, Ministry of National Development Planning (Bappenas) coordinated the agenda of ‘Corruption Prevention and Eradication’ on 2015 – 2016. The program was implemented on both national and regional scope. Result shows considerable progress as reflected that on 2016 – 2017 that 80 Ministries/Agencies and 535 Regional Government involved. ‘Corruption Prevention and Eradication’ agenda on central government consists of 2 program which are Prevention and Law Enforcement. As for the following years, the main focus were similar but the sub program were slightly different.

The program mainly emphasizing on ensuring the implementation of e-government, regulatory reform, and the continuity of village fund realization. In the matter of corruption issue, it is important to build comprehensive national development plan to avoid the possible corruption act from the upstream. Initial study on corruption uncovers budget inefficiency arise mostly on planning and budgeting stage. Moreover, the anti-corruption agenda was implemented on regional scope concentrated on prevention aspect. The program composed of sub program which are, 1. Synergized license system of central and regional government, 2. E-Government, 3. Transparency procurement, and 4. License simplification.

In order to strengthen the anti-corruption agenda in Indonesia, the government established Anti-Corruption Index under the Central Statistical Agency. The index measures 2 aspects which are corruption based on perception and experience. There has been a declined score during 2017 - 2018 from 3.71 decrease into 3.66 out of 5.00. It reflects that the corruption is an urgent issue and people are relatively steer clear of it. Interestingly, people who live in town tend to have higher awareness of corruption compare to those who live in rural area. Statistic confirms that the index for townspeople is 3.81 and for those villagers is 3.47. Noting in this respect, the quality of education is a vital aspect to this index. Furthermore, people with good educational background relatively having good understanding of corruption issue and it is reflected on the index.

Presently, Indonesia’s target on anti-corruption index is nowhere near the target of National Development Medium Plan 2015 – 2019 that supposed to raise into 4.00 by the end of 2019. Therefore, through the Government Annual Work Plan (Rencana Kerja Pemerintah) 2018 and 2019, the anti-corruption agenda is embedded into the sequence of planning and budgeting to assure its sustainability. Within the context of the Government Work Plan 2018, anti-corruption program takes place under the National Priority 10 ‘Politics, Law, Defense, and Security’. The effort is strengthen into 2019 under National Priority 5 ‘National Stability and Election Attainment’.

Inclusive Participatory

Delivering promising change cannot only be made one sided, the government has routinely involved several related stakeholders to partake in decision-making situations at needed times. Public participation are organized and held by the Ministry of Law and Human Rights, whereas Public Consultation Forum are organized and held by BAPPENAS. BAPPENAS annual forum invites participants to share their opinions, inputs, and suggestions on Indonesia’s development for the upcoming Government Annual Work Plan. As stated under the Ministerial Decree No. 5/2018, article 8 paragraph 1 letter (a), the preparation of the initial draft on Government Annual Work Plan and its’ funding must go through a public consultation meeting to capture the aspirations of development actors.

Indubitably, the implementation of the development process is carried out in an inclusive manner by involving public participation, therefore the government strives continuously to increase the public role in the process of formulating development policies, especially in the
Government Annual Work Plan. The outcome is a compilation of public issues and recommendations relating to strategic issues on government national priorities and establishing coherent communication by implementing the forum as a bridge between the government and development stakeholders.

Furthermore, BAPPENAS’s initiative alongside with UNDP had created Indonesia Democracy Index (IDI) to assess three aspects of democracy, namely civil liberties, political rights, and institutions democracy. This tool is expected to be useful to identify the strengths and weaknesses of democratic practices throughout the country. It is also a tool that is used for planning in the Government Mid Term Plan (RPJMN). The latest considerable progress is the positive increase from 70.09 in 2016 to 72.11 in 2017.

Violence, Terrorism, and Crime Prevention

Congruent steps are taken to hinder violence, combat terrorism and crime in Indonesia, specifically through Bappenas cooperation with UNODC under Country Programmed Strategy 2017 – 2020. After the launching ceremony that took place in November 22 2016, on-going progress are taking place regarding the country’s collaboration with UNODC. The program main focus is on Transnational Organized Crime and Illicit Trafficking, Anti-Corruption, Criminal Justice, and Drug Demand Reduction and HIV/AIDS.

Progress of the collaboration proceeded by holding a Mid Term Report in July 2018 at BAPPENAS. Relevant Ministries and Institutions work closely through the programs such as the Anti-Corruption Commission (KPK) who aligns their duty on Transnational Organized Crime’s sub program to ensure that no individual are gaining profits in forest crime. For the program on Criminal Justice, the National Prevention and Terrorism Agency (BNPT) are in good agreement towards the workplan made as the program is aligned with their duty. Lastly, in the program on Drug Demand Reduction and HIV/AIDS, BNN’s involvement with UNODC were still going strong. Evidently, Indonesia’s international cooperation are serious when it comes to tackling on violence, terrorism, and crime.

Additionally, the Minimum Essential Force had an increase from 52.3% in 2017 to 58.3% in 2018. Law and Development Index (IPH) had a minimum increase from 0.57% in 2017 to 0.60% in 2017. Key priorities are also included in The Government Annual Work Plan 2019 such as Security and Cyber Security, Success of General Elections, National Territory Defense, Legal Certainty and Bureaucracy Reformation, and Diplomacy Effectiveness, and also for 2020 for a chapter on its own on National Security Stability.

3.2 Interlinkage of Goals

Linkage Goal 16 and Goal 5

Indonesia’s 2017 VNR on “Eradicating Poverty and Promoting Prosperity in a Changing World” places Goal 5 as one of the Enabling Environment that supports to “Improve Quality of Human Resources” and to “Enhance Economic Opportunity and Sustainable Livelihood”. Clearly, this shows how flexible and how widespread this goal is with the rest of the goals. Looking deeper into Gender Equality, it is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. Ending all forms of discrimination is not only a basic human right, but it also crucial to accelerating sustainable development. It has been proven time and again, that empowering women and girls has a multiplier effect, and helps drive up economic growth and development across the board. So, to achieve these targets, Indonesia’s government has plan.
The implementation content of Law No. 7 in 1984, the government issued Presidential Instruction No. 9 of 2000 concerning Gender Mainstreaming (PUG) in National Development, which aims to organize planning, formulation, implementation, monitoring, and evaluation of national development policies and programs that are perspective in gender in order to realize gender equality and justice in Indonesia. In the national development planning sector, the context of gender mainstreaming has been one of the focus of policies as outlined in the 2015-2019 Medium-Term Government Work Plan (RPJMN), which is coordinated by BAPPENAS. Various ministries in Indonesia take crucial notice on tackling gender challenges and those that connects with it.

The Ministry of Women Empowerment and Child Protection has for significant programs that are specifically focus on women and children. Programs such as Increased Prevention and Handling of Various Violent Acts against Women, including Crimes in Trafficking in Person with Action Plan: Improving Women's Protection from Violence and has goal: Compilation of guidelines for the Guidelines for Improving Services for Women and Children Victims of Violence and : Increased Prevention and Handling of Various Violent Acts against Women, including Crimes in Trafficking in Persons, with Action Plan: Identifying the handling of victims of violence against women, and has goal: Availability of data handling victims of violence against women in 2014 aligns with SDG 5. The Social Ministry, Coordinating Ministry of Human Development and Culture, and Witness and Victim Protection Agencies all have the same outlook.

As what has been mentioned previously, Indonesia’s Government takes SDGs seriously as reflects on National Action Plan to support the goal of SDG 5: Achieving Gender Equality and Empower All Women and Girls. Programs such as Child Protection Program held by Ministry of Women Empowerment and Child Protection & Ministry of Women Empowerment and Child Protection, General Judicial Management Program held by Supreme Court of Republic of Indonesia, Education Program held by Ministry of Education and Culture, Population Program, Family Planning and Planned Parenthood held by The National Population and Family Planning Board (BKKBN), Informatic Development Program held by Ministry of Communication and Informatics, United Nation and Political Development Program held by Ministry of Home Affairs, and Management Support Program and technical task of Ministry of State Secretariat held by Witness and Victim Protection Institution are all part of the state Gender Mainstreaming implement in Institution.

From program and targets interconnects with Goal 16 which has 12 targets with 34 indicators which projected to be achieved by 2030, with 3 (three) main agenda: 1) remove all forms of violence, 2) Children Protection, 3) Handling Cases Related to Violence Against Woman, 4) Strengthening National legal guidance programs, 5) Improving the system of judicial administration, 6) Improving the registration system for the community, 7) Promote and protect human rights.

Regarding all the above statements, Indonesia has been progressing through the year with significant support from various ministries and agencies to take step to streamline Gender Mainstreaming (PUG). Gender Equality principles, policies and practices contribute directly to the substantive targets of the SDGs, specifically through Goal 5, and Goal 16 to strengthen Access to Justice. Indonesia’s government already establish framework to any related stakeholder to be involved on the process of SDGs implementation and further to developing themself as reflects on National and Regional Action Plan.
Linkage Goal 16 and Goal 10

Poverty is still one of the main challenge for Indonesia, substantial progress been made in poverty alleviation in the past 10 years from 17.75% (2006) - 10.70% (2016). Although, the number of people living in poverty line is still 22.76 million people but the poverty gap among regions been narrowed. The rapid progress is due to comprehensive social protection system provided by the government through National Social Security System (Sistem Jaminan Sosial Nasional/SJSN) and social assistance. SJSN consists of 2 main program; National Health Insurance (Jaminan Kesehatan Nasional/JKN) and Indonesia Health Card (Kartu Indonesia Sehat/KIS). At the end of 2016, Indonesia population were 171.9 million people, and about the 40% of the population who have low income been covered by these facilities. In order to ensure that families with minimal wage have access to basic needs, on 2016 the beneficiaries expanded into 6 million poor families including pregnant woman, children under five, school age children, elderly, and people with disabilities.

The role of government to reach out those who are in need and vulnerable people proven to give significant impact on the decline of poverty rate. In this case, the constant decrease of poverty rate indirectly stimulates human capacity through good education and health system. Thus it can be seen that poverty cannot be lifted up just by providing basic needs, most importantly enhancing the capacity of people is mandatory so that they can give positive contribute back to the society.

The development of human capacity must be accompanied by economic opportunities. Industry, innovation, and infrastructure are one platform that be used to provide sustainable livelihoods through the creation of potential economic segment. As an archipelago country with more than 17,000 islands and which of two third of its area is ocean, no doubt that geographical barrier is still one of the issue the government faced off. There been a swift of infrastructure project, the priority of infrastructure project now targets the disadvantage, outermost, and frontier region aiming to reduce isolation and inequality. The strategy mainly aim to give effects on low income family to get more affordable prices and better opportunities on economic activity.

In the eastern region, 14 industrial park potentially absorb 962,800 workers, currently 3 industrial park been operated. The industrial strategy later on will focus on labor-intensive and local resource manufacturing that will absorb more manpower, enhance value added, provides more multiplier effect in the area. In this case, with potentially high number of worker involved it will contribute to poverty alleviation too.

3.3 Challenge from the implementation of Goal 16

The infamous challenge is the implementation practice itself in countries is no different in Indonesia as well. The SDG emphasize on inclusiveness, that all stakeholders are welcome. That both the Government and Non State Actors should intertwine to focus on the Goals. Although this idealism is perfect on paper, reality shows otherwise. It is difficult to measure what inclusiveness is and who is partaking what. As much as no one gets left behind, there is no indicator or participatory measurement as to who is left or who is involved.

Another challenge faced is how ambitious the target and indicators of Goal 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”. Implementing and ending conflict once in for all sounds over optimistic. Taking a closer look at the target such as Target 16.2 “End abuse, exploitation, trafficking and all forms of violence against and torture of children”, a 2030 deadline to end a crucial and on-going violence isn’t likely to happen. Reasonably, to lessen, to decrease, or the reduction of the problem based on the
indicators should be taken into account. Improvising is necessary, especially to each specific countries, yet on the global scale the baseline are the same targets and indicators.

The Ego-sectoral can also be a major problem implementing Goal 16 in Indonesia. This has been an on-going yet predictable problem for the country to let go of their own agenda and start focusing on the bigger goal. Ministries and Institutions has their own plans and certain programs, this can lead to a shaking accountability on the technocratic side with less strong bureaucracies. Lastly, Inconsistent data availability can also become an obstacle. For instance, for the VNR Report 2019, it is asked for the stakeholders to use a 10 years data. This can be difficult for Indonesia, especially when the Statistic Indonesia (BPS) had problems relating to its institution a few years ago causing less reliable data.

4 Conclusion

Initiatives are certainly being implemented and progress are taken place moderately. The involvement of key actors for the country’s peace and justice will not only effect individually, but with consistency on implementing relevant policies aligning with the Annual Government Work Plan and the Government Mid Term Plan 2020 – 2024, achievement is thoroughly possible. The implementation of SDGs based on inclusive approach enrich the output. Together with philanthropies, CSOs, academia, and business associate, Indonesia government through BAPPENAS formulize a ‘no one left behind’ mechanism. All stakeholders in charged and involved from the preparation, realization, and monitoring evaluation. Further, the government will also invite the participation of Non-state Actor on the Voluntary National Review (VNR) 2019.

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Maladministration in Land Dispute Resolution Services in the Lampung Provincial National Land Agency

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Abstract. Land dispute as a crucial problem in Indonesia, where handling is still less effective and efficient. This argument is based on the results of a systemic study "Potential Maladministration in Services for Settling Land Disputes and Blocking Land at the Land Office in Lampung Province" by the Team of Lampung Pro-Province Ombudsman Study on 7 (seven) Land Offices in Lampung Province in 2018. There were indications of maladministration in the flow of land dispute resolution at the Lampung Province National Land Agency (BPN). The indications of maladministration are a reflection of the quality of BPN services. To test the BPN bureaucracy, bureaucratic development models are used and recommend effective and efficient service solutions. This study is a normative juridical legal research, and the problem approach used are legislation approach and conceptual approach. Secondary data used were the results of a systemic study by the Lampung Province Ombudsman team and other legal materials. Data analysis used is quantitative data analysis. The results of the study show that the causes of maladministration are caused by a lack of competencies in human resources and various obstacles. The BPN bureaucracy is also classified as Pre-Bureaucratic because there is still a flow of dispute resolution that is not following the Minister of Agrarian Regulation and Spatial Planning No. 11 of 2016 concerning Land Settlement. BPN needs to improve the quality of its bureaucratic structure to provide effective and efficient dispute resolution services.

Keywords: Maladministration; Land Dispute Resolution Service

1 Introduction

Land disputes is a popular problem in Indonesia, which is currently less effective and efficient. This argument departs from the results of a systemic study of "Potential Maladministration in Services for Settling Land Disputes and Blocking Land at the Land Office in Lampung Province" by the Team of Lampung Pro-Province Ombudsman Study on 7 (seven) Land Offices in Lampung Province in 2018. Based on these data, indications of maladministration were found in the flow of land dispute resolution at the Lampung Province BPN. The indications of maladministration are a reflection of the quality of land dispute resolution services at the BPN. To test the hypothesis, used bureaucratic development model from Philippe Nonet and recommended effective and efficient service solutions.
Based on this background, the problems are:
1. Why is there maladministration in resolving land disputes at the BPN?
2. How does the BPN bureaucracy test results use the bureaucratic development model?

2 Methods

The method used is normative juridical, problem approach used is legislation approach and conceptual approach. Secondary data used are the results of systemic studies by the Ombudsman Representative Team of Lampung Province. Data analysis using qualitative data analysis. Data processing is carried out with inventorying data, systematizing interconnected data, interpreting data theoretically and authoring legal arguments, analyzing the data accordingly to answer existing problems. The legal theory used departs from Responsive Legal Theory. Philippe Nonet and Philip Selznick introduced 3 (three) types of bureaucracy as evolutionary forms of continuity; those are bureaucratic, bureaucratic, and post-bureaucratic as manifestations of the evolution of legal types of a repressive law, autonomous law, and responsive law.

3 Results and Discussion

3.1 Causes of Maladministration in Land Dispute Resolution Service at BPN

The causes of maladministration in this paper are traced using the diachronic method, which is a method to find the truth by tracing period. With this method, the author divides the time of occurrence of maladministration into 2 (two) periods, which includes:
1. Maladministration on land registration for the first time; and
2. Maladministration on land dispute resolution services.

Maladministration on Land Registration for the First Time

Based on research data in 7 (seven) Land Offices in Lampung Province, there were no indications of maladministration in the substance aspect, because there were no errors or errors in the physical data and land juridical data. However, based on the author's hypothesis, maladministration can occur in land registration for the first time, those are on:
1. Registration of Basic Maps: Measurement and mapping for the making of basic registration maps are carried out by terrestrial, photogrammetric and other methods. Terrestrial methods are carried out on the surface of the earth, while photogrammetric methods are carried out in the air. While other methods can be done, but in Article 12 paragraph (1) Minister of Agrarian Regulation and Spatial Planning No. 3 of 1997 concerning Implementation Provisions of Government Regulation No. 24 of 1997 concerning Land Registration, do not mention other methods that are allowed. To avoid errors in measurement and mapping, the phrases in the rule should be emphasized.
2. Determination of Land Sector Limits: Physical data for land registration is obtained by measuring the land parcels to be mapped, its location, boundary, and boundary signs placed at the corners of the land. In the case of stipulating land parcels on land registration, boundary arrangements are based on the agreement of the parties. If there is no agreement, but it is still carried out without the knowledge of the parties, this can lead to errors in setting boundaries in the plots of land, resulting in maladministration caused by the neglect of obligations and neglect of the law.

3. Measurement and Mapping of Land Plots and Making a Registration Map: Plots of land that have been determined are measured and mapped in the registration base map. Making this registration map is sensitive, so it requires the competency of the officer responsible for carrying it out. Maladministration actions that are prone to occur in this plot are incompetence in measuring and mapping land parcels that cause errors in physical data.

4. Land Register Making: Land parcels that have been mapped on the registration map, are recorded in the land register. Need accuracy and thoroughness of the responsible officer and carried out according to AUPB so that there is no mistake in affixing the registration number in the registration and bookkeeping map in the land register which results in maladministration.

5. Preparation of Measuring Letters: For land parcels that have been measured and mapped on the registration map, a measured letter is made for registration of their rights. In the letter of measurement can be seen the location of the land, the area of land, and whoever the measuring limit is. The physical data must be by the conditions in the field so that there is no discrepancy or in other words, maladministration.

**Maladministration in Land Dispute Resolution Service at BPN**

Based on the existing secondary data, maladministration in 7 (seven) Land Offices in Lampung Province is indicated as a maladministration action. Maladministration that occurs in the flow of land dispute resolution services in BPN Lampung Province, among others:

1. **Complaint Check:** There is 1 (one) Land Office providing a Receipt of Complaint to the complainant if the complaint file is declared to meet the requirements, while there are 6 (six) Land Offices not giving a Receipt of Complaint to the complainant if the complaint file is declared to have met the requirements. Administrations that occur include:
   a. Disregard of law: Whereas in Article 7 paragraph (3) of the Minister of Agrarian Regulation and Spatial Planning No. 11 of 2016 concerning Land Settlement, complaints that have met the requirements, to the complainant are given a Receipt of Complaints;
   b. Deviation of procedures: Caused by incomprehension and incompetence, due to a lack of improvement in human resource capabilities, in this case, an increase in legal knowledge.

2. **Recording/Administration of Development of Dispute Settlement:** There are 5 (five) Land Offices recording the progress of disputes in the Dispute Resolution Register and administering through the Dispute Information System, while there are 2 (two) Land Offices recording the progress of disputes in the Dispute Resolution Register and not administering through the Dispute Information System. Administrations that occur include:
   a. Disregard of law: Whereas in Article 9 paragraph (1) of the Whereas in Article 9 paragraph (1) Minister of Agrarian Regulation and Spatial Planning No. 11 of 2016 concerning Land Settlement, every development of dispute resolution, data administration is carried out through the Dispute Information System;
b. Deviation of procedures: That the official responsible for handling disputes should explain that any progress in dispute resolution is administered through the Dispute Information System.

3. Data Collection: There are 5 (five) Land Offices conducting data collection in the dispute resolution stage, while there are 2 (two) Land Offices not explaining data collection in land dispute resolution. Administrations that occur include:
   a. Disregard of law: Whereas in Article 10 of the Permen on Settlement of Land Cases, data collection is carried out so that officials responsible for handling disputes cannot conduct analysis;
   b. Deviation of procedures: That with no explanation of data collection, a procedure deviation has occurred which has resulted in data analysis not being carried out;

4. Analysis: There are 2 (two) Land Offices explaining the implementation of the analysis of land dispute resolution, while there are 5 (five) Land Offices not explaining the analysis of land dispute resolution, so it is not known that the complaint is the authority of the ministry or not the authority of the Ministry. Administrations that occur include:
   a. Disregard of law: Whereas in Article 11 of the Minister of Agrarian Regulation and Spatial Planning No. 11 of 2016 concerning Land Settlement, carried out the analysis, so it is not known that the complaint is the authority of the ministry or not the authority of the ministry;
   b. Deviation of procedures: That by not explaining the analysis, there has been a procedure deviation which has resulted in the dispute being unknown as the authority of the ministry or not the authority of the ministry;

5. Dispute Resolution: There are 7 (seven) Land Offices in Lampung Province explaining that dispute resolution, which is the authority of the Ministry is carried out through mediation. The results of data collection and analysis are not reported to the Head of the Land Office so that the Head of the Land Office does not submit the results of data collection and analysis to the Head of the BPN Regional Office or to the Minister to follow up the settlement process. Administrations that occur include:
   a. Disregard of law: Whereas in Article 6-27 of the Minister of Agrarian Regulation and Spatial Planning No. 11 of 2016 concerning Land Settlement, dispute resolution which is the authority of the ministry, is resolved through the appropriate stages, not through mediation. That is Article 12 paragraph (1) the official responsible for handling disputes, reports the results of data collection and analysis to the Head of the Land Office, then in Article 13 paragraph (1), The Head of the Land Office shall convey the results of data collection and analysis to the Head of the Regional Office of the Land and the Minister;
   b. Dishonesty: That the official responsible for handling dishonest disputes or hiding an explanation of the data analysis in settlement of land disputes. That the results of data collection and analysis should be reported to the Head of the Land Office;

6. Mediation: There are 4 (four) Land Offices which explain that dispute resolution that is not the authority of the Ministry can be made through mediation, while there are 3 (three) Land Offices which do not explain that mediation can be done in resolving disputes which are not the authority of the ministry. Administrations that occur include:
   a. Disregard of law: Whereas in Article 37 - 42 of the Article 6-27 of the Minister of Agrarian Regulation and Spatial Planning No. 11 of 2016 concerning Land Settlement, dispute resolution which is not the authority of the ministry, is resolved through mediation based on the agreement of the parties. This means that there has been maladministration related to the neglect of the law, which has resulted in an
unknown settlement of the option of dispute resolution through mediation facilitated by the BPN.

b. Favoritism in interpreting the law: That an official responsible for handling disputes interprets the law for certain interests, the official responsible for handling disputes should explain that mediation can be done in resolving disputes that are not the authority of the ministry.

3.2 Development Model of BPN Bureaucracy
The bureaucratic development model is a theory of institutional limitations and responses whose function is to identify the evolutionary level of bureaucracy. In this theory, there are 3 (three) developments in the bureaucracy, which include:

1. Pre-Bureaucratic: identical to the bureaucratic system that is still old-fashioned or has not implemented bureaucratic elements determined by legislation;
2. Bureaucratic: synonymous with the bureaucracy that meets standards, but its nature is still rigid and fettered by rigid rules, in other words not progressive;
3. Post Bureaucratic: synonymous with modern bureaucracy, and meets bureaucratic elements that meet regulatory standards and has progressive initiatives in carrying out its functions.

Philippe Nonet and Philip Selznick interpreted 3 (three) types of bureaucracy as evolutionary forms, including pre-bureaucratic, bureaucratic and post-bureaucratic. This model illustrates of legal types of a repressive law, autonomous law and responsive law. The function of this bureaucratic development model is to determine the level or condition of the bureaucracy of an organ, in this case, the organ of government, to find the root of the problem in a bureaucracy.

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The following is a discussion of data on the dispute resolution service flow indicated by maladministration in 7 (seven) Land Offices in Lampung Province which were tested using a bureaucratic development model theory with the following 5 (five) aspects:

1. Examination of complaints file: there is an obligation to provide a Receipt of Complaints if the complaint does not meet the requirements, then notify them in writing;

2. Recording/Administration of Development of Dispute Settlement: there is an obligation to record the progress of dispute resolution in the Register for Settling Disputes and administering it through the Dispute Information System;

3. Data collection: there is an obligation to collect data in the stages of dispute resolution;

4. Implementation of analysis: there is an obligation to explain the implementation of the analysis in dispute resolution;

5. Dispute resolution: there is an obligation to explain that dispute resolution that is not the authority of the Ministry is carried out through mediation.

Based on the flow, the results of analysts using the bureaucratic development model are as follows:

1. Purpose:
   a. Pre-bureaucratic services are 25 (twenty-five) services because they do not fulfil explicit, definite, public, and identified elements with defined jurisdiction;
   b. Services are classified as bureaucratic in the number of 17 (seventeen) services, because they fulfil explicit, definite, public, and identified elements with defined jurisdiction;
   c. Services are classified as Bureaucratic Post at 0 (zero) services because they don't fulfil flexible mission-oriented elements.

2. Authority:
   a. Pre-bureaucratic services are 25 (twenty-five) services because they do not fulfil structured and communication elements through channels, and fulfil traditional elements;
   b. Services are classified as bureaucratic in 1 (one) service because they fulfil structured and communication elements through channels;
   c. Ministry is classified as a bureaucratic post with 16 (sixteen) services because it fulfils the elements of the task of open communication, diffusion of authority, team and group organizations, and open communication tasks.

3. Rules:
   a. Pre-bureaucratic services are 25 (twenty-five) services, because they do not fulfil the element of focus on administrative order and blueprints for action, and fulfil non-systematic elements;
   b. Service is classified as bureaucratic by 17 (seventeen) services because it fulfils the element of focus on administrative order and blueprint for action;
   c. Services are classified as Post-Bureaucratic in the amount of 0 (zero) services because they do not fulfil the Subordinate element towards the purpose of rejecting the attachment to regulations.

4. Decision Making:
   a. Pre-bureaucratic services are 25 (twenty-five) services because they do not fulfil routine elements, are obedient to rules, systematic, and fulfil the elements of uncontrolled actions carried out by subordinates;
b. Services are classified as bureaucratic in the amount of 10 (ten) services because they fulfil routine elements, are obedient to rules, and systematic;

c. Service is classified as a bureaucratic post with 7 (seven) services because it fulfils the element of participatory, problem-centered, broad delegation, and tone of assumptions about the environment with changing demands and opportunities.

5. Careers:
   a. Pre-bureaucratic services are 25 (twenty-five) services because they do not fulfil the element of professionalism;
   b. Services are classified as bureaucratic in the amount of 5 (five) services because they fulfil the element of professionalism;
   c. The service is classified as a bureaucratic post with 12 (twelve) services because it fulfils the element of affiliation, and experts have an autonomous professional foundation.

This figure is a reflection of the quality of land dispute resolution services at the BPN. It can be concluded that the BPN is still in the pre-bureaucratic development model with 125 pre-bureaucratic services. Nevertheless, in practice, BPN continues to carry out its duties and functions optimally. The level of BPN services can also be seen in the Community Satisfaction Index (IKM) on the ATR/BPN Ministry website. The elements assessed in the IKM include procedures, requirements, fairness, costs, security, the certainty of costs and time of completion, etc.

4 Conclusion and Recommendation

Most of the indications of maladministration are the ignore of obligations and ignore the law. For this reason, the solution that the writer can recommend is to improve the employee acceptance system, reduce excessive work pressure on employees, provide training to improve employee skills, place employee positions according to their scientific background. Regarding legal knowledge, employees should be given legal socialization by presenting competent speakers, recruiting employees who are experts in the field of land law, cooperating with competent stakeholders, improving the flow of dispute resolution that is not by the legislation to be adjusted.

The Pre-Bureaucratic development model counts 125 services; in other words, around 60% of the flow is indicated as maladministration, while the other 40% do not occur in maladministration. Thus it is also known that BPN is still in the model of Pre-Bureaucratic
development. BPN should optimize its bureaucracy to avoid maladministration and provide effective and efficient services.

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Identity of Muslims in India as Marginalized community: Special Focus on Minorities of Gujarat State

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Abstract. Marginalized communities and ethnic minorities are a visible sign in most of the modern societies around the world. The tag people carry as belonging to a marginalized and minority community may give rise to suspicion. Their presence in a civilized society may not be welcomed and the people who belong to majority communities may not reckon them. However, in India, the constitution has recognized the rights of people who belong to marginalized and minority communities. Over the years, the majority has curtailed the rights of the marginalized communities not through legislation but by depriving them of government benefits. The constitution of India has safeguarded the identity of minority population. Jains, Sikhs, Christians, Buddhists, Parsis and Muslims as minorities have to live among the people who are in majority communities. Among these six minority communities, Muslims across the world and in India are looked in suspicion. Most of the communal violence across India have had the participation of Muslims. Do these people involve in violence without any provocation? The Sachar Committee, which was appointed to look into social, economic and educational conditions of Muslims, highlighted and presented its suggestions on how to remove impediments preventing Indian Muslims from fully participating in the mainstream activities of Indian life. On this background, my research paper tries to show the conditions of Muslims as belonging to one of the minority communities in India, how have they been marginalized, their present status in the state of Gujarat and their contributions to the nation building tasks.

Keywords: Minority; backlash; Muslims; marginalise; education; nation; rights; community; communal

1 Introduction

Muslims in India have been living in different areas for many years. They were given an opportunity to move to newly created country during the time of partition. However, many Muslims preferred to live in India than shifting their bases to Pakistan after partition. The lack of transportation and the location that South India was too far away to North Indian towns during the partition period made the Muslim population of Southern Indian towns to remain in India. The constitutional rights in India made the Muslim population to work for the nation building tasks rather than thinking of moving out from India to Pakistan.

Living in India for many years, under various rulers, Muslims have been accorded various positions and designations even in British India and later during the independent India has
given protection to this minority community in the constitution of India. The lawmakers and the framers of constitution of India had accepted the role that the Muslim population had played in the construction of India through their diversified identities. The main idea behind this is a highly educated Muslim could decorate the highest constitutional position in India.

2 Identity Crisis

Muslims in India have been in different occupational strata. There are civil servants, judicial officers, and professionals like doctors, engineers, teachers and religious leaders. Farmers and street vendors contribute in the task of nation building where everyone gets the fruits of their hard labor. Muslims do not recoil themselves in one locality. They are integrated and assimilated in the very fabric of Indian ethos. Their diversified identities can be seen in Indian context as Tamil speaking Muslims in Southern state of Tamil Nadu to that of Kashmiri and Dogri speaking Muslims in Jammu and Kashmir. The western Indian side we find Gujarati speaking Muslims and in Eastern side of India they are identified as Bengali Muslims in the state of West Bengal. However, their identities cannot be affiliated only to those who speak in Urdu and Hindi. However, these two languages spoken widely by Muslims across Indian subcontinent, there are Muslims who identify themselves as belonging to a particular state, its culture and language and broadly, they identify themselves as Indian.

Let us consider the following questions, though Muslims in India identify as belonging to India, the majority community still look at them in suspicious eyes. What is the reason for this? Why does the suspicion emanate though these Muslims ancestors were born and died in the Indian sub-continent? Is the reason that their faith has come from a foreign country enough to justify that they are not truly Indian? It is true that their faith has come from a foreign country but they have nothing to do with that country since they have professed their loyalty towards India. It would be better and wise decision from other communities to accept the diversified nature of Muslim population in India, try to educate their siblings and make them as productive citizens of India who are ever ready to sacrifice their lives to the cause of nation rather than sowing the seeds of mistrust and misunderstanding in their diversified identities.

While writing an article to The Hindu newspaper, Hilal Ahmed, a faculty member at CSDS opines, “It is important to note that although Islam as a religion provides a unifying religious identity to various Indian Muslim communities, Muslims tend to follow various sect-based interpretations of religious texts and region-based rituals and customs. It is this religious-cultural distinctiveness, which makes Indian Islam a highly diversified phenomenon. The question of politics, especially electoral politics, is inextricably linked to this unique Muslim diversity.” (The Hindu, 24 July 2016).

Further analysis on this shows that the Muslims tend to follow the identity of the domicile region in the state rather than their unique identity as belonging to the religion of Islam. A Muslim from any country from the Middle East coming to India may conclude as ‘gone astray’ after seeing the local culture where Muslims of that region who have assimilated into the local cultural ethos follow the culture of that place. How far Muslims in India are secure in this secular democratic set up? Over the years, the militancy in Kashmir region has seen the active participation of Muslims and their active cells in different parts of India that has done a lot of damage towards the community. The suspicion has become more severe soon after the terrorist attacks indifferent parts of India. Communal violence in few parts of Uttar Pradesh and a coastal town in Karnataka, the concept of Love Jihad, which was in vogue in parts
Kerala and other incidents have been playing on the psyche of the Hindu fundamentalists who have openly commented on the nature of Muslims in India.

The Godhra carnage that gained the attention of the world community, thereafter, the aftermath of this incident where a large number of Muslims were torched in Ahmedabad and elsewhere in Gujarat kept the Muslim population away from the dwellings of majority community. The implication of being a Muslim in India is challenging. C.M. Naim, while writing to Columbia edu portal says, “Being a Muslim in India is at the same time a challenge and an opportunity: to become functionally alive in the developing, secular democracy. I suggest that a way to meet that challenge is for the Muslims to discover their own individual, highly differentiated pasts and only then to engage in making aggregates of them, first at the local and regional levels, and later at the national level.” (C.M. Naim, for Columbia edu portal).

Keeping this statement in mind, there are Muslims who are active in local politics in Gujarat. The district of Anand, an hour journey from Ahmedabad has housed a large number of Muslims. There are businesspersons. Fighting local Panchayat elections was not new to these Muslims. They have been in support of congress leaders in Anand district, which had traditionally remained faithful to congress party ideology.

3 Muslims in Gujarat State

The state of Gujarat is known for its cultural values and new development model. Gujaratis are enterprising who have gone to different countries and the business diaspora sends huge remittances to Gujarat. The early migrants from Gujarat to African coasts were Gujarati Hindus and Muslims. Dawoodi Bohra and Khojas who are prominent business communities in Gujarat have set their foot in various countries. Bhora style of Mosque construction is still visible in Gujarat (Madhavi Desai, 1992). It is estimated, more than 50% of Dawoodi Bora community Muslims reside in Gujarat (Asghar Ali Engineer, 1980). Over all, Gujarat state has Muslim population with diversified identities such as a lot of difference can be seen in their social strata, some are rich and others are poor, some are educated with good jobs but others are doing menial jobs.

Among Hindu upper castes, the Patel community has large landholdings across Gujarat, monopolized agricultural activities. They have interests in politics, business, industries and educational institutions. Among OBCs, Thakor community comes behind the Patels in the above said activities. Dalits are in less number when compared to Scheduled tribes. Population of Christians is less than Muslims. Among all the minority communities in Gujarat, Muslims have a larger population share. Its total population is 9.67% and Christians account just 0.52%. Before the Patel agitation for OBC quota, people did not bother about Muslim support. However, ‘Gujarat Kshatriya-Thakor Sena’ president Alpesh Thakor once commented by saying, “These general castes projected Muslims as our enemies and incited OBCs to fight against them. But now we have learnt that Muslims are also OBCs. They are among us. We have now realized that our actual enemies are those who want to snatch our right of reservation,” he said. (Indian Express, 23 August 2015).

Soon after the Patel agitation in the state, most of the OBCs came together to protect their reservation rights. Later, the lynching of Dalits brought Dalit communities together under Jignesh Mevani who is the present leader of Rashtriya Dalit Adhikar Manch. In the prevailing scenario, we can see in Gujarat Hindu OBCs, Muslims and Dalits have come together to form a grand alliance against the upper castes. The assembly election that is going to take place in the months of November – December 2017 will have an interesting contest from different
sections of the society. Muslims in Gujarat though politically not active but can be a reckoning force by financing the candidates whom they could see potential winners and their sympathizers. Having glorified the Patel community within Gujarat and the Patels in Indian diaspora, it is also interesting to see how upper castes of Gujarati people have kept the population that is considered "Other", out of the preview of benefitting from “Gujarat Model of Development”. The OBCs especially who belong to Hindu religion had slight better treatment than that of Muslims, Christians and Scheduled Castes.

Reverend Father Cedric Prakash, a Jesuit Catholic Priest, based in Ahmedabad was a champion of fighting against injustice towards the SCs, STs, Muslims and Christians. He was in charge of an NGO. While speaking on the issue of Anti-Conversion legislation, in his article, "Ruthless and regular persecution of Gujarat's Christians and Muslims", comments, "The government of Gujarat "has conveniently forgotten that Article 25 of the Constitution guarantees freedom of worship, and it does everything in its power to continue, and to justify, ruthless persecution against Christians and Muslims living in the state". With these words, Fr Cedric Prakash – director of Prashant, a Jesuit-run centre for human rights, justice and peace – concluded the article he wrote about the "Carnage of Gujarat": the massacre perpetrated three years ago by "unknown people" against the Muslim community." (Fr. Cedric Prakash, 2006: Asia news web portal).

This has shown that the anti-conversion law is a step forward by the upper castes to make Gujarat as a "fully populated by Hindus" as commented by Praveen Togadia (Praveen Togadia warns Muslim family, India TV News Desk, 2014). Further Fr. Prakash spoke on the issue of harassment meted out to Muslims and Christians. The anti-conversion law plays its major role when a Hindu converts to Islam, Christianity or Judaism than to that of Jainism, Buddhism and Sikhism. He opined, "…..the government continues to harass and intimidate Christians, Muslims and other minorities with a terrifying regularity. They are doing all in their power in order to justify this law and persecution. The government has conveniently forgotten that Article 25 of the Constitution guarantees every single citizen, the freedom to practice, preach and propagate the religion of his/her choice." (Fr. Cedric Prakash, 2006: Asia news web portal).

Muslims were asked to vacate the houses by VHP, RSS members who have their membership in Patel communities. When Praveen Togadia had come to Gujarat, he openly poured venom on Muslim communities, like, "A Muslim businessman had never thought while buying a bungalow in a posh area of Bhavnagar city that he will not be allowed to move in. Hindu Sanatorium–is the address given by local residents in a section of Krishna Nagar, a posh area of Bhavnagar city. A Bohra Muslim, Ali Asghar Zaveri, in January this year, had purchased a bungalow but he has not been able to move in due to protests by Hindu residents, according to a report published in Indian Express. For the last two months, the Hindu residents have been holding “Ram Darbars” outside Zaveri’s bungalow every evening, gathering there and playing recordings of “Hanuman Chalisa” and bhajans. VHP leader Pravin Togadia visited the area during the darbar on Saturday. Addressing the gathering, he reportedly warned Zaveri to vacate the premises within 48 hours and asked residents to forcibly occupy the bungalow. An FIR has been filed against him. The bungalow next to Zaveri’s belongs to the family of Razak Lakhani. While Lakhani is dead, his family continues to live there." (India TV News web portal: 23 April 2014).

The above statement of a VHP prominent figure in Gujarat had threatened and frightened the Muslims who are destitute and poor. If Patels wish, they could have protected this man from harassment but they did not. The majority community looks down not all the Muslims in Gujarat. Educated Muslim population are in decent jobs. There are rich Muslims doing brisk
businesses. Many of the Gujarati Muslims have settled in Mumbai and doing well in their chosen field of work. Mahatma Gandhi got an invitation from a Gujarati Muslim who was working in South Africa. This incident made Gandhi to embark upon African tour, ended up in South Africa fighting for the causes of Africans, and marginalized Indian diaspora of that time.

In spite of the backlashes, atrocities, harassments and depriving of opportunities to Muslims in India general and Gujarat in particular, they are working silently in every field. In many places, their Hindu brethren from majority community would vouch for their nationalistic commitments, security and patriotism. Muslims in India have been working towards the nation building tasks in their own ways. They support Shri Narendra Modi’s call towards good governance and development of India. There are engineers, doctors, civil servants, teachers and other professionals from Muslim community working hand in hand with their fellow citizens.

At school, colleges and universities Muslim teachers mould students thinking capacity and assist them to become useful citizens of India. Muslims of India today are ready to lay down their lives for the sake of their nation. Their loyalty is for their homeland, which is India. However, it is not right on the part of bigots asking them to prove their nationalistic feelings. Some statements uttered in public against the Muslim communities in India may dampen their spirit. Keeping the sensitive issues in mind, it is advisable for the responsible citizens to avoid issuing statements that would hasten the communal violence. Never in India, should majority community doubt about the integrity of Muslims of India. Appreciation of their diversified identities, culture and tradition is the need of the hour.

4 Conclusion

The majority community in certain parts of Gujarat do not want to see the minority settling down. One can see a stark contrast in Gujarat. People of Gujarat no doubt are enterprising in nature. Their wealth has been increasing. Their religious beliefs too are increasing. At the same time, their love for cows also increases day by day. They feed street dogs with Parle - G, Marie and Crack Jack biscuits. They throw grains at birds. They have kept fodder for cattle stock. They regularly put sugar to ants. They also take regular insulin injection for their ailment. A lot of charity work is done in Gujarat. There are many NGOs working with the active financial and logistical support from Gujarati Diaspora. It is a well-known fact that Gujaratis earn well and spend well. This helps the economy moving. If one travels inside Gujarat, progressive areas and backward areas can be seen. There are many Hindu religious places frequented by the faithful spending huge amount on religious festivals. Does this bring any change in their attitude towards the marginalized sections of the society? Haven't foreign returned Gujaratis observed how foreign people treat Muslims and other ethnic communities in their countries? Gujarati majority population should be broadminded in accommodating all classes of people in Gujarati society.

Patels are rich in every aspect. The major contrast in Gujarat, one can ask, how do Gujaratis treat human beings? How minorities are treated in Gujarat? What is the status of Muslims in Gujarat? If upper caste Hindus of Gujarat want to make Gujarat as a fully inhabited land by Hindus, then where should the minorities particularly Muslims and Christians go? When we say Gujarat is a developing state, we need to stop and ask a question, is it all-inclusive? If it is not inclusive growth then who are left out? Do people who have really toiled get recognition? Dominant class should see that even the marginalized section of
the society and the minority population such as Muslims should get good and reasonable price for the hard labour that they put in every day.

The state has its name and fame in the world map. Let not discrimination among castes and religions stultify the glory and pride of Gujarat. There are enough indications of bickering in the unity of the people in Gujarat. Visible cracking signs in Gujarat Model of Development have already shown not only in Gujarat and India but also for the world community. The incident like that of Godhra and its aftermath reaction should have taught a lesson to all those who perpetuate violence and atrocities on minority communities. The progress of Gujarat state lies with every stakeholder who has really toiled to make this state progressive. Let the rich culture of Gujarat should hold Gujarati Muslims within the inclusive growth without any regional imbalances and the Gujarat model of development flourish in Gujarat by taking along with its journey towards development, progress and good governance.

The majority community across India should understand the history of Muslims. However, the partition of India gave a chance to Muslims to shift their bases towards newly created Pakistan, a large number of Muslims decided to stay back in India and work for nation building task. They did not fail the dream of India. There are many Muslims, in spite of having diversified identities, have got highest education and decorated the highest constitutional position in India. A vast number of businesspersons have been doing philanthropic work in different fields. There are many educational institutions managed by Muslims in India. Gujarati Muslims are entrepreneurs, doing social work along with their brethren from majority communities. This kind of relationship should prosper that would remove the mistrust and misunderstanding between communities.

References
The Possibility of Village Development: Village Regulation Formulation and Its Challenges

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Abstract. The new constitutionalism is giving the village new stance within Indonesia state relation. This is creating the new relation between the state and village and open wide possibility for village development. As one of the authority of the village, the authority for the formulation the village regulation maybe the key to open those possibility. Thus, The need for good regulations is very urgent in this new development since village regulation is become the foundation of village autonomy. Within the analysis above, this research test the possibility of the development through the formulation of the village regulation on two village in Lampung namely Way Empulau Ulu di West Lampung and Tanjung Setia Village in West Coast. In other side, government has enacted many regulations to govern the management of village and has made possibility to halt the development of village. This is based on the assumption that more regulation means more barrier for village formulation as Indonesia is using the model of hierarchy of law. This paper found that village regulation formulation success is depend on the political will of the people and the collaboration with legal drafter is needed to achieve the goal of village development using the formulation of village regulation.

Keywords: Village Regulation; Village Development; State Relation

1 Background

The village is a forerunner to the formation of society and the government in Indonesia. Long before the Indonesian nation-state was formed, social groups similar to villages or other indigenous peoples had become an important part of the archipelago. The village is a pioneer of an autonomous and fully sovereign democratic system. For a long time, the village has had a system and mechanism of government and social norms of each. Today, the village is still where we all live. At the very least, most Indonesian citizens live in villages. Ironically, villages are often ignored in Indonesia's overall development. Since 1979, the government, through Law Number 5 of 1979 on the Village Government, has carried out structured and systematic actions to kill village autonomy. The death of village autonomy has made villages in Indonesia trapped in a sleep state for a long time, and some even died in that long sleep. It was only in 2014, the State through Law Number 6 of 2014 has set footsteps of decentralization in the village. With this law, the village has the authority to regulate and manage government affairs, the interests of the local community based on community
initiatives, original rights, and/or traditional rights that are recognized and respected in the system of government of the Unitary Republic of Indonesia.

With this authority, the village gets very broad autonomy. This broad autonomy was then supported by the obligation to transfer village funds by the central government to each village with an amount that could be said to be fantastic. Noted, village funds from year to year continues to increase. In 2015, the village fund budget was 20 trillion IDR, in 2016 47 trillion IDR, and 2017 60 trillion IDR. Lampung Province itself was recorded receiving Village Fund disbursements of 1.9 trillion IDR in 2017. Problems that arise later, with funds that could be considered fantastic, the village and local government were shocked and looked unprepared. This can be seen from the many irregularities and failures that occur in addressing the Village Fund and village development. The results of the 2015 and 2016 Village Fund evaluations released by the ministry of finance show some irregularities that are common throughout Indonesia. The evaluation above shows that the use of village funds violates administrative regulations and even leads to corruption.

The Village Fund can be a comprehensive development weapon. The rush of village funds as a policy of decentralization of the budget to the villages to equalize development and a way to strengthen village empowerment. The goal, of course, is to empower villages so that they can create a trickle-down effect on the development and welfare of village communities. Therefore, the reformation of the ideal village development approach for rural areas is needed. Meanwhile, law and development have interrelated relationships. Amartya Sen in his phenomenal work emphasized that the development of the legal sector will have an impact on socio-economic development and even health so that legal reform and the development of legal institutions are the keys to accelerating development acceleration.

Therefore, the Village Law with its various arrangements has the potential to reduce poverty and social inequality through community empowerment mechanisms. Especially because the use of Village Funds as a backbone of village development must begin with the formation of village regulations and the preparation of village development plans so that they can be measured. Failure and inability to prepare legal documents and development planning documents are some of the causes of development failure in villages. This theoretical hypothesis was strengthened by the results of interviews with village chief stating that the lack of capacity to arrange development planning and legal documents resulted in stuttering in building empowered villages.

The success of village development as a national strategic issue then depends on the strength of accountability and the strength of empowered village communities. Therefore, community empowerment supported by legal instruments in rural areas is an important key in the success of village development. The village's need for good legislation triggers researchers to think of appropriate legislative development models for the village. At this point, the researcher then offers a model of pengayoman law as a model of village protection and empowerment. By adopting the pengayoman law model, the village will be able to optimize the eminence of each village in a legal platform that protects the community and village officials.

On the other hand, the law does not live in a vacuum space, the law intertwined with other sciences. The pengayoman law model, in this case, was born from a process of interdisciplinary interaction. At the national level, this model already applied through competency research grant application for 2016-2017. Through this research, the researcher that discusses different disciplines will try to adapt the pengayoman law model into legal development at the village level. The development of the pengayoman law in this study is interpreted as a strategy to improve the development of village regulations both in terms of the
process and substance following the characteristics of each village. In the process aspect, what is needs attention is the systematic and synchronized planning of village regulations, transparency, and involvement of stakeholders in the formation of laws and regulations, including the model of norm formulation and its implications for justice and protection. While from the aspect of substance is to ensure that village regulations can be a tool of social engineering for the success of village development.

2 Village Regulation as Village Development Instrument

Development as a process of realizing prosperity, one of which is through accelerating the economy has a very close relationship with the law. De Soto in his book Mystery of Capital stated the important role of legal institutions in the economic success of a country. Holistically and specifically, legal institutions also have links with the acceleration of development and economic activities as the results of research by economists and law such as Thomas Carothers and Kenneth Dam. I Nyoman Nurjaya explained that the development of national law has placed the dominance and discrimination of state legal regulations on the people in the region, ignoring, displacing and even "killing" the values, principles, and norms of the people (customary law/folk law / indigenous law/custom law). Various laws and regulations, such as Law Number 5 of 1979 have resulted in the release of various rights, loss of village control over "property right", including the right to regulate a decent life that was originally sourced and regulated in the customary law of the communities.

This statement was reinforced by Zen Zanzibar MS, that villages which originally had broad scope of authority, financial resources and were more independent, in the era before the reformation had been experienced a degradation of position and authority, so that the dependence on higher autonomous regions appeared to be prominent and even tended to reach nadir. One of the keys to restoring the spirit of village autonomy to be empowered is through the development of a protective law in the village. According to Satjipto Rahardjo, many positive roles can be played by the law, namely a) Creation of new legal institutions that launch and encourage development; b) Securing the results obtained by work and business; c) the development of justice for development; d) granting legitimacy to changes; e) the use of law for overhaul; f) dispute resolution; g) regulation of government power. The role of law is in all stages of development, starting from planning, legislative implementation, decision making in the executive and administrative fields, drafting civil-based arrangements and dispute resolution.

The discussion on the relationship between law and development cannot be separated from legal, economic and institutional aspects. This doctrine clearly states that law and development are the overlapped area of three aspects, namely economics, law, and the character and form of institutions. The economic aspect influences the practices and policies of policy-making institutions, but these policies and practices are also adopted as part of economic theory. So, there is an overlapping area between the practice of policymaking institutions and economic theory. Through understanding the doctrine of law and development. Ideally, the law can become an instrument that provides a level of development ideas and at the same time becomes an instrument for establishing an established structure.

In the legal and development framework, the legal product in the form of laws and regulations is one of the inputs in the development planning and implementation. On the other hand, the development plan is a political process whose output is a legal product which is the
operational basis for implementing development. Also, the agreed development plan document will be the basis for establishing political policies in the form of legal products as a legal basis for implementing the development plan. In this case, village regulation may be regarded as village development instrument.

Village Regulation (Perdes) definition based on the provisions of Law no 6/2014 concerning Villages determined that village regulation established by the Village Consultative Body (BPD) with the mutual agreement of the Village Chief. In other provisions concerning Village Government, Perdes was formed in the context of implementing village autonomy which is a further elaboration of the higher laws and regulations by taking into account local characteristics and culture.

The content of Perdes is all material contained in the context of implementing village autonomy and accommodating the specific conditions of the village. The Perdes draft can be initiated from the BPD and the Village Chief. The Perdes preparation program conducted through the village legislation program, so that it expected that there will be no overlap in the preparation of a Perdes material. There are several types of Perdes stipulated by the Village Government, which are encompassing of: (1) Village levies, (2) Community Forest Area Governance, (3) Village Conservation Plans, (4) Village Area Spatial Planning, (5) Village Revenue and Expenditure Budget (APBDes), (6) Village Apparatuses, (7) Village-Owned Enterprises (BUMDes), and other general regulations.

3 Results and Discussion Village Regulation Formulation

The establishment of a good Perdes must be based on the principle of establishing the following laws and regulations: (a) clarity of objectives, (b) the appropriate institutional or organ formation, (c) compatibility between types of regulation and its material content, (d) can be implemented, (e) usability and efficacy, (f) clarity of formulation, and (g) openness. In general, several steps need to be taken in preparing a Perdes. The description of each step can vary, but in general, the stages of preparing the Perdes are; (1) identification of problems, (2) identification of legal baselines, and how Perdes can solve problems, (3) preparation of technical studies, and (4) following procedures for preparation of Perdes. The next stage is the preparation of Perdes draft within the BPD, preparation of the Perdes draft within the Village Government, the process of obtaining BPD approval, the endorsement process, the Village Gazette, and the Perdes supervision mechanism.

The flow of the Perdes preparation process can be described as follows: (a) identification of issues and problems, (b) holding community consultations, (c) revising the Perdes draft if necessary, (d) conducting additional community consultations, (e) discussion at BPD, (f) identification of the legal baseline and how the new Perdes can solve the problem, (g) preparation of technical studies, (h) writing of the Perdes, and (i) stipulation of the Perdes. Perdes drafters need to make Perdes on behalf of and for the benefit of the community. The first step that must be taken is to ask questions about the types of problems faced by the community. Problems can include many things, including the degradation and deviation of resources which results in social unrest and inequality. In addition to identifying the problem, the Perdes draft must also identify the cause of the problem (the root of the problem) and the parties affected by these problems. To identify problems, several theories can be used to identify, for example, the ROCCIPI method (Rule, Opportunity, Capacity, Communications, Interest, Process, and Ideology).

In addition to ROCCIPI, two methods that are close to the nature and mechanism of its action can be used, namely the Fishbone method and the RIA (Regulatory Impact
Assessment). The Fishbone method works by using in-depth research, everything is tested in a long discussion. Some of the things tested were related to Man (human); testing how human behavior (legal subjects) carry out or act so problems arise. Money; testing is done by identifying how the position of the budget in the implementation of activities that cause problems; Management; carried out testing and research whether the managerial patterns of both the system and subsystems can support or not the existing rules. Method; What is meant by the method here is related to the relationship between legal subjects (actors) with legal objects, how the model and relationship patterns are arranged in a method. Environment (environment); the environment is very influential on the presence of problems that occur, this environment is also related to external influences (globalization). This Fishbone method is carried out if indeed an analysis of a problem arises when the regulation will be applied.

In line with Fishbone, there is also RIA which is prioritize understanding of all the rules behind the preparation of new regulations. RIA is usually used as collateral to support development and investment. The use of RIA must be done in-depth research about why Perdes should be made after it has been answered what the risks are if the Perdes are made. If these things are answered then a Perdes will be involved in the good and bad sides if applied. Based on the various methods above, the compilers of the Perdes can choose a method that suits the conditions of their village, all calculations about that method always emphasize community participation. Furthermore, from the inventory of problems based on the approach stated above, the Perdes draft should make a priority scale regarding the problems that must be solved as soon as possible, the problems that need to be solved together, and the problems that can be postponed. Priority scaling is important because Perdes is generally limited in scale.

The legal baseline definition is the status of village regulations that are currently in force. The legal baseline identification includes an inventory of existing village regulations and a study of the ability of village officials to carry out various village regulations. Identification of legal baselines also includes an analysis of the implementation and enforcement of existing Perdes. Through this analysis, it can be seen parts of existing Perdes, which have and have not/are not yet enforced. The enactment of the new Perdes should be pursued by using new methods to change community behavior, such as through voluntary programs based on incentives, or recognition of adat rights. Also, if village officials are not transparent and are not accountable, it is difficult to expect that the enactment of the new Perdes will immediately be implemented well in the future. So the new Perdes can form an independent agency, or give authority and empower non-governmental organizations and traditional institutions, to ensure accountability in decision making.

In the preparation of the Perdes so far, it is still not equipped with academic studies. For the Perdes to be prepared to truly answer the needs of the village community and answer the problems to be arranged, the preparation of academic studies is very important. Substantially, academic studies must examine three substance problems, namely: (1) answering the question why a new Perdes is needed, (2) the scope of material content and the main components of the Perdes, and (3) the process that will be used to compile and ratify the Perdes. Academic studies do not have to contain chapters related to the proposed Perdes. The form and content of academic studies at least contain the idea of a holistic and futuristic arrangement by including various scientific aspects with references that contain urgency, conception, foundation, legal basis and principles used as well as thoughts on norms set forth in the form of articles -the article by appointing a number of alternatives presented in the form of a systematic description and can be justified legally in accordance with the politics of law outlined.
Specifically, the technical preparation and format of academic studies for the Perdes are not yet available, but in general, the format for preparing academic studies consists of two parts, namely: the first part contains reports on the results of studies and research on the Village Regulation Draft. The second part contains the initial draft of Perdes draft which consists of proposed articles. The format of academic studies includes an introduction, scope of academic studies, and conclusions and suggestions.

Preliminary/introduction; which contains the main thoughts about the constellation of facts which are reasons for the importance of the relevant legal material without being regulated and a list of relevant Perdes and can be used as a legal basis (Background); The goals and uses to be achieved; Method and approach; and Organizing. Scope of Academic Studies; consists of general provisions containing terms/meanings used in academic studies and their respective meanings. The second content is material that contains the conceptions, approaches, and principles of regulated legal material as well as suggested normative thoughts, as far as possible by suggesting several alternatives. Conclusions and recommendations; which contains a summary of the main contents of academic studies and the scope of the material that is regulated and which relates to other village regulations and the form of regulation that is related to the material content. Suggestions contain whether all material is regulated in one form of village regulation or there is a part that is otherwise outlined in the implementing regulations or other regulations. Academic studies must be arranged carefully and cautiously. The formation of a drafting team and a consulting or steering team must be carried out. Likewise, village consultation meetings (public consultation) must continuously be held to revise the academic study draft. The first step of the village apparatus is to form a drafting team formed based on the decree of the Village Chief.

To improve the quality of Perdes products, a process or procedure for preparing Perdes is needed to be more directed and coordinated. This is due in the formation of Perdes it is necessary to prepare carefully and deeply, including knowledge of the material into the Perdes briefly but clearly with good language and easy to understand, arranged systematically without leaving procedures by Indonesian language rules in the preparation the sentence. This drafting procedure is a series of activities for the drafting of village legal products from planning to enactment.

4 The Drafting Experience in Two Villages

To test our model, we try to do experiment in two villages, namely Way Empulau Ulu and Tanjung Setia village. Culturally, the life of the Way Empulau Ulu community is very interesting. Lampung's local customs still live well, while the culture of the immigrants also well developed. The fact finding was obtained by the team when testing the research results. Based on history, at first the Marga Liwa originated from a traditional law community called Buay Betawang. Buay Betawang is what later gave birth to the Marga Liwa in West Lampung. Way Empulau Ulu itself, which is centered in the hamlet of Negeri Agung, is led by the Marga Liwa, whose leadership is called Pengikhan Marga Liwa. In addition, Marga Liwa itself consists of several traditional elders, consisting of:
1. Umpu Buay Betawang;
2. Umum Dugu;
3. Umpu Gajah Mencecak; and
4. Umpu Sepulau Langgar.

Marga Liwa area has restrictions ranging from West Lampung Sekuting to Ranau OKU, South Sumatra. Although currently there has been an administrative depreciation based on the Way Empulau Ulu area which is the center of the Marga Liwa government. Then, according to
one of the traditional elders found in the Way Empulau Ulu named Suttan Syahrir, the traditional composition of Marga Liwa is still maintained today. In his statement, he also explained that the traditional arrangement is denoted by the following names that apply in stages starting from the highest position namely the title Pengikhan, Suttan, Dalom, Inner, Radin, Kinak, Kimas, and Witon.

Way Empulau Ulu is a typical traditional/adat village that submerged by the regulation of Law Number 5 Year 1979 concerning Village Government. However, Law Number 6 Year 2014 concerning Villages gives hope to villages that have historical lines of custom to reclaim that status. The interviews results with local communities led to the discovery of the fact that tradition and adat are still held so firmly, and there is a strong desire from the Way Empulau Ulu community to improve the status of their village to become an adat village. this gave the research team a big picture in assisting in the village regulation drafting that support the achievement of the status of the adat village.

Differ from the first case, in the second case with the village of Tanjung Setia which patterned as a tourism village, because of its geographical location which is directly adjacent to the beach. However, it has a heavy burden in the its development. Because as an icon of surfing heaven in the world. Tanjung Setia village cannot manage tourism tax or retribution because it is the domain of the West Pesisir district government. In fact, there are very critical environmental issues related to waste management produced by tourists. In this regard, the community and the village government of Tanjung Setia also hope to find a solution or regulation that can help in overcoming the issue. Therefore, the village regulation that would be drafted based on this matter as main issue.

5 Conclusion
This paper found that village regulation formulation success is depend on the political will of the people and the collaboration with legal drafter is needed to achieve the goal of village development using the formulation of village regulation.

References
Abstract. Non-custodial sanctions are formulated in the Law Draft on the National Criminal Code (RUU KUHP) with various forms and criteria in terms of their application, as determined in Article 70 of the Criminal Code Bill. The problem in this research is what is the philosophical basis for determining non-custodial sanctions policies in the Criminal Code Bill is? Moreover the study searches for the crime and how the measure/criteria in determining the appropriate non-custodial sanctions imposed on the perpetrators of criminal acts based on the Criminal Code Bill. This study aims to examine and analyze the philosophical basis for determining non-custodial sanctions policies in the Criminal Code Bill, as well as studying and analyzing criminal acts and measures/criteria in determining the appropriate non-custodial sanctions imposed on perpetrators of criminal acts based on the Criminal Code Bill. This research is a normative study using secondary data obtained from library materials. Results showed, in essence, the philosophical basis for determining non-custodial sanctions policies in Criminal Code Bill respecting and upholding human rights, and creating a balance based on religious, moral values of divinity, humanity, nationality, citizenship, and social justice for all people Indonesia. Furthermore, the imposition of non-custodial sanctions for perpetrators of crime guided by the provisions of Article 71 of the Criminal Code Bill. Based on the results of the study, it is recommended that the Criminal Code Bill immediately passed into law and non-custodial sanctions prioritized by law enforcement in handling criminal cases.

Keywords: Policy; non-custodial; punishment

1 Introduction

Non-custodial sanctions alternative forms of imprisonment (alternative to prison) which are forms of non-institutional acts in consent. It is an alternative to all types of liberty deprivation that place a person institution/institution or other areas detention/confine/isolation. Furthermore, in development of non-custodial sanctions alternative imprisonment in the “Criminal Justice Handbook Series”, stated that: “non-custodial sentences may also be acceptable if their punitive elements meet the standards of human dignity and the rule of law”. The above statement interpreted that in the application of non-custodial sanctions, considers several aspects of respect for human rights, social justice
and the need for rehabilitation of perpetrators of crime and also considers some legal rules that contain provisions regarding non-custodial sanctions. Furthermore, in the “Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment”, determined several forms of non-custodial sanctions in the “Tokyo Rules”, including:

1. Verbal sanctions, such as caution, reprimand, and warning;
2. Conditional discharge;
3. Status of penalties;
4. Economic sanctions and monetary penalties, such as fines and day-fines;
5. Confiscation of an expropriation order;
6. Restitution to the victim or a compensation order;
7. Suspended or deferred sentence;
8. Probation and judicial supervision;
9. A community service order;
10. Referral to an attendance center;
11. House arrest;
12. Any other modes of non-institutional treatment;
13. Some combinations of the measures are listed above.

Based on a survey conducted by the Council of Europe illustrates that there are currently approximately 22 alternatives to criminal deprivation of liberty in Europe. It demonstrates that even the denial of criminal justice is difficult to abolish, but as far as possible, it must be avoided and other alternatives are sought. Furthermore, in the context of renewing criminal law, non-custodial sanctions are also formulated in the Law Draft on the National Criminal Law (RUU KUHP) with various forms and criteria in terms of their application. As stipulated in Article 70 of the Criminal Code Bill, that: with due regard to Article 54 and Article 55 of the Criminal Code Bill relating to the Objectives and Guidelines for Criminal Conduct, imprisonment be imposed for possible, if the following conditions found:

1. the defendant is a child;
2. the defendant is over 75 (seventy) years old;
3. the defendant is committing a crime for the first time;
4. the loss and suffering of the victim is not too significant;
5. the defendant has paid compensation to the victim;
6. the defendant did not realize that the criminal activities carried out would cause a considerable loss;
7. the crime occurred because of powerful incitement from others;
8. Victims of a criminal law encourage or mobilize the occurrence of such crimes;
9. the offence is a result of a situation that is unlikely to be repeated;
10. the defendant's personality and behavior assured that he would not commit any other crime;
11. imprisonment will cause great suffering to the defendant or his family;
12. guidance outside the correctional institution is expected to succeed for the defendant;
13. the conviction of lighter crimes will not reduce the severe nature of the criminal offence committed by the defendant;
14. Crimes occur among families; or
15. Crime due to negligence.
Based on the description, it seems that it is essential to apply non-custodial sanctions looking at some of the considerations contained in the perpetrator, in a victim and looking the level of loss resulting from crime and impacts the community then application of non-custodial sanctions very likely carried out remedy defendants, victims and public. Is also certainly as an embodiment of restorative justice by carrying out the settlement of cases/criminal acts by involving perpetrators, victims, perpetrators/victims' families to seek a fair solution by emphasizing restoration back to its original state and not retaliation. Based on this description, it becomes relevant and interesting to study the non-custodial sanctions policy in the renewal of the criminal system in Indonesia contained in the Criminal Code Bill.

Based on background description above, the problems in the study are what is the philosophical basis for the determination of non-custodial sanctions policies in the Criminal Code Bill and against criminal offences and how is the size/criteria in determining the appropriate non-custodial sanctions imposed on perpetrators is a crime based on the Criminal Code Bill is? This study aims to examine and analyze the philosophical basis for determining non-custodial sanctions policies in the Criminal Code Bill and reviewing and analyzing criminal acts and measures/criteria in determining the appropriate non-custodial sanctions imposed on perpetrators of criminal acts based on the Criminal Code Bill.

2 Methods

This research is a normative study conducted using secondary data obtained from library materials. In connection with research on the application of non-custodial sanctions, there will undoubtedly be a lot of use of books or journals deemed relevant to study the application of sanctions.

3 Results and Discussion

Philosophical is the Base for Non-Custodial Sanction Policy Determination in the Criminal Code Bill. Renewal of criminal law is not an easy thing to do. Since the beginning of its development, criminal law has been concerned with human dignity. Criminal law in its growth directed at the protection of human rights. Therefore, the renewal of criminal law does not only concern the substance but also relates to existing values. Restoration criminal law, implies an effort to reform criminal law following the sociophilosophic, sociocultural, illegal policies, and legislation. Indonesia is currently undergoing a renewal of the criminal law, one of which is manifested in the drafting of the Criminal Code Book (the Penal Code Draft).

According to Sudarto, there are 3 (three) reasons for the need to renew the Criminal Code, namely political reasons, sociological reasons, and practical reasons.

1. Political rights, based on the idea that an independent state must have its national laws for the sake of national pride;
2. Sociological reasons, require the existence of laws that reflect the cultural values of a nation;
3. Practical ideas, among others, stem from the fact that usually, the former colonies inherited the law that colonized it with the original language, which many did not understand by the younger generation of the newly independent country. This because usually, the newly independent country wants to make its language as a unitary
language so that the language of the colonial state only owned by the generation that has colonized.

One substance of the renewal of the national criminal law as outlined in the Draft National Criminal Code is non-custodial sanctions. Non-custodial sanctions are alternative forms of imprisonment which are forms of consents or non-institutional acts or in other words as an alternative to all types of deprivation of liberty that places a person in an institution/institution or other places of detention/confinement/isolation. The emergence of non-custodial sanctions as an alternative to imprisonment expressly set out in the main document of the General Assembly Resolution of the United Nations 45/110 (after this abbreviated to the United Nations) on "United Nations Standard Minimum Rules for Non-Custodial Measures", dated December 14, 1990, known with the term “Tokyo Rules”. This draft resolution is the result of the 1990 United Nations Congress on “the Prevention of Crime and the Treatment of Offenders” held in Havana, Cuba on August 27 to September 7, 1990.

Furthermore, the form of non-custodial sanctions as “Alternatives to Imprisonment” is also confirmed in Penal Reform International (after this abbreviated as PRI), which states that: “Alternatives to Imprisonment cover range of sanctions aim to restore the relationship between the offender, the victim and the wider community by taking into consideration the rehabilitative needs of the offender, the protection of society and the interests of the victim. Specific alternative measures include mediation, diversion, community service and administrative and monetary sanctions.” (Alternative imprisonment, includes a series of sanctions aimed at improving relations between perpetrators, victims and the broader community by considering the needs of perpetrators, community protection, and the interests of victims.

The above shows that the PRI also wants the application of non-custodial sanctions against perpetrators of criminal acts in various forms as an alternative to imprisonment while still considering aspects of justice both perpetrators, victims and community protection (issues of restorative justice). The PRI also stated “is the prison sentence always a solution?”. By looking at the damaging effects of unnecessary use of prisons around the world and making a case for greater use of non-custodial acts. Furthermore, the renewal of the national Penal Code based on various issues, including the point of over-criminalization in criminal acts as a result of criminal law is not selective and limitation, of course, will also have an impact on overcapacity within the prison. The issue of escaped prisoners is partly problems arising from the effect of overcapacity in with a various complex problem. The application of non-custodial sanctions at each stage as an alternative to imprisonment is not solely to resolve or overcome the issue of overcrowding. But more broadly that which is a reflection of fundamental changes in approaching crime, perpetrators, and place in society, as well as a reflection of changes in penitentiary actions from crime and isolation to restorative and reintegration justice from punishment and isolation to restorative justice and reintegration.

This argument is in line with the philosophical foundation of the stipulation of the Criminal Code Bill, namely that efforts to reform criminal law in Indonesia must be based on the national goals to be achieved by the Indonesian people as an independent and sovereign state. The Criminal Code, which is still in effect, is a legal product of the Dutch East Indies government, which needs to be adjusted. A fourth of a paragraph the opening of 1945 Constitution of the Republic of Indonesia must be used a benchmark for the implementation of the renewal. In other words, the restoration of criminal law must be a means to protect the entire Indonesian nation and all of Indonesia's blood spill, promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice. National criminal law material is adapted legal politics, circumstances,
federal and state life development aimed at respecting and upholding human rights and creating a balance based on religious, moral values of the Almighty God, humanity, nationality, society, and social justice for all people of Indonesia.

Related renewal of criminal law, there are at least two objectives to be achieved by criminal and criminal law, namely inward and outward goals. The purpose of inward is the renewal of criminal law carried out as a means for the protection of society and the welfare of the Indonesian people. Both of these goals serve as a cornerstone (cornerstone) of criminal law and criminal law reform. While the purpose of exiting is to participate in creating world order in connection with the development of international crimes (international crimes), protection of the community (social defense) with law enforcement in criminal and criminal renewal carried out with the aim of:

1. protection of society from anti-social acts that harm and endanger the community. The objective of punishment is to prevent and overcome crime.
2. protection of the city from the dangerous nature of a person, the criminal/criminal punishment in criminal law, aims to improve the perpetrators of crime or try to change and influence their behavior so that they return to the law and become good and useful citizens.
3. protection of the public from the misuse of sanctions or reactions from law enforcers as well as from citizens in general, then criminal objectives are formulated to prevent arbitrary mistreatment or acts.
4. protection of the community from disruption of the balance or harmony of various interests and values resulting from crime, the enforcement of criminal law must be able to resolve conflicts caused by criminal acts, be able to restore balance and bring a sense of peace in society. Community protection in this regard also specifically covers the protection of victims of crime, which after the Second World War came to light. Victims in this case also include victims of “abuse of power”, who must obtain compensation and assistance protection.

Based on the philosophical foundation of the RKUHP above, in essence, the formation of a national RKUHP aims to replace the colonial product KUHP (WVS) which is not by the values of Indonesian society. In the colonial Criminal Code, contains provisions regarding non-custodial criminal provisions contained in Article 10 of the Criminal Code, namely criminal fines, criminal cover, revocation of individual rights, seizure of certain goods, and announcements of judicial decisions. However, criminal sanctions in Article 10 of the Criminal Code have not fully accommodated the current problems of Indonesia, especially the criminal aspect. Penalties in the colonial Penal Code tend to be retaliation which is identical to imprisonment. In contrast, the current condition of Indonesia shows that detention raises various problems such as overload Penitentiary Institutions.

Based on the above, the application of non-custodial sanctions at each stage can reflect a restorative justice. As stated by Topo Santoso that: “In the last few years this has been a matter of punishment for perpetrators of crimes which are sometimes very mild but received prison sentences offend the sense of justice of the community. It can be answered by developing restorative justice. If someone is also forced brought into the criminal justice system, then it is better to use several alternatives of non-prison punishment which the level of effectiveness is still always a question up to now”.

Based on the description above, the idea of restorative justice is no longer a concept or discourse, but more than that in the development of restorative justice has been continuously considered as the policy legislation and the justice system. Restorative justice is a process of resolving violations of law committed by bringing victims and perpetrators (suspects) together
to sit in a meeting to speak together. It was also stated restorative justice offered the best solution in resolving criminal cases, namely by giving priority to the core problems of a crime. The solution that is important to note is to repair damage or losses arising from a crime. Furthermore, in restorative justice, the perpetrators are also allowed to explain clearly about the actions taken in the sense that the perpetrators explain the conditions and cause why the perpetrators committed crimes that cause the victim's loss in the hope that the victim will respond to the explanation. Is at least relevant to the guarantee of legal protection that the application of non-custodial sanctions is based criteria including "the personality, background of the offender and the right of victims".

The above description shows that the importance or urgency of applying non-custodial sanctions in the context of the realization of restorative justice begins with criticisms of imprisonment both in extreme and moderate critique. Excessive criticism which wanted to abolish the prison sentence altogether felt to be impossible to apply. Therefore reasonable criticism (criticism from the perspective of strafmodus, strafmaat, strafsoort as described earlier) which felt appropriate to be considered one of the things that underlie the application of non-custodial sanctions against perpetrators of criminal offences. The urgency of an alternative unlawful revocation of independence (prison) in the context of renewing criminal law occupies a central position in the criminal sanctions system in addition to the illegal dismissal of freedom which turned out to be challenging to abolished. Furthermore, philosophically some things are contradictory that is related to the purpose of prison and the function of prison as stated below:

1. That use of detention first is to guarantee the security of prisoners, and second is to provide opportunities for prisoners to rehabilitate.
2. The nature of the prison function mentioned above often results in the dehumanization of the perpetrators of crimes. It ultimately causes losses for prisoners who are too long in the institution, in the form of the prisoner's inability to continue their lives productively in society.

Based on the description above, there has been a paradigm shift in punishment in Indonesia. Criminal punishment in the colonial penal code (WVS) emphasizes retribution (retributive) against the perpetrators of criminal acts. Whereas discipline in the national RKUHP is oriented restorative justice. Can be seen from the provisions of Article 51 of the RKUHP, that the penalties aimed at:

1. prevent criminal acts by upholding legal norms for the protection and protection of the community;
2. popularize the convicted person by providing guidance and coaching to be a right and useful person;
3. resolve conflicts caused by criminal acts, restore balance and bring security and peace to the community; and
4. foster remorse and free guilt on the convicted person.

Then it is confirmed by the provisions of Article 52 RKUHP that punishment is not intended to demean human dignity. This shift in the paradigm of punishment caused by three main factors, namely the development of human rights, changes in people's views of crime and differences in people's opinions of criminals themselves. The paradigm shift is not only happening in Indonesia; the application of non-custodial sanctions is not only accommodated in many provisions in the favorable law legislative policy in Indonesia as described previously. A comparative study use non-custodial permissions, can be seen from countries including France in Law No. 70-643 dated July 17, 1970, which stipulates a judge imposing a
prison sentence of 6 months or less, provide the opportunity for a convicted person to serve his sentence outside the prison institution to:

1. Following training courses or other studies (to follow a training course or others studies);
2. Doing work (to pursue an occupation); or
3. Undertake medical care (to undergo medical treatment).

Furthermore, the application of alternative custodial crimes (alternative to custodial sentences) in Greece can be pursued, among others by:

1. Conversion of custodial crime with a fine;
2. Criminal delayed / conditional (suspended sentence);
3. Conditional Release (conditional release);
4. Reduction of imprisonment for doing good work (Goodtime allowance).

Also in Portugal, the criminal intended as an alternative to imprisonment is seen in the provisions governing:

1. Conditional punishment (suspended sentence) and criminal supervision (probation order).
2. Reprimand (reprimand).
3. Limited release (limited release or parole).
4. Do not impose a crime (non-imposing of a penalty).

About non-custodial sanctions, Australia is also a country that is very progressive in terms of the application of these sanctions. In Australia, non-custodial sanctions can be applied to various violations. Especially for some minor violations. Legislative provisions also maximize non-custodial sanctions. Illegal imprisonment is the most severe criminal offence in Australia and generally must be imposed as a last resort. Listed below are several forms of non-custodial sanctions in order ranging from mild to the most severe:

1. Criminal without supervision, including:
   a. release, parole, and guarantee;
   b. fine.
2. Criminal supervision, including:
   a. Community service and trials;
   b. Intensive supervision or intensive criminal repairs.
3. Criminal substitutes from prison, including:
   a. Conditional postponement / criminal;
   b. House arrest and detention at periodic times.

In line with the renewal of criminal law and philosophical considerations in the determination of the policy of non-custodial sanctions, it is clear the urgency of alternative illegal deprivation of independence with the formulation of non-custodial sanctions in the Indonesian RKUHP.

3.1 Size/Criteria in Determining Non-Custodial Sanctions that are Appropriate/ Appropriate Imposed by Criminal Actors Based on the Criminal Code Bill

Nowadays, the problem of increasing the use of alternative criminal deprivation of liberty (non-custodial sanction) has become a universal problem, proved by the attention of the United Nations to this problem. Subcommittee 11 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offender in 1980 in Caracas, which discussed the topic of De-institutionalization of corrections which provides the following recommendations: “In a resolution on alternative to imprisonment the congress recommended that member state examine their legislation with a view towards removing legal obstacles to
utilizing alternative to imprisonment in appropriate cases in countries where such obstacles exist and encouraged wider community participation in the implementation of alternative to improvement and activities aimed at the rehabilitation of offenders.”

Criminal deprivation of liberty in the form of prisons and confinement is the type of sanction most often imposed by judges in the criminal justice system in Indonesia. It can be seen from various court decisions in Indonesia that almost 98% impose imprisonment or confinement on convicts regardless of the type of crime or the seriousness of the crime committed by the perpetrators of the crime. The crime of deprivation in the form of imprisonment and confinement is considered to be very effective in preventing and overcoming crimes that occur in the community. Criminal sanctions emphasize the element of retaliation (raiding), which is suffering that intentionally imposed on an offender. In contrast, non-custodial sanctions originate from the basic idea of community protection and guidance or treatment of the maker. Or as JE Jonkers said, that criminal penalties emphasize criminal which applied for crimes committed, while non-custodial sanctions have social objectives.

Along with its development to improve the implementation of imprisonment is the existence of Minimum Standards Rules (SMR) which were initially designed by The International Penal and Penitentiary Commission (IPPC) in 1933. After the UN secretariat corrected the IPPC text, the SMR was finally approved by the UN congress the first concerning crime prevention and the promotion of lawlessness in 1955 in Geneva. Furthermore, the SMR approved by the UN Economic and Social Council in its resolution No. 633 C (XXIV) dated July 31, 1957. Closely related to the acceptance of this SMR, the Second United Nations Congress on the prevention of crime and the promotion of lawbreakers in 1960 in London has issued recommendations to limit or reduce the widespread use of short prison sentences. Thus the need to develop local, national, regional and international strategies in the field of fostering perpetrators of crime and also alternative imprisonment can be an effective means for promoting perpetrators of crime and profits for the community.

Seeing from the many weaknesses and such broad negative impacts on imprisonment, various alternatives to the deprivation of liberty sought. According to the United Nations, the Minimum Rules for Non-Custodial Measure (The Tokyo Rules) establishes a set of fundamental principles for developing non-custodial measures and also develops minimum guarantees for people subject to alternative prison measures. These Minimum Rules intended to increase community involvement and greater participation, particularly in fostering perpetrators of crime, and increasing the sense of responsibility of perpetrators of crimes against the community. Non-custodial sanctions accommodated in positive law in Indonesia.

Types of alternative punishments for deprivation of liberty in Indonesia's positive law that have been regulated positive Indonesian law are:

3.1.1 Principal Crimes
1. Conditional Crimes
   The conditional criminal practice often referred to as a criminal trial, is a system/model of illegal imprisonment by a judge whose implementation is unclear in certain conditions. It means that the criminal sentence imposed by the judge is not necessary to be carried out on the convict as long as the specified conditions are deemed not violating the convicted person. The benefit of conditional criminal offence is to fix criminals without having to put them in prison.

2. Criminal Fines
   Criminal fines are other types of violations either as alternative confinement or as a stand-alone. Likewise, with different kinds of minor or culpa crimes, criminal penalties are
often threatened as an alternative to imprisonment. Crimes are rarely punished with fines either as an alternative or not.

3. Parole
A stipulation of conditional release can be given by the Minister of Justice Article 15 paragraph 1 of the Criminal Code if the convicted person has served the third sentence or at least nine months (Article 15 paragraph 1 of the Criminal Code). The length of the intended criminal offence does not include the length of the temporary detention period. Means that the length of Supreme Court temporary detention not counted determining two-thirds or nine months even though in a judge's decision, it always stipulated that the sentence imposed is cut with a period of imprisonment.

4. Environmental Compensation and Recovery
The compensation sanction is a breakthrough in Law Number 32 of 2009, which previously in Act Number 23 of 1997 concerning Environmental Crimes recognizes that there are sanctions in the form of disciplinary action that can be imposed perpetrators of Criminal Acts. The environment regulated in Article 47 determines:
- Expropriation of profits derived from acts of speech or
- Company closure (in whole or part); or
- Repair due to criminal acts, and or
- Require performing an action outside its authority
- Put the company under the maximum capacity of 3 years

5. Rehabilitation
Rehabilitation is a new sanction in Indonesian laws and regulations, and this can be seen in Law Number 35 of 2009 concerning Narcotics. Article 54 through Article 59. Article 56 Paragraph (1) and (2) Act Number 35 of 2009.

3.1.2. Additional Crimes
There are three types of other crimes according to Article 10 of the Criminal Code:
1. Revocation of Certain Rights;
2. Confiscation of Certain Goods;
3. Announcement of Judge's Decision;

Furthermore, in the context of the renewal of the Indonesian criminal law, especially in the restoration of the National RKUHP, non-custodial sanctions are also adopted in the National RKUHP as specified in Article 65 of the RKUHP, which determines that: Principal penalties consist of: imprisonment; criminal closure; criminal supervision; criminal fines; and social work crime. Shows that criminal control, criminal punishment, and illegal social work are one of the leading criminal types which certainly can be handed down by the judge to the perpetrators of criminal acts. Re-emphasizing the importance of applying non-custodial sanctions to perpetrators of crime is also strengthened/reinforced in the provisions of Article 70 of the Criminal Code, which stipulates that: by considering Article 54 and Article 55 of the Criminal Code relating to the Objectives and Guidelines for Criminal Acts, imprisonment may not as far as possible drop if found the following circumstances:
1. the defendant is a child;
2. the defendant is over 75 (seventy) years old;
3. the defendant is committing a crime for the first time;
4. the loss and suffering of the victim is not too high;
5. the defendant has paid compensation to the victim;
6. the defendant did not realize that the criminal activities carried out would cause a significant loss;
7. the crime occurred because of powerful incitement from others;
8. Victims of a criminal act encourage or mobilize the occurrence of such crimes;
9. the offence is a result of a situation that is unlikely to be repeated;
10. the defendant's personality and behavior assured that he would not commit any other crime;
11. imprisonment will cause great suffering to the defendant or his family;
12. guidance outside the correctional institution is expected to succeed for the defendant;
13. the conviction of lighter crimes will not reduce the severe nature of the criminal offence committed by the defendant;
14. Crimes occur among families; and
15. Crimes arise due to negligence.

Based on this description, it can see that it is essential in applying non-custodial sanctions by looking at some of the considerations contained in the perpetrator, in the victim and looking at the level of loss resulting from the crime and its impact on the community then the application of non-custodial sanctions is very likely to be carried out as a remedy for defendants, victims and the public. Is also as an embodiment of restorative justice by carrying out the settlement of cases/criminal acts by involving perpetrators, victims, perpetrators/victims' families to seek a fair solution by emphasizing restoration back to its original state and not retaliation.

The application of non-custodial sanctions, as described above, can be carried out at the adjudication and post-adjudication stages, which indeed are guided by several provisions that govern them. But at least ideally/the strategic step of applying non-custodial sanctions can be done at an early stage or at the pre-adjudication stage especially at the police level as the main gateway in the criminal justice system to suppress the number/stacking of cases at the next level. In connection with the above, if non-custodial sanctions applied at that stage, it can at least assist the process of resolving criminal cases so that they do not reach the prosecution or trial process. With the application of non-custodial sanctions, at least the accumulation of instances, especially at the policy level can be reduced at least each year. And if this sanction is applied the initial stage, it is likely that at the final stage (after the conviction) it can avoid overcapacity in correctional institutions.

The application of non-custodial sanctions in the pre-trial stage against perpetrators of criminal acts (by releasing perpetrators of crimes which of course with various considerations) requires a high level of professionalism from the police and prosecutors not to cause feelings of mutual suspicion between the two agencies. Likewise, at a later stage in the trial/court and correctional institutions. Where in both scenes, it is also possible for forgiveness by the judge. Furthermore, in the case of the application of non-custodial sanctions at each stage requires the role of supervisor and observer judges in the Criminal Procedure Code (KUHAP) and commissary judges in the Draft Criminal Procedure Code (RKUHAP) to the maximum in the context of the realization of restorative justice. In terms of criteria/measures against criminal offences (for example, minor crimes), the prosecutor may impose appropriate non-custodial sanctions for the offender.

In the adjudication stage, based on the criteria of criminal acts, the judge can also impose non-custodial sanctions that are appropriate for the perpetrators with various forms/variations which in their development have been accommodated in positive law in Indonesia and enforcing the law. Its use (for example, those contained in the Criminal Code, SPPA Law, Narcotics Law, Penitentiary Act, RKUHP, or other laws), such as conditional criminal, fines, criminal warning, criminal with conditions (such as; guidance outside the institution, community service, supervision) as well as job training and maintenance at rehabilitation
centers. Or the possibility of a judge can apply an apology to the perpetrators of a criminal offence. In addition, in the post-adjudication stage, leave, remission, conditional release and forgiveness have at least used by authorized officials, only in its application can be further improved by adding unique criteria for inmates who are eligible to be given non-custodial sanctions or even accelerate the submission process, so that overcapacity can be quickly dealt with and ultimately fostering prisoners can succeed optimally, and the objectives of the criminal justice system both short-term, medium-term and long-term goals be realized.

4 Conclusion and Recommendation

The philosophical foundation of establishing non-custodial sanctions policies in the Criminal Code Bill is to respect and uphold human rights, and to create a balance based on religious, moral values of God, humanity, nationality, society, and social justice for all Indonesian people. Also, the establishment of a non-custodial sanction policy in the Criminal Code Bill is aimed at realizing a restorative justice for perpetrators of criminal acts. The imposition of non-custodial sanctions for offenders guided by the provisions of Article 71 of the Criminal Code Bill. The application of non-custodial sanctions also based on several considerations contained in the perpetrators, in the victim and looking at the level of loss resulting from the crime and its impact the community, so the application of non-custodial sanctions is very likely to do as a remedy for accused, victim the community. Is also certainly as an embodiment of restorative justice by carrying out Resettlement of cases/criminal acts by involving perpetrators, victims, perpetrators/victims' families to seek a fair settlement by emphasizing restoration back to its original state and not retaliation.

Based on the results and discussion above, it recommended that the Criminal Code Bill be immediately passed into law, so that non-custodial sanctions can be applied order to reduce the use of imprisonment and reduce over-load in Corrections. Furthermore, non-custodial sanctions should be prioritized by law enforcement in handling criminal cases, in order to bring about restorative justice for perpetrators of criminal acts.

References


Assignments Method in Infrastructure Development: Opportunities And Challenges

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Abstract. Infrastructure, has become a pride in President Joko Widodo's government. Various policies were decided to support infrastructure development including the method of Public Private Partnership (PPP) as outlined in Presidential Regulation No. 38 of 2015. However, the provisions regarding the selection of an Implementing Business Entity (IBE) of infrastructure that should have been carried out only through 2 (two) methods, namely auction or direct appointment, in practice were broken by the government itself by using other methods, namely assignments, as what happened in the construction of Light Rail Transit infrastructure integrated (LRT) for Jakarta, Bogor, Depok and Bekasi. Of course this becomes a problem that must be clarified, regarding the opportunity to do the assignment method, and what conditions make the government use the assignment method to select the implementing business entity of infrastructure.

Then, what are the potential conflicts of interest in the assignment method? This problem is solved through research based on a normative approach using the secondary data.

Keywords: Assignment; Public Private Partnership; Conflict of Interest; Infrastructure

1 Introduction

Since 2015 the trend of infrastructure development in Indonesia has increased. This can be seen from the enhancement in budget allocations for infrastructure in the National Budget from 2015 to 2019. Even for 2019, the allocation reaches Rp. 420, 5 trillion, up about 10 trillion from the budget allocation in 2018. The enhancement in the budget sends a message that the Government will continue to improve infrastructure development in Indonesia. If it refers to what was presented by the President of the Republic of Indonesia, Joko Widodo, that the amount of the budget will be used to increase the length of national roads, widening, building railroads, energy infrastructure, such as power plants. In addition, it also facilitates digital infrastructure, and the provision of drinking water.

However, the high enhancement in the budget for infrastructure, is not entirely positive as a result of infrastructure development, which is intended to improve economic growth and the welfare of the Indonesian people. The budget deficit is indicated as a negative impact of high infrastructure financing in Indonesia, due to the priority of budget spending for infrastructure projects with low financial benefits. It can be seen from the data that the growing infrastructure budget is not accompanied by an increase in GDP’s growth, at least in 2017.

Realizing this, various efforts were used to fulfill the infrastructure development’s financing, so that the burden on the state budget could be reduced. One that is used by the
Government is to involve the private sector in infrastructure development. This means that even state-owned enterprises (SOE) can be involved in infrastructure development. This involvement is legalized through the Presidential Regulation Number 38 of 2015 concerning public private partnership in Infrastructure Development. This is intended to strengthen the PPP scheme in a juridical manner in the Indonesian legislation system, so that it becomes the operational driving force for the implementation of PPP in Indonesia and to increase institutional capacity and human resources that handle infrastructure. Of course, the ultimate goal is for PPP to provide maximum benefits for infrastructure development in Indonesia.

However, in practice, there are facts that raise questions in the implementation of PPP. Like, about the selection of the Implementing Business Entity (IBE) for infrastructure development projects. Ideally, the selection of IBE according to Article 12 paragraph (2) of Presidential Regulation No. 38 of 2015 is carried out through an auction mechanism or direct appointment. Clearly, there are only two methods to determine the IBE that will become the government's collaborative partner to build infrastructure. However, empirical reality shows that there are other methods to determine IBE as a collaborative partner of the Government to build infrastructure. That particular another method is assignment.

The method can be seen from the LRT infrastructure development project integrated in the Jakarta, Bogor, Depok and Bekasi regions, when the Government through Presidential Regulation No. 98 of 2015 concerning the Acceleration of the Implementation of LRT Integrated in the Region Jakarta, Bogor, Depok and Bekasi, as amended by Perpres No. 49 of 2017, assign the SOE, namely Ltd. Adhi Karya, To build the integrated LRT infrastructure. In addition, the assignment of Ltd. Kereta Api Indonesia to organize the infrastructure and facilities of the Soekarno-Hatta Airport railroad and the Jakarta-Bogor-Depok-Tangerang-Bekasi ring line also occurred with the same method and was legalized through Presidential Regulation No. 83 of 2011. A similar method also occurred with Ltd. Jasa Marga is in the construction of toll roads, and Ltd. Housing Development, Wakita Karya, Wijaya Karya and Hutama Karya.

The problem is whether this method has the opportunity to be carried out by the Government? if it turns out yes, what conditions makes the government use the assignment method to choose the IBE. Then, what are the potential conflicts of interest in the assignment method? The potential for conflict of interest in the assignment method is important to question because based on the understanding of conflict of interest is "conflict between public responsibility and personal or group interests." In conflicts of interest, public officials have the potential to abuse their power to fulfill their own interests or groups, so that serving the public is not optimal. there will even be an urge to abuse power and authority to divert the use of the budget to personal or group interests, resulting in a mode of corruption such as procurement of goods and services fictitious, tax manipulation, or "parking money".

In addition to the challenges, what must be sought and found in this study are the opportunities caused by this assignment method in infrastructure development through the PPP mechanism. The results of the research on these problems, set forth in a system that consists of an introduction that contains an overview of the circumstances that trigger the emergence of a problem examined in this study. Second, is the method. This method describes the way in which this problem is solved, or at least obtained a finding that brings the researcher to the truth even though it is relative. Next is the result and discussion in which the results of the research have been described, and the elaboration of the doctrines or normative provisions that govern the facts and reality about PPP. The last is the conclusion and recommendation. In this section, described the conclusions of various findings and analyzes
that have been carried out, after that, the researcher will describe the solution as a recommendation of the problems in this study.

2 Methods

The problem in this study was solved using normative approaches and concepts. Normative stressors and concepts are needed to solve problems regarding opportunities for assignment methods carried out by the Government to select the IBE in the implementation of a PPP’s project, and regarding the circumstances that encourage the government to use the assignment method to select IBE, also regarding the potential conflicts of interest that are very likely to occur in this assignment method, and that is why referrals to legislation governing PPP and concepts, doctrines or teachings regarding conflicts of interest according to State Administrative Law are urgently needed.

Through this approach, the normative legal research method that used is based on the secondary data. Secondary data used in this study which is in accordance with the normative approach to solve the problem regarding the opportunity of the assignment method carried out by the Government to select IBE in PPP’s projects is the legislation governing the PPP. Of course the legislation comes from primary legal material. Meanwhile, the problem regarding the situation that prompted the government to use the assignment method and about conflicts of interest was resolved by a conceptual approach that originated from secondary legal materials, namely expert writings, whether through books or journal articles and even articles in print and electronic media. Legal material that is the source of data is obtained through the study of documents or literature which are then analyzed qualitatively. Of course, before being analyzed, the data is validated by using coding techniques, so that the data used is relevant to the problem and can be used to find out the truth of a problem.

3 Results and Discussion

3.1 Infrastructure in Indonesia and its Evolution

Equitable infrastructure in Indonesia which has 34 provinces is not an easy matter, it requires funds, adequate human resources, and careful planning so that development can be carried out effectively and on target. In the last four years, the structure of the Indonesian economy is still dominated by provincial groups in Java and Sumatra with a total GDP distribution of around 80%, while the islands of Kalimantan, Sulawesi, Bali, Nusa Tenggara, Maluku and Papua are only around 19.6%. The difficulties and lack of access experienced by regions such as Papua, Maluku and the Sulawesi region are concrete evidence that infrastructure equality is needed. Finally, the Indonesian Government began to aggressively spread the issue of infrastructure development so that it can became the main focus in national development. The aim of intensifying infrastructure development in Indonesia is to improve the welfare of the Indonesian people by encouraging the pace of the economy through facilitating accessibility between one region and another.

Efforts to decompose justice through infrastructure development are very clearly seen, especially from the amount of budget prioritized by the government to develop infrastructure in various regions in Indonesia. Through a budget that is calculated to be around 400 trillion, inter-regional connectivity will begin to be built, such as toll roads, railroad additions and train services, airports and ports. Then supporting infrastructure for food security such as dams and
reservoirs, as well as telecommunications such as palapa ring which makes Indonesia have a broadband or internet network at high speed. Based on the data, for 2016 to 2017, the Jokowi-Jusuf Kalla Government has completed 30 (thirty) national strategic infrastructure projects, with a total project value of 94,8 Trillion. Of the 30 projects, 20 of them are:

1. Gempol-Pandaan Toll Road, East Java with a length of 14 km
2. Development of Soekarno Hatta Airport (Terminal 3), Banten
3. Kalibaru Port, DKI Jakarta

3.2 Public Private Partnership as a Method of Improving Infrastructure Development

Indonesia’s requirement for infrastructure development is clear and certain. But to fulfill that, a large amount of budget is needed from the National budget, and that had become a major issue. Overcoming that, the Government is trying to involve the private sector in infrastructure development, known as Public Private Partnership (PPP). PPP is an idea that is considered capable of overcoming the problem of infrastructure development in Indonesia originating from the state budget financing.

In addition, the PPP’s system is deemed capable of creating an investment climate of the Business Entity in the infrastructure development, and encouraging the principle of use-pay by users, or in certain cases considering the ability to pay from the user’s side. The PPP’s method or system is applied by adhering to the principles which if viewed philosophically, have a beneficial side for the state and society. And the beneficial are such partnerships, benefits, competing controls and risk management, effective and efficient. Thus, PPP’s in the paradigm of infrastructure provider actors are considered as a method of increasing infrastructure development in Indonesia.

3.3 Selection Method of Implementing Business Entities for Infrastructure

Through PPP, Business Entities can cooperate with the Government in infrastructure development. this has been validated through Presidential Regulation Number 38 of 2015 concerning PPP in Infrastructure development. According to the Presidential Regulation, Business Entities that can cooperate with the Government to provide infrastructure are SOE, Regionally-Owned Enterprises, business entities in the form of Limited Liability Companies (Ltd), foreign legal entities or cooperatives. Whereas the IBE must be from the Limited Company established to carry out the PPP’s project by the auction winner or business entity/consortium appointed directly. From this normative provision, it can be understood that those who become IBE for infrastructure projects are only companies in the form of limited liability companies, both from SOE, regional government-owned companies, foreign legal entities and cooperatives.

What needs to be underlined is that the Limited Liability Companies formed to carry out the PPP’s project is by the auction winner's business entity or already through a direct appointment mechanism. Thus, the method used to select the IBE for infrastructure’s project is the auction or direct appointment. This method has also been stated through Article 38 of Presidential Regulation No. 38 of 2015, that "the procurement of implementing business entities is carried out through an auction or direct appointment."

This provision was reaffirmed through the Regulation of the Government of the Republic of Indonesia Goods/Services Procurement Policy Number 29 of 2018 concerning Procedures for Procurement of Infrastructure Providing Business Entities through Government Cooperation with Business Entities, initiated by the Minister/Head of Institution/Regional Head. This regulation is the implementing regulation of Presidential Regulation No. 38 of
2015. So the main point of discussion is the Regulation Number 29 of 2018 which states that the selection of IBE is conducted through an auction or direct appointment.

The selection of implementing business entities through the auction is conducted in 2 (two) ways, namely one-stage or two-stage auction. One-stage auction is carried out for PPP’s projects if:

1. Can be clearly formulated regarding infrastructure requirements; and
2. There is no additional requirement or optimal dialogue to get the most useful offers with the best value for money.

The two-stage auction is carried out if the PPP project has formulated clearly and cannot be changed to the minimum requirements of infrastructure provision, and additional conditions and optimal dialogue are needed to obtain offers that have the best value for money. Circumstances that make certain conditions are differentiated again. For example the requirements for certain conditions that the Implementing Business Entity (IBE) had previously built and/or operated an infrastructure project that was being developed, then its performance was also assessed based on an independent audit, and the project was considered effective and efficient if it was built by the same IBE. Thus, the method of direct appointment cannot be arbitrarily carried out by the Government, without any clear reason or argument.

Wisely applied in the direct appointment based on land tenure. The government can make direct appointments to implementing business entity (IBE) that have controlled the land, if:

1. Land owned by IBE is the only land for infrastructure locations and cannot be moved; and
2. PPP projects have been declared technically, economically and financially feasible without Feasibility Support from the Government.

3.4 Assignment: Opportunities and Challenges

Presidential regulation Number 38 Year 2015 has determined that the selection of IBE is only through 2 (two) methods, namely auction and direct appointment. But empirically, the government conducted another method, namely by assignment. If referred to the provisions in Presidential Regulation No. 38 of 2015, it does not mention the assignment method. That is, the method is outside the 2 (two) methods mentioned above. Law number 19 of 2003 and Government Regulation number 45 of 2005, has the same statement that the Government provides special assignments for State-Owned Enterprises to carry out the function of public benefit and still paying attention to the main intention of the State-Owned Enterprise’s activities, and must first obtain the approval of the Shareholders / Ministers. Things statement stated at Article 66 paragraph (1) and paragraph (2) law 19 of 2003.

Further emphasized in the explanation of Article 66 paragraph (1) of Law 19 of 2003 that state-owned enterprises in urgent matters are given special assignments by the Government, and if the assignment according to the study is financially not feasible, the government must compensate all costs incurred this state-owned enterprise includes the expected margin. In addition, the assignment must also be known and approved by the general meeting of shareholders / Ministers.

In contrast to the auction method and the direct appointment of predetermined criteria for IBE as implementing PPP through implementing regulations of Presidential Regulation 38 of 2015, the assignment method to state-owned enterprises regulated in Law 19 of 2003 and Government Regulation No. 45 of 2005 provides provisions that:

1. Special assignments still pay attention to the intent and purpose and business activities of state-owned enterprises;
2. The assignment plan is jointly reviewed between the relevant state-owned business entity, the Minister, the Minister of Finance, and the Taeknis Minister who gave the assignment.

3. The technical minister who gave the assignment as a coordinator;

4. If the assignment is financially unprofitable, the Government must provide compensation for all costs incurred by the state-owned enterprise, including the expected margin along the level of fairness in accordance with the assignment given.

5. The assignment must be based on the approval of the Shareholders General Meeting for the Persero and the Minister for Public Corporation.

6. State-owned business entities must expressly separate books regarding the assignment with bookkeeping in order to achieve the company's business objectives.

7. Director must provide a report to the general meeting of shareholders / Ministers, the Minister of Finance, and the Technical Minister who gave the assignment.

This raises the understanding that the method of determining IBE is not only through auction and direct appointment, but also through assignments. Thus, the Government assignment method to BUMN based on Law 19 of 2003 and PP 45 of 2015 relating to the type of infrastructure specified in Article 5 paragraph (2) of Presidential Regulation 38 of 2015, has the opportunity to be done. However, based on these provisions it can be understood that the Government can assign state-owned enterprises (SOE) to carry out activities related to PSO that are urgent, so that SOE does not only focus on seeking profits but also carry out public services, certainly accompanied by consideration financially from the SOE itself. As a platform for understanding the urgent of PSO, presidential Regulation Number 75 of 2014 concerning the Acceleration of Priority Infrastructure Provision can be used, so that assignments made by the Government to SOE for the provision of Infrastructure should pay attention to priority indications set by the Committee for Accelerating the Provision of Priority Infrastructure (CAPPI).

However, the determination of priority projects carried out by CAPPI is one of them based on proposals by ministers, heads of institutions, regional heads, SOE leaders, or leaders of regionally owned enterprises. This condition, which actually explains that open conflicts of interest occur in determining priority infrastructure projects and SOE to be assigned. In addition, excessive dependence on SOEs can "marginalize" the private companies and crowd out private investment in the domestic construction industry. As a result, competition between contractors has diminished and the amount of resources available for infrastructure development is limited.

On the other hand, if the assignment method is used in the PPP process without specifying the type of BUP, it will also have an impact on the business wheels of state enterprises, bearing in mind that BUP is not only SOE / ROE. Later this can be detrimental to the Indonesian economy. These conditions indicate that the assignment method has its own challenges, when it was chosen by the Government as a method for selecting BUP in implementing infrastructure development projects.

This suspicion further indicates the danger of the assignment method which seems to be used as the government's mainstay method in implementing PPP. If observed in the provisions of the Government assignment to SOE, the emphasis of the assignment acceptance decision is at the share voter general meeting of the SOE. Potentially create a conflict of interest between the government which in this case is the minister in charge of carrying out infrastructure activities with SOE elements to be assigned, if the assignment is based on:

1. there are personal and/or business interests;
2. relationship with relatives and family;
3. relationship with representatives of the parties involved;
4. relationship with the party who works and gets a salary from the parties involved;
5. relationship with the party providing recommendations to the parties involved; and/or
6. relations with other parties which are prohibited by the provisions of the legislation.

On the other hand SOE BUMN is domiciled as a provider of public services according to government policies that can work on infrastructure development projects, which results in accelerated development. In addition, another potential that can also occur due to this assignment method is the risk management periodically through monitoring the balance sheet capacity and BUMN liquidity conditions. With this situation, the weakening state finances caused by the weakening of SOE’s balance sheet performance can be controlled. Thus, the assignment method in determining IBE for working on infrastructure projects saves the "black and white" side. Therefore, it is important to explore the potential of the opportunities provided, and not get caught up in the challenges, but look for solutions so that challenges can be faced.

4 Conclusion and Recommendation

The assignment method has the opportunity to be carried out by the Government in the implementation of PPP to determine IBE, but the assignment method is only intended for SOE and for the implementation of urgent infrastructure activities as stipulated in Article 66 of Law 19 of 2003. determining criteria for urgent conditions that determine the implementation of activities can be delegated to SOE through the assignment method. Finally, various infrastructure programs carried out through PPPs through assignments to SOEs are read as a form of accelerating the implementation of infrastructure development programs, is the risk management periodically through monitoring the balance sheet capacity and BUMN liquidity conditions.

With this situation, the weakening state finances caused by the weakening of SOE's balance sheet performance can be controlled. With this situation, the risk of state finances caused by the weakening of BUMN's balance sheet performance can be controlled. This situation is an opportunity for the use of the assignment method in establishing BUP for infrastructure development projects. While The absence of technical arrangements regarding the assignment of the implementation of infrastructure projects from the Government to the IBE has the potential to create a conflict of interest, both from the implementing elements or officials authorized to determine and accept assignments or conflicts of interest between IBE and the Government. so this becomes a challenge when the assignment method for establishing IBE.

Based on the conclusions that have been obtained, the recommendations generated from this research is the requirement to establish technical regulations regarding the assignment method to IBE, at least regulating the IBE criteria for each type of PPP activity and the criteria for PPP activities that determine IBE through assignment methods. This is important, to erode various challenges conflicts of interest.

References


Legal Protection of Violence Against Women in Semarang City, Indonesia

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Abstract. The number of violence against women in Semarang City every year continues to increase, even become areas with the highest cases of violence in the Central Java. Therefore, Semarang City needs to do efforts to protect women from violence. This study aims to examine the efforts of Semarang City Government to protect the women from violence’s. This research is a normative law research by laws. The data used are secondary data, which consist of primary law and secondary law materials. The result shows Semarang City already stipulate Local Act number 5 of 2016 on the Protection of Women and Children from Violence to reduce a number of violence of women. In addition, various efforts are also made by Semarang City, such as established an Integrated Service Center that helps the Department of Women Empowerment and Child Protection of Semarang City; providing Rumah Duta Revolusi Mental (RDRM) as a shelter and legal aid victims of violence’s and bullying to women and children, in coordination with other agencies, and socialization the law to the public.

Keywords: Legal Protection; Women; Violences; Semarang City

1 Introduction

Indonesia is a legal state as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The concept of a legal state that adheres to the rule of law, according to Dicey, contains three elements, namely:

1. Human rights are guaranteed by law;
2. Equality before the law;
3. Supremacy of legal rules and no arbitrariness without clear rules (Kurdie, 2005).

However, Indonesia has its own characteristics as a state based on law, with its elements, including:

1. The law comes from Pancasila
2. People's sovereignty
3. Constitutional system
4. Equal position in law and government for every citizen.
5. The power of the judiciary which is free from the influence of other powers.
6. The legislators are the president together with the DPR.
7. Use of the MPR system. (Prasetyo, 2010)

As a democratic legal country, Indonesia recognizes equality in law and government for every citizen without exception, including women and children. In addition, Indonesia is
obliged to guarantee and recognize Human Rights as stated in Article 28 I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, as the objective of the Indonesian State as contained in the Preamble of the 1945 Constitution. Violence against women is a violation of law and human rights. Violence as a violation of law today has become a factual phenomenon in people's lives. Violence against women in Indonesia is increasing.

The data in the diagram above shows a very rapid increase in the number of violence against women in the country of Indonesia from 2007 to 2018. In 2009, for example, the increase occurred in the amount of more than 5 times from 2007, namely from 25.522 people increased 143.586 people. Likewise in 2016 to 2018, that is an increase of 1.5 times, namely 259.150 people and 406.178 people respectively. From 2012 to 2015 there was an almost equal increase, namely 216.156 people, 279.688 people, 293.220 people, and 321.752 people. Although there has been a decrease in the number of violence that occurred in 2009 to 2010 and 2015 to 2016. However, this did not last long because the following year there was an increase again.

Looking at the data above, legal protection for women needs to be given because violence against women is understood by the wider community, lawmakers and government officials are limited to sexual violence only. The lack of understanding of women about violence and its consequences makes women tend to surrender and accept the situation. In addition, violence is carried out in marital ties so that women do not report it to the authorities (Gultom, 2013). Violence occurs because women are considered to be in a position below men. “The extension and legitimacy of patriarchal practices in the personal-intimate domains of the aspects of public life impinge on the lives, rights and freedoms of women” (Imam, Shadab, Bano, 2015).

Indonesia has ratified an international convention with the Law Number 7 of 1984 on Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, as a consequence of the ratification of the international convention is participating countries of the convention give commitment, commit themselves to guarantee through legislation, policies, programs and temporary special measures, to realize equality and justice between men and women, and to eliminate all forms of discrimination against women (Irianto, 2006). Legal protection for women in Semarang City should get serious attention. Legal Resources Center for Gender Justice and Human Rights Semarang, noted that throughout 2016 there were 496 cases of violence against women in Central Java Province. This number is
spread in each district and city in Central Java. The most cases occurred in Semarang City with 199 cases, followed by Kendal with 26 cases, Sragen with 17 cases, Blora with 17 cases, Magelang District and Surakarta City with 16 cases ("Kota Semarang Peringkat Pertama Kasus Kekerasan pada Perempuan di Jateng," n.d.).

In 2017, in Semarang City there were 118 cases. Looking at the number of violence against women and children which is increasing from 2014-2017, Semarang City is the highest region of violence against women in Central Java Province. This is based on the number of cases of violence against women cases which reached 236 cases in 2014, which consisted of 169 cases of violence against women (Pusat Pelayanan Terpadu SERUNI Kota Semarang, 2014). This number has increased to 278 cases in 2015, consisting of 188 cases of violence against women and 90 cases of violence against children (Pusat Pelayanan Terpadu SERUNI Kota Semarang, 2015).

This condition, if without a serious treatment, will destroy the lives of households, communities, nations and countries. Violence against women is an estuary of signs that discrimination is still ongoing against women in the culture of life. In violent behavior, women are the most vulnerable groups as victims. Legal protection for women is not solely for the fulfillment of victims’ rights, but in greater interest is an effort to stop the culture of violence.

2 Methods

This research is normative juridical method. The data used are secondary data, which consist of primary law and secondary law materials. In its relation to normative research, the writer uses two approaches, they are statute approach and conceptual approach. Statute approach is an approach done towards many law related to violences to women and other organic law which has relation with the object of the study. Conceptual approach is used to know the concepts of protection law. The data of this research through studying those documents are then analyzed by using content analysis method.

3 Results and Discussion

3.1 Impact of Violence on Women

Forms of violence against women such as sexual, physical, harmful traditional practices, socio-economic, and emotional psychological. Violence against women not only disrupts physical health, but also mental health problems. Women who live with violent experiences will express anxiety, fear, and reluctance to believe. Women with mental illness are overtly vulnerable and much worse. Being mentally fit all the time, such as being more likely to be exploited, violated and deprived of their rights (Kaur, 2018). Legal systems and cultural norms often treat violence against women not as a crime, but as a family problem or a normal part of life. This is in line with the opinions of Shamima Akhter and Kyoko Kusakabe:

"The divide between public and private issues is” invisible "- either literally, since it happens behind closed doors, or effectively, since legal systems and cultural norms too often treat it, but as a family matter or a normal part of life (Akhter, Kyoko Kusakabe, 2014).

The processes leading to individual's perception of gender discrimination caused perceived gender bias against women. Women with mental illness are very vulnerable and have far
worse consequences. Serious abuse commonly results in women experiencing anxiety, depression, panic attacks, suicidal ideation, or abusing substances (Tutty, 2015).

3.2 Overview of Cases of Violence Against Women in Semarang City

The increase in violence against women encourages the government to find solutions by regulating it through various laws and regulations. Women will experience suffering that is very diverse, both physical, material, social, and psychological. The severity of the impact that will be felt by the victims makes the government must carry out legal protection intensively and effectively. The regulation of national law related to legal protection against women is the Law Number 23 of 2004 on the Elimination of Domestic Violence.

The Law Number 23 of 2004 on the Elimination of Domestic Violence is a law relating to other legislation that has been in effect before, including the Law Number 1 of 1946 on the Criminal Code and its amendments, Law Number 8 of 1981 on the Criminal Procedure Code, Law Number 1 of 1974 on Marriage, Law Number 7 of 1984 on Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Protection in Article 1 number 4 of the Law Number 23 of 2004 is defined as all efforts aimed at providing security to victims carried out by families, advocates, social institutions, police, prosecutors, courts, or other parties both temporarily and based on court determination. Article 3 of the Law Number 23 of 2004 states that the elimination of domestic violence must be carried out based on:

1. Respect for human rights;
2. Justice and gender equality;
3. Non-discrimination; and
4. Protection of victims.

The forms of violence that are prohibited in the home in Article 5 of the Law Number 23 of 2004 are:

1. Physical violence;
2. Psychic violence;
3. Sexual violence; and
4. Domestic neglect.

Women are often the object of gender based violence in the home. The existence of this law is expected to free women in Indonesia from violence and oppression that often occur in the home. Physical, psychological, sexual violence and neglect that are often experienced by women are increasingly worrisome. The increasing number of cases requires a solution that can solve this problem fundamentally, but this problem is not an easy problem. Resolving the problem of violence against women requires support from all elements of society.

Based on data from the Women's Empowerment and Child Protection Service of Central Java Province, Semarang City had the highest rate of violence against women in Central Java Province. The types of violence against women in more detail can be seen in the following table:

Table 1. Number of Violence Against Women in Semarang City based on the Form of Violence

<table>
<thead>
<tr>
<th>No.</th>
<th>Form of violence</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Physical violence</td>
<td>91</td>
<td>107</td>
<td>138</td>
</tr>
</tbody>
</table>
Based on data from Women's Empowerment and Child Protection Service in Central Java Province, cases of violence against women in the city of Semarang in 2016 to 2018 were dominated by violence in the household in the form of psychological and physical violence. Psychological violence experienced a significant increase from 2017 to 2018, which is almost 2 times increase. This can illustrate that violence against women not only caused in physical illness, but also to psychological illness. The more ironic thing is that it happens in the home itself, both the actors are husbands, parents, children, family/relatives, or anyone who lives together in the house. Here are data on violence against women in Semarang City in 2016 and 2018 based on the characteristics of the actors:
In 2017, data on violence against women based on actors in all districts/cities in Central Java Province was not recorded in the Women's Empowerment and Child Protection Service of Central Java Province.

3.3 Efforts made by the Semarang City Government in Protecting Women from Violence’s

Women are people that are often identified with the weak who need special protection from acts of violence. Women as part of society, especially residents of Semarang City have the right to obtain legal protection from acts of violence. Thus, the population of women in the city of Semarang can be better protected, so that community security and welfare can be achieved. In terms of carrying out the mandate of the Law Number 23 of 2004 on the Elimination of Domestic Violence, Semarang City has issued Local Regulation Number 5 of 2016 on the Protection of Women and Children from Violence. The local regulation gives responsibility to the Local Government starting from the prevention of acts of violence to the handling of victims of acts of violence.

Based on the provisions of Article 8 paragraph (1) Local Regulation of Semarang City Number 5 of 2016 on the Protection of Women and Children from Violence, the obligations and responsibilities of the Semarang City Government include:

1. establish, implement policies, programs, and carry out collaborative activities in the implementation of protection of women and children from acts of violence;
2. facilitate the establishment of institutions for the protection of women and children from violence and provide support for facilities and infrastructure;
3. allocating budget for the protection of women and children from acts of violence in accordance with regional financial capacity;
4. develop and supervise the implementation of protection of women and children from acts of violence;
5. providing services to protect women and children victims of violence;
6. encourage and increase community participation;
7. appoint replacement parents as a protection measure for children who are victims of violence.

In order to carry out the responsibilities as mandated by the Local Regulation of Semarang City Number 5 of 2016 on the Protection of Women and Children from Violence, the Semarang City Government issued several programs and policies, as follows:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Friends/boyfriends</td>
<td>32</td>
<td>41</td>
</tr>
<tr>
<td>5. Neighbor</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>6. Employer</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>7. Teacher</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>8. Co-workers</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>9. Others</td>
<td>23</td>
<td>56</td>
</tr>
</tbody>
</table>
Establishment of a Gender-Based Integrated Service Center for Handling Violence Against Women and Children at the city and sub-district level.

Establishment of integrated services center handling gender-based violence against women and children is a mandate of the Local Regulation of Semarang City Number 5 of 2016. Integrated services center are established at the city and sub-district level. Integrated services center at the Semarang City level are referred to as Seruni. In addition to Seruni integrated service center, Semarang City also formed a integrated services center on sub districts. The services and service mechanisms provided by Seruni integrated service center and sub district integrated service center, which refer to the Mayor of Semarang Regulation Number 10 of 2011 are Legal Consultations; Legal protection; Legal Assistance; and Legal Handling. Procedures for legal services for women and children victims of violence can be seen in the following chart:

![Fig 2. The Procedure of law service for women and children abused](image)

Providing Rumah Duta Revolusi Mental (RDRM) as a shelter to protect and gives legal assistance for victims of violence and bullying to women and children.

Bullying and violence especially towards children and women are still high. The Semarang City Government made the shelter to minimize the incident. RDRM is a follow-up to Presidential Instruction Number 12 of 2016 on the National Movement for Mental Revolution. RDRM is a manifestation of programs to improve public health services, social welfare, quality of education, empowerment of women in the fields of mental health and psychosocial use of information technology systems and face to face. RDRM is the result of the collaboration of the Seruni Integrated Service Center, the Women's Empowerment and Child Protection Service, and society.

Providing services to people who take advantage of the existence of the shelter, the Semarang City Government provides supporting facilities that are comfortable and complete. The room includes a psychological counseling room, a child counseling room, a legal counseling room, an IT room, a meeting room, a kitchen and a fairly large courtyard. In addition, there are also 2 psychologist counselors with 3 auxiliary staff and 1 legal counselor with 1 assistant who is ready to serve in this RDRM.
Programs that can be accessed by the public free of charge in RDRM, namely:

1. Restorative Justice Program
   This program is a school-based restorative justice program in the field of recovery of children who are faced with law and child-friendly mediation.

2. Moral and Character Education Program
   This program is a great moral education and character program for children and adolescents in Semarang City.

3. Public Mental Health Program
   The mental and psychosocial health service program for the community in Semarang City.

4. Community Development Program, Action Research
   Semarang City community development program to achieve better psychosocial conditions

5. Human Resource Development Program
   Competency development program in career preparation for young people or great citizens.

The public can submit complaints to RDRM in two ways, namely by directly to the RDRM headquarters and getting through the website. If the community comes directly, then by filling out the guest book and consultation form first, the community will be presented with a counselor or counseling counselor. If the community really needs a psychological therapy, it will be taken to a psychologist to get further services. The second way is to visit the website. On the page, the public will be asked to fill in their identity and content as well as complaints. However, the page only seems to be for women and children, even though the mandate of the Presidential Instruction Number 12 of 2016 concerning the National Revolutionary Mental Movement is not only for women and children, but for all Indonesian people.

Basically, this shelter still have some of the weaknesses in serving victims of violences against women and children, are:

1. Security system for the occupants of the shelter is still not guaranteed because there is only one guard to save the victim.
2. Counseling services for victims is still less available.
3. Space to empowerment of victims that does not exist.

Make Coordination between Institutions.

Semarang City Government in dealing with victims of violence always coordinates with the Central Java Province, NGOs, Police, Regional Hospitals, and the Women's and Children's Services Unit. However, this coordination also experienced obstacles, such as budget problems, limited integrated service center and the lack of knowledge of the police regarding handling cases.

Conduct Dissemination of the Rights of Women and Children in Legal Protection from Violence.

Not all people know the rights of women and children in legal protection from acts of violence. The Semarang City Government made an effort to socialize laws and regulations relating to acts of violence against women and children, and to encourage the public to actively participate in reporting acts of violence against women and children. In addition, Women's Empowerment and Child services of the Semarang City serves students or communities who will conduct research that supports the elimination of violence against
women and children. Results these studies can help them preventing and resolving cases of violence against women and children that occur in community.

4 Conclusion and Recommendation

Legal protection for women in Semarang City should get serious attention because the number of violence against women in Semarang City every year continues to increase, even become areas with the highest cases of violence in the Central Java. Therefore, Semarang City has issued Local Regulation Number 5 of 2016 on the Protection of Women and Children from Violence to protect the women and children from violence’s. To run Local Regulation Number 5 of 2016, the Semarang City Government issued several programs and policies, are: establishment of a gender-based Integrated Service Center; providing a shelter to protect and gives legal assistance for victims of violence and bullying to women and children; make coordination between Institutions; and conduct dissemination of the rights of women and children in legal protection from violence.

That efforts have some of the weaknesses, such as: security system for the occupants of the shelter is still not guaranteed because there is only one guard to save the victim; counseling services for victims is still less available; space to empowerment of victims that does not exist; budget problems; limited integrated service center; and the lack of knowledge of the police regarding handling cases of violence against women and children. To overcome the weaknesses, the government should provide counselor for counseling services in a shelter; ensure the security system for the occupants of the shelter; provide spaces to empowerment of victims; provide more budget based on gender; and give training for the policeman to handling the cases.

Acknowledment

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References


Doctor Authority in Online Health Consultation

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Abstract. Nowadays in the development of internet, there are many online applications in the health sector that provide online consultation services with doctors. But until now, there are no clear or specific regulations have been issued regarding online health consultation. One of authority violation is often done by doctors in online health consultation is such as giving definitive diagnoses up to giving prescriptions. Where to do these actions should be only done by the doctors when conducting direct examinations to the patients. This research is normative with descriptive research types. The collected data is then analyzed qualitatively into structured and logical sentences. This research is to find out development, the legal relationship, and doctor authority in online health consultation. Online health consultation requires elements of the agreement law. Doctors are not permitted to provide definitive diagnoses and provide prescriptions or drug therapy to patients. Because of its nature, online consultation cannot replace the direct interaction between doctors and patients. Hopefully, there will be a specific regulation about online health consultation so as to provide legal certainty and provide clear authority for doctors in giving online health consultation.

Keywords: doctor; authority; online health consultation

1 Introduction

In the current digital era, the development of technology, especially internet, is growing rapidly. The internet can provide convenience for humans in their daily activities. Many sectors nowadays have used the internet a lot so that it can simplify work and connect many people from various places so that distance is no longer a meaningful limit for now. One sector that also utilizes internet technology is the health sector. Today, many people can get various healths’ information on the internet. However, health information that is spread on the internet cannot be easily trusted by many people because there are still many health information that prove hoaxes or false news, so people need a review to prove that the health information is absolutely correct.

Doctor as a professional profession in the sector of health, is one of the professions which is trusted by people to get health information. Previously, if people wanted to overcome their health problems, they had to visit the doctors directly (face to face). But due to the development of the internet, there are many online applications media in the health sector that provide online consultation services with doctors. From taking online health consultation, people can find out the cause, risk factors, possible diagnosis of the disease, management actions which can be done at home, recognize signs of emergencies and follow up actions
which should be taken by them related to their health problems. Even online health consultation can be a second opinion when someone who had consulted directly to particular doctor still does not feel satisfied with the health information, so the person can ask doctor again via online application to make it more clearly.

Besides considering the advantages, actually the use of online health consultation has been debated by several parties, with opinions ranging from overwhelming support to strong opposition. Among the concerns raised regarding online health consultation are: their reliability for making clinical decisions, protection of patient data with respect to privacy, impact on the doctor-patient relationship, and proper integration into the workplace.

Until now, there are no clear or specific regulations have been issued regarding online health consultation, especially in Indonesia. The implementation of online health consultation in Indonesia is expected to be based on the Undang-Undang Dasar 1945, Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran, UU No. 36 Tahun 2009 tentang Kesehatan, Kode Etik Kedokteran Indonesia (KODEKI), UU No. 19 Tahun 2015 tentang Informasi Transaksi Elektronik (ITE), and Peraturan Pemerintah Nomor 82 Tahun 2012 tentang Penyelenggaraan Sistem dan Transaksi Elektronik (PP PSTE). Online health consultation also requires elements of the agreement law. The agreement includes agreements between doctors and service providers for online consultation application, agreements between doctors and patients, and agreements between patients and service providers for online consultation application. In online consultation between patients and doctors, actually is included in a therapeutic transaction, where there is a legal relationship that gives rights and obligations for both parties. By understanding to the contents of the agreement and the applicable legislation, is hoped that online health consultation can run well among doctors, patients, and service providers so there will be no parties who do not fulfill the achievement and who are harmed.

One of authority violation by doctors in online health consultation such as providing definitive diagnoses up to giving pharmacotherapy (prescriptions) for patients of online consultation application (user), even drugs that are prescript by the doctors are classified as hard drugs. Where to do these actions should be only done by the doctors when conducting direct examinations to the patients. In this case, establishing standards and policies within online health consultation will be necessary to ensure ethical and transparent conduct. Rigorous evaluation, validation, and the development of best-practice standards for an online health consultation are greatly needed to ensure a fundamental level of quality and safety when the tools are used. So, ultimately it will provide meaningful, accurate and timely information and guidance to the patients in order to serve the vital purpose of improving patients outcomes. One thing that needs to be emphasized in organizing online health consultation is the use only for consultation about health issues, not as a media for giving definitive diagnosis and giving pharmacotherapy for patients. Because of its nature, online consultation cannot replace the direct interaction between doctors and patients.

Based on the background above, the authors are interested in discussing doctor authority in online health consultation. This problem needs to be discussed further, because according to the authors' observation, this problem is still rarely discussed and the legal aspects that govern this problem are not yet clear.
2 Methods

This research is normative with descriptive research types. A normative approach is an approach through literature study by reading, quoting, and analyzing legal theories and legislation related to problems in research. Data sources were obtained from literature studies dan observations in some online applications of health consultation that connect doctors and patients.

3 Results and Discussion

3.1 Development of Online Health Consultation

Along with the development of the internet, online health consultation is also experiencing growth. Online health consultation is a practice of medicine that uses technology. This kind of technology can help patient to reach the doctors for consultation. In Indonesia, the development of online health consultation began with e-Health (electronic Health) which was first created by the Surabaya City Government through the Health Office and received appreciation from many people in 2015. The presence of this e-Health application triggered the emergence of others online health applications.

The development of online health consultation started with web-based. If patients want to consult with their doctors online, patients need to visit certain health websites or consult via e-mail using a computer or laptop. Weaknesses in this system are more one-way or less interactive, where the patients tell and ask about the health problems experienced, then the doctors immediately answer the questions from the patients without the doctors doing a deeper anamnesis of the patients’ health problems. In addition, the response of doctors also tend to be slower in answering patients’ questions because there is no time limit so patients need to wait for a doctors’ reply long enough and sometimes the patients do not know when the doctors have answered the question.

However, now consultation with doctors can use online applications that can be directly downloaded via a smartphone in the Play Store or App Store so that it is more practical, interactive, fast and efficient. The patients can tell and ask about their health problems, then the doctors can do a deeper anamnesis so that the doctors can provide better and more accurate advices, plus the doctors' response is faster as we chat through the chat applications (such as
WhatsApp, Line, etc). If the patients still feel unclear to understand the explanation from the doctors, the patients can still ask directly and the doctors can directly answer the patients' question.

Some examples of online health consultation applications that can be downloaded on smartphones are Alodokter, Halodoc, KlikDokter, Go-Doc, YesDok and others. In using online health consultation, patients are not charged fees, especially if consulting a general practitioner, but if consulting a specialist, it can cost around Rp. 15,000 - Rp. 50,000.00 per one consultation session. After the patients have consulted, the patients can give a positive or negative review regarding the services provided by the doctors. Besides, providing a question and answer consultation service with doctors, these online applications also provide services to search for health information in the form of articles, the nearest doctors around the residence, the nearest hospitals, estimating the location and cost of medical treatment, offering health insurance, making emergency calls, even buying drugs.

![Image of Alodokter application interface]

**Fig 2. Consultation with Doctor via Online Health Application**

### 3.2 Legal Relationship between Doctor and Patient in Online Health Consultation

Online health consultation requires elements of the agreement law. The agreement includes agreements between doctors and service providers for online consultation applications, agreements between doctors and patients, and agreements between patients and service providers for online consultation applications. According to Subekti, an agreement is an event that someone promises to do something. The legal requirements of an agreement as stipulated in article 1320 of the Civil Code, the elements of which are as follows: an agreement from those who tie themselves together (toestemming van degenen die zich verbinden), the ability to make an agreement (debekwaamheid om een verbintenis aan te gaan), concerning a matter (een bepaalddonderwerp), and a cause which is permissible (een geoorloofdeoorzaak).

According to R. Wirjono Prodjodikoro, an agreement is a legal act concerning property of wealth between two parties, in which one party promises or is considered promising to do something or to do nothing, while the other party has the right to demand the implementation
of the promise. According to Sudikno Mertokusumo, the agreement is not a legal act, but is a legal relationship between two people who agree to cause legal consequences. This is also in accordance with the theory statement (Uniting’s Theory) theory of the occurrence of a contract in which the statement of agreement occurs when the party receiving the offer states that he received the offer. According to Mariam Darius Badrulzaman, the element of agreement consists of bidding, namely the statement of the party offering and accepting, namely the statement of the party receiving the offer.

If a doctor and an online health consultation user (patient) have agreed on an agreement, it will cause legal consequences. An agreement will cause legal consequences, that is: the agreement binds the parties as a law or the Principle of Pacta Sunt Servanda as stipulated in Article 1338 of the Civil Code, "all agreements those are legally made apply laws for those who make them." If a patient has chosen or be willing to consult with a doctor by pressing the "start chat" button so the doctor and patient are bound by an agreement.

The above agreement between patients and doctors via online health consultation is a form of agreement through an electronic contract. Based on Pasal 47 ayat (2) PP Nomor 82 Tahun 2012 tentang Penyelenggaraan Sistem dan Transaksi Elektronik, electronic contracts are considered valid if: a. there is an agreement between the parties; b. performed by legal subjects who are competent or who are authorized to represent in accordance with the provisions of the legislation; c. there are certain things; d. the object of the transaction must not conflict with the laws, regulations, decency and public order.

For example, in online health consultation via Alodokter application, if the patient agrees to use the "Ask a Doctor" service, the patient is deemed to have agreed to the terms and conditions that apply to Alodokter, such as:

1. This service will not be used in an emergency, including but not limited to any medical conditions that require rapid treatment or physical examination by a doctor;
2. This service will not be used to obtain treatment dispensions from doctors in any form;
3. This service may not be considered to replace any physical examination, diagnosis or treatment by a doctor or other health care provider; and
4. Alodokter's responsibility is simply to provide technology that facilitates communication and interaction between you and the service provider.

Therefore, patients need to understand that consultation with doctors via online health consultation cannot be used to get personal diagnosis certainty about illness. The conversation within online health consultation cannot replace direct interaction with the doctors, even for emergency conditions, it is necessary to immediately see the nearest doctors or hospital. Patients are also not permitted to request treatment or prescription through an online health consultation. According to Munandar Wahyudin, the relationship between doctors and patients in collaboration is based on the patients' trust in doctors to treat and treat it as a therapeutic transaction. According to Endang Kusuma Astuti, in therapeutic transaction that become objects are efforts to cure (Inspanningverbintenis). Therapeutic agreement is included in the category of agreement to do certain services regulated in Article 1601 of the Civil Code.

Elaboration of the elements of the agreement of Article 1601 of the Civil Code with the therapeutic agreement as follows:

1. In a therapeutic agreement, the element that is employed is the doctor's maximum effort towards healing patients who are carried out carefully and does not promise results.
2. The service element in a therapeutic agreement is a service provided by a doctor as a health care provider.
3. Certain time elements in the therapeutic agreement.
4. The wage element in a therapeutic agreement depends on the rate set by the hospital or health care provider itself.

Sometimes, this is often a form of misunderstanding by ordinary people where the recovery of patients is the object of therapeutic transaction. Whereas the object of therapeutic transaction is actually the doctors’ efforts in treating patients, not the recovery of patients because if the patients’ recovery is used as an object, it will further corner the doctors. Health efforts in therapeutic transaction between doctors and patients include health efforts, namely: promotive efforts (efforts to improve health), preventive efforts (prevention efforts), curative efforts (healing or treatment efforts), and rehabilitative efforts (recovery efforts).

3.3 Doctor Authority in Online Health Consultation

In monitoring the development of online health consultation, a guideline is needed to make online health consultation stays in the good track. The U.S. Federation of State Medical Boards (FSMB) published “Model Guidelines for the Appropriate Use of the Internet in Medical Practice” in 2002. The guideline contains the rules of prescription practice, unacceptable standard of care (online questionnaire or consultation), furthermore the FSMB guideline state that electronic communications cannot replace the crucial interpersonal interaction that create the very basis of the physician-patient relationship.

Another guideline issued in 2003 by the American Medical Association (AMA). This guideline is about online prescribing medicine to patient. AMA guideline state that physician must establish or have an established a valid patient-physician relationship when they prescribed medication to the patient via internet. In the U.S., there were many states have passed laws that add prescribing without first conducting a physical examination is a form of unprofessional conduct.

There have been doctors prosecuted because of prescribing drug case using online health consultation. In the U.K. for example, Dr. Richard Franklin was found guilty by General Medical Council (GMC). The GMC sued the doctor for serious professional misconduct after prescribing drugs online. Dr. Franklin prescribed the drugs, based on the patient questionnaire that filled out by the patient when doing an online consultation. In this case, what Dr. Franklin did was wrong. The GMC also sued Dr. Franklin because he didn’t carry out an adequate assessment of the patient’s condition, it means that he didn’t act in the best interest of his patients. Another case is from U.S. In this case, Dr. Shreelal Shindore of Florida prescribed a Schedule IV controlled substance to a patient based on the internet questionnaire without conducting a physical examination, obtaining a complete history, making a diagnosis, or establishing treatment plan. As a consequence, she lost her medical license because of this case.

In Indonesia, actually there have not been big cases about online health consultation. Even though there have not been cases that come up, we still can see it from the user experience review of the application for online health consultation. There are some reviews of dissatisfaction, such as the doctor gave prescriptions for a patient to cure cough symptoms, but after the treatment, the symptoms of the patient got worse and the patient asked about the responsivity of the doctor who gave him the treatment. Not only that, but also there was a doctor who wrote a review about his patient who suffered fever for a day, but his patient had got azithromycin (one of antibiotic that is to treat wide variety of bacterial infections) from that application. While actually that antibiotic is not directly needed, unnecessary use or misuse of the antibiotic can lead to its decreased effectiveness or risk of resistance.
In online health consultation with doctors, it is actually included in therapeutic transaction where doctors provide healing efforts, especially in promotive aspects (health improvement efforts) and preventive aspects (prevention efforts). Doctors also need to understand that the authority in this online health consultation is not absolute for curative or treatment efforts because to treat a disease cannot be arbitrary, of course further and deeper anamnesis, comprehensive physical examination directly, and even extra examinations are needed so that the doctors can make a diagnosis and provide appropriate treatments.

For example, doctors who work in the online health consultation, like Alodokter, also have authority based on agreements with the service provider of the online application in answering questions from patients so that answers from doctors are not hoped to violate agreements and harm many parties.

The doctors' guide in answering patients questions via online health consultation, Alodokter such as:
1. Greet patients with friendliness,
2. Perform anamnesis (in-depth interviews) about health problems experienced by patients,
3. Provide an explanation of the differential diagnosis (not a definitive diagnosis) regarding the possibility of a patient's illness (minimum 3 differential diagnosis),
4. Provide appropriate education and according to evidence based medicine (EBM). Providing education must be informative and fully explained, not half-hearted or just give a sentence and be in a hurry,
5. Build a pleasant atmosphere of conversation,
6. If needed only suggest green labeled drugs (free drugs), such as: Paracetamol, Antacids, OBH, and other green labeled medicines,
7. Always give home remedy (advice on handling at home),
8. Provide knowledge about the existence of Red Flag or danger signs that must be known about the conditions experienced by patients,
9. Always recommend seeing a doctor directly,
10. Do not mention any brand in the conversation in the application.

So, doctors who are already bound by an online application provider are required to follow the guidelines that have been set. In this online health consultation, the doctors act as Interactive Medical Advisors who are expected to build an atmosphere of conversation with patients comprehensively to provide explanations in easy-to-understand languages and the best advice on patients health problems. Doctors are not permitted to provide definitive diagnoses and provide prescriptions or drug therapy to patients, especially drugs other than the green logo. Enforcement of diagnosis and prescription of drugs without conducting a deeper anamnesis and without conducting a direct examination are certainly not justifiable and violates the agreement that has been in force.

Therefore, doctors still have to maintain their professionalism in answering questions from patients via online health consultation. According to the provisions of article 1234 of the Civil Code, the form of achievement can be in the form of giving something, to do something, or not to do something:
1. Giving Something
   Providing something in an agreement that is giving up goods and still taking good care of the goods as appropriate to maintain their own belongings as well as caring for other property, which will not be left to others.
2. Do something
Doing something in an agreement that means doing something as specified in the agreement. So the form of achievement here is to do certain actions.

3. Don't do Something
Not doing something in an engagement that means not doing an action as agreed.

And there are four general form of agreement violations (default):
1. Do not do what is agreed to be done
2. Do what was promised but not as agreed
3. Do what was promised but late
4. Do something that is by agreement cannot be done

The achievement of the relationship between doctors and patients in therapeutic transaction in online health consultation is in the form of "doing something" in which the doctors provide an explanation or suggestion regarding the problem of the patients' disease according to guidelines set by the service provider of online health consultation. Other forms of achievement are also in the form of "doing nothing" where doctors are not allowed to provide definitive diagnoses and prescribe medicines, especially drugs classified as hard drugs.

If the doctors give definitive diagnoses and prescribe medicines to the patients via online health consultation, it means that the doctors do not fulfill the achievement well where the essence of online consultation should not replace direct interactions between doctors and patients, especially in terms of diagnosis and therapy because it is feared, there will be misdiagnosis and mistreatment that can harm patients in therapeutic transaction. Not only it violates the essence of the agreement, but it is also unethical. Because according to Article 2 KODEKI in 2012 states that a doctor must always make professional decisions independently and maintain professional behavior in the highest measure. Professional medical decision making referred to in Article 2, is carried out after conducting a thorough examination and evaluation of patients using legally recognized medical service standards or guidelines.

Determining definitive diagnoses and giving drug therapy (hard drug classes) without conducting a direct examination are not appropriate authority of doctors. In carrying out medical practice, the doctors should work based on patients complaints or problems, then proceed with tracing the medical history (anamnesis), physical examination, and extra investigation. Because doctors need to pay attention to the patients' aspects holistically and comprehensively, which generally cannot be done through online consultation. It aims to provide healing efforts and improve the patients' health status.

4 Conclusion and Recommendation
From articles above, it can be concluded into three main points:
1. The development of online health consultation in Indonesia has grown rapidly, where many online applications can be found that can be downloaded on smartphones so that they are more practical, more interactive, faster and more efficient and make it easier for people to consult with doctors about health problems experienced.
2. Online health consultation requires elements of the agreement law. The agreement includes agreements between doctors and service providers for online consultation applications, agreements between doctors and patients, and agreements between patients and online consulting service providers.
3. One form of authority violations that carried out by doctors in online health consultation is to determine definitive diagnoses and to give prescriptions of hard
drugs without conducting direct examinations of the patients. This is feared to cause misdiagnosis and mistreatment that can harm patients.

Online health consultation should be regulated in specific regulation so as to provide legal certainty and provide clear authority, especially for doctors to be able to reduce the violations of doctor ethics and errors in diagnosis and treatment.

References


Organizational Restructuring of Regional Apparatus of Sleman Regency, Yogyakarta, Regarding Spatial Planning

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Abstract. This study aims to investigate the urgency of organizational restructuring of regional apparatus in regard to spatial planning and the authority of Land and Spatial Planning Agency of Sleman Regency, Yogyakarta. The study employed a doctrinal approach. The results of the study suggest that the urgency of organizational restructuring of regional apparatus in Sleman Regency is for the effectiveness of the implementation of spatial planning. The authority of Land and Spatial Planning Agency of Sleman Regency is not limited to the spatial planning of the Sultanate Land and Regency Land.

Keywords: Restructuring; Land Agency; Spatial Planning

1 Introduction

In the course of eight years (2009-2016), the Government of Sleman Regency of Yogyakarta restructured the local organizational apparatus for three times. The restructuring was characterized by three regional regulations, namely: 1) Regional Regulation of Sleman Regency No. 9 of 2009 on the Local Organizational Apparatus of Sleman; 2) Regional Regulation of Sleman Regency No. 8 of 2014 on the Second Amendment to the Regional Regulation of Sleman No. 9 of 2009; and 3) Regional Regulation of Sleman Regency No. 11 of 2016 on the Formation and Structure of Regional Apparatus of Sleman. The last regulation lifted the previous two regional regulations. Organizational restructuring aimed to create a more effective and efficient organization.

As stipulated in Article 7 Paragraph 2 of Law No. 12 of 2013 on the Privilege of Yogyakarta Special Region (DIY), one of the privileges is the authority over spatial planning which is further specified in the Special Regional Regulation (Special Regional Regulation). In this regard, Special Regional Regulation refers to Special Regional Regulation DIY No. 2 of 2017 on the Sultanate Land and the Regency Land. Other rights and authority remain subject to applicable laws and regulations. On the other hand, at the national level, spatial planning is the authority of Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Previously, Ministry of Public Works and Housing was responsible for spatial planning. Following the laws and regulations, the local government of Sleman Regency performed organizational restructuring of regional apparatus.
Based on the explanation above, this study aims to 1) investigate the urgency of organizational restructuring of regional apparatus related to spatial planning in Sleman Regency in Yogyakarta and 2) examine the authority of Land and Spatial Planning Agency of Sleman Regency in organizational restructuring of spatial planning.

2 Research Methods

This research uses an analytical descriptive approach. This study is conducted with the aim of describing and analyzing the urgency of organizational restructuring of regional apparatus regarding to spatial planning in Sleman Regency, Yogyakarta, and the authority of Land and Spatial Planning Agency in Sleman Regency, especially in spatial planning. The primary and secondary data of the study were collected and analyzed based on the law concerning spatial planning.

3 Discussion

3.1 The Urgency of Organizational Restructuring of Regional Apparatus Regarding to Spatial Planning in Sleman Regency

In order to build infrastructure, President Jokowi needed a synergy of all sectors; spatial and agrarian sectors were no exception. Thus, the president appointed ministers who were able to manage those sectors. This is in line with the 1945 Constitution of Republic of Indonesia Article 17 stating that the President, in running the government, is assisted by ministers. In 2015, new ministry called Ministry of Agrarian Affairs and Spatial Planning was formed. The legal basis for the formation of this ministry was the President Regulation No. 17 of 2015 on Ministry of Agrarian Affairs and Spatial Planning.

In the previous term, land and spatial planning were handled by different agencies. The land sector was the responsibility of BPN (National Land Agency), while spatial planning was the authority of Ministry of Public Work Directorate General of Spatial Planning. The local government of Sleman restructured regional apparatus for the last time in 2016. In carrying out the organizational restructuring of regional apparatus, the local government of Sleman complied with the laws and regulations stipulated by both central government and local governments (province). In regions, (provinces/regencies/cities) authority over the strategic field was continued and implemented by the local governments.

The elements of local government are governor, Regional Representative Council (DPRD), and regional apparatus. Article 5 of Regional Regulation No. 18 of 2016 on Regional Apparatus stipulates that there are several types of regional apparatus at the provincial and regency/city level; one of which is agency. On that basis, the local government of Sleman specifies Regional Regulation No. 11 of 2016 on the Formation and Structure of Regional Apparatus of Sleman. Since the regulation took effect, BPPD of Sleman Regency was transformed into Land and Spatial Planning Agency of Sleman Regency. The Land and Spatial Planning Agency of Sleman Regency supports the duties of regional heads. The agency is responsible for formulating regional policies, which are quite specific, on land and spatial planning. Viewed from the effectiveness point of view, it is necessary for the local government of Sleman Regency to conduct organizational restructuring of regional apparatus. Many divisions, sub-divisions, and sections were added to the Land and Spatial Planning
Agency of Sleman Regency. Consequently, regional budget, including professional human resources, was increased in order to run the spatial planning authority.

Furthermore, restructuring was carried out based on the organizational structure of regional apparatus by taking into account these principles: 1) intensity of government affairs and regional potential; 2) efficiency; 3) effectiveness; 4) division of duties; 5) control range; 6) clear working procedures; and 7) flexibility. Therefore, the urgency of restructuring of Land and Spatial Planning of Sleman Regency was to carry out duties on land and particularly spatial planning more effectively.

3.2 The Authority of Land and Spatial Planning Agency of Sleman Regency over Spatial Planning

Organizational restructuring of regional apparatus in Sleman Regency based on Regional Regulation No. 11 of 2016 on the Formation and Structure of Regional Apparatus was followed up by the stipulation of Regent Regulation No. 66 of 2016. The legal basis of regional apparatus was previously Regional Regulation of Sleman No. 9 of 2009 on the Second Amendment to the Regional Regulation of Sleman No. 9 of 2009 on Local Organizational Apparatus. This regulation controls the local organizational apparatus; one of which is Regional Land Controlling Board (BPPD). Regional Regulation No. 9 of 2009 stipulates that the institution was called Regional Land Controlling Board Regional Regulation No. 8 of 2014 was followed up by the stipulation of Regency Regulation of Sleman No. 24.1 of 2014 on Description of Duties, Functions, and Work Procedures of the Public Works and Housing Agency.

BPPD, according to Regional Regulation No. 9 of 2009, has the following functions:
1. Formulation of technical policies on land sector;
2. Implementation of duties on land sector;
3. Implementation of public services on land sector;
4. Guidance and development on land sector; and
5. Implementation of other duties mandated by the Regent according with its duties and functions.

According to Regional Regulation No. 8 of 2014, on the other hand, BPPD has functions as follows:
1. Formulation of technical policies on land use control;
2. Implementation of duties on land use control;
3. Guidance and coordination on land use control; and
4. Implementation of other duties mandated by the Regent according to its duties and functions.

Spatial planning, based on both Article 17 of Regional Regulation No. 9 of 2009 and Article 18 Paragraph 1 Letter e of Regional Regulation No. 8 of 2014, is still the responsibility of Public Works and Housing Agency. However, based on Regional Regulation No. 9 of 2009, no division of the agency is assigned to take charge in spatial planning. In other words, it is not clear who is responsible for spatial planning. Meanwhile, Regional Regulation No. 8 of 2014 stipulates that spatial planning is specifically assigned for Spatial Planning and Building Division of Detailed Spatial Planning Section at the Public Works and Housing Agency. Pursuant to Regional Regulation No. 11 of 2016 in lieu of Regional Regulation No. 8 of 2014, Land and Spatial Planning Agency Type B was formed to replace Regional Land Controlling Board in order to manage government affairs in land and spatial planning. Through Regional Regulation No. 11 of 2016, spatial planning, which was previously handled
by Public Works and Housing Agency, is now one of the duties and functions of Land and Spatial Planning Agency.

According to Article 3 of Regional Regulation No. 11 of 2016, further provisions regarding the position, organizational structure, duties, and functions of regional apparatus are regulated by Regent Regulation. Hence, in order to implement government affairs in land and spatial planning, Regent Regulation of Sleman No. 66 of 2016 on Position, Organizational Structure, Duties and Functions, as well as Administration on Land and Spatial Planning was issued.

As stipulated in Regent Regulation No. 66 of 2016, Land and Spatial Planning Agency has the following duties and functions:

1. formulation of work plan of Land and Spatial Planning Agency;
2. formulation of technical policies on land and spatial planning;
3. implementation, service, guidance, and control of government affairs in land and spatial planning sectors;
4. evaluation and report on the implementation of government affairs in land and spatial planning sectors;
5. implementation of secretariat services; and
6. implementation of other duties mandated by the Regent according to its duties and functions and/or according to rules and regulations.

Spatial Planning Division, however, has the following duties and functions according to Article 19 of Regent Regulation No. 66 of 2016:

1. formulation of work plan of Spatial Planning Division;
2. formulation of technical policies on guidance on regency spatial planning;
3. guidance on regional spatial planning and detailed spatial planning;
4. guidance on building planning and environmental planning; and
5. evaluation and preparation of work implementation reports on Spatial Planning.

As specified in Article 30 of Regent Regulation of Sleman No. 24 of 2014 on Description of Duties, Functions, and Work Procedures of Public Works and Housing Agency, Spatial Planning Division works under the Public Works and Housing Agency and is part of Detailed Spatial Planning Section. Detailed Spatial Planning Section is responsible for preparing materials for implementation, guidance, and control of detailed spatial, building, and environmental planning. As mentioned above, Regent Regulation of Sleman No. 24.1 of 2014 is the implementing regulation of Regional Regulation No. 8 of 2014.

As stipulated in Article 31 of Regent Regulation No. 24.1 of 2014, Detailed Spatial Planning Section, in performing its duties, is responsible for preparing materials for:

1. work plan of Detailed Spatial Planning Section;
2. formulation of technical policies on detailed spatial, building, and environmental planning;
3. implementation, guidance, and control of detailed spatial, building, and environmental planning; and
4. evaluation and work implementation reports of the Detailed Spatial Planning Section.

Institutional dynamics of spatial planning are very interesting to observe. It should be remembered that spatial planning at the level of central government rests with the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. To this day, however, spatial planning in regions remains the responsibility of Public Works and Housing Agency (except in Yogyakarta). In Yogyakarta, spatial planning is no longer the duty of Public Works and Housing Agency, but now the responsibility of Land and Spatial Planning Agency. It should be noted, however, that Land Agency is different from Land Office. Land and Spatial
Planning Agency of Sleman Regency is a regional agency, while Land Office of Sleman Regency is a vertical agency.

Organizational restructuring of spatial planning agency affects not only the authority over spatial planning, but also human resources. This means that Land and Spatial Planning Agency is given additional authority over spatial planning from Public Works and Housing Agency. This is in line with the national policy that spatial planning, which was originally handled by the Ministry of Public Works and Housing, is now managed by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. The establishment of Land and Spatial Planning Agency is the manifestation of Article 97 Paragraph 1 of Regional Regulation No. 3 of 2015 on Local Government Institutions of Yogyakarta Special Region, which states that the Regency government should manage and strengthen institutions, especially in terms of special affairs of Yogyakarta Special Region which include institutions, culture, land issues, and spatial planning.

According to Regional Regulations No. 2 of 2017 on Spatial Planning of Sultanate Land and Regency Land, Regional Regulation No. 12 of 2012 on Spatial Planning of Sleman Regency in 2011 and 2031, and Regent Regulation of Sleman No. 66 of 2016 on Position, Organizational Structure, Duties and Functions, as well as Administration of Land and Spatial Planning Agency, the authority of Land and Spatial Planning Agency over spatial planning is presented in Table 1.

Table 1. Authority of Land and Spatial Planning Agency over Spatial Planning in Sleman Regency

<table>
<thead>
<tr>
<th>Article 44 of Special Regional Regulation DIY No. 2 of 2017</th>
<th>Article 3 of Regional Regulation of Sleman No. 12 of 2012</th>
<th>Article 19 of Regent Regulation of Sleman No. 66 of 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implement authority to facilitate the manifestation of spatial planning of Sultanate Land and Regency Land, if requested by Provincial Government in terms of:</td>
<td>Stipulation of policies on regional spatial planning covers:</td>
<td>Duties and functions for:</td>
</tr>
<tr>
<td>a. preparation of Detailed Spatial Planning in the Sultanate Land and the Regency Land strategic spatial units;</td>
<td>a. integration and development of activity centers outside disaster areas;</td>
<td>a. preparation of work plan of Land and Spatial Planning Agency;</td>
</tr>
<tr>
<td>b. preparation of Detailed Building and Environmental Planning in the Sultanate Land and the Regency Land strategic spatial units;</td>
<td>b. management of natural disaster prone areas and geological protected areas;</td>
<td>b. formulation of technical policies on governmental affairs on land sector and spatial planning sector;</td>
</tr>
<tr>
<td>c. preparation of the master plan in the Sultanate Land and the Regency Land strategic spatial units;</td>
<td>c. preservation of environmental functions;</td>
<td>c. implementation, service, guidance, and control on governmental affairs in land sector and spatial planning sector;</td>
</tr>
<tr>
<td>d. implementation of spatial planning;</td>
<td>d. development of agricultural areas to achieve food security;</td>
<td>d. evaluation and implementation reports of governmental affairs in land sector and spatial planning sector;</td>
</tr>
<tr>
<td>e. monitoring and control of the utilization of the Sultanate Land and the</td>
<td>e. development of integrated tourism destinations;</td>
<td>e. implementation of secretariat services; and</td>
</tr>
<tr>
<td></td>
<td>f. development of education areas;</td>
<td>f. implementation of other duties mandated by the Regent according to its duties and functions and/or rules and regulations.</td>
</tr>
</tbody>
</table>
Regency Land that violate Spatial Planning;
f. handling of disputes over the utilization of the Sultanate Land or the Regency Land;
g. preparation of technical considerations for the spatial utilization permit;
h. control over the spatial utilization; and
i. supervision of the spatial planning implementation.

| residential areas; |
| i. stabilization of infrastructure; and |
| j. improvement of regional functions for national defense and security. |

Based on the table above, the authority of Land and Spatial Planning Agency covers the spatial planning of the Sultanate Land and the Regency Land and the spatial planning of other areas. Meanwhile, the spatial planning of other areas besides Yogyakarta rests with the Public Works and Housing Agency.

4 Conclusion

1. Organizational restructuring of regional apparatus in Sleman Regency Yogyakarta regarding spatial planning should comply with policies imposed by the government, Regional Regulations, and the organizational structure of regional apparatus. The urgency of organizational restructuring of regional apparatus aims to achieve the effectiveness of the exercise of authority over spatial planning.

2. The authority of Land and Spatial Planning Agency of Sleman Regency over spatial planning is not limited to the spatial planning of the Sultanate Land and the Regency Land.

References


Misconception on the Implementation of Diversion System Within Child Criminal Justice System in Indonesia

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Abstract. Based on Article 7 of Law Number 11 of 2012 concerning Child Criminal Justice System (CCJS Law) which stipulates that at the level of investigation, prosecution and examination of children's cases in the district court must be pursued for diversion and the crime that is punishable by imprisonment under seven years and not a residv crime. Diversion itself is intended to ensure that child crime cases can be settled out of court. However, in practice of diversion often cannot work well since the stakeholder relating to such issue also legal enfor-cer didn’t understand the essence of the diversion. Using the juridic-normative research method with case study approach, this study found that the application of the diversion often recognized to be similar as giving compensation to the victim of child crime, though those conception are greatly different to each other. Thus, it can be concluded the urge of knowledge improvement about the diversion and the need for public education through legal counseling to understand the intention of the diversion itself. Ultimately, the diversion is expected to be optimally applied.

Keywords: Implementation; Diversion; CCJS

1 Introduction

The emergence of the child criminal justice system in Indonesia since 2012, was not implemented merely without any underlying factors. The formation of child criminal court in Indonesia based on the existence of a constitutional mandate, mainly in the provisions of article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia Unitary State which determined that:

“Every child shall have the right to live, grow and to develop and shall have the right to protection from violence and discrimination”.

That all children who are in Indonesia, have the same right to live, grow and develop and are protected from violence and discrimination. So that it can be underlined in here is that the Republic of Indonesia at least recognizes and is obliged to protect the five elements of children's rights. One of the elements in fulfilling children's rights is protection against violence and discrimination. The relations between recognition of the Unitary Republic of Indonesia and its obligation to fulfill that right. Impact on the steps of the government of the Republic of Indonesia to establish a child criminal court that specifically handles criminal cases involving children as the perpetrators of the crime. The importance of the existence of
this institution because it is the main means of fulfilling the rights of children protected through the constitution.

Of course it is necessary to understand that not every child can benefit from being born into a whole and loving family. Not a few children who do not experience conditions as fortunate as this, not a few of the children who even have to live without proper education or even without family and fall in street life. Such conditions often result in children being involved in juvenile delinquency, which sometimes even leads to criminal offenses. The state, however, must be able to take responsibility in this matter. Because of course a child who has a criminal record will face a long road ahead of his life in society in the context of facing discrimination. Discrimination arises due to the label attached to a child who has been sentenced as a criminal of a criminal offense.

The necessity for the protection of children's rights to avoid discriminatory attitudes is the fundamental foundation in the formation of child criminal court in Indonesia. In addition, the formation of child criminal court is also equipped with a strategy to resolve criminal cases involving children as crime makers to be resolved outside the court. This system is referred as diversion, but due to the unpreparedness of the society and law enforcers. As a result, the diversion system so far can be said to be less than optimal. This paper will perform discussion on the optimization or shortcomings in the application of the diversion system.

2 Discussion

2.1 The Philosophical Foundation Of The Diversion System

The diversion system is an effort to shift from a retributive justice system adopted by criminal justice in Indonesia to a restorative justice system. The difference between the two is that the retributive justice system provides punishment to create peace in the community and a deterrent effect on the perpetrators of crime. Unlike this condition, the restorative justice system seeks to produce a level of legal awareness as well as inculcation of guilt and a desire to be responsible of the mistake that were committed to the perpetrators of crime. Compared to a retributive justice system that merely emphasizes punishment, a restorative justice system is considered to be more guaranteeing the continued growth and development of children as responsible individuals and can be used as a means to instill a sense of responsibility and awareness of the mistakes that have been made. Restorative justice systems emerge as a strong foundation in overcoming the problem of children who become crime makers and the interests to fulfill the constitutional rights of children to be able to grow up and protected from violence and discrimination.

This makes the restorative justice system as the foundation of child criminal justice system in Indonesia with its manifestation in the form of a diversion system. However, not all children who are involved with crime as perpetrators can enjoy the diversion system facilities in child criminal court. Restrictions are still placed on children who can enjoy these facilities, such restrictions are carried out because crime is not a stand-alone phenomenon. But a humanitarian problem or social problem that continues to develop as a complex phenomenon and has a relations with other social structures. Restorative justice system that emphasizes restoration efforts for victims of crime and perpetrators of crime. Equipped with restrictions on who the perpetrators of crime who can receive this diversion facility. This restriction is in the form of the application of the diversion system only for children who are mentally, psychologically and intellectually immature to judge that the his/her act is a crime. Law
Number 11 Year 2012 concretely stipulates that the so-called children are those who are 12 years old and have not yet reached the age of 18 years.

Other restrictions also arise based on the type of crime committed by the child. The diversion system can be applied as long as the crime committed is a crime that is punishable by imprisonment under 7 years and is not a recidivist/crime repetition by the child. So this diversion system is really aimed for the children’s who were commit crimes for the first time and crimes committed was not classified as serious crimes or have a severe impact on social structure. In his opinion R.Wiyono pointed out that if there is a criminal offense in contrary to the above two conditions in which it would cause logical consequences of child crime to be not obliged to diversion. Thus, the notion of "not obliged to be diverted" has a meaning that is not imperative or facultative. This means for a crime of a child who is punishable by imprisonment of more than 7 (seven) years or in the case of a child committing a criminal act. It can be attempted to divert.

However, according to M Nasir Djamil, former chairman of the House of Representatives' Committee for Child Criminal Justice Commission III, said that the aforementioned matters may have logical consequences for the actions of children who is dealing with the law to be not required to be diverted. Caused if the child is threatened with imprisonment more than 7 (seven) years. Hence, the crime is a serious criminal offense or if he/she commits a repetition of a crime. Thus, it can be concluded that the purpose of diversion. That is to instill a sense of responsibility to the child not to repeat a similar criminal act is not achieved. Thus, resulting in the logical consequences of the diversionary effort against it is not mandatory.

2.2 Diversion System Implementation Failure

Although the diversion effort has been designed in such way, however, at the level of its implementation, not infrequently these diversion efforts experienced rejection by the victim or the victim's family. This can be seen from one example of a case that occurred in the jurisdiction of the Kotabumi District Attorney, where there is a suspect with the initials HS Bin Y who commits a criminal act of fencing as stipulated in article 480 of the Criminal Code. The North Lampung Police Investigator who handles the case carried out the legal process of investigation based on Police Report Number: LP/930/XI/2014/POLDA LPG/RES LU, Investigation Order Number: SP. Sidik/659/XI/2013/Reskrim dated 26 November 2013, and Notice of Commencement of Investigation Number: SPDP/197/XI/2014/Reskrim.

The State Prosecutors of Kotabumi through the Public Prosecutor in this case conduct a diversion effort as outlined in the Minutes of Diversity Number: 02/N.8.13/Ep.1/12/2014. The point of diversion is the perpetrator to compensate the victim of Rp. 2,000,000, the perpetrator promised not to repeat his actions and if the agreement is not met then the legal process will continue. However, the victim and the victim's family subsequently refused this diversion attempt. Due to the intention of made HS to be processed in court and properly punished as regulated in Criminal Code. Because of the criminal acts committed by HS has been disturbing local residents. Thus, the victim and the victim's family want HS to be sentenced to prison in accordance with his actions.

Although in the end, the Kotabumi District Court through Verdict Number: 11/Pid.Sus-Anak/2014/PN.Kbu stipulates the process of examination of the child and ordered the prosecutor to remove the child from the prisons of Kotabumi Children's Prison. Because the Judge considers that the diversion at the Court's examination level has been successful. The above case sample show that conceptually, diversion does have a noble purpose. However, at the time of its implementation, people tend to refuse to implement diversion efforts primarily by victims or families of victims.
This failure can be understood due to ignorance by the victim and the victim's family regarding the different characteristics of general criminal court and child criminal court. Because, the diversion was made in the settlement of the case, indicating that the child who made the crime had met the criteria for the child who committed the crime in order to implement the diversion system in his case. This means that according to the assessment of investigators and public prosecutors, HS, who is a criminal offense, had his first time committing the act and the crime is a minor crime. For the sake of protecting HS from violence in the form of taking his freedom through imprisonment. Thus, diversionary efforts were made to resolve the case without criminal punishment.

Unfortunately, the victim and victim’s families are closely related to the retributive justice system that exists in general justice in Indonesia so far. The victim and the victim's family encourage the court to remain investigated the case and even want him to be punished according to the provisions in general criminal justice. The doctrine of the retributive justice system needs to be eradicated in society by promoting the rights of children as an excuse for the importance of the diversion system. In addition, other failures was illustrated through the cases sample that failed to implement the diversionary effort in Lampung. Occurs because there is a compensation component required by the victim for diversion to be implemented. In author opinion such request was an abused of the diversion system by the victim to reap materialistic benefits. This is not in line with the philosophical objectives of the diversion system which requires diversion efforts to be carried out in order to restore the state of the perpetrators of crime and victims of crime.

Compensation given could be said was conducted to restore the situation of the victim, but it was not give the same thing to the perpetrators of crimes which incidentally are children. Let's say that the compensation given to compensate for the loss suffered by the victim. But which party pays the compensation, the child who committed the crime or just the other party. If the imposition of compensation is justified on the grounds that the offender feels deterrent, then it can be criticized in this way.

The diversionary effort aims to instill a sense of responsibility and awareness of wrongfully act directly to the child offender. The request for compensation is less animating, it would be better if the victim or the victim's family can simply want an apology from the child of the perpetrator directly as a condition for diversion rather than requesting compensation. Inaccuracies that occur in the implementation of the diversion system occur due to the lack of public understanding of children's rights. Mainly in the context as specified in article 28B paragraph (2) of the Constitution of the Unitary Republic of Indonesia in 1945. That children have the right to live, grow and develop and get protection from violence and discrimination. The emergence of child criminal court and the diversion system that was born from its womb are solely intended as a means of helping children who are trapped in criminal behavior to be able to return being a good and responsible person. Not encourage him to be punished and labeled as a criminal all his life.

4 Conclusion

The successful fulfillment of the constitutional rights of children as stipulated in article 28B paragraph (2) of the 1945 Constitution of the Unitary Republic of Indonesia, is pursued through the establishment of child criminal court. child criminal court emerged with the consequence of shifting the understanding of the retributive justice system that has flourished in general court in Indonesia, to shifting into a restorative justice system that wants a balanced restoration of perpetrators and crime victims.
Unfortunately, the strong doctrine of the retributive justice system makes victims affected by child crime be reluctant to use methods that are outside of punishment. While the diversion system that was born from the restorative justice system of child criminal justice system does not want that. The long road that needs to be taken is to change the understanding of the community to be able to voluntarily accept the ways presented by the diversion system through the promotion of children's rights, that every child has the same opportunity to develop. The internalization process is expected to bring changes in the community paradigm in responding to criminal acts committed by children by not discriminating against child offenders. But opening their hands widely to help the child realize mistakes and instill a sense of responsibility not to repeat the mistakes. The law enforcers who strive for this diversion system also need to be present as third parties who oversee the implementation of the diversion effort so that it is not misused into a mere profit-making event.

References
Abstract. The international law has always been one to introduce new things for the sake of human kind’s progress. With its uniqueness of connecting through the world, the international law is also available of adjusting the life of humanity. Besides of prioritizing health, education, and welfare, the pressure of globalization has taken us to the front door of a developed globalization, which in this case can be seen from the modern life of technology. Thus, it would a better option for law experts to acknowledge the ways of embracing technology through the crisis matter of all time, health. Telemedicine would be a great example of any hypothesis regarding to balancing health and technology without neglecting the idea of its possibilities to be enhanced in developing countries such as Indonesia. Therefore, it is important to understand the regulation regarding to telemedicine and the provided legal protection for its patients based on the international in order to realize health advancement of Indonesia’s citizens evenly. This research could be taken advantage by stakeholders in the health sectors. The method used is normative law research with focus of purpose on fact findings, problem identifications, and problem solution.

Keywords: Health Services; Legal Protection; International Law; Telemedicine

1 Introduction

Health is a crucial component of human lives and never ceases to be a problem in discussing the international agenda. The development of the era along with the increasing plurality of components of life, caused experts to consider the existence of health care at a new level; through technological involvement. Technology became modern throughout the years and is applied in human lives including in far distance; for an instance, the internet. As many as 15,000 health websites have dominated the society both in managing a healthy lifestyle or merely complaints from an illness. These websites’ qualities vary which grew concerns from the medical professions. The process of exchanging health information from a medical profession to a patient that is separated by distance which causes the consultation performed through technology device is known as telemedicine.

Telemedicine allows patients worldwide to complete their health need without experiencing distance that cost finance and money. This health service technique is very potential for patients that live in an isolated area. However, there is an ongoing of using telemedicine universally, especially in terms of the patient’s protection. Distance and
technology in between the medical professions and patients complicates the idea to implement protection for telemedicine’s patients that will experience disadvantage in the near future.

Indonesia is a country with 266,795,000 population and life expectancy at 61.7 years old. Afterwards, in every 1000 population, there are at least 7 deaths which put Indonesia as the 2nd place for the highest mortality rate of South East Asia. The high rate of mortality in Indonesia’s background is poor health services. Factors that cause poor health services are (1) Citizens in poverty have low health status, (2) Double burden which is the improvement of contagious and not contagious disease, (3) Poor equity, access, and quality of health facilities, (4) Limited resource for medical professions. Based on these issues, telemedicine is a potential step to enhance health equality of Indonesian society. Therefore, this article will research telemedicine in the international law, its protection model for telemedicine patients, and the concept of telemedicine in Indonesia.

2 Methods

This research is a normative research with a purpose to find facts, continued with problem identification, and problem solution. Source of data used in this research is secondary data consisting of primary, secondary, and tertiary law data. The data collecting method is a non-interactive method through content analysis. Data analysis will eventually be network analysis which maps frames of individuals, organizations, situations and places.

3 Results and Discussion

3.1 What is the Telemedicine?

Telemedicine is a form of remote medical services with the use of information and communication technology with the aim of advancing the level of individual health or the general public. The components of telemedicine technology consist of a doctor, a patient, an internet container or other information exchange tool, and a health practitioner. In practice, there are 4 main fields for conducting telemedicine services, namely:

1. Teleradiology
   Teleradiology uses telemedicine to send radiological images from one location to another.
2. Telepathology
   Telepathology uses telemedicine to send pathological digital to gain the image interpretation and/or consultation from it.
3. Tele dermatology
   Tele dermatology uses telemedicine to send medical information regarding to skin condition for interpretation and/or consultation.
4. Telepsychiatry
   Telepsychiatry uses telemedicine for evaluation session and/or psychiatric consultation through a video or voice.
3.2 How does it occur?

Telemedicine facilitates the provision of medical aid from a distance. It tends to provide effectiveness to form a simpler access and reduced cost which in years to come is targeted to the rural patients in terms of decreasing the isolation from professional health care. Telemedicine can enable ordinary doctors to perform extra-ordinary tasks:

Types of Service

According to the American Telemedicine Association, telemedicine services are divided to five types:

1. Specialist required services. This kind of service usually requires the help of a specialist which also includes a practitioner whenever they decide a diagnosis. The telemedicine aspect happen when the patient consults through live call, transmission of diagnostic images, and videos of the patient data.
2. Direct patient attendance. This type of service is intervened by an audio or video in the process of medical data exchange between patient and health professional.
3. Remote patient monitoring. This kind of service benefits from the use of devices that support medical data being sent to a monitoring station. For example is “home telehealth”, which replaces the need for nurse visitation. This application uses telemetry devices to record blood pressure, glucose, and ECG.
4. Medical mentoring. This is an educational type of service which widen from continuing medical education credits for health professional, towards special medical seminars, and finally interaction between expert advisor and professional performing procedure.
5. Consumer’s information on health and medical data. This is the type of service we use every day in terms of telemedicine. It includes the use of internet to access health information and proceed to discussion in an online forum.

Delivery Mechanisms

In spite of taking advantage of telemedicine services, we should be aware of ways of delivery in telemedicine which includes:

1. Networked programs: This is the most common way of delivering telemedicine, because it enables the link of tertiary care facilities such as hospitals and clinics or community health centers in rural or suburban areas. This is possible through a hub and spoke and/or an integrated networked system. In approximately 3,500 medical and healthcare institutions throughout the USA, up to 200 telemedicine networks are used.
2. Point-to-point connections: This is a more private network than the networked program because it is used by medical institutions to deliver services directly to an independent medical service that are health professionals at ambulatory sites.
3. Health provider to the home: As it is stated, this is mechanisms included primary care provider entrusted to health service in a home health treatment. Of course, this mechanism requires the patient to reach their health providers through phone for consultations. This type can easily be enhanced to an extension including a residential care center.
4. Direct patient to monitoring center: This is a more specific mechanism, where it is used in particular health equipment such as a pacemaker, cardiac, pulmonary, or fetal monitoring. These equipment’s have the ability to maintain independent lifestyle, which patient could easily learn how to use it by reaching a direct monitoring center.
5. Web-based e-health: Previously discussed, these are the most humble ways of the public to understand the telemedicine. These webs enable patient service sites through the internet that seeks for public or common information regarding to health and medical data.

3.3 Telemedicine and The International Perspective

Telemedicine throughout the world

Telemedicine has already been an undergoing matter in the international technology part. In this discussion, the existence of telemedicine would be expanding through the studies of telemedicine in different countries all around the world.

1. Japan
   The buds of telemedicine in Japan have arrived since the 1990’s. Then, telemedicine is actually represented in the form of teleradiology. The Information and communication technology, and Digital Imaging and Communications in Medicine (DICOM), has been the biggest telemedicine that occurs in Japan.

2. India
   Indian Space Research Organization’s (ISRO) Telemedicine stated a need of notice to areas such as Kargil and Leh in the North, Andaman, Nicobar, Lakshwadeep, Orissa, and Karnataka as these areas still struggle in health providing. However, the North-Eastern states of India including some tribal distric have their access towards health services from some major hospitals. These accesses came with medical education, village center resource and telemedicine, mobile telemedicine, telemedicine in special situations, and telemedicine during tsunami.

3. New Zealand
   Practice of medicine in New Zealand is regulated in three main ways: (1) the Health Practitioners Competence Assurance Act 2003 (HPCA Act), (2) the Office of the Health and Disability Commissioner (the HDC) through the Code of Patient Rights, (3) the Medicines Act 1981. These instruments are yet to be adjusted with the work of telemedicine.

3.4 Telemedicine and the international law

The international law instrument does not provide specific regulation regarding to the Telemedicine. However, there are few regulations that implicitly described the idea of this type of medical service.

1. The Ottawa Charter on Health Promotion
   The Ottawa Charter is a continuation of the Alma Atta Declaration. According to the Ottawa Charter, health promotion is a process for eligible access towards parties that are involved in improving medical facilities. Moreover, this charter focuses on providing health equality throughout the world in the year 2000 and beyond.

2. United Nations General Assembly Resolution 73/91
   This resolution consists of report of the Working Group on Space and Global Health by Committee on the Peaceful Use of Outer Space, decisions, and recommendation. Telemedicine is mentioned as one of the strategy to enhance health through use of outer space.

3. WHO e-Health Strategy
   Since the year of 1997, the World Health Organizations (WHO) has planned health and medical service with a usage of technology and information. The fifty-eighth World Health Assembly in May 2005 adopted resolution WHA58.28 establishing an
e-Health strategy for WHO. It calls on governments to form national e-Health bodies to provide guidance in policy and strategy, data security, legal and ethical issues, interoperability, cultural and linguistic issues, infrastructure, funding, as well as monitoring and evaluation. WHO recommends that Member States establish a national-level body for e-Health, supported by the ministry of health, as an instrument for implementing the WHA e-Health resolutions.

   This Directive approves all form of health support and respects the choices of each state in their medical facilities.

5. ASEAN Telemedicine Protocol and Standard Harmonization
   The ASEAN Telemedicine Protocol and Standards Harmonization purpose is to ensure knowledge promotions which consist of best practice, standards, and challenges to apply telemedicine among states. This protocol is a part of ASEAN Economic Community 2025. However it focuses on the technology and economic perspective.

3.5 Telemedicine’s Patients and Their Protection: What Does the International Law Offer?
   After going through the discussions above, the protection for telemedicine’s patient in the future is through a great coordination between the international law and the national law. Below is an idea of a protection model towards patients of telemedicine:

![Fig 1. Model Protection for Telemedicine’s Patients](image)

This model is a developed and inspired version from Zlatko Stapić, Neven Vrček, Goran Hajdin’s article in title of “Legislative Framework for Telemedicine”. From the model above, it can be seen that both the international law and the national law must fulfill three elements that are basics for the telemedicine framework legislation. Those elements are technical standards, license, and existing fundamental. Through implementation, the national law will produce law products such as specific laws, code of conduct, guidelines, and regulations. In order to have these protection succeed, the parties (government, medical professions, patients, institutions, and NGO) must ensure the effectiveness of each regulations.
3.6 Telemmedicine in Indonesia

In Indonesia alone, the technology of telemedicine is developing even though still limited in certain aspects. It is an increase of awareness to evolve this technology to the needs and priority of patients. Indonesia is an archipelago state, thus telemedicine would be very helpful to solve the distance problem. There are several opinions that stated Indonesia ready for such technology based on wide connections. The technology information infrastructure that has connected all of the cities through Indonesia with a wide net system of Broadband, the human resources that is more than enough with skills in the technology field, and the computer software which is a product built by professionals and developed in a long time. It is a crucial part to make the sufficiency of telemedicine. To embrace the concept of telemedicine, the obstacles and Indonesia’s national regulations regarding to telemedicine are two things that we must pay attention to.

Urgency to implement from the International Law

If the international community were to have an instrument specifically highlighting the medical aspect, Indonesia should be the one to implement it. The reason is that Indonesia needs a guidance and role model to actually arrange a telemedicine service. The second is to abolish the possibility of “the void of law”. The third is to enable telemedicine performance in the international platform with standards and indicators to support the vision.

Obstacles in adjusting the telemedicine

The implementation of telemedicine in Indonesia until now is still developing, because through the process, there are some obstacles that is making it quite a challenge, the obstacles are:

1. Information and communication technology equipment’s for medical services are below the qualified quality.
2. Purchasing the needed equipment’s and hardware cost high expenses.
3. Lack of general practitioners because health practitioners in Indonesia prefer to be specialists which are unable to serve the society in rural areas.
4. Health practitioners are forced to serve more than their capability, especially in isolated places.
5. Adjustment to the diverse results of telemedicine.

Indonesia’s Regulations Regarding to Telemedicine

In order of implementing the telemedicine, Indonesia has its national regulation which consists of:

1. Government Regulation No. 10 year 1966 on the obligation of medical data confidentiality
   This regulation has given the society to have their rights of medical care with safety guarantees. Patients are possible to explain their complaints that are considered bothering them, either physically or psychology, with the motivation of those rights are to ensure their cure. They are hoped to not feel insecure about the privacy of their circumstances, which is not allowed to be violated by doctors or other medical staff. This is the main qualification to a good connection between doctors and patients.
2. Law No. 29 year 2004 on the Medical Practice
The aim of this regulation is to fulfill protection to the patient, to preserve the medical service quality, and certainty of law to the society, doctors, and dentists.

3. Law No. 11 Year 2008 on the Information and Electronic Transactions
The usage of technology, information, and electronic transactions are with the aim of enlightening the society as a part of world information, to expand the national economic and trading, increasing the public service sufficiency, to share a wider vision of the usage of technology.

4. Ministry of Health Decree No. 269 year 2008 on the Medical Record
This regulation controls the privacy information to be accessed in certain benefits such as the patient’s health, law enforcement request, has permissions from patient, and for the usage of education, research, and medical audit.

5. Ministry of Health Decree No. HK.02.2/MENKES/409/2016 on the Hospital Trial for Telemedicine Service Program based on Video Conference and Tele-Radiology
This regulation consists of supporting hospitals and supported hospitals. Supporting hospitals task include providing recommendation services adjusting to telemedicine based on video-conference needs, providing expertise radiology services, and establishing a telemedicine service functional team. The supported hospitals shall fulfill tasks of providing medical records, informed consent, and facilitations that supports the telemedicine performance.

6. Action Plan of the Ministry of Health’s Secretariat of Director General of Health Service 2015-2019
In order to enhance the Primary Level of Health Facility, this Action Plan established a policy direction. The third point of the policy is to realize service innovation which includes flying health care, telemedicine, and superior hospitals.

4 Conclusion and Recommendation

The international law has not regulated the telemedicine specifically yet rather subtle in the Ottawa Charter on Health Promotion, UN General Assembly Resolution 73/91, EU Directive 2011/24, and ASEAN Telemedicine Protocol and Standard Harmonization. For (international) patients of telemedicine, their protection depends on the cooperation between the international law and national law, reconsidering three basics which are technical standards, licenses, and existing fundamental law.

In Indonesia, the Ministry of Health Decree No. HK.02.2/MENKES/409/2016 on the Hospital Trial for Telemedicine Service Program based on Video Conference and Tele-Radiology and Action Plan of the Ministry of Health’s Secretariat of Director General of Health Service 2015-2019 have impacted the telemedicine’s performance. Despite the adjustment, Indonesia has come a lot in embracing the concept of telemedicine. Through this research, recommendations are aimed to:

1. The international community is ought to form an international regulation specifically on the telemedicine, highlighting the protection for all parties involved and focusing on the health/medical perspective.

2. The Government of Indonesia must establish a policy that differs between technology, medical, and telemedicine.
References


Legal Sanctions on Corporation That Do Corruption

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Abstract. KUHP often lags behind the development of crimes that occur in the community so it must be patched to keep up with these developments. Corporate problems as the subject of criminal law, where corporations can carry out criminal acts and can be accounted for. Corruption problems are a problem that is hated by all the international community including the people of Indonesia so that since the reforms were rolled out in Indonesia this has been highlighted by various parties or it can be said that the problem of corruption is given priority to eradication.

Keywords: Corruption; Legal Sanction on Corporation; Legal Sanction of Corruption

1 Introduction

1.1 Background

Government policies in an effort to eradicate corruption continue to increase. This is evidenced by the establishment of commission IV, as stipulated in Presidential Decree No. 12 of 1970, with the following tasks:

1. Conducting research and assessment of policies and results achieved in the context of eradicating corruption;
2. Give consideration to the government regarding policies that are still needed in order to eradicate corruption.

On March 12, 1971, was passed into Law No. 3 of 1971 concerning the eradication of Corruption Crimes. Efforts in the handling of criminal acts (criminal policies) in general, especially criminal acts of corruption, can be pursued by using the means of reasoning and non-reasoning in an integrated manner because the means of reason have limited ability to repeat crimes for certain reasons.

Reasoning efforts that have been made are the issuance of various legislative products to eradicate corruption, while the non-reasoning efforts that have been made are the screening of corruptors on television media. Developments in Indonesia in some of the biggest criminal law regulations outside the Criminal Code regulate corporations as criminal offenders and can be punished, for example, Law No. 20 of 2001 concerning Eradication of Corruption Crimes discussed in this paper, the acceptance of corporations as perpetrators of criminal acts and can be convicted, then the interesting thing to study is the problem of corporate and criminal liability that is united in the corporation.

1.2 Formulation of Problems/Questions

Based on the things mentioned above associated with the background of the problem, the problems raised in this paper are as follows:
1. Can corporations be criminally responsible?
2. What forms of criminal liability and sanctions on corporations in criminal acts of corruption?

1.3 Theory and Related Works

Justice from Plato (classical age)
1. The government is held by wise people to be fair
2. Law as a means of justice.
3. Fair Law Reality:
   a. The best law to deal with injustice.
   b. The rule of law must be compiled in one book to avoid chaos.
   c. The law must be preceded by a preamble of contents about motives and goals.

1.4 Search Objectives

Based on the background of the problems and problems raised above, the objectives of this study are:
1. To find out corporate responsibility in criminal law.
2. To find out the form of corporate criminal liability for corruption.

2 Methods

2.1 Time and Context of Research

Approach to the Problem

The approach taken in this study is a normative juridical approach and an empirical juridical approach.

Data Sources and Types

The data used in this study is data obtained directly from the field (empirical data) and from library materials. Primary data is the result of field research that will be conducted from sources of observation and open and in-depth interviews with officials who are directly involved or know the problem of corporate criminal liability in corruption. Secondary Data is the data used to solve the problem in this study is secondary data, namely data obtained from the results of library research by studying and citing books or literature and applicable legislation and supporting this research. Secondary data consists of 3 legal materials, namely:

Secondary data is data obtained through library research activities by reading, analyzing, recording, analyzing and citing books, laws and several provisions and other literature relating to legal issues that occur include:
1. Primary Law Materials which include:
   Primary legal material is in the form of legislation along with the implementing regulations, which consist of:
   a. 1945 Constitution The 4th Amendment Result
c. Law Number 8 of 1981 concerning the Criminal Procedure Code;
d. Law Number 2 of 2002 concerning Republic of Indonesia Police;
e. Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office;
f. Law Number 48 of 2009 concerning Republic of Indonesia Judicial Power;
g. Government Regulation Number 58 of 2010 as amended by Government Regulation Number 92 of 2015 concerning the implementation of the Criminal Procedure Code.

2. Secondary Legal Materials
   Secondary legal materials that include, documentation or notes, literature relating to this research and observations (observations) in the data field obtained from library studies and interviews with the Lampung Regional Police. Field data were obtained from the Lampung Regional Police, The Lampung High Prosecutor's Office and the Tanjung Karang Corruption Court.

3. Tertiary Legal Materials
   Tertiary legal materials are materials relating to primary and secondary legal materials, such as dictionaries, encyclopedias and so on.

4. Primary data
   Namely, data sourced and obtained directly from the object of field research and carried out by collecting data, researching and selecting primary data obtained directly from the field, especially from legal practitioners and other related parties.

5. Informant
   The informant is someone who can provide clues about the symptoms and conditions relating to an event. At this stage using a list of statements that are open where it is done to the parties relating to the problems in this study include:

   a. Police in Lampung Region : 1 person
   b. Attorney at the Lampung High Prosecutor's Office: 1 person
   c. The judge at the Tanjung Karang Corruption Court: 1 person
   d. Academics at the University of Lampung: 1 person

   Total: 4 persons

2.2 Tools/Data Collection Methods
1. Collection Methods
   In collecting data for this thesis research the researcher used 2 types of data collection procedures, namely:
   a. Library research
      Data collection through this literature study was conducted to study the literature on existing legal materials by reading, quoting, analyzing whether the data is sufficiently complete to be prepared in the process of data verification carried out carefully and adjusted to the subject matter. Field Research.
   b. Field research
      This research focuses on primary data, so data collection is done openly in-depth interviewing (open and in-depth interviews) by preparing the main points of the problem can then develop at the time the research took place. At this stage,
various interviews were conducted with several key informants who were found, namely from the Lampung Regional Police. Because these respondents had vitally related authority, especially in terms of problems in the condition of corruption law enforcement related to corporate criminal liability as perpetrators of corruption. So that later obtained detailed information and resolution of the problem.

2. Data Processing
   After secondary data and primary data are obtained, data processing is carried out in the following steps:
   a. Data Selection of data that is checked for completeness, clarity, and relevance to the research.
   b. Data Classification Data classification is sorting or classifying the data obtained either by literature study or interview results.
   c. Data Systematics Data systematics, namely placing data in accordance with predetermined subjects in a practical and systematic manner.

Analysis Methods
   After collecting and processing the data, it is then analyzed qualitatively by the normative juridical approach and empirical juridical approach, namely by describing all the results of the research obtained from theory, legislation and field data, according to the nature of the symptoms and events of the law that are linked to the theory criminal law.

3 Results and Discussion

3.1 Definition of Corporate Crime

   In various parties, corporate crime is often confused with various types of crimes, such as occupation crime, professional crime (organized crime), organized crime, a crime against the corporation (crime against corporations) and criminal corporations (corporations as means of committing a crime). Marshall B. Clinard and Peter C Yeager give an understanding of crime as follows: A corporation committed to being punished by the state, regardless of whether it is finished under administrative, civil, or criminal law (corporate crime is every action which is carried out by corporations that can be punished by the State, whether under state administrative law, civil law or criminal law.

   Corporate crime is carried out for the benefit of the corporation and not vice versa, a crime against a corporation called employee crimes is a crime committed by employees of a corporation, such as embezzlement of company funds by an official or employee of the company. Whereas being criminal corporations is a corporation that is deliberately formed and controlled to commit a crime. The position of the corporation here is merely a means of committing a crime "mask" to hide the real face of a crime. The usual pattern is that a legal entity seeks to be determined for legitimate purposes and then develops within the limits of an illegal organization indicated for the crime. The important thing to distinguish between crime for corporations is related to the perpetrators and the results of the crimes they have obtained. The perpetrators of crime in corporate crime are the corporation itself. Whereas perpetrators in criminal corporations are criminals outside the corporation, and the corporation is only a means to commit crimes. The proceeds of crime in corporate crime are in the interests of the corporation itself.
3.2 Corporate Criminal Liability System

With regard to criminal liability, the main principle that applies is that there must be an error (Schuld) on the perpetrator according to the notion of error (Schuld) having three special tents, namely:

1. Responsible ability of people who commit actions.
2. Certain inner relationships of people who do their actions can be intentional or negligent.
3. There is no basis for removing the responsibility for the creator for his actions.

To determine the ability of corporate responsibility as the subject of a criminal offense, this is not easy because the corporation as a subject does not have the obligation (spirituality) like natural people (Natuurlijk Persoon). And because the corporation has been recognized as the subject of law, all the effects of the activities it causes that are negative towards the general welfare can be accounted for criminally. At present corporations or business entities in the business world can be extensively liable for crimes or crimes committed by corporate agents acting on behalf of the corporation.

Relating to the form of accountability of a legal entity (corporation), which is about the punishment imposed on a legal entity (corporation) itself. In terms of according to S.R Sianturi, it has been concluded about the provisions regarding the punishment of a legal entity or union, including:

1. That the punishment is in principle not directed at a legal entity or union, but actually to a group of people who work together for a purpose or who have shared wealth for a purpose incorporated in the agency.
2. There are several provisions that must deviate from the application of criminal law (general) against these bodies in the event that the body can be convicted, such as the possibility of imposing a criminal deprivation of liberty (Prison, Confinement) on him, and the possibility of criminal penalties being replaced with imprisonment.

If we want to connect the perpetrators with their actions in order to account for the speech of the perpetrators, it must be examined and proven that:

1. The subject must be in accordance with the formulation of the Act.
2. There is an error in action.
3. The act is illegal.
4. The act is prohibited and threatened by criminal law, and
5. The action is carried out in accordance with the place, time, and other conditions specified in the law.

In the development of Indonesian criminal law, there are three systems of corporate responsibility as the subject of criminal acts, namely (1) Corporate administrators as makers, then the administrators are responsible, (2) Corporations as makers, then responsible managers (3) Corporations as responsible and responsible. The regulation of corporations as the subject of criminal acts in our positive criminal law turns out to be very diverse. The development of corporate regulation as the subject of criminal acts can be clarified based on three systems of accountability, which are explained in detail as follows:

**Corporate Managers As Makers, Then Administrators Are Responsible**

This system of accountability is characterized by efforts to ensure that the nature of criminal acts committed by corporations is limited to individuals (natuurlijk Persoon). So that if a criminal act occurs within the corporation's environment, then the criminal act is deemed to be carried out by corporate management. In connection with the development of the concept of corporation as a subject matter, it can be stated that the general provisions of the Indonesian
criminal law (KUHP) currently in effect still adhere to that a criminal can only be committed by humans while corporations according to the theory of physics from Von Savigny are legal subjects. Provisions that indicate that acts can only be committed by human beings are Article 51 WVS Netherlands or Article 59 of the Criminal Code, which reads, "in cases where violations are determined criminal against the management, members of the governing body or commissioner, then administrators, management body members who apparently do not interfere committing a criminal offense ". By looking at the above provisions, it can be seen that the previous compilers of the Criminal Code were influenced by the principle of non-potent societies delinquent or no protest delinquent universities, ie legal entities cannot commit a crime.

Corporations As Makers, Then Administrators Are Responsible
The second system of corporate responsibility is marked by a recognition that arises in the formulation of the Law that a crime can be committed by a union or business entity, but that responsibility is a burden on the management of the corporation. Slowly criminal responsibility shifts from members of the management to those who order, or with a prohibition to do it if it actually leads the corporation. In this system of accountability, corporations can become makers of criminal acts, but those responsible are the members of the board.

Corporations as Makers and Responsible
This third system of accountability is the beginning of the immediate responsibility of the corporation. In this system, the possibility is opened according to the corporation and holds accountable according to criminal law. Things that can be used as the basis of justification or the reason that the corporation as the maker of and also responsible are as follows: First, because in various economic crimes, profits obtained by the corporation or losses suffered by the community can be so large that it will not be balanced if the criminal is only dropped only to the board. Second, by only convicting the management, there is no or no guarantee that the corporation will not repeat the crime again.

By convicting corporations of the type and weight in accordance with the nature of the corporation, it is expected that the corporation can comply with the relevant regulations. In this third system of accountability, there has been a shift in view, that corporations can be held accountable for this third, there has been a shift in view, that corporations can be accounted as makers, besides natural people (naturlijk persoon). So the refusal of corporate punishment based on the doctrine of the non-potent delinquent university has undergone a change by accepting the concept of a functional actor (functioneel daderschap).

3.3 Form of Corporate Responsibility in Corruption Crimes
The word of responsibility comes from a word of responsibility, that is, an offense of responsibility and crime is an audible phrase and is used in daily conversation both moral, religious, and legal. The three elements are related to one another and are rooted in the same state that the breach of a system of rules may be broad and diverse, covering civil law and criminal law and moral rules. Responsible for a crime means that the lawful person may be subject to criminal penalties for the action he has committed. A criminal offense can be legally sanctioned if for that action there is already a rule in a relationship system and that the system is applicable to that action. In other words, the action is not allowed by the system.

Here is the basic concept. The law aims to achieve justice and justice is commonly interpreted in common. In the use of criminal sanctions as one of the means of social sanction
in all limitations. Muladi said that the conditions for optimally using criminal sanctions must include:

1. The prohibited acts, according to most members of the community, are considered strikingly harmful to the community, considered important by the community.
2. The application of criminal sanctions against acts that are prohibited is consistent with the objectives of punishment.
3. The eradication of these acts, will not experience or hinder the desired behavior of the community.
4. Such behavior can be understood in ways that are not biased and not discriminatory.
5. Arrangement through the process of criminal law, will not give a heavy impression, both qualitatively and quantitatively.
6. There are no choices based on the criminal sanction, to deal with this behavior.
7. With the existence of Law No. 31 of 1999 Jo. Law 20 of 2001, Law 3 of 1971 concerning the eradication of criminal acts of corruption is not in accordance with the development of legal needs in society, which is expected to be more effective in preventing and eradicating criminal acts of corruption. In Law 31 of 1999, there are several formulations of corruption offenses, formally formulated which are adopted in this law, even though the results of corruption have been returned to the State, perpetrators of corruption are still sent to court and remain convicted.

3.4 Criminal Imposition of Corporations in Corruption Crimes

In article 20 paragraph (1) Law No. 20 of 2001 stipulates that: "In the case of a criminal act carried out by or on behalf of a corporation, then the demands and imposition of criminal acts can be carried out against the corporation and/or its management". So what can be accounted for is:

1. Corporate;
2. The management;

Suprapto also stated that the penalties that can be imposed on companies are:

a. The closing of all or part of the company of the convicted person for a certain period of time;
b. Revocation of all or part of certain facilities that have been or can be obtained from the government by the company for a certain period of time.
c. Placement of companies under forgiveness for a certain period of time.

4. Conclusion and Recommendation

4.1 Conclusion

1. The corporation is a business entity whose existence and legal status are equated with humans (people), regardless of the shape of the organization. Corporations can have wealth and debt, make claims, and be sued before the court. Whereas corporate crime is any action taken by a corporation that can be punished by the State, both in the punishment of state administration, civil law and criminal law. In this case, the penalty that can be imposed on the company (corporation) is the closure of all or part of the corporation (corporations), the revocation of certain facilities obtained from the government, placement of companies under forgiveness for a certain period of time,
criminal penalties, civil sanctions or compensation. So with this, it can be concluded that the system of corporate accountability as the subject of criminal acts, namely the corporate management as the maker, the management is responsible, the corporation as the maker and responsible. The corporate responsibility in the Criminal Code is in accordance with article 59 of the responsible officials, article 169 paragraph (2), article 378 benefits themselves / others.

2. The legal subject in the Corruption Eradication Act is: every person or corporation (article 2 paragraph (1) and article 3). Legal subjects who can be snared as perpetrators of criminal acts of corruption are not only individual individuals (their capacity as private persons or civil servants), but also a corporation, corporate criminal responsibility for criminal acts of corruption.

4.2 Recommendation

1. In terms of criminal liability against corporations, it should be viewed from various sides, this is because if the corporation is given criminal liability that is very ineffective, it can have an adverse effect on those who do not participate in committing the corporate crime. Such as employees or workers who can be negatively affected by the implementation of corporate criminal sanctions that are less effective, so that in this case law enforcers must be truly wise in deciding the imposition of criminal sanctions on corporations in accordance with the laws and regulations.

2. In the case of corporate responsibility for criminal acts of corruption, law enforcers should see appropriate and effective sanctions against corporations that commit such crimes. So that it not only creates a deterrent effect for the actors in the corporation itself, but also creates justice for all Indonesian citizens so that the ideals of the State of Indonesia, namely the creation of justice and free corruption are truly realized in our country.

References

The Online Purchasing Contract Done by Students of Faculty of Law in Lampung University

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Abstract. Selling and buying are activities commonly done by public both in urban and rural areas. Along with age development, purchasing goods must not necessarily be done directly, but can be done with online purchasing, by using internet media. Online selling and buying are activities where seller and buyer must not necessarily meet to do negotiation, transaction, and communication, and it is not separated from Article 1320 of Civil Code (KUHPerdata). Many students of faculty of law use online media to chat, make phone call, to do SMS, to use Facebook, Instagram, etc. Therefore, the author conducted a study with problems on how did the implementation of online purchasing done by students of faculty of law and how did the legal effect of this online purchasing. This was a normative empirical and descriptive research by using sociological jurisdiction approach. Primary data were collected by field study with interviews to 50 students of faculty of law who conducted online purchasing. The research result with samples of 50 students of faculty of law who conducted online purchasing showed that this selling and buying transaction had been done according to the requirements for a valid contract from Article 1320 of Civil Code (KUHPerdata). The requirements were that seller and buyer must be polite, communication was done by using good Wi-Fi and hotspot network in campus environment, by using pictures in internet, and students selected the pictures that they liked, they stated their agreements to do purchasing by filling name, phone number, address, and then students did the payment to a referred bank by the seller. After these processes finished, the student would send transfer evidence to the seller, and then the seller would send the desired goods. The legal effect of online purchasing done by the students was that an agreement that the purchaser had the right upon the goods with any risk that the goods might be received beyond expectation. 50% samples who did online purchasing were not satisfied because the received goods were beyond expectation.

Keywords: agreement; selling and buying; online

1 Introduction

The increase on social and economic activity with the constellation of world society has entered into an information-oriented society. The systematic progress of information and technology have been used in many sectors of life, ranging from trade or business (electronic commerce or e-commerce), education (electronic education), health (tele-medicine), telekarya, transportation, industry, tourism, and environment to the entertainment sector. Information technology includes systems that collect, store, process, produce and send information from industry to society effectively and quickly. Information Technology provides numerous benefits and offers an appealing promise for life in the digital age like today, by using the
sophistication of information technology, we can do many things in minutes. Information technology can really help us do the work and solve it more effectively and efficiently. The increasingly rapid development of Information and Communication Technology in Indonesia leads to technological convergence which has an impact on the paradigm shift in the telecommunications industry and business.

The paradigm shift includes technology shifts, changes in business structure and patterns, and their effects on people's lives. Article 1 number 2 of Law of the Republic of Indonesia No. 11 Of 2008 Concerning Electronic Information and Transactions hereinafter referred to as ITE Law, define electronic transactions as a legal act that is committed by the use of Computers, Computer networks, and/or other electronic media. The next word is an online word which is often translated in Indonesian as a ‘dalam jaringan’ or better known as the abbreviation 'daring'. Online refers to when computer established an Internet connection, if our computer or mobile phone is online then we can access the internet. With this access, we can establish communication (both verbal and nonverbal) only online with various nations and countries throughout the world. Online can also be used as an adjective to describe activity performed while on the Internet, such as online shopping.

The internet provides the opportunity for a company to develop or supporting its business and reach geographically dispersed customers. It happened in the law faculty environment, where many students made buying and selling transactions through Wi-Fi within the faculty of law. Students make purchases for the needs in the field of fashion and beauty. At first the purchase of fashion and beauty products was done with conventional methods but later changed using an online shop application (electronic commerce). Based on the background above, the writer is interested in writing with the title Online Purchase Agreement Made by University of Lampung Faculty of Law Students.

2 Research Results and Discussion

2.1 Implementation of Online Purchase Agreements Made by Faculty of Law students

Article 1313 of the Indonesian Civil Code states that the meaning of an agreement is an act pursuant to which one or more individuals bind themselves to one another. According to Abdulkadir Muhammad, an agreement is an agreement by which two or more parties commit themselves to carry out a material thing in the field of assets. According to Subekti, an agreement is an event where someone promises to a person or where two people promise one another to do something, then from this event, an engagement relationship arises. The definition of electronic contracts is explained in Article 1 number 17 of the ITE Law that Electronic Contract is an agreement of parties entered into by means of Electronic Systems. Business entity who offering goods or services must provide information about the terms of the contract, complete and correct product contents of goods or services electronically.

We can see elements from online shopping are trade contracts, electronic media, physical presence is not needed, contracts in public networks, and the systems are open. Information technology has offered various facilities such as speed of data and information access, problem solving and work automation and so on. Intensive and extensive use of computers, internet, cell phones and ATMs has overcome the limitations of space and time. Buying and selling activities are part of the agreement activities. Buying and selling does not have to be
done directly, that is, face to face, but can be done through online media using the internet. The use of internet media can be done with Facebook, Instagram, WhatsApp, and others.

The principles adopted in buying and selling online adhere to the Indonesian Civil Code, especially in Article 1320 of the Civil Code, in order to be valid, an agreement must satisfy the following four conditions:

1. There must be consent of the individuals who are bound thereby
   The seller offers the goods to the buyer and the buyer agrees to buy it. The seller sends the purchase format through internet media. In general, students of the Faculty of Law use the social media like Facebook, Instagram, and WhatsApp in carrying out buying and selling transactions. In the implementation of this buying and selling, Buyers, in this case, Law students make purchases by agreeing to their purchases, then an agreement automatically occurs.

2. There must be capacity to enter into an obligation
   According to the Indonesian Civil Code, the competent criteria are 21 years old. Students who buy and sell online are 21 years old, and all of the samples we used are 21 years old.

3. There must be a specific subject matter
   Certain objects are goods that are traded and their types are determined. Products offered online in the form of images or photos as well as with product specifications. Law students more than 75% buy products in Fashion and beauty.

4. There must be a permitted cause
5. It does not conflict with law, decency, and order. In buying and selling online, it must be ensured that transactions conducted by law students are carried out in good faith with the seller.

The ITE Law also regulates the terms and conditions for online trading transactions, namely:

1. Information Technology and Electronic Transaction utilization shall be implemented under the principles of legal certainty, benefit, prudence, good faith, and freedom to choose technology or technology neutrality.
2. Any Business Entity offering products through the Electronic System must provide complete and accurate information relating to the contract terms, manufacturers, and products offered
3. Parties that conduct Electronic Transactions must be in good faith in making interaction and/or exchange of Electronic Information and/or Electronic Documents during the transactions.
4. Provisions on the time of sending and receiving information and/or electronic transactions.

The terms of online sale and purchase are seen that when there is a transaction or agreement between the seller and the buyer, the buyer is a student of the Faculty of Law when an agreement occurs and before payment occurs, the seller will ask for the cost of shipping the goods. What shipping costs will be offered will use, when the buyer agrees it will be combined with the cost of purchasing goods that have been ordered. This is by the provisions contained in the Civil Code and the ITE Law.

2. Legal Consequences of Online Purchases Conducted by Law Faculty Students

Legal consequences are consequences that arise due to events, actions, and legal relationships. A legal effect can arise because of acts or actions that are intentionally carried out in order to arise the desired consequences in accordance with legal regulations. Article
Article 1320 of Indonesian Civil Code is a benchmark of the validity of an agreement, both in terms of subjective and objective conditions. An agreement that meets both subjective and objective conditions applies as binding to the parties to the agreement as the binding force of the law. Non-fulfillment of terms, both subjective or objectives, have impacts on the binding power of an agreement.

Subekti explained that an agreement that did not meet the subjective requirements could be requested for cancellation by one of the parties. An agreement that does not fulfill the objective requirements may cause an agreement to be treated as non-exist. Thus making the agreement should pay attention to the subjective and objective conditions, so that the rights and obligations of the parties contained in the agreement have legal binding force. In the event of such online trading, rights and obligations arise. The buyer's right is to receive the goods they bought in accordance with what they wants, while the obligation of a buyer under the contract of sale is to pay the price for the goods delivered. While the seller's right is to receive payment agreed with the buyer, the obligation of the seller is delivering the goods and transfer the property in the goods to the buyer, which for its part agrees to pay the price for the goods and take delivery of them.

Law faculty of Lampung University students on average, order goods via the internet through online shopping websites such as Tokopedia, Shopee, belibeli.com and some buy through Facebook and Instagram. In the case of clothing purchases, online shoppers do not have the ability to physically inspect or try on the items being considered for purchase, that's why the average is expressed dissatisfaction because the picture that look good and display properly and the original items are not suitable. Also, when they have received the goods ordered, most sizes do not fit, and goods that have been ordered cannot be returned.

### 3 Conclusion

Based on the results of the research described, it can be concluded that:

1. On-line purchases made by students of the Faculty of Law are in accordance with the provisions of the law contained in Article 1320 of the Indonesian Civil Code, which is first, agreed, by agreeing to the conditions that have been determined then automatically an agreement occurs, second, competent, the capacity to enter into an obligation that students have aged 21 years, third, specific subject matter that is the purchase of fashion and cosmetics, fourth, permitted cause, the purchase is not contrary to the law, decency and order.

2. The legal consequences of online purchases made by the student are appropriate because there have been rights and obligations where the seller provides the goods and the buyer pays the amount of money specified in the payment.

### References


Reconstruction of Criminal Law Protection Policy for Credit Consumers Based on Financial Technology

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Abstract. The development of fintech online loan business is currently growing rapidly in Indonesia. The use of online-based loans has become a breakthrough in economic development in Indonesia by providing easy loan services, but on the other hand fintech costumers are vulnerable to become victims of cybercrime such as threats, intimidation, fraud and misuse of personal data. The Efforts to protect costumers from organizing online loans based on POJK No. 1 / POJK.07 / 2013, POJK No. 77 / POJK.01 / 2016, and SEOJK Number 18 / SEOJK.02 / 2017. Therefore an ideal construction is needed in the protection of criminal law for fintech customers. This type of research is normative juridical and empirical juridical involving Lampung Financial Services Authority, Lampung Regional Police, and Lampung DISKOMINFO. The results of this study in the perspective of legal reform need to be made legal protection regulations provided to fintech costumers which include preventive legal protection and repressive legal protection based on the 2013 POJK and 2016 POJK as well as regulations related to the implementation of online-based fintech loans because they cannot currently provide protection maximum in the aspect of protection of criminal law so that it is necessary to make a special legislation policy that regulates related to the protection and implementation of fintech and the need for supervision that is carried out integrally by related agencies such as the Authority, KOMINFO, Police against illegal fintech.

Keywords: Policy; Protection; Criminal Law; Fintech Consumers; Financial Technology

1 Introduction

Technological developments have an impact on the higher economic growth in a country. One form of economic progress as a result of technological developments is the development of online-based financial business (financial technology). Digital economic developments led to service innovations in various fields, one of them is the business of lending and borrowing money based on financial technology (PM-Tekfin). Based on the NDRC (The National Digital Research Center) Fintech is an innovation in the financial sector that gets a touch of technology and brings a more practical and secure financial transaction process.

The fintech business presents payment system services which include lending and borrowing services between parties in the community and public capital services. The fintech payment business is regulated and supervised by Bank Indonesia (BI), while the fintech lending and capital fintech business is overseen by the Financial Services Authority (OJK). Bank Indonesia (BI) classifies fintech into 4 categories, namely: (1) Payment, settlement, and clearing, is the fintech category that provides payment system services performed by banks and BI. (2) Market aggregator, is fintech that presents financial data so that users can use it as
a comparison to choose the right financial product, (3) Risk and investment management, namely fintech which functions like a financial planner for users, (4) Peer to Peer Lending (P2P Lending) is a fintech offering direct loans to users at fixed rates.

One of fintech business that develops in Indonesia is Fintech Peer-to-peer (P2P) lending or what is referred to online-based. Fintech Peer-to-peer lending is a method of lending money to individuals or businesses and vice versa through applications that connect investors and borrowers online, peer to peer lending allows anyone to lend or apply for one another for various purposes without going through a legitimate financial institution as an intermediary.

The rise of the online business in addition to having a positive impact also a negative impact, according to Jakarta Legal Aid there are 283 victims complaining about various forms of legal customers. The weakness of costumers’ protection raises complex problems in several studies. It is known that the management of the financial system based on technology has not been able to provide effective protection considering when there are violations committed by parties concerned with fintech imposing criminal sanctions currently still using Law No. 19 of 2016 concerning ITE Law, namely Article 26 Paragraph 1, Article 27 and Article 29 if it involves the misuse of personal data, fraud and threats. Furthermore, fraud can be handled through fraud articles in the Criminal Code (KUHP). However, in practice, online-based crime is often constrained by evidence. Another problem is that online loan providers have also been carried out by illegal fintech operators whose physical presence is unknown.

Based on the description above, the development of fintech in Indonesia has not been matched by regulations on the protection of criminal law against costumers, so that many people are victims of crime in the implementation of online-based. The urgency of an ideal criminal law protection policy for fintech costumers is urgently needed to ensure the optimization of fintech especially the online loan business for economic growth and financial inclusion in achieving a balance between the ease and flexibility of technology offered by fintech with aspects of consumer security and comfort.

Based on this description, this article will focus on the implementation of criminal law protection for fintech-based costumers credit loans in positive law in Indonesia today, and the ideal construction of implementing criminal law protection for fintech-based consumer loans in the perspective of renewal, so that effective, efficient and fair fintech costumers protection policies are obtained in order to realize economic development and financial services are easy and convenient for the community as well as measures to prevent potential disruptions to financial system stability in Indonesia.

2 Methods

The approach used in writing is a legal approach, namely studying the law as a social phenomenon associated with the organization of corporate programs in the field of financial services based on internet technology. This approach examines the law as a construction as well as protection from the social phenomena associated with fintech. In addition, in accordance with the scientific character of law as a practical science with authoritative nomology, a statutory approach is also used. Some data collections will be done through in-depth interviews and focus group discussions with stakeholders in the field of electronic technology formation, IT expert, criminal law expert, and law enforcement (Lampung Regional Police).
While legal materials are collected through identification, inventory, classification and systematization of legal materials according to research problems. Analysis of legal materials or data are carried out prescriptive-analytic, that is, examining legal concepts, legal principles, legal norms, and legal systems relating to the administration and development of government in the field of technology-based financial services, particularly fintech companies. Dogmatic legal perspective, analysis of legal materials are done by way of exposure and analysis of the content (structure) of applicable law, systematization of legal phenomena that are explained and analyzed, interpretations, and assessments of applicable law.

3 Discussion

3.1 Criminal Legal Protection of Online Based Consumer in Positive Law in Indonesia

The State of Indonesia is a state of law, reads Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the duties and obligations of the State in providing legal protection for people who needs attention, it is legal protection for online customers. Based on the theory of legal protection proposed by Satjipto Rahardjo which in this theory explains that legal protection is to provide protection for human rights that have been harmed by the public in order to enjoy all the rights granted by law. Efforts to protect human rights are carried out in two ways, are:

1. Preventive Legal Protection
   Protection provided by the government with the aim of preventing before the occurrence of violations. This is contained in legislation with the intent to prevent a violation and provide guidelines or limitations in carrying out an obligation.

2. Repressive Legal Protection
   Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional punishment given if a dispute has occurred or a violation has been committed.

Business activities in the era of the industrial revolution 4.0 generation has interfered with all aspects of human life and often cause legal problems, so that the state needs to play a role in protecting people as costumers, or service users of the business against the possibility of the occurrence of crimes in the course of the business. One of them is fintech Peer to Peer lending also called online-based. Based on the results of research conducted by researchers, it is known that in the operationalization of business activities fintech Lending or online-based currently there have been several violations of the consumer rights of users of online-based that are violated by the host company. The forms of violations can be seen in table 1.1 below:

<table>
<thead>
<tr>
<th>No</th>
<th>Type of violation</th>
<th>Number of Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Very high interest rates without Limitation</td>
<td>1145</td>
</tr>
<tr>
<td>2</td>
<td>Billing not only to borrowers or emergency contact numbers</td>
<td>1100</td>
</tr>
<tr>
<td>3</td>
<td>Distribution of photos and loan information to borrower contacts</td>
<td>903</td>
</tr>
<tr>
<td>4</td>
<td>Conduct threats, libel, sexual harassment and fraud</td>
<td>781</td>
</tr>
<tr>
<td>5</td>
<td>Dissemination of personal data</td>
<td>915</td>
</tr>
</tbody>
</table>
Regarding the violations stated above, online-based costumers’ loans are also vulnerable to becoming victims of crime. As for the types of violations that can be categorized as crimes are as follows:

1. First, credit crimes committed by corporate debtors who apply for credit by inflating the financial statements and good performance in order to get credit.
2. Second, prospective debtors have a tendency to bankrupt themselves.
3. Third, document falsification consisting of 2 types, namely bank guarantees and falsification of deposit bills.
4. Fourth, phishing or credit card identity theft, including crime of skimming or data theft through an account at an ATM.
5. Fifth, falsification of e-banking display (modified similar to the original and then deceived the customer when entering the password and username that is used primarily to move funds from the victim's account).

Related to the types of violations above based on the Focus Group Discussion (FGD) that has been conducted with the financial services authority, Dwi Krisno said that in fact the violations of the costumers rights of users of the fintech service Lending are often violated and most of the perpetrators are fintech Lending illegal, that’s making it easier for businesses to pressure their customers who have not been able to pay off their debts with modes that conflict with existing laws, this is because at the time of making the fintech site peer to peer Lending is separated from the monitoring of his side because the financial services authority does not have the authority to supervise and close illegal and unilateral peer to peer Lending sites but must first propose site blocking to KOMINFO.

According to the Chairperson of the Investment Alert Task Force for Financial Services Authority, Tongam L Tobing said there needs to be a special law governing criminal acts against online loan services or illegal fintech’s so that illegal and unregistered fintech’s can be legally processed. Tongam revealed, during July 2019 to August 2019 the financial services authority had stopped 1,230 illegal fintech’s. Of these, as many as 42 percent are not known the location of the server. Currently there are efforts to monitor and monitor illegal fintech’s but there are still many illegal fintech’s that continue to emerge and operate.
The efforts made by Financial Services Authority to protect consumers from Fintech (P2P) illegal lending consists of two efforts, namely preventive and repressive efforts. This preventive effort is a protection that has the nature of prevention carried out by providing information and education related to the characteristics of the financial services sector by using digital outdoor space, social media, and outreach. Furthermore, through the Investment Alert Task Force formed by the Financial Services Authority which is tasked with preventing and stopping peer to peer Lending Illegal activities can take decisive actions that can protect peer to peer lending consumers are:

1. Announce to the public the names of peer to peer Lending Illegal so customers can know whether the website or online based loan application that they want to use is safe or not so that no further victims occur.
2. Disconnecting peer to peer Lending Illegal financial access to banks and fintech payment systems in collaboration with Bank Indonesia

While repressive measures are protections made after violations or disputes such as cracking down on peer to peer Lending Illegal and legal investment actors by applying sanctions that apply to existing regulations, settlement of complaints, termination of company activities or other administrative actions, and legal defense to protect customers. Efforts to protect customers from organizing online loans are regulated by special regulations made by OJK relating to aspects of consumer protection, including:

1. POJK No. 1 / POJK.07 / 2013 concerning customers Protection in the Financial Services Sector. This provision especially applies to PUJK which has been overseen by the Financial Services Authority and carries out Fintech services. The PUJK must pay attention to all aspects of customers’ protection by applying the principles stipulated in article 2, namely the principles of transparency, fair treatment, reliability, confidentiality and security of customers’ data / information, and the use of customers’ complaints and settlement in a simple, fast and affordable cost.

2. POJK No. 77 / POJK.01 / 2016 concerning Information Technology and SEOJK Lending and Borrowing Services Number 18 / SEOJK.02 / 2017 concerning Information Technology Governance and Risk Management for Information Technology Lending and Borrowing.

Costumers’ protection aspects regulated in peer to peer Lending by Financial Services Authority regulates the basic principles of user protection as in POJK No. 1 / POJK.07 / 2013 concerning customers Protection in the Financial Services Sector, including:

1. The Organizer must provide and convey the latest information that is accurate, honest, clear and not misleading;
2. The organizer must use simple terms, phrases and or sentences in Indonesian that are easily read and understood by users in each electronic documents
3. The Operator is required to have standard operating procedures in serving users contained in electronic documents
4. The organizer is prohibited in any way from providing data and or information about users to third parties.

Regarding the protection of personal data on online based costumers loans, according to Permen PM 20/2016, is entitled to the confidentiality of his data. His data has the right to submit complaints in the context of resolving personal data sticky entitled to get access to obtain historical personal data and has the right to request the destruction of certain personal data of his person in the electronic system. According to Gunawan Sujadmiko, if a violation is committed through an online loan in the form of theft of personal data of the user of the provider and is disseminated without the consent of the customers, then the action is a
criminal action for a crime against a person's personal right to be kept confidential information about himself. As stated in Law No. 11 of 2008 concerning Electronic Information and Transactions, which includes protection from unauthorized use, protection by electronic system providers, and protection from illegal access and interference. Article 65 Paragraph 1-4 of Law No. 7 of 2014 concerning Trade therein also stipulates that "The use of an electronic system is required to meet the provisions stipulated in the ITE Law".

The data and / or information contains at least the following matters:
1. Identity and legality of the business actor as a producer or distribution business actor;
2. Technical requirements of the goods offered.
3. Technical requirements or qualifications of services offered;
4. Price and method of payment of goods and / or services;
5. How to deliver goods.

Rahmad Mardian said that in addition to the perpetrators of the theft of personal data of providers, users may be subject to articles in the ITE Law and can also be charged with Articles contained in the Criminal Code, namely. If the criminal act takes the form of physical violence and the taking of property, it may be subject to sanctions in accordance with Criminal Code Article 170 concerning violence, Article 351 concerning defamation, Article 368 Paragraph 1 concerning extortion and threats, Article 335 Paragraph 1 concerning forcing others to use violence.

3.2 Ideal Construction that can be Used in Forming Special Arrangements Regarding Fintech

The cases related to victims of fintech who are entangled in online as previously stated, make the public demand good and ideal regulations related to the implementation of online loans in order to protect the public and legal certainty from the bondage of "online moneylenders". The appropriate construction to be used in providing criminal law protection for fintech costumer is peer to peer lending, namely the PM-Tekfin Business must not be in conflict with Law Number 11 of 2008 concerning Information and Electronic Transactions. Legal protection that should be regulated includes criminal and civil legal protection in terms of business actors, consumers, products, and transactions in accordance with applicable laws. However, The Financial Services Authority cannot provide any other sanctions other than closing the company for illegal online loan service companies.

The regulation and supervision of PM-Tekfin's service business must also be based on;
1. Article 28 letter (F) and (G) Paragraph 1 of the 1945 Constitution;
2. Article 1 number 10, Article 5, Article 6 of Law Number 21 Year 2011 concerning the Financial Services Authority (OJK);
3. Law Number 11 Year 2008 concerning Information and Electronic Transactions (ITE)
4. Law Number 8 of 1999 concerning Consumer Protection;
5. Article 65 Paragraph (1 to 4) of Law Number 7 of 2014 concerning Trade;
6. Article 5 of Law Number 8 of 2010 concerning Money Laundering Crimes;
7. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
8. Article 2 Paragraph (2) Regulation of the Financial Services Authority Number 77 / POJK.01 / 2016 concerning Information Technology Based Lending and Borrowing Services;
9. Article 2 Paragraph Regulation of the Financial Services Authority Number 1 / POJK.07 / 2013 concerning Consumer Protection of the Financial Services Sector;
10. Article 1313, Article 1754 of the Civil Code (Civil Code) and Article 5, Article 170, Article 351, Article 368 Paragraph 1, Article 335 Paragraph 1 of the Criminal Code (KUHP).

There are needs to be a synergy of cooperation between the Ministry of Communication and Information Technology (Kominfo), the Financial Services Authority, and the police in overseeing online loan services. Currently the Financial Services Authority through its task force has made preventive measures against illegal online loan services. This was done by announcing a list of illegal online loan services to the public and then applying for blocking through the Ministry of Communication and Information to cut off financial access, and then submit a report to the police.

4 Conclusion

Based on the discussion above, it can be concluded that one form of fintech business that develops in Indonesia is Fintech Peer-to-peer lending or what is referred to as online-based. Fintech Peer-to-peer. Related to the implementation, there are often violations against consumers of fintech peer to peer lending users, therefore legal protection is needed for consumers of fintech users using peer to peer lending. The efforts was made to protect costumers from illegal peer to peer Lending consist of two efforts, namely preventive and repressive measures. This preventive effort is a protection that has the nature of prevention carried out by providing information and education related to the characteristics of the financial services sector by using outdoor digital space, social media, and outreach, Whereas repressive measures are protection carried out after violations or disputes such as cracking down on peer to peer legal lending and legal investment by implementing sanctions that apply to existing regulations, settlement of complaints, termination of company activities or other administrative actions, and legal defense to protect costumers.

Appropriate construction to be used in providing criminal law protection for fintech costumers of peer to peer lending, which must be in accordance with and must not be conflict with Law Number 11 of 2008 concerning Information and Electronic Transactions. Legal protection that should be regulated includes criminal and civil legal protection in terms of business actors, costumers, products, and transactions in accordance with applicable laws. The formation and regulation of PM-Tekfin's service business must be carried out based on laws relating to the implementation of fintech peer to peer lending. There needs to be a synergy of cooperation between the Ministry of Communication and Information Technology (Kominfo), the Financial Services Authority, and the police in overseeing online loan services. Increased digital literacy in the community. Considering that the negative impact of illegal online loan services is greatest in the community, there needs to be literacy to the public regarding digital / technology based. The public needs to know the provisions, impacts, and legal protection of these online loan transactions.

References

Legal Protection for Bitcoin Users in Criminal Acts of Fraud in Indonesia

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Abstract. This paper discusses legal protection in criminal law for bitcoin users in Indonesia. Bitcoin has not been specifically regulated in Indonesian laws and regulations; even the Indonesian government has made a clear statement regarding the illegitimacy of bitcoin. Bitcoin fraud raises new issues related to legal protection for its users in Indonesia. The research method used is normative legal research, with the statute approach and case approach. This study uses secondary legal data. The results of the study indicate that bitcoin does not have a positive legal arrangement in Indonesia. Even so, bitcoin can be a legitimate payment instrument in Indonesia with several conditions being fulfilled, such as not easily damaged, good quality, cannot be faked, easy to carry, and has a stable value. Whereas in terms of legal protection for users of bitcoin in Indonesia based on Article 28D of the Constitution of the Republic of Indonesia in 1945. Although bitcoin is not explicitly stated in Law Number 11 of 2008 concerning Information and Electronic Transactions, this law can be used as its legal basis, because bitcoin is included in the form of electronic transactions. The Criminal Code can be a threat to the perpetrators of bitcoin fraud.

Keywords: Legal Protection; Bitcoin Fraud

1 Introduction

The progress of information and communication technology (IPTEK) has an impact on social change in society both in the fields of political, economic, legal and cultural life. One of the results of the progress of science and technology is globalization. Globalization as is known as the process of entering the world scope. In other words, the information and communication traffic in the era of globalization does not have a significant limit so that currently, all the world community can easily access science and technology. The progress of science and technology gave birth to innovations in the field of finance, such as the emergence of Virtual Currency like the existence of an online bitcoin payment system. Bitcoin is not currently the only form of digital money in the world. There are 1,500 (one thousand five hundred) other forms of digital money, but bitcoin is the first and most popular digital money. Here's a comparison of bitcoin with five other popular digital money:

Table 1. Comparison Bitcoin with Other Popular Digital Money

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Market Cap</th>
<th>Price</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bitcoin</td>
<td>$93,193,804,600</td>
<td>$5,285.01</td>
<td>$17,408,166,061</td>
</tr>
<tr>
<td>2.</td>
<td>Ethereum</td>
<td>$19,164,550,112</td>
<td>$181.54</td>
<td>$8,737,216,810</td>
</tr>
</tbody>
</table>
3. XRP $15,142,887.172 $0,362,758 $1,470,493,201
4. Litecoin $5,678,130.416 $92,71 $3,272,979,994
5. EOS $5,019,684.117 $5,54 $2,955,707,289

Bitcoin is not only different but is relatively superior to other digital money. The table above shows a significant comparison; it seems the popularity of bitcoin ranks first compared to other digital money. It can be seen from market capitalization, price and volume, which shows that bitcoin dominates more than other digital money. The development of bitcoin is also seen in the increase in exchange rates. It can be seen in the diagram below:

The Bitcoin exchange rate in 2013 was only 91 US Dollars (US $), in 2014 it moved up by 829% to the US $ 846 per one bitcoin. In 2015, although its value decreased 68.8% to the position of US $ 265 per unit, the value of bitcoin rise again at the beginning of 2016 until December 2017, the exchange rate was recorded at the US $ 19,000 per one bitcoin. But from 2018 to 2019 the value of Bitcoin continues to decline and increase, starting from the US $ 5,000 to the US $ 3,000. Even so, the existence of bitcoin has been maintained and remains the first position in the most popular digital currency. The data shows that bitcoin has grown and accepted.

In 2017 there are at least 68 countries that legalized bitcoin; where 15 countries were opposed, and 19 countries still did not respond to bitcoin. In Indonesia, the regulation of the currency is regulated in Law No. 7 of 2011 concerning Currency, related to bitcoin, which has not been specifically regulated in Indonesian legislation. In the press release of the Ministry of Finance of the Republic of Indonesia Number 3/KLI/2018, the ban on transactions using virtual currencies is based on two laws and regulations above. Bank Indonesia, as the central bank in Indonesia, made a clear statement that bitcoin is not a legitimate payment instrument in Indonesia. But on the other hand, bitcoin users in Indonesia have reached more than 1.14 million investors and more than 66,000 users, which means that the intensity of the Indonesian community towards the emergence and use of this digital currency is quite high.

The amount of use of bitcoin in Indonesia has the potential to cause misuse of bitcoin itself, one of the cases occurred in the Bangka Belitung Islands, where hundreds of people
experienced bitcoin fraud. Although there are no concrete regulations governing bitcoin, based on Article 28D of the UUD 1945 that every citizen has the right to legal certainty and protection so that in the case of bitcoin fraud cases that harm Indonesian citizens, then in terms of this country must provide legal protection for victims. Then the law is directed to be progressive and responsive in facing the challenges of technological globalization. The absence of regulations governing bitcoin, but on the one hand, there is a case of bitcoin fraud, this raises a new issue related to legal protection for citizens who are victims of bitcoin fraud.

2 Methods

The research method used is normative legal research, with the statute approach and case approach. This study uses secondary legal data, that is legislation relating to issues, namely the Criminal Code (KUHP), Currency Law, and ITE Law, and the writing of other relevant legal researchers. The legal theory used is progressive legal theory and responsive legal theory.

3 Results and Discussion

Technological and economic developments support the change in the new payment system, digital money. Beginning with a payment system using precious metals such as gold and silver, then turning into paper assets such as checks and paper money. Furthermore, experiencing a change in digital money. Digital Currency/electronic money is money used in internet transactions by electronic means. This transaction involves the use of computer networks (such as the internet and digital price storage systems), using cryptographic security and settlement technology through distributed ledgers without any regulating authority. In this case, bitcoin is one type of digital currency without regulating authority, and there is no official legal regulation regarding the use of bitcoin, including in Indonesia.

3.1 Bitcoin According to Indonesian Law

Bitcoin was first introduced by Satoshi Nakamoto (a pseudonym) who was the creator in 2009. Nakamoto began uploading the bitcoin problem in a paper published in 2008 via a mailing list to explain cryptography. According to Nakamoto, bitcoin is an online payment system from peer-to-peer electronic cash that is sent directly from one party to another without going through a financial institution. It can also be said that bitcoin is a virtual currency that has been designed for payments that are anonymous and made independently without government or bank interference. In certain payment situations, bitcoin can bring advantages over traditional payment methods. These benefits include lower costs, speed of payment, and more. However, its use can also be riskier because bitcoin is not directly regulated by positive law in Indonesia.

Currently, bitcoin has entered Indonesia and is often used as a payment tool in cyberspace. Bitcoin has also become part of transactions of the needs of the people in Indonesia. Indonesian legislation governing currency is Currency Law. But regarding bitcoin, the Currency Law does not yet regulate it. In this law, bitcoin is not explicitly mentioned as a payment instrument in Indonesia. We can see the legal currency in Indonesia in Article 2 of the Currency Law which states that the Indonesian currency is a rupiah, which consists of banknotes and coins, and is symbolized as "Rp.".
Whereas those who have the authority to print and make currencies are central banks, namely Bank Indonesia. Bank Indonesia established Bank Indonesia Regulation Number 17/3/PBI/2015, which requires the use of the rupiah as a legal payment instrument. It can be seen in Article 2 Indonesian Bank Regulations (PBI) concerning the Obligation to Use the Rupiah Currency, which states that the use of the rupiah currency is only carried out in the territory of Indonesia. While related to bitcoin, Bank Indonesia made a firm statement that: “Bitcoin and other virtual currencies are not legal currencies or payment instruments in Indonesia. People are encouraged to be careful of bitcoin and other virtual currencies. All risks related to ownership/use of Bitcoin are borne by the owner/user of Bitcoin and other virtual currencies”.

The statement is then legalized in Article 34 of PBI Number 18/40/PBI/2016 concerning the Implementation of Transaction Processing, which regulates the prohibition of processing payment transactions using the virtual currency. While related to fund transfers, Indonesian law has regulated it in Article 69 of Act No.3 of 2011 concerning Funds Transfer:
1. Non-Bank business entities that carry out the activities of conducting Fund Transfers must be Indonesian legal entities and obtain permission from Bank Indonesia.
2. The terms and procedures for licensing of Fund Transfer Providers as referred to in paragraph (1) are regulated in a Bank Indonesia Regulation.

Based on this article, it can be said that bitcoin can be legalized. Namely, the Indonesian bitcoin exchanger named "bitcoin.co.id". But "bitcoin.co.id" must obtain permission through approval from Bank Indonesia first. Furthermore, arrangements relating to permits to carry out fund transfers are regulated in Article 79 paragraph (1) of the Fund Transfer Act. This article states that anyone who carries out the activities of administering funds without permission can be sentenced to a maximum of 3 (three) years imprisonment or a maximum fine of Rp. 3,000,000,000,00,- (three billion rupiah). "Bitcoin.co.id" as a bitcoin exchanger place is not subject to this article because of an appeal from Bank Indonesia No: 16/6/Dkom is considered a “green light” by Oscar Darmawan CEO of Bitcoin Indonesia.

Also, bitcoin cannot be likened to a non-cash form, which Indonesia acknowledges. It is because transactions using bitcoin continue to occur even though there is a statement from the Governor of Bank Indonesia stating that bitcoin is illegal, and the law cannot allow uncertainty in the use of bitcoin to continue. It is as stipulated in PBI Number 17/3/PBI/2015 Article 3 paragraph (1) and (3), which states that: “obligation to use rupiah in each transaction applies to cash transactions and non-cash transactions. Non-cash transactions include transactions that use non-cash payment instruments and mechanisms”.

Based on the explanation above, it can be said that bitcoin does not have legalization in Indonesia. But that does not mean that bitcoin cannot be a legitimate payment instrument that can be legalized by Indonesia. The terms of an object can be made into money, or a medium of exchange is as follows:
1. generally accepted or acceptability;
2. has a high value or guaranteed existence by the ruling government;
3. durable and not easily destroyed (durability);
4. has a quality that tends to be the same (uniformity);
5. the number can meet the needs of the community and is not easily scarred;
6. it is portable or easy to carry and easy to share without reducing the value of the object; and
7. having values that tend to be stable from time to time (stability).

Bitcoin can be a legal payment tool in Indonesia because it fulfils most of the terms of an object can be said to be a means of payment, i.e.:
1. not easily broken;
2. has a quality that tends to be the same;
3. Cannot be forged;
4. Easy to carry; and
5. has a stable value.

Based on the list, it can be seen that the constraints of bitcoin as a legal payment instrument are legal guarantees by the government and are generally accepted. So that bitcoin is hampered by the absence of government regulations, and no law protects bitcoin users so that if something happens to users like losing bitcoin, users cannot hold the government accountable. Therefore, the existence of bitcoin is not generally accepted. It is inversely proportional to neighboring Indonesia, namely Singapore. Singapore has a regulation regarding bitcoin and has acknowledged the existence of bitcoin in their country by taxing the use of bitcoin.

Researcher opines that court has rightly observed the problem of caste system in India and its solution. Only love among the community can achieve the goal of unity and integrity of our Constitutional goal. Court has very rightly observed that such marriages should be encouraged by giving proper support and incentives. Since ages, the Indian social system is governed on the basis of caste. According to the old scripts such as Manusmriti, work was divided amongst the people in Indian ancient society on the basis of caste, in which some of the communities were treated as lower caste because of the nature of the work distributed to them under the social arrangement.

However, the system proved fatal in due course and resulted in the gross violation of human rights of backward caste. After independence, the Constitution of India, in 1950 provided special provisions in favor of backward category in educational institutions and public employment. In absence of clarity and definite criteria of deciding a caste as a backward category, various communities and caste claiming to be backward in nature started demanding reservations and benefits. From time to time, Government of India included these castes in schedule caste list and declared reservations by suitable amendments in the respective laws.

Recently, in India, there is a great demand by the open category for removal of reservation on the basis of caste in the educational field in order to save merit. This scenario has created a new division of society into the open category and reserved category. Certain unpleasant incidences are alarming these days. And it is very clear that even after 72 years of Independence, the Indian legal system has failed to solve the issue of casteism in India. With the everyday development on technological front, the whole world is fast becoming a global village in true sense of the term. With the advent of internet technology which has now permeated in our day to day life, the process of intermingling of people at international level has started long back. India cannot afford to remain aloof from this global phenomenon.

If at all India desires development along with international community, then what is happening at global level i.e. intermingling of people of various countries, races, cultures, creed etc. must also affect what should happen at country level for development. In other words, love begets love. The people of India who belong to different castes and cultures are necessarily required to forget their differences and become united. The importance of unity and integrity as well as secularism is specifically incorporated in the preamble of our Constitution. Intercaste and interrelation marriages can be one of the most effective tool to eradicate these differences.
3.2 Bitcoin According to Indonesian Law

Bitcoin in Indonesia has experienced a fairly rapid development, this is based on the statement of one of the head companies of the Indonesian provider of exchange, purchase, shipping and receipt services, which states that there are around 200,000 (two hundred thousand) bitcoin users in Indonesia with the total transaction is around Rp. 4,000,000,000,- (four billion rupiah) per day in Indonesia. Along with the development of bitcoin in Indonesia which is increasing every day, but on the other hand, this development is not accompanied by arrangements that regulate the use and legal protection of bitcoin users in Indonesia, in other words, there is no consumer protection.

As already mentioned, there are no legal regulations related to bitcoin in Indonesia, so the Indonesian government does not provide legal protection related to all risks that may be experienced by bitcoin users in Indonesia. But on the other hand, there are several cases related to bitcoin fraud that were reported to the Indonesian Police. One such case is the alleged BTC Panda internet transaction fraud using a bitcoin payment instrument that was reported to the Metro Jaya Regional Police. The victim of this case is Sandy Budiman with a loss of Rp. 700,000,000,- (seven hundred million rupiahs), with two people, reported being Fredy Wirajaya and Herman Makmur. In this case, it is reported that Article 378 of the Indonesian KUHP (KUHP) and Article 372 of the KUHP or Article 28 paragraph (1) of the ITE Law is reported. This case has been reported since September 2016, but until January 2019, there was no development and had not found a bright spot even though more than 2 (two) years of this case were reported.

Other losses due to bitcoin investment by BTC Panda are also experienced by hundreds of residents in the Bangka Belitung Islands. This case was reported to the Metro Jaya Regional Police Headquarters in several TBL/3388/VII/2016/PMJ/DIT Reskrimsus. Then the case was delegated to the Ditreskrium Polda Bangka Belitung. In the report, the value of material losses is Rp. 480,000,000- (four hundred eighty million rupiahs). Based on some of these cases, it can be seen that the loss due to bitcoin fraud is not a small amount. Losses resulting from the misuse of bitcoin not only threaten individuals but can also threaten state security. According to Indonesia's National Risk Assessment (NRA), bitcoin has become one of the means that threatens the crime of money laundering and payment for various crime transactions such as narcotics, funding of terrorism, black markets and theft. It is further shown that there is a need for strict rules regarding bitcoin in a country because if it is misused, bitcoin can pose a threat to state authority.

There is no legal basis regarding bitcoin itself; of course, this will be a new problem. When a society progresses, it is the responsibility of the state to take a role in establishing a regulation in the context of legal protection. In Indonesia itself, this is confirmed in Article 28D of the UUD 1945 that everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. Thus the state must protect its citizens who experience legal problems, including in this case citizens who are harmed due to bitcoin fraud. Thus, the law in Indonesia is required to be responsive in accepting problems that arise at any time, must also be progressive in upholding and providing legal protection for victims of crime in this case bitcoin fraud.

Regarding the regulation of bitcoin in Indonesia, the ITE Law has imposed "electronic information" and "electronic transactions". According to Article 1 paragraph (1) of the ITE
Law, Electronic Information is one or a set of electronic data, including but not limited to writing, voice, images, maps, designs, photos, electronic data interchange (EDI), telegram electronic mail, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them. The definition of electronic information does not limit Bitcoin, that has electronic data. It is because part of a bitcoin transaction such as a blockchain, hash, public key, and private key can be included as a sign and certain people can understand access code that has been processed as meaning or that. Article 5 paragraph (1) of the ITE Law states that electronic information and electronic documents and printed results are legal evidence. Also, by the definition of electronic transactions that have been implemented in Article 1 paragraph (2) of the ITE Law states that Electronic Transactions are legal actions carried out using Computers, Computer networks, and other electronic media. Thus, the ITE Law can be used as a legal basis for bitcoin fraud.

Bitcoin that has not been regulated so that in some articles it can be associated with cybercrime which has been regulated by the ITE Law. Thus is responsiveness, according to Philippe Nonet, good law must recognize the public's desire to achieve substantive justice. The criminal acts related to bitcoin contained in the ITE Law are as follows:

1. Hacking can be subject to Article 30 in conjunction with Article 46 of the ITE Law;
2. Cracking may be subject to article 32 in conjunction with Article 58 of the ITE Law;
3. Spoofing may be subject to Article 35 jo Article 51 of the ITE Law; and
4. Sniffing may be subject to Article 31 in conjunction with Article 47 of the ITE Law.

The bitcoin fraud is also included in actions that are prohibited according to the ITE Law, which can be subject to Article 28 paragraph (1) of the ITE Law which states that "everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions". According to progressive legal theory, law enforcement is not merely a sterile vacuum; the law must look at other perspectives to achieve justice. Based on the researcher's hypothesis, progressive law is described in the following demonstration:

Fig 1. Demonstration of Progressive Legal Theory

Borrowing the theory, the articles above can be imposed even though bitcoin has not been legalized and has not been regulated. Similar to the time before the ITE Law was made, cybercrime used the KUHP so that internet users still felt protected. The ITE Law is a lex specialist from the KUHP, which is the same criminal offence, but the packaging is different.
because of the crime stipulated in the technology-based ITE Law. Whereas according to the KUHP, fraud is regulated in Article 372 of the KUHP concerning Evasion and Article 378 concerning Fraud.

4 Conclusion and Suggestions

From the discussion above, it can be concluded that bitcoin does not have written legal arrangements in the law in Indonesia. Nonetheless, bitcoin can be a legitimate payment instrument in Indonesia with the fulfilment of several terms of payment tools owned by bitcoin such as, not easily damaged, having the same quality that cannot be falsified, easy to carry, and has a stable value. Whereas in terms of legal protection for Bitcoin users in Indonesia based on Article 28D of the UUD 1945. Although bitcoin is not explicitly mentioned in ITE Law, this law can be used as a basis for bitcoin law, because bitcoin is included in the form of electronic transactions. Also, the KUHP can be a threat to the perpetrators of bitcoin fraud.

It is hoped that the Indonesian government will immediately take firm action regarding the use of bitcoin as a payment instrument in Indonesia. A firm decision is needed in the form of a permit or a ban on the use of bitcoin. If the government allows bitcoin transactions in Indonesia, it is necessary to have clear regulations to regulate the use of bitcoin and a firm threat to bitcoin criminals. So that bitcoin has a clear position and the people who use it get legal protection. But if bitcoin still does not have a clear arrangement, it is necessary to have a strict ban on people using bitcoin. It is related to the readiness of law enforcement officers and to protect the public if there are fraud and embezzlement of bitcoin.

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Role of Interreligious and Intercaste Marriages in Achievement of the Constitutional Goal of Unity and Integrity in India

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Abstract. Since ages, the Indian social system is governed on the basis of caste. According to the old scripts such as Manusmriti, work was divided amongst the people in Indian ancient society on the basis of caste, in which some of the communities were treated as lower caste because of the nature of the work distributed to them under the social arrangement. However, the system proved fatal in due course and resulted in the gross violation of human rights of backward caste. After independence, the Constitution of India, in 1950 provided special provisions in favor of backward category in educational institutions and public employment. In absence of clarity and definite criteria of deciding a caste as a backward category, various communities and caste claiming to be backward in nature started demanding reservations and benefits. From time to time, Government of India included these castes in schedule caste list and declared reservations by suitable amendments in the respective laws. Recently, in India, there is a great demand by the open category for removal of reservation on the basis of caste in the educational field in order to save merit. This scenario has created a new division of society into the open category and reserved category. Certain unpleasant incidences are alarming these days. And it is very clear that even after 72 years of Independence, the Indian legal system has failed to solve the issue of casteism in India. In this background, the researcher has tried to throw light on the role of Intercaste and Interreligious marriages in removing the caste system and bringing unity and integrity amongst the personages which is one of the Constitutional goal enshrined in the preamble of the Constitution.

Keywords: Intercaste marriages; caste system; discrimination; Constitution of India; right to equality; unity and integrity of the country

1 Introduction

Sixty-nine years ago, “we the people of India” set for themselves the goal of achieving amongst other things unity and integrity of India. The goal assumed importance on the background of bitter experiences of frequent attacks and war and consequent slavery through which India had to pass because of differences amongst people. Therefore, the visionaries of free India had developed a dream of One India. Setting such a goal for themselves was a step taken in the direction of that dream. In 1950, when the Indian Constitution came into force, there were various religious, linguistic, caste and cultural groups in India. Partition of India with Pakistan resulted in communal violence and many communities in the country started feeling insecure. During British regiment, religious differences were nurtured which further
resulted in communal differences. There was no uniformity in the application of personal laws. Communities were allowed to be governed by their personal laws relating to marriage, adoption, divorce etc. These laws were based on religious texts. In this background, the drafting committee constituted by the Indian government with the purpose of framing the constitution of India was very much worried about the unity and integrity of the country amidst various religious groups. To bring communal harmony and unity amongst the people of India, Government adopted the principle of secularism in its governance i.e. non-interference into the matter of any religion.

The intended goals of the Constitution which our forefathers wanted to achieve, were thus declared in the form of the preamble which, along with other values like Socialism, Secularism, also declares Equality, Justice and Fraternity as an objective in the preamble to assure the dignity of individuals and the unity and integrity of the country. The expression “Union of States” emphasizes the unity of the country as a whole; the constituent units have no liberty to secede from it. There are, however, other provisions which are against the fraternity, such as the division of States on linguistic lines and provisions relating to language.

In Modern India, the traditional caste system is an additional menace to the above division of Indian subcontinent. Muslim’s rights are a matter of concern amongst highly populated Hindu community at Gujrat. Similarly, the Hindu community does not feel safe in places such as Kashmir and in Kerala. Though the caste system is the biggest menace in India, the term is not defined anywhere. Constitution of India, guarantees right to equality to all persons within the territory of India and prohibits discrimination on the basis of caste, religion, race etc. However, in absence of any specific definition of these terms including caste and religion, the concept is misused and misinterpreted in favor of certain communities. Supreme Court of India has tried to clarify this term in its numerous judgements. It is said that caste system has its inception in Manusmriti, and is normally connected with the birth of a person in a particular caste such as a person can call himself a Hindu if has taken birth in Hindu family or brought up by Hindu parents. These rules are a matter of long practice in India.

Since there has been no specific criterion for determining someone's caste, the decision of caste in India has been done solely on the basis of birth. Although the Constitution of India gives liberty of faith and religion to be professed, practiced and propagated, whenever any person goes for conversion, the society depicts a hostile attitude to this idea which often results in violence and boycott from society. In the era of globalization, where everything is transformed to intermingle with each other, there is a huge failure in removing the problem of the caste system in India and has, therefore, become the biggest hurdle in its progress.

Constitution of India, through Art 44 (Part IV - Directive Principles of State Policy), imposes a duty upon the state to secure a Uniform Civil Code for all the citizens of India irrespective of their caste and religion.

India is a secular country and every community has the freedom to practice its own religion. In the absence of implementation of the Uniform Civil Code, marriages are governed by personal laws. India has a multiplicity of family laws most of which do not recognize intercaste marriages. Muslim law, which is still uncodified, provides that marriage with a non-Muslim is null and void. Even children begotten out of such marriages are considered as illegitimate hence deprived of many property and family rights. The Christian and Parsi laws, both prohibit intercaste marriages. The Christian Marriage Act provides that marriages can be performed between Indian Christian and non-Indian Christians. But it seems that under the Act a marriage between a Christian and a non-Christian is not valid if it is permitted by the personal law of parties.
Under the Parsi Law, marriage between non-Parsi and Parsi is invalid. Whereas, marriage between such persons is valid in Special Marriage Act 1954 which provides for a secular method of marriage and religion is not a criterion for the validity of any marriage contrary to the Hindu, Christian and Muslim marriage methods. The basic purpose of passing this law i.e. Special Marriage Act 1954 is to ensure validity of a marriage between persons of different religions and caste. Thus in absence of Uniform Civil Code, Special Marriage Act 1954 is a ray of hope in order to bring uniformity at least in matrimonial matters. The religion oriented personal laws of our country are all outdated and encourage casteism. These personal laws are not only in contrast with the letter and spirit of Caste Disabilities Removal Act 1850, but also contrary to the spirit enshrined in the Preamble of our Constitution and to the provisions of Right to equality, right to personal liberty and right to life and right to religion under Art. 14, Art 15, Art 19, Art.21 and Art.25.

Previously caste system was totally different from the present prevalent caste structure of the society. The previous practice of caste system is almost vanished now. Previously caste was usually associated with the occupation; however present situation is totally contrary to it, and has restricted the caste practice on few things only such as performance of marriages.

2 Problem of Caste system in India

Throughout the world, India is the only country in the continent which is divided on the basis of caste and infected with caste system. Multiplicity of caste and religion itself is not a problem. However, the bad side of this system is that, it has become a hurdle in achieving the constitutional goal of unity and integrity of the country. Political leaders are encouraging these differences for their vote bank and other benefits. Further, compulsion of marital laws with respect to marriage within religion for the validity of marriage has become a stumbling block to the social integrity. It has become a mindset of people to love only those who are belonging to their caste. Such kind of mindset is totally against the values which we want to achieve through the Constitutional goal. As a result, at the time of independence, there was a great demand for reservations for certain communities on the basis of caste.

To remove social injustice from the society, certain fundamental rights were included in the constitution in favor of reservations under Art. 15 and 16 for the limited time. Gradually, this time period of quota in various sectors is extended by the Government. Certain more castes were added to the list of castes which were entitled to the benefit. In the year 1992, it crossed even 50% during the governance of Janta Dal Party through Mandal Commission. Such policy of the Government, affected the educational and economic interest of those who were not entitled to reservation (Open Category). Many students from open category agitated against the policy of relaxation in marks for reserved category and comprising with merit for qualifying exam and getting admissions to professional institutions by self-immolating themselves. Recently few more reservations are declared on the basis of caste in few of the states in India which has crossed even 60 % of reservation of seats.

Ayodhya dispute of 1993-94 is the glaring example to show how the politicians are using the caste system for filling their vote bank by dividing people. In the landmark judgement of Ayodhya dispute Supreme Court observed that “the dispute relating to the structure in Ayodhya led to the communal tension and violence resulting in loss of many lives and destruction of property throughout the country.” With a view to maintain communal harmony
and fraternity in India the Union Government issued an Ordinance acquiring certain areas at Ayodhya which subsequently become an Act.

The issue of reservation is an added salt to the injury which is leading the nation towards communal war. The open category people feel injustice because of reservation policy of Union and state Government. Thus, again the policy of reservation is dividing the modern Indian society in three classes: higher class, backward class/schedule castes and other backward classes by creating tension over reservation. Mandal case is a good example to show how the politicians have deliberately flouted the constitutional provisions. The reservation policy in Mandal commission resulted into big loss of persons and property which further created a division of people into open category and reserved category and gave new colors to caste system in India.

Thus caste system is directly or indirectly splitting Indians. The existence of casteism, communal hatred, communal disharmony among Indians, is a hindrance, an obstacle in achieving the goal of unity, integrity of India which is proclaimed in the constitutional preamble. Thus because of non-achievement of this goal progress of country is stalled. We claim to achieve the status of being Super Power by 2020 but we are wasting our energy in fighting with each other over the issue of casteism and reservation. It seems that only the intercaste and interreligious marriages can remove the menace of caste system in India. The existing caste system does not encourage inter-caste or interreligious marriage. On the contrary, there are various legal provisions recognizing inter-caste/inter-religious marriage under Special Marriage Act 1954. Moreover, it is a Constitutional right to marry anyone he or she likes to marry as interpreted by courts in various cases under Art. 21 of the Indian Constitution. Despite that if such marriages are unacceptable to society it will lead to divorce and unhappy ending of the marriage. Such system not only affects the couple but adversely leads to division of the country.

India is one of the multi religious nation in the world. Luckily it is a secular country instead of religious country. Other than Hindu there are many religious groups who also follow caste system. Though the Indian Constitution has formally rejected the unequal treatment on the basis of caste and religion, caste system is a curse for India especially in rural area. Since British period religion based society is proved harmful to nation in one or other way. Policy of the British to ‘divide and rule’ resulted into partition of India, on religious basis. Thereafter series of demands of separate states on religion basis like demand of Khalistan in Punjab, and Bodo land in Assam have weakened the unity and integrity of the country. Reports of violence amongst the community shows that all governmental policies to evade caste based inequality is proved unsuccessful in achieving its goal. The modern India is thus facing lot of financial loss on security and on maintenance of peace and order. Values enshrined in our Constitution of rule of law and equality, fraternity, secularism, instead of becoming a part of our daily lives, is falling prey to communal violence.

While all efforts seem to be failing, the pronouncement from none other than topmost legal institution of India; the Supreme Court, in the case of Lata Singh v. State of UP has come as a refreshing breeze. The judgment has brought a ray of hope. It has given us the direction to think in new ways. Supreme court in this case suggested that the intercaste society solidly integrated in more ways than one. Recently, in response to a case of police harassment to an intercaste married couple, Hon’ble High Court of Chennai observed that the intercaste marriages are necessary to uproot caste system from India.

The Court observed thus:

“In fact many thinkers believe that inter-caste marriage is the only panacea to root out the evil of caste system. These are days where the younger generation is slowly moving out of the
ill-effects of caste system and that is the reason for a lot of inter-caste marriages. These changes must be accepted by the elders and this change is in fact good for the society in rooting out the caste system.”

3 Conclusion and Suggestions

Researcher opines that court has rightly observed the problem of caste system in India and its solution. Only love among the community can achieve the goal of unity and integrity of our Constitutional goal. Court has very rightly observed that such marriages should be encouraged by giving proper support and incentives. Since ages, the Indian social system is governed on the basis of caste. According to the old scripts such as Manusmriti, work was divided amongst the people in Indian ancient society on the basis of caste, in which some of the communities were treated as lower caste because of the nature of the work distributed to them under the social arrangement. However, the system proved fatal in due course and resulted in the gross violation of human rights of backward caste. After independence, the Constitution of India, in 1950 provided special provisions in favour of backward category in educational institutions and public employment. In absence of clarity and definite criteria of deciding a caste as a backward category, various communities and caste claiming to be backward in nature started demanding reservations and benefits. From time to time, Government of India included these castes in schedule caste list and declared reservations by suitable amendments in the respective laws.

Recently, in India, there is a great demand by the open category for removal of reservation on the basis of caste in the educational field in order to save merit. This scenario has created a new division of society into the open category and reserved category. Certain unpleasant incidences are alarming these days. And it is very clear that even after 72 years of Independence, the Indian legal system has failed to solve the issue of casteism in India. With the everyday development on technological front, the whole world is fast becoming a global village in true sense of the term. With the advent of internet technology which has now permeated in our day to day life, the process of intermingling of people at international level has started long back. India cannot afford to remain aloof from this global phenomenon.

If at all India desires development along with international community, then what is happening at global level i.e. intermingling of people of various countries, races, cultures, creed etc. must also affect what should happen at country level for development. In other words, love begets love. The people of India who belong to different castes and cultures are necessarily required to forget their differences and become united. The importance of unity and integrity as well as secularism is specifically incorporated in the preamble of our Constitution. Intercaste and interreligion marriages can be one of the most effective tool to eradicate these differences.

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Community Satisfaction on The Performance of Public Services in Lampung Tengah

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Abstract. Public service in Indonesia is still a big homework in order to realize excellent and optimal service. The standard of public service for the bureaucracy, especially in the regions is still limited to slogans without implementation in the performance area. Research on community satisfaction with the performance of public services in Lampung Tengah district was conducted in September-November 2018, involving 384 respondents using quantitative methods through surveys. The results of the study show that education and health services that are basic services and compulsory local governments are still in an unfavorable dimension or range. Need to improve on a large scale so that public services in Lampung Tengah Regency can meet good standards.

Keywords: public service; community satisfaction; Lampung Tengah district

1 Introduction

The division of government affairs in accordance with Law Number 23 Year 2014 consists of: (1) absolute governance, namely government affairs that are fully under the authority of the Central Government; (2) general government governance, namely government affairs which are under the authority of the President as head of government; and (3) concurrent government affairs, namely government affairs that are divided between the Central and Provincial and District / city governments and become the basis for the implementation of regional autonomy and are based on the principles of accountability, efficiency, and externalities, as well as national strategic interests. Concurrent government affairs which are the authority of the region consist of compulsory government affairs and elected government affairs. One of the authorities of the regional government at the level of the City / Regency relating to government affairs must comprise government affairs relating to services which include: (1) education; (2) health; (3) public works and spatial planning; (4) public housing and residential areas; (5) peace, public order and community protection; and (6) social.

The division of authority relating to government affairs must provide consequences for the City / Regency government to provide services to the community optimally. The development of authority relating to mandatory affairs services is inseparable from the enactment of regional autonomy which provides regional freedom in managing its finances both from regional revenues and government assistance. center. On the other hand, the decentralization of mandatory services to the City / District governments is expected to be able to improve the welfare of the community and increase public trust in the government. Negative highlights of the services provided by local governments to the public should be used as a basis for efforts to improve bureaucracy and public service governance. Complicated bureaucracy, unpleasant
behavior, inadequate facilities, and various levies other than provisions are the triggers of public dissatisfaction with the services provided by the government. Efforts to eliminate negative assumptions that arise in the community have been carried out both in the form of rewards (rewards) and punishment (punishment) for implementing public services. Increased facilities and infrastructure facilities have been staged so that services can be better.

2 Method

According to the Big Indonesian Dictionary, service has three meanings: (1) subject or method of service; (2) efforts to serve the needs of others by obtaining compensation (money); (3) facilities provided in connection with the sale and purchase of goods or services. Understanding service according to the American Marketing Association as quoted by Donald (1984) in Sinambela (2011) that service is basically an activity or benefit offered by a party to another party and is essentially intangible and does not result in ownership of something, process production may also not be associated with a physical product. Whereas according to Lovelock (1991) in Sinambela (2011), service is a product that is intangible, lasts a moment and is felt or experienced. That is, service is a product that has no form or form so that there is no form that can be owned, and lasts a moment or is not durable, but is experienced and can be felt by the recipient of the service. Davidow in Waluyo (2007) states that services are things that if applied to a product will increase the power or value of the customer. Furthermore, he stated that good service requires very good service instructors. The most important thing is to make everyone in the organization quality-oriented. Meanwhile, the public term comes from English which means general, customer, country. Public Indonesian has become a public standard which means public, people, and crowded with the equivalent word is praja which means people so that the term pamong praja is born which means the government serves the interests of all people (Badudu and Zain, 2001).

Public service by Roth (1987) in Istianto (2009) is defined as any service available to the public whether it is provided or privately (as is a restaurant meal). According to Law - Law Number 25 Year 2009 on the Public Service, Chapter I Section 1 Paragraph 1, which referred to the public service is an activity or series of activities in order to meet the needs of the service in accordance with the laws of every citizen and resident in the goods, services, and or administrative services provided by public service providers. Following the above understanding, Ratminto and Atik (2007) in Hardiansyah (2011) define public services or public services as all forms of services, both in the form of public goods and public services which in principle are the responsibility and implemented by government agencies in the central, regional, and within the State-Owned Enterprises or Regional Owned Enterprises in an effort to fulfill the needs of the Customer and in the context of implementing the provisions of the legislation.

Public services are related to services that fall into the category of the public sector, not the private sector. The service is carried out by the central government, regional government, and BUMN / BUMD. The three components that deal with the public sector provide public services such as health, education, security and order, social assistance, and broadcasting (Vilson (1993) in Nurcholis (2007)). Every implementation of public services must have service standards as a guarantee of certainty for the giver in the implementation of their duties and functions and for service recipients in the application process. Service standards are a standardized measure in the implementation of public services as a guideline that must be
adhered to and carried out by service providers and serve as guidelines for service recipients in the process of submitting applications, as well as controls for customers and / or service recipients for the performance of service providers (Hardiansyah, 2011).

2.1 Quality of Public Services

Service quality is closely related to systematic and comprehensive services better known as the concept of excellent service. Excellent service is (Rahmayanty, 2010):

1. Excellent service and exceeding customer expectations;
2. Services that have distinctive qualities;
3. Services with high quality standards and always keep abreast of customer needs at all times, consistently and accurately (reliably);
4. Services that meet the practical needs and emotional needs of customers.

The concept of service quality can be understood through customer behavior, which is a behavior played by customers in searching for, buying, use, and evaluate a product or service that is expected to satisfy their needs. According to Ibrahim (2008) the quality of public services is a dynamic condition that relates to products, services, people, processes, and the environment where the assessment of its quality is determined at the time the service is delivered. The public sector performance measurement system is a system that aims to help public managers assess the achievement of a strategy through financial and non-financial measurement tools. The performance measurement system can be used as an organizational control tool, because performance measurement is strengthened by setting reward and punishment systems. Local government performance measurement is carried out to fulfill three objectives (Mardiasmo, 2002: 121), namely:

1. Improve government performance
2. Helps allocate resources and make decisions
3. Realizing public accountability and improving institutional communication.

In general, the objectives of a performance measurement system are:

1. To communicate the strategy better (top down and bottom up);
2. To measure financial and non-financial performance in a balanced manner so that the development of strategy achievement can be traced;
3. To accommodate the understanding of the interests of middle and lower level managers and motivate to achieve goal congruent;
4. As a tool to achieve satisfaction based on individual approaches and rational collective abilities.

2.2 Community Satisfaction

According to Mendelsohn (1998) there are 2 advantages for business entities with community satisfaction, namely: (1) keeping customers cheaper than buying new ones; and (2) increasing competition in the form of products, organizations, and distribution of outlets means fierce pressure for consumers. Consumer satisfaction is a viable strategy to maintain market share in competition. To measure community satisfaction, an attribute that is used is about how people value a product or service that is reviewed from customer point of view. According to Frederik Mote (2008), community satisfaction can be measured through satisfaction-forming attributes consisting of:

1. Value to price relationship. The relationship between the price set by the business entity to be paid with the value / benefits obtained by the community
2. Product value, is an assessment of the quality of the product or service produced by a business entity.
3. Product benefits, are benefits obtained by the community from consuming products produced by business entities.
4. Product features, are certain characteristics or characteristics that support the basic functions of a product so that it is different from the products offered by competitors.
5. Product design, is a process for designing product appearance and function.
6. Product reliability and consistency, is the accuracy and reliability of the products produced by a business entity.
7. Range of product are services, is a type of product or service offered by a business entity.

Then the attribute related to service includes (Frederik Mote, 2008: 20): First; Guarantee or warranty, is a guarantee or guarantee given by a business entity and is expected to satisfy the community. Second; Delivery communication, is a message or information conveyed by the business person to the community. Third; complain handling, is the attitude of the business entity in handling complaints and complaints. Fourth; Resolution of problem, is the response given by business entities to help solve community problems related to the services they receive. A attribute related to the purchase as follows (Frederik Mote, 2008: 21), first; Courtesy, is courtesy, attention and friendliness of employees. Second; Communication, is the ability of employees to communicate with the customer community. Third; Ease or convenience of acquisition, is the convenience provided by a business entity to get the product or service offered. Fourth; Company reputation, is a good reputation or not owned by a business entity in serving the community. Fifth; Company competence, whether or not the ability of a business entity to serve the community.

3 Research Methods

The study used a qualitative approach with Likert scale measurements. Likert scale is a psychometric scale that is commonly used in questionnaires (questionnaires), and is the scale most widely used in research in the form of surveys. This method was developed by Rensis Likert. Likert scale is a scale that can be used to measure attitudes, opinions, and perceptions of a person or group of people towards a type of public service. On the Likert scale respondents were asked to determine their level of agreement with a statement by choosing one of the available options. The population in the study in Central Lampung Regency consisted of all households that have been permanently domiciled in the Central Lampung Regency area. The number of households in Central Lampung Regency in 2016 was 339,319 households.

Respondents in this survey were selected using a purposive sampling technique. According to Sugiyono (2010) purposive sampling is a technique for determining research samples with certain considerations aimed at making the data obtained later more representative. Using formulas sample from Krejcie and Morgan, then obtained the sample of this study amounted to 384 respondents. The elements studied are as follows:
<table>
<thead>
<tr>
<th>No.</th>
<th>Element of satisfaction</th>
<th>Element Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Requirements</td>
<td>A</td>
</tr>
<tr>
<td>2</td>
<td>Systems, mechanisms and procedures</td>
<td>B</td>
</tr>
<tr>
<td>3</td>
<td>Settlement time</td>
<td>C</td>
</tr>
<tr>
<td>4</td>
<td>Fees / Rates</td>
<td>D</td>
</tr>
<tr>
<td>5</td>
<td>Product type of service specifications</td>
<td>E</td>
</tr>
<tr>
<td>6</td>
<td>Implementing competencies</td>
<td>F</td>
</tr>
<tr>
<td>7</td>
<td>Implementing behavior</td>
<td>G</td>
</tr>
<tr>
<td>8</td>
<td>Handling complaints, suggestions, and input</td>
<td>H</td>
</tr>
<tr>
<td>9</td>
<td>Facilities and infrastructure</td>
<td>I</td>
</tr>
</tbody>
</table>

The range of values in this study are as follows:

<table>
<thead>
<tr>
<th>Perception Value</th>
<th>Interval Value (NI)</th>
<th>Conversion Interval Value (NIK)</th>
<th>Service Quality (x)</th>
<th>Service Unit Performance (y)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.00 - 2.5996</td>
<td>25.00 - 64.99</td>
<td>D</td>
<td>Not good</td>
</tr>
<tr>
<td>2</td>
<td>2.60 - 3.064</td>
<td>65.00 - 76.60</td>
<td>C</td>
<td>Not good</td>
</tr>
<tr>
<td>3</td>
<td>3.0644 - 3.532</td>
<td>76.61 - 88.30</td>
<td>B</td>
<td>Well</td>
</tr>
<tr>
<td>4</td>
<td>3,5324 - 4.00</td>
<td>88.31 - 100</td>
<td>A</td>
<td>Very good</td>
</tr>
</tbody>
</table>

4 Results and Discussion

The survey was carried out with a total sample of 384 people with predetermined criteria. Sampling was done randomly by accidental sampling method. The majority of respondents who were used as community satisfaction surveys were mostly young people aged 21-30 years as much as 41% or as many as 159 respondents from 384 respondents. The age of> 50 years is 68 people (18%), age 31-40 years as many as 62 people (16%), age 41-50 years as many as 48 people (13%), and the remaining <20 years as many as 47 people (12%) Respondents in this study were not only people who directly enjoyed the services provided by the Central Lampung Regency Government, but also people who had direct involvement / knowledge in helping their relatives to enjoy the services provided.
Random sampling using the accidental sampling method. Respondents in this survey by sex were 215 men or 56% and the rest were 169 women or 44%.

Fig 2. Distribution of respondents by sex

Respondents based on the level of education they have obtained are the results that high school/equivalent is the highest level of education that has been taken by the respondents with 194 people or 51% of the total respondents as many as 384 people. The respondents who have taken tertiary education (diploma, S-1, and S-2) total 94 people or 24% of the total respondents as many as 284 people.

Fig 3. Distribution of respondents based on education levels

Based on the main types of work currently undertaken, respondents with other types of work amounted to 186 people or 48% of the total respondents as many as 384 people. The other types of work are dominated by the type of work of farmers. This is in accordance with the agrarian area of Central Lampung Regency which is dominated by agriculture and plantation sectors. As for the number of respondents with the main types of private employment as many as 113 people (29%), Polri as many as 38 people (10%), PNS as many as 27 people (7%), and the rest entrepreneurs as many as 21 people (6%).
Lampung Tengah Regency has a Regional Minimum Wage of Rp2,083,640.38. Based on the average income of respondents in a month, the number of respondents who have an average income above the UMR is 163 people or as much as 42% of the total respondents as many as 384 people. The rest are respondents who have an average income below the Central Lampung Regency UMR of 221 people or 58% of the total respondents as many as 384 people. Income of respondents will describe their ability to fulfill their basic needs before meeting other needs. In this case, there are still many respondents who are only oriented to meeting basic life needs.

4.1 Performance of Education Services in Lampung Tengah

The results of processing data based on the answers of each respondent in the element of education services indicate that all elements of education services in Central Lampung Regency are still not optimal. More detailed results can be presented in the following table.

<table>
<thead>
<tr>
<th>No.</th>
<th>Elements of Educational Services</th>
<th>Average value</th>
<th>IKM</th>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>element of requirements</td>
<td>2.57</td>
<td>64.26</td>
<td>Not good</td>
</tr>
<tr>
<td>2</td>
<td>elements of systems, mechanisms and procedures</td>
<td>2.67</td>
<td>66.80</td>
<td>Not good</td>
</tr>
<tr>
<td>3</td>
<td>element of completion time</td>
<td>2.54</td>
<td>63.61</td>
<td>Not good</td>
</tr>
<tr>
<td>4</td>
<td>element of cost/tariff</td>
<td>2.54</td>
<td>63.41</td>
<td>Not good</td>
</tr>
<tr>
<td>5</td>
<td>product element specification type of service</td>
<td>2.59</td>
<td>64.78</td>
<td>Not good</td>
</tr>
<tr>
<td>6</td>
<td>element of implementing competence</td>
<td>2.89</td>
<td>72.20</td>
<td>Not good</td>
</tr>
<tr>
<td>7</td>
<td>elements of implementing behavior</td>
<td>2.93</td>
<td>73.18</td>
<td>Not good</td>
</tr>
<tr>
<td>8</td>
<td>Elements of Complaint Handling, Suggestions and</td>
<td>2.28</td>
<td>57.10</td>
<td>Not good</td>
</tr>
</tbody>
</table>
Feedback

| 9 elements of facilities and infrastructure | 2.75 | 68.75 | Not good |

Based on the table above, it can be seen that the elements of complaint handling, advice and input are the lowest value elements that reach 57.10 or are in poor performance. While the highest achievement was found in the behavioral elements of education service implementers which reached 73.18 or in the poor category. Efforts to improve every element in education services are prioritized in areas that are in a bad condition. There are 5 elements from 9 elements which are considered to have poor performance. To assess the satisfaction of education services as a whole, data processing is carried out (appendix II). The results show that the performance value of education services in Central Lampung Regency is in position C or in a poor category. More complete results can be seen in this table.

Table 2. Table of Education Service Performance in Lampung Tengah Regency

<table>
<thead>
<tr>
<th>Ket</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>∑ Value / Element</td>
<td>987</td>
<td>1026</td>
<td>977</td>
<td>974</td>
<td>995</td>
<td>1109</td>
<td>1124</td>
<td>877</td>
<td>1056</td>
</tr>
<tr>
<td>NRR / element</td>
<td>2.57</td>
<td>2.67</td>
<td>2.54</td>
<td>2.54</td>
<td>2.59</td>
<td>2.89</td>
<td>2.93</td>
<td>2.28</td>
<td>2.75</td>
</tr>
<tr>
<td>Weighted NRR / element</td>
<td>0.29</td>
<td>0.30</td>
<td>0.28</td>
<td>0.28</td>
<td>0.29</td>
<td>0.32</td>
<td>0.33</td>
<td>0.25</td>
<td>0.31</td>
</tr>
<tr>
<td>∑ Weighted IKM NRR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.64</td>
</tr>
<tr>
<td>IKM Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>66.00</td>
</tr>
<tr>
<td>Quality of Education Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>C</td>
</tr>
<tr>
<td>Educational Service Performance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not good</td>
</tr>
</tbody>
</table>

The results above are in line with the performance of each element of educational services that shows unfavorable conditions. By paying attention to the results of the average value of each element, all elements in education services must be increased to be more than the current achievement (> 3). However, in the short term the handling of the five elements is more equated so that it can improve its performance. The five elements that become the priority handling scale are elements of requirements, elements of completion time, cost / tariff elements, product elements, type of service specifications, elements of Complaint Handling, Suggestions and Feedback.
4.2 Performance of Health Services in Lampung Tengah

The results of processing data based on the answers of each respondent in the element of health services indicate that all elements of health services in Central Lampung Regency are still not optimal. More detailed results can be presented in the following table.

<table>
<thead>
<tr>
<th>No.</th>
<th>Elements of Health Services</th>
<th>Average value</th>
<th>IKM</th>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>element of requirements</td>
<td>3.06</td>
<td>76.56</td>
<td>Not good</td>
</tr>
<tr>
<td>2</td>
<td>elements of systems, mechanisms and procedures</td>
<td>3.05</td>
<td>76.24</td>
<td>Not good</td>
</tr>
<tr>
<td>3</td>
<td>element of completion time</td>
<td>2.87</td>
<td>71.81</td>
<td>Not good</td>
</tr>
<tr>
<td>4</td>
<td>element of cost / tariff</td>
<td>2.17</td>
<td>54.30</td>
<td>Not good</td>
</tr>
<tr>
<td>5</td>
<td>product element specification type of service</td>
<td>3.06</td>
<td>76.56</td>
<td>Not good</td>
</tr>
<tr>
<td>6</td>
<td>element of implementing competence</td>
<td>3.18</td>
<td>79.56</td>
<td>Well</td>
</tr>
<tr>
<td>7</td>
<td>elements of implementing behavior</td>
<td>3.13</td>
<td>78.19</td>
<td>Well</td>
</tr>
<tr>
<td>8</td>
<td>Elements of Complaint Handling, Suggestions and Feedback</td>
<td>2.92</td>
<td>73.05</td>
<td>Not good</td>
</tr>
<tr>
<td>9</td>
<td>elements of facilities and infrastructure</td>
<td>3.25</td>
<td>81.18</td>
<td>Well</td>
</tr>
</tbody>
</table>

The condition of health services for each element in Central Lampung Regency is still better compared to education services. Based on the table above, it can be seen that the element of cost / tariff for health services is the element with the lowest value reaching 54.30 or in poor performance. While the highest achievement was found in the elements of health service facilities and infrastructure which reached 81.18 or in the good category. Other categories that are well categorized include elements of implementing competence and implementing behavior. Even though the categories are not good, the three services that approach good categories include elements of requirements, elements of the system, mechanisms, and procedures, and elements of product specifications of the type of service. Efforts to improve every element in education services are prioritized in areas that are in a bad condition.

To assess overall health service satisfaction, data processing is carried out (appendix II). The results show that the value of the performance of health services in Central Lampung Regency is in position C or in a poor category. More complete results can be seen in the following table.
Table 4. Table of Performance of Health Services in Central Lampung Regency

<table>
<thead>
<tr>
<th>Ket</th>
<th>Element</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
</tr>
</thead>
<tbody>
<tr>
<td>∑ Value / Element</td>
<td></td>
<td>1176</td>
<td>1171</td>
<td>1103</td>
<td>834</td>
<td>1176</td>
<td>1222</td>
<td>1201</td>
<td>1122</td>
<td>1247</td>
</tr>
<tr>
<td>NRR / element</td>
<td></td>
<td>3.06</td>
<td>3.05</td>
<td>2.87</td>
<td>2.17</td>
<td>3.06</td>
<td>3.18</td>
<td>3.13</td>
<td>2.92</td>
<td>3.25</td>
</tr>
<tr>
<td>Weighted NRR / element</td>
<td></td>
<td>0.34</td>
<td>0.34</td>
<td>0.32</td>
<td>0.24</td>
<td>0.34</td>
<td>0.35</td>
<td>0.35</td>
<td>0.32</td>
<td>0.36</td>
</tr>
<tr>
<td>∑ Weighted IKM NRR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.97</td>
</tr>
<tr>
<td>IKM Health</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>74.15</td>
</tr>
<tr>
<td>Quality of Health Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>C</td>
</tr>
<tr>
<td>Health Service Performance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Not good</td>
</tr>
</tbody>
</table>

The results above are in line with the performance of each element of educational services that shows conditions that are close to good conditions. By paying attention to the results, the average value of each element means that all elements in health services must be increased to be more than the current achievement (> 3). However, in the short term the handling of the tariff / cost element is more preferable in order to increase its performance. Furthermore, handling the categorical elements is not good enough to do. Efforts to improve health services into good categories can be done more easily when compared to education services.

4.3 Performance of Education and Health Services in Lampung Tengah

The results of processing data based on the answers of each respondent on the elements of education and health services indicate that all elements of service in Central Lampung Regency are still not optimal. More detailed results can be presented in the following table.

Table 5. Table of Performance Elements of Central Lampung Regency Services

<table>
<thead>
<tr>
<th>No.</th>
<th>Service Elements</th>
<th>Average value</th>
<th>IKM</th>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>element of requirements</td>
<td>2.82</td>
<td>70.41</td>
<td>Not good</td>
</tr>
<tr>
<td>2</td>
<td>elements of systems, mechanisms and procedures</td>
<td>2.86</td>
<td>71.52</td>
<td>Not good</td>
</tr>
<tr>
<td>3</td>
<td>element of completion time</td>
<td>2.71</td>
<td>67.71</td>
<td>Not good</td>
</tr>
<tr>
<td>4</td>
<td>element of cost / tariff</td>
<td>2.35</td>
<td>58.85</td>
<td>Not good</td>
</tr>
<tr>
<td>5</td>
<td>product element specification type of service</td>
<td>2.83</td>
<td>70.67</td>
<td>Not good</td>
</tr>
<tr>
<td>6</td>
<td>element of implementing</td>
<td>3.04</td>
<td>75.88</td>
<td>Not good</td>
</tr>
</tbody>
</table>
The condition of education and health services for each element in Central Lampung Regency is mostly in the poor category. Based on the table above, it can be seen that the element of cost/tariff for health services is the element with the lowest value reaching 58.85 or in poor performance. Other non-good results are found in the elements of Complaint Handling, Suggestions and Feedback which reached a value of 65.07. The highest achievement is in the element of implementing competencies which reached 75.88 or in the poor category. Efforts to improve every element in the services provided by the Central Lampung Regency government are prioritized in areas that are not in good condition. To assess the satisfaction of service performance provided by the Central Lampung Regency government as a whole, data processing is carried out. The results show that the value of service performance in Central Lampung Regency is in position C with a value of 70.08 or in a poor category. More complete results can be seen in the table below.

### Table 6. Table of Service Performance of Lampung Tengah Regency

<table>
<thead>
<tr>
<th>No.</th>
<th>Service Elements</th>
<th>Average value</th>
<th>IKM</th>
<th>Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>elements of implementing behavior</td>
<td>3.03</td>
<td>75.68</td>
<td>Not good</td>
</tr>
<tr>
<td>8</td>
<td>Elements of Complaint Handling, Suggestions and Feedback</td>
<td>2.60</td>
<td>65.07</td>
<td>Not good</td>
</tr>
<tr>
<td>9</td>
<td>elements of facilities and infrastructure</td>
<td>3.00</td>
<td>74.97</td>
<td>Not good</td>
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<th>Ket</th>
<th>Element</th>
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<th>2</th>
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<tr>
<td>Σ Value / Element</td>
<td>2163</td>
<td>2197</td>
<td>2080</td>
<td>1808</td>
<td>2171</td>
<td>2331</td>
<td>2325</td>
<td>1999</td>
<td>2303</td>
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<td>NRR / element</td>
<td>5.63</td>
<td>5.72</td>
<td>5.42</td>
<td>4.71</td>
<td>5.65</td>
<td>6.07</td>
<td>6.05</td>
<td>5.21</td>
<td>6.00</td>
<td></td>
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<tr>
<td>Weighted NRR / element</td>
<td>0.31</td>
<td>0.32</td>
<td>0.30</td>
<td>0.26</td>
<td>0.31</td>
<td>0.34</td>
<td>0.34</td>
<td>0.29</td>
<td>0.33</td>
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<tr>
<td>Σ Weighted IKM NRR</td>
<td>2.80</td>
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<tr>
<td>Central Middle District IKM</td>
<td>70.08</td>
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<td>Quality of Service District. central Lampung</td>
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<td>Service Performance of</td>
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The results above are in line with the performance of each element of education and health services that shows unfavorable conditions. By paying attention to the results, the average value of each element means that all elements in health services must be increased to be more than the current achievement (> 3). However, in the short term the handling of the tariff / cost element and the elements of Complaint Handling, Suggestions and Input are more equitable in order to increase its performance. Furthermore, handling the categorical elements is not good enough to do. Special attention can be given to improving education services which are in a lower position compared to health services.

3 Conclusion

Educational services in Central Lampung Regency are still not optimal, as seen from the performance of educational services in the poor category with an IKM value of 66.00. The five elements that become the priority handling scale are elements of requirements, elements of completion time, cost / tariff elements, product elements, type of service specifications, elements of Complaint Handling, Suggestions and Feedback. Health services in Central Lampung Regency are still not optimal, as seen from the performance of education services in the poor category with an IKM value of 74.15. However, there are several elements of service that are already in the good category, including elements of executive competence, elements of implementing behavior, and elements of facilities and infrastructure. Overall, the Community Satisfaction Index of the Central Lampung Regency government is in the poor category with an achievement of an SMI value of 70.08. The high disparity in assessment between education and health services is a major factor in the low achievement of Central Lampung Regency IKM.

Suggestions that can be conveyed in this study are; The effort to improve education services is done by increasing the service elements which are in the bad category. The five elements that become the priority handling scale are elements of requirements, elements of completion time, cost / tariff elements, product elements, specifications of service types, elements of Complaint Handling, Suggestions and Feedback. Efforts to improve health services are carried out by increasing the service elements which are in the bad category, including the cost / tariff element. Efforts to improve the performance of Central Lampung Regency Government can be done by prioritizing programs / activities on the lowest element of the IKM value. In addition, synergy between agencies is needed to improve the service performance of the Central Lampung Regency Government.

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[18] The Liang Gie, Pertumbuhan Daerah Pemerintahan Daerah di Negara Kesatuan Republik Indonesia, Gunung Agung, Jakarta
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Legal Protection of *Ulayat* Rights: Contextualization and Policies

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**Abstract.** The constitution has mandated that the existence of customary law communities and their rights as long as they live still be recognized and respected. This was supported by various national and sectoral laws and regulations which also recognized and respected the customary rights of indigenous peoples, but in its implementation customary land conflicts continue to occur. From the legal aspect, this condition occurs because there is no legal umbrella to protect the existence of customary law communities at the regional level. This research was conducted to protecting of ulayat lands of customary communities with doctrinal legal research methods. The results of this study show that First, regional authority in protecting indigenous peoples is obtained from two legal regimes, the regional government legal regime in Law No. 23 of 2014 concerning Regional Government and sectoral legal regimes in the fields of land, forestry and human rights. Second, the contextualization of legal protection of ulayat land rights for customary law communities by local governments can be done by establishing a Regional Regulation as a Legal Policy, so that local governments are advised to immediately form regulations that contain and protect customary land rights for customary law community.

**Keywords:** contextualization; community; *adat*; *ulayat*; protection

1 Introduction

Since the beginning of independence efforts have been made to realize the national of legal system, including the unification of laws in the agrarian field. National agrarian law was deliberately worked out at the earliest, considering that from this agrarian problem the Indonesian people were involved in various social, political and legal struggles. Agrarian and the resources in it are always the object of struggle for control and ownership, both among fellow citizens, groups, indigenous peoples, kingdoms, and even the state. Occupation of Indonesia by foreign countries was also in the framework of the agrarian control. Therefore, it is wise when we are free, so the main concern is prioritized to regulate the agrarian problem. On the one hand, the existence of national agrarian law is expected to increase the prosperity of all Indonesian people, while on the other hand the existence of national agrarian law is a means of anticipating the emergence of various conflicts of ownership and control.

The main points of regulation of national agrarian law are in Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA). There is no denying that the UUPA is a product of legislation that is able to survive for quite a long time, amidst the turmoil and changes in social, political and power regimes in this country. However there are so many demands to change and even replace the UUPA under the pretext of agrarian reform, the
reality of the UUPA until today is still strong, intact and valid. This does not seem possible, unless the UUPA has strong and deep roots in the life of the Indonesian nation. These strong and deep roots include noble values from which national agrarian law is built with arable objects including earth, water, space, and natural wealth contained in it, as is commonly called agrarian (Indonesian earth). Customary land is one of the main points stipulated in the regulation.

The legal policy of customary land rights, in its implementation, has not provided justice for indigenous people, which has a broad impact on indigenous people because the law cannot work properly, resulting in conflict, besides this, indigenous peoples lose their rights constitutional. Based on the results of the agrarian consortium the report obtained in 2015 agrarian conflict in the country continues to show an increase from 472 cases that occurred, there are several cases related to the issue of land rights of customary law communities or ulayat land which until now has not been resolved. One example is Mesuji Regency, Lampung Province. Problems experienced in Mesuji Regency, Lampung Province, namely there are several implementing regulations that are inconsistent, as in the Lampung Governor's Regulation No. G / 127 / DA / HK / 1974 and Minister of Forestry Decree No. 0688 / Kpts-11/1991 Jo No. 93.KPTS-11/1997 and updated with Minister of Forestry Decree No.322 / Kpts-11/2004 concerning HPHTI. This resulted in the ulayat rights of the Mesuji traditional law community being ignored or lost.

Based on the above conditions, it shows that the state in this case the government has not been able to fully implement efforts to protect the rights of communal land of customary law communities. The many disputes over customary land rights of customary law communities that occur show that the law has not been able to achieve its objectives in accordance with its basic values, namely for justice, benefit and certainty, both in its existence and in its implementation. Therefore there is a need for contextualization of legal protection to provide efforts to recognize and protect the rights to customary land of customary law communities. The legal policy on the protection of customary land rights of the new customary law community is expected to be able to protect the rights to ulayat land of customary law communities and can resolve conflicts over customary land rights that occur in customary law communities.

The role of the regional government as the executor of autonomy authority in the regions must also take responsibility in resolving various problems in the region including regarding the protection of customary land rights. The philosophy of autonomous authority must be understood as an authority to improve the welfare of the people, including indigenous peoples. In this regard, this paper will map and describe an analysis of the role of local governments in providing protection for the rights of indigenous and tribal peoples. To describe the focus of this research the formulation of the problem is formulated as follows:

1. What is the authority of the region in carrying out legal protection for indigenous peoples?
2. What is the contextualization of legal protection of customary land rights for indigenous peoples by the local government?

2 Method

This research is done in 2018 and used corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary
legal materials and secondary legal materials. The problem approach uses a statutory approach and a conceptual approach. The data were analyzed qualitatively by describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis then concluded deductively.

3 Results and Discussion

3.1 Regional Authority in Protecting Customary Law Communities

According to Bagir Manan, authority in legal language is not the same as power (macht). Power only describes the right to do or not act. In law, authority also means rights and obligations (rechten en plichten). Philipus M. Hadjon argues that authority is obtained through three sources, namely: attribution, delegation, and mandate. The authority for attribution is usually outlined through the distribution of state power by the Constitution, the authority of delegations and mandates is the authority that comes from delegation. The delegation according to Hadjon, citing Article 10: 3 AWB, delegates is defined as the transfer of authority (to make "besluit") by government officials to other parties and that authority is the responsibility of the other party. The definition of mandate according to Hadjon is a delegation of authority to subordinates.

Authority will give birth to government actions. For this reason, it is also necessary to explain the bestuurhandeling. In order to guarantee and provide a legal basis that government action (bestuurhandeling) carried out by the government as a legitimate and justified act, can be accountable and responsible and liable, then every act of the government must be based on the law that is fair, dignified and democratic.

As an entry point in carrying out an analysis of regional authority in carrying out legal protection for indigenous peoples, it is necessary to map relevant laws and regulations to get a clear picture. The study of the laws and regulations is intended to determine the legal conditions or legislation governing the substance of the regulation of rights to communal land. In this description we will know the position of regional authority in providing protection for indigenous peoples. This analysis will illustrate the synchronization, harmonization of existing legislation and the position of regional authority. The mapping will be described in the following table one.

Table 1. Mapping of Regional Authority for the Protection of Customary Law Communities and Ulayat rights in the Laws

<table>
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<th>No.</th>
<th>Rules</th>
<th>Substance Analysis</th>
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| 1   | Basic Constitution of the Unitary Republic of Indonesia 1945 | Article 18 paragraph (6) "The regional government has the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks."  
Article 18B Paragraph (2) which states that "The State recognizes and respects customary law community units along with their traditional rights insofar as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law"  
Article 28 I paragraph (3): Cultural identity and rights of
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<th>traditional communities are respected in line with the development of the times and civilizations.</th>
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| 2 | Law Number 23 Year 2014 concerning Regional Government | Broadly speaking, government affairs are divided into absolute matters which are not autonomous to the regions and both are concurrent matters, namely government affairs which are autonomous to the regions concurrently according to the level of government. Article 12 then details what constitutes compulsory government affairs and elected government affairs which are concurrent matters of regional government:  
(1) Mandatory Government Affairs relating to Basic Services as referred to in Article 11 paragraph (2) include:  
a. education;  
b. health;  
c. public works and spatial planning;  
d. public housing and residential areas;  
e. peace, public order and community protection; and  
f. social.  
(2) Obligatory Government Affairs not related to Basic Services as referred to in Article 11 paragraph (2) include:  
a. labor;  
b. women's empowerment and child protection;  
c. food;  
d. land;  
e. living environment;  
f. population administration and civil registration;  
g. community and village empowerment;  
h. population control and family planning;  
i. transportation;  
j. communication and informatics;  
k. cooperatives, small and medium enterprises;  
l. capital investment;  
m. youth and sports;  
n. statistics;  
o. coding;  
p. culture;  
q. library; and  
r. filing.  
(3) Preferred Government Affairs as referred to in Article 11 paragraph (1) include:  
a. marine and fisheries;  
b. tourism;  
c. agriculture;  
d. forestry;  
e. energy and Mineral Resources;  
f. trading;  
g. industry; and  
h. transmigration.  
The following are the details of the affairs that are under the authority of the Regency/City Regional Government related to
the protection of the rights of customary law communities in the field of affairs as attached to the Annex to this law:

**Land Affairs**
Sub-Ulayat Land Affairs Sub-authority for Determination of Ulayat Land located within the regency / city area.

**Government Affairs in the Environment**
Sub Affairs Recognition of the existence of customary law communities (MHA), local wisdom and MHA rights related to PPLH Authority Determination of recognition of MHA, local wisdom or traditional knowledge and rights of local wisdom or traditional knowledge and MHA rights related to PPLH in district/city .

b. Increasing the capacity of MHA, local wisdom or traditional knowledge and local wisdom rights or traditional knowledge and MHA rights related to PPLH in the district / city area.

**Government Affairs for Community and Village Empowerment**
Sub Affairs of community institutions, customary institutions, and customary law communities Authority to empower community organizations engaged in village empowerment and customary institutions at the district/city level and empowering customary law communities that have the same customary law in the district/city. b. Empowerment of community institutions and traditional institutions at the village level.

From the provisions above, it can be seen that government affairs are the source of authority of the regional government as a basis for the Protection of Customary Rights of the Customary Law Community.

<table>
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<tr>
<th>3</th>
<th>Law Number 5 of 1960 concerning Basic Agrarian Principles</th>
<th>Article 3 UUPA</th>
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<tr>
<td></td>
<td>&quot;Customary rights of indigenous peoples are recognized as long as in reality there are still&quot;.</td>
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<tr>
<th>4</th>
<th>Law Number 41 Year 1999 jo Law Number 19 Year 2004 concerning Forestry</th>
<th>CHAPTER IX INDIGENOUS LEGAL COMMUNITIES Article 67</th>
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<td></td>
<td>(1) The customary law community insofar as it is in reality still exists and is recognized as having the right:</td>
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<td>a. collecting forest products to fulfill their daily needs the indigenous peoples concerned;</td>
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<td>b. carry out forest management activities based on applicable customary law and</td>
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<td>c. get empowerment in order to improve their welfare.</td>
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<td>(2) Inauguration of the existence and deletion of the customary law community as referred to in paragraph (1) shall be stipulated</td>
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220

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<tr>
<th></th>
<th>Law Number 39 of 1999 concerning Human Rights</th>
<th>Article 6</th>
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<td>(1) In order to uphold human rights, differences and needs in indigenous and tribal peoples must be considered and protected by law, society, and the government.</td>
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<td>(2) Cultural identity of customary law communities including customary rights is protected, in line with the times.</td>
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<td>Explanation of Article 6</td>
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<td>Paragraph (1)</td>
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<td>Custodial rights that are actually still valid and upheld in the environment customary law communities must be respected and protected in the context of protection and enforcement of human rights in the community concerned pay attention to laws and regulations.</td>
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<td>Paragraph (2)</td>
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<td>In order to uphold human rights, the national cultural identity of the community customary law, custodial rights that are still clearly held by the community local customary law, still respected and protected insofar as it does not conflict with the principles of the rule of law which have the essence of justice and people's welfare.</td>
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<td>MK Court Decision No. 35/PUU-X / 2012</td>
<td>In its decision, the Constitutional Court canceled a number of words, phrases and verses in the Forestry Law. For example, the Constitutional Court deleted the word &quot;country&quot; in Article 1 number 6 of the Forestry Law, so Article 1 point 6 of the Forestry Law became &quot;Customary forests are forests within the territory of indigenous peoples.&quot; The Court also interpreted the provisions of Article 5 paragraph (1) of the Forestry Law insofar as it is not interpreted &quot;State forest as referred to in paragraph</td>
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The existence of customary law communities is recognized, if according to reality it fulfills the elements, among others: a. the community is still in the form of a community (rechtsgemeenschap); b. there are institutions in the form of their traditional ruling device; c. there are clear areas of customary law; d. there are institutions and legal instruments, especially customary justice, e. who are still obeyed; and a. still holding collection of forest products in the surrounding forest area to fulfill their daily needs.

Regional regulations are prepared taking into account the results of research by indigenous law experts, the aspirations of the local community, and indigenous community leaders in the area concerned, as well as other relevant agencies or parties.
(1) letter a, does not include customary forest” and removes the phrase "and paragraph (2)" in Article 5 paragraph (3). "Article 4 paragraph (3) of the Forestry Law contradicts the 1945 Constitution and does not have binding legal force insofar as it is not interpreted as" forest control by the state still observing the rights of customary communities, insofar as they are alive and in accordance with the development of the people of the Republic of Indonesia regulated in Constitution,”

The word "country" in Article 1 number 6 of Act Number 41 of 1999 concerning Forestry (State Gazette of the Republic of Indonesia Number 167 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3888) does not have binding legal force, so Article 1 number 6 of the Act Number 41 of 1999 concerning Forestry referred to as "Customary forests are forests that are within the territory of indigenous peoples”;

Article 4 paragraph (3) of Law Number 41 of 1999 concerning Forestry (State Gazette of the Republic of Indonesia Number 167 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3888) does not have binding legal force insofar as it is still alive and in accordance with the development of the community and the principle of the regulated Unitary State of the Republic of Indonesia in law;

Article 5 paragraph (1) of Law Number 41 of 1999 concerning Forestry (State Gazette of the Republic of Indonesia of 1999 Number 167, Additional State Gazette of the Republic of Indonesia Number 3888) does not have binding legal force insofar as it is not interpreted as "State forest as referred to in paragraph (1) letter a, not including customary forest";

Article 5 paragraph (2) of Law Number 41 of 1999 concerning Forestry (State Gazette of the Republic of Indonesia of 1999 Number 167, Additional State Gazette of the Republic of Indonesia Number 3888) does not have binding legal force;

The phrase "and paragraph (2)" in Article 5 paragraph (3) of Law Number 41 of 1999 concerning Forestry (State Gazette of the Republic of Indonesia Number 167 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3888) does not have binding legal force, so Article 5 paragraph (3) of Law Number 41 of 1999 concerning Forestry referred to as "Government determines forest status as referred to in paragraph (1); and customary forests set insofar as it is in reality, the customary law community concerned is still present and acknowledged ".

Minister of Home Affairs Regulation Article 2: Governors and regents / mayors recognize and protect customary law communities.
222

Number 52 of 2014 concerning Guidelines for Recognition and Protection of Customary Law Communities

Article 3
(1) In recognizing and protecting customary law communities, the regent / mayor forms a district / city Customary Law Community Committee.

Article 4
Recognition and protection as referred to in Article 2 is carried out through stages:
a. identification of Customary Law Communities;
b. verification and validation of Customary Law Communities; and
c. determination of the Customary Law Society.

Article 5
(1) Regents / Mayors through the Sub-District Head or other designation shall identify as referred to in article 3 letter a by involving customary law communities or community groups.
(2) Identification as referred to in paragraph (1) is carried out by observing:
a. history of the Customary Law Society;
b. Indigenous territory;
c. customary law;
d. assets and / or customary objects; and
e. customary government institutions / systems.
(3) The results of identification as referred to in paragraph (2) shall be verified and validation by the district / city Customary Law Community Committee.
(4) Results of verification and validation as referred to in paragraph (3), shall be announced to Local Customary Law Society within 1 (one) month.

Article 6
(1) District / city Customary Law Community Committees submit recommendations to Regent / Mayor based on the results of verification and validation as intended in Article 5 paragraph (4).
(2) The regent / mayor shall determine the recognition and protection of the community customary law based on the recommendations of the Customary Law Society Committee with Decree of the Regional Head.
(3) In the case of customary communities in 2 (two) or more districts / cities, recognition and protection of customary law communities determined by a Joint Decree of the Regional Head.

Article 7
(1) In the case of Customary Law Communities object to the results of verification and validation as referred to in Article 5 paragraph (4), then the customary law community may file an objection to the Committee.
(2) The committee conducts verification and re-validation of
community objections as referred to in paragraph (1). (3) Verification and re-validation of community objections can only be done 1 (one) time. Article 8 (1) In the case of the Customary Law Society objection to the Decree of the Regional Head as referred to in Article 6 paragraph (2) and paragraph (3), can submit objection to the State Administrative Court. (2) Settlement of the dispute over the filing of an objection as referred to in paragraph (1) is carried out in accordance with the provisions of the legislation.

8 Agrarian and Spatial Planning Regulation No. 10 of 2016 concerning procedures for establishing communal rights over land of customary law communities and communities within certain areas

Communal rights to land, are joint property rights to the land of a customary law community, or joint property rights to land granted to communities within a certain area. MHA is a group of people who are bound by their customary law as citizens together with a legal alliance because of the similarity of place of residence or on the basis of descent. Article 2 paragraph 1, customary communities that fulfill the requirements can be confirmed the rights to their land. Article 4 paragraph 1 The requirements of the customary law community as referred to in article 2 paragraph 1 include: a. The community is still in the form of a community; b. There are institutions within the ruler’s customary instruments; c. There are clear areas of customary law; and d. There are institutions and legal instruments, which are still adhered to. Article 5 paragraph 1 Customary law communities or communities in certain areas submit applications to regents / mayors or governors. Article 6 paragraph 1 In the case of the land requested in 1 (one) district / city, the regent / mayor forms an IP4T team. Article 7, The IP4T Team has the duty: to accept the application; identify and verify the applicant, land history, type, control, use and use of land; identify and inventory land boundaries; field inspection; analyze juridical data and physical data on parcels of land; and submit reports on the work of the IP4T team. Article 18, in the event that the report states the existence of customary law communities and their land, the regent / mayor determines the existence of customary law communities and their land, in the case that land is located in 1 (one) district / city.

Based on the description in table one, it can be seen that there is harmonization and synchronization which shows that the local government has the authority to protect and empower indigenous peoples. The authority of the Regional Government in protecting indigenous peoples is based on two legal regimes at the same time, namely the regional
government legal regime outlined in Law No. 23 of 2014 concerning Regional Government and sectoral legal regimes spread in the fields of land, forestry and human rights. The authority is conceptually the authority that is attributed because it is directly outlined by the Act. From these laws and regulations, the Regional Government has the authority to make regional policies related to the protection of customary law communities which are ideally set forth in regional regulations as the basis for legitimacy for the protection of customary law communities.

3.2 Contextualization of Legal Protection of the Ulayat Right for Customary Law Communities by the Regional Government

The constitution as the highest legal source has mandated that the existence of customary law communities and their rights as long as they live still be recognized and respected. This was then supported by various national and sectoral laws and regulations which also recognized and respected the customary rights of customary law communities, including: Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations, Law Number 39 of 1999 concerning Human Rights, Minister of Environment and Forestry Regulation No. P.32 / Menlhk Secretariat of 2015 concerning Forest Rights, Agrarian Regulation and Spatial Planning No. 10 of 2016 concerning procedures for establishing communal rights, and other sectoral regulations. The government's political will in maintaining the existence of indigenous peoples is also strengthened by the existence of the Constitutional Court Decision No. 35 / PUU-X / 2012, which has canceled some of the provisions in Law No. 41 of 1999 concerning Forestry which are the source of the emergence of dishonorable policy regulations, so that the existence of these decisions is that customary forests are no longer part of State forests.

Even though the customary rights of indigenous peoples have been recognized in various laws and regulations, but in its implementation to date customary land conflicts continue to occur. From the legal aspect, this condition occurs because there is no legal umbrella to protect the existence of customary law communities at the regional level. Therefore, the concrete role of regional governments is urgently needed in the formation of regional regulations related to the protection of customary rights of indigenous and tribal peoples. The formulation of arrangements for the protection of customary land rights for indigenous and tribal peoples in regional regulations will concretize the role of local government and customary law communities to form the following configuration:

![Fig 1. Configuring Charge Synergy Raperda Protection of customary law communities](image-url)
The existence of local regulations on the protection of customary land rights for customary law communities in accordance with the legal function to maintain public and individual interests in the state and direct the actions or decisions of the state and people to realize the ideals of justice, truth and prosperity in the country. With the legal protection of the right to communal land for indigenous peoples who are just, it is hoped that it will be able to protect indigenous groups in the area.

In addition, according to Von Savigny (1779-1861) that the regime and legal doctrine made by the government differed from local law. Next he said that the law was the People's Soul. Construction of von Savigny's theory of the law that there is an organic relationship between the law and the character or character of a nation. Reflecting the law of the Volkgeist, therefore customary law that grows and develops in a volkgeist regime must be seen as a law of true life. True law is not made, but found. Legislation is important as long as it has the declarative nature of the true law. So that law is a mirror of society, the law that is built must be a reflection of the character or character of a society.

Establishment of a law on the protection of customary land rights for indigenous peoples as a formulation of substance and legal institutional structure. Through this regulation, the protection of customary land rights of customary law communities can be carried out. Formulation of Legal Protection of customary land rights for indigenous and tribal peoples with a human rights perspective using the Prismatic Society-FW Riggs Concept. The legal concept of the Prismatic Society is the concept of law as a middle way of resolving two cultural problems found in society. In society there are two cultures, namely those based on the community (gemeinschaft) and patembayan (gezelschaft). The formulation of legal protection for customary land rights for indigenous people is a harmonious law that combines the values of national land law with customary law. In accordance with the concept of the Prismatic Society or the concept of the Prismatic community, that the formulation of the Regional Regulation on Legal Protection of the rights to communal land for indigenous peoples is a middle ground in overcoming the problems at hand.

4 Conclusions

4.1 Conclusion

Based on the results of the discussion, it can be concluded the following: First, regional authority in protecting indigenous peoples is obtained from two legal regimes, namely the regional government legal regime outlined in Law No. 23 of 2014 concerning Regional Government and sectoral land law regime, forestry and human rights. Second, the contextualization of legal protection of customary land rights for customary law communities by the local government can be done by the establishment of a Regional Regulation as a Legal Policy for the Protection of Property Rights on the Land of Customary Law Communities

4.2 Recommendation

The regional government must immediately form regional regulations as contextualization of the role of the content of recognizing and protecting customary land rights for customary law communities.
References

Fuel Oil Distribution in Regional Level in Indonesia

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Abstract. One of the priority agenda of Nawa Cita Joko Widodo-Jusuf Kalla is the distribution of development and economics in all regions of Indonesia. An implementation of it would be the improvement of public facilities in remote areas. It causes fuel oil (BBM) needs to continue to increase. As a consequence, the country needs an equitable distribution of fuel; however, there is often an inequality of oil fuel distribution, as what occurred in Bunga Mayang district of North Lampung. The local community should travel approximately 40 km to reach the nearest gas station; Negararatu, and often the gas station has run out of fuel oil. Some people who carried oil transportation from the gas station to Bunga Mayang were arrested and sentenced to 8 (eight) months in prison per the ruling of the city-state court No: 66/Pid. Sus/2017/PN. Kbu although they have made it easy for people to get fuel oil. This research examines that Law No. 22 of 2001 on oil and Gas has not been made clear about the granting of permits to business activities in remote areas. The requirements to obtain existing permits are quite challenging to reach by communities with the lower middle class. Other laws and regulations are also deemed to have not matched the situation in the remote areas so that 3 (three) fundamental values of the law, namely justice, legal certainty, and benefit for the community are yet to be achieved.

Keywords: Distribution; fuel oil; remote areas

1 Introduction

1.1 Research Significance

After officially became president and Vice President of the Republic of Indonesia and inaugurated on 20 October 2014, Joko Widodo and Jusuf Kalla designed nine priority agenda called Nawa Cita. The Program is made to demonstrate the priorities of the changing roads to Indonesia, which are politically sovereign, independent in the field of economics, and personality in the field of culture. Building Indonesia from the periphery by strengthening areas and villages within the framework of the unitary state is one of the implementations of Article 33 on the National Economy and Social Welfare of the Constitution of the Republic of Indonesia 1945. The Constitution 1945 is the highest legal basis in Indonesia per Law No. 10 of 2004 on the establishment of statutory regulations.

Article 33 briefly explain that the state controls all branches of production such as Earth, water, and natural wealth, it is then compiled based on the principle of family and use for the prosperity of the people. Also, this is then implemented in economic democracy with several principles that are the principle of togetherness, fairness, sustainable, environmentally sound,
independence and by maintaining the balance of progress and economic unity of the nation, and all the perpetrations are governed in law.

The purpose and objectives of the distribution of development and economics and article 33 UUD 1945 is an element of equality in all parts of Indonesia from the big city to remote areas in the field of natural wealth management. Natural wealth is controlled by the state but must be managed well and sustainably for the prosperity of the people as a manifestation of national ideals and objectives. Article 33 UUD 1945 is the basis for the establishment of the Law of the Republic of Indonesia No. 22 of 2001 on Oil and Gas.

However, in the practice of law enforcement of the Republic of Indonesia, number 22 of 2001 on Oil and Gas is still found inconsistency with circumstances in society. As an example, the distribution of oil fuel that occurred in Bunga Mayang North Lampung Regency, which is a remote area and quite challenging for the community to get fuel oil. Seeing the situation, several people took an opportunity to distribute it illegally. As a result, they were sentenced to prison 8 (eight) months under the decision of the District Court of Kotabumi No: 66/Pid. Sus/2017/PN. Kbu. There is a discrepancy between the law written with the reality of the community, which proves that the law of the Republic of Indonesia number 22 of 2001 on oil and Gas is considered less effective and needs revision or renewal. Notably, in the field of granting distribution permits in remote areas to fit the circumstances and situation as well as reach the welfare of the community.

The definition of "renewal" (Pembaruan) or "renewal" (Pembaharuan) in the General Indonesian dictionary by W.J.S. Poerwadarminta is interpreted as an act or way of updating. "Updating" has three understandings:

1. Fix to be new;
2. Repeat/ Start again;
3. Replace with new ones

Linking the three understandings above with the criminal law as the subject of renewal, the most appropriate sense to use for the renewal of criminal law (criminal law politics) is the third sense, which is "replacing with new ones". Based on the background above, it encourages authors to research "Fuel Oil Distribution In Regional Level In Indonesia."

1.2 Formulation of Questions

Based on the background, the formulation of the research is to corroborate the objective of achieving the law enforcement against the distribution of oil fuels in remote areas based on Act No. 22 of 2001 on Oil and Gas and other regulations.

1.3 Theory and Related Work

Distribution is the delivery of goods and services to several retailers, distributors of something that shares with some people or several places. Fuel oil is a fuel derived and/or processed from petroleum. Regional is an area of cities, districts, and other regions within a country; remote areas are a place or area that is difficult to reach for several reasons, namely geography (forest, mountains, islands, swamp), transportation, social and economic.
2 Research Method

The research method used is empirical. The research uses empirical studies to examine the prevailing laws and regulations that are then associated with the legal facts that occur in the community. The data used in this study are primary data, sourced from statutory regulations and court decisions, and secondary data, sourced from books, legal dictionaries, and legal journals. These data are processed using descriptive and analytical-qualitative methods.

3 Results and Discussion

3.1 The decision of the District Court of Kotabumi No.: 66/Pid. Sus/2017/PN. Kbu

The verdict of the Kotabumi Court number: 66/Pid. Sus/2017/PN. KBU contains a trial of 2 (two) defendants, MUHAMMAD RIFAI and MUHAMMAD ANDI SAPUTRA, who have been proven to have committed a criminal offense "participate in the carriage of subsidized fuel without legitimate permission" and sentenced to prison respectively for 8 (eight) months and the penalty of fines of Rp. 40 million,-(forty million rupiah) provided that if the fine is not payable, it is replaced by imprisonment for 3 (three) months.

The example of the case explains that the transportation of oil fuel that occurs in Bunga Mayang North Lampung Regency, close to PTPN VII Bunga Mayang sugar Factory, is a fairly remote place and does not have a Gas station (filling stations/Public Fuel). Under Article 33, Paragraph (3) of Law No. 22 of 2001, oil and gas business activities cannot be carried out adjacent to the factory except with the permission of government agencies. The nearest gas station is about 40 kilometers from the Bunga Mayang region, but that particular gas station often does not have the supply of oil or empty gasoline. This situation is considered an opportunity by several persons to distribute it illegally. It helps local people to meet the needs of everyday life that are supported by fuel oil. The wage for the carrier is also very cheap, which is only 350-450 rupiah per liter. However, the perpetrator of the criminal offense remains convicted by the Kotabumi District Court, which is 8 (eight) months in jail.

3.2 Distribution of Oil Fuels in Remote Areas

Consumption of domestic oil fuels continues to rise to promote economic growth and equitable. However, unfortunately, it is not balanced with oil production. If such circumstances are left continuously, then Indonesia will continue to depend on the supply of imported oil. Increased consumption of fuel oil is a natural thing to support the growth and equitable of the economy; it becomes unnatural when the consumption of oil is not efficient because it triggered cheap fuel prices subsidized by the government. The distribution of fuel oil is also one of the problems that Indonesia has as oil fuel is not evenly distributed in some remote areas. Therefore, it is necessary to set up legislation to regulate and control the distribution of oil and gas. Based on the Act of the Republic of Indonesia number 22 of 2001 on Oil and Gas and other derivative regulations, a body is formed to make arrangements and supervision on the provision and distribution of Oil and Gas Fuels are BPH Migas (Downstream Oil and Gas Regulatory Bodies).

Based on the law of the Republic of Indonesia Number 8 of 1971 about the State Oil and Gas Mining Company (PERTAMINA), it regulates that the oil and gas industry should only
be undertaken by the State companies solely in this regard Pertamina. In Indonesia itself there are three types of fuel oil established by the government based on the Regulation of the President of the Republic of Indonesia Number 191 of 2014 on the provision, distribution and retail price of petroleum fuel, namely the following:

Article 1
1. Certain types of fuel oils are referred to as Certain Fuel are fuels derived and/or processed from petroleum and/or processed from petroleum which has been mixed with biofuels as other fuels with the type, standard and quality (specification), price, volume and specific consumer and given subsidies.
2. Special Oil Fuel Assignment Type is referred to as Special Types of Fuel Assignment are fuel derived from and/or processed from petroleum and/or fuel derived and/or processed from petroleum that has been mixed with biofuel as another fuel of a particular type, standard and quality (specification) distributed in the assignment area and not subsidized.
3. Type of general fuel oil which is referred to as type of General Fuel is fuel derived and/or processed from petroleum and/or fuel derived and/or processed from petroleum which has been mixed with vegetable fuel (biofuel) As other fuels with certain types, standards and quality (specifications) and is not subsidized.

In other words, fuel oil in Indonesia is classified into subsidized and unsubsidized fuel oil. Subsidized petroleum fuel is the fuel that has received discounted prices or financial assistance from the Government to increase the purchasing power of consumers in the lower middle circles, for example, are Solar and Kerosene. Non-subsidized fuel oil is the fuel of oil that does not get discounted or government financial assistance due to the price of non-subsidized petroleum fuel following the price dynamics of the crude oil and the rupiah exchange rate in the global market; Premium, Pertamax, Pertamax Turbo, Pentalite, Pertamina Dex, and Dexlite.

### 3.3 Distribution of Oil Fuels in Remote Areas

![Petroleum Distribution Flows](Fig.1)

According to Soekartawi, the meaning of distribution is the activity of channeling or delivering goods and services to the consumer. The distribution of oil fuels that occur in
remote areas including downstream business activities as happened in the case in Bunga Mayang North Lampung District is an indirect distribution where PT. Pertamina, as the primary distributor, distribute fuel oil to the area through a third party of individuals. The distribution activities of subsidized and non-subsidized oil fuels must also be supplemented by legal business license issued by the Minister of Energy and Mineral resources delegated to BPH Migas under Act No. 22 of 2001 on oil and Gas and other derivative regulations.

Article 23 explains that the new business entity can carry out downstream business activities after receiving a business license from the government, as for the business license of management business license, transportation business license, storage business license, and commercial business license, and Any business entity may have more than 1 (one) business license as long as it does not contradict the prevailing laws and regulations.

Article 29 explains that in the event of a shortage of oil fuel in remote areas, the transportation, storage, and other facilities can be utilized with other parties which are then governed by the governing body and do not ignore the aspects of technical and economical.

Article 30 explains that government regulations govern regulations such as processing, transport, storage, and commerce in article 23 to article 29.

According to the above articles, it is clear that downstream business activities which include processing, transporting, storing, and trading both for subsidized and non-subsidized fuels in remote areas must have permits which then the permit is further stipulated in the Government Regulation of the Republic of Indonesia Number 36 of 2004 about Downstream Oil and Gas Business Activities.

Article 8 paragraph (1) letter A explains that the business entity that has had a business permit from the Minister should guarantee the availability and distribution of fuel oil in the entire territory of the Republic of Indonesia that has been established Government.

Article 75 explains that the policy stipulated by ministers in remote areas is based on the consideration of location, readiness of market formation and the strategic value of the region concerned, by not ignoring the consideration of the governing body.

Article 76 explains that the fuel oil transmitted to the remote area is regulated and stipulated by the governing body which the business entity can cooperate with the local-owned enterprises, cooperatives, small businesses and national enterprises that have been has a distribution network in remote areas without ignoring the technical and economic aspects, as for the remote areas are obliged to receive the distribution of gasoline-type oil, diesel oil and kerosene tailored to the needs of the region concerned.

Article 8 paragraph (1) letter A, article 75, and article 76 regulation of the Government of Republic of Indonesia Number 36 of 2004 about Downstream Oil and Gas business activities explained that the distribution of oil fuel conducted by every business entity that has been granted permission from BPH Migas and has been established by the government should spread evenly to remote areas. It is under Joko Widodo-Jusuf Kalla’s program, Nawa Cita, on the equitable development and economy. However, in particular communities, there are still areas that have difficulty getting fuel oil.

3.4 Objectives on Achieving Legal Enforcement

Given the business license that has been governed by Act No. 22 of 2001, the Government Regulation of Republic of Indonesia No. 36 of 2004 and other regulations, it is still considered very difficult to obtain the business license. For some business entities with competent human resources in reachable areas, it is not too difficult to obtain such permits. However, other circumstances occur in remote areas that have limited education on human
resources. The lack of understanding of existing regulations and considerations to get the business license is very complicated, coupled with the economic limitations that make them perform various ways to meet daily needs. Not to mention, BPH Migas is headquartered in South Jakarta, which makes it difficult for people in remote areas to be able to obtain these permits. Legal facts where oil fuel carriers in the form of premium and diesel are still sentenced to 8 (eight) months jail in Bunga Mayang, North Lampung Regency is not in accordance with Joko Widodo-Jusuf Kalla’s program, Nawa Cita, about equalization. They helped the distribution in the area. Thus, it is also considered not in accordance with the real legal purpose of realizing justice as expressed by the Roman philosophers Aristotle and Hans Kalsen with his theory of righteousness.

In the framework of the thought of Aristotle, Eudaimonia (the highest goodness that is the goal of all Politika) is only possibly embodied in the Agathon Kai Ariston (the highest good for any and every one), which for Aristotle is (logos) manifested through human ethical conduct. That noble deed could not be ignored, for Aristotle, the Eudaimonia which also included justice (as he had earlier pointed out in his book Nomoi) must be enforced nomothetical, which means that justice should be enforced by law. Alternatively, in the language of our day: justice must be enforced by law. Justice is indeed an essential principle in Aristotle's teachings because it is relevant to the reciprocal relationship between humans living together with the policy to be able to fulfill the need for civilization. The social life of a fellow man becomes impossible if it is not supported by justice.

Kalsen relied on the rationality of the norm of justice in one of the most ancient teachings about what justice was from a legal expert, Domitius Ulpainus (Romans, 170-223), who expressed his formulation of justice as recorded in Digest Justiniani, Justice is a steadfast will and the syndicate to give to whoever what is the right. The necessity of the law is as follows: Live with respect, do not hurt others, and give to anyone what is right. Kelsen accepted the doctrine of Ulpinus as a rational norm of justice, which was applied in inter-human relations as a "glorious rule."

The modern legal thought posed by Gustav Radbruch seeks to combine the three classical views (philosophical, normative and empirical) into a single approach which is then known as the Three Legal Principles that include: Justice (Philosophy), Legal Certainty (Juridical) and the Benefit of the Society (Sociological). Furthermore, Radbruch teaches the use of the fundamental priorities of the three principles, where the priority always falls on justice, then benefits, and lastly legal certainty.

Based on the theory of justice expressed by Aristotle and Hans Kalsen, the theory of the Three Legal Principle of the law of justice, legal certainty, and the benefit of society as stated by Gustav Radbruch above, suggested that the regulations Legislation made by the Government should be enforced based on the essential purpose of the realization of justice, legal certainty, and benefit to society. However, to make it happen is not easy; it should be supported by several factors that influence the enforcement of the law itself, namely:

1. The legal factor itself.
2. Law enforcement factors, the parties who form or apply the law.
3. Factors which support the enforcement of the law.
4. Community factors, i.e., the environment in which the law applies or applied.
5. Cultural factors, namely; the work, copyright, dan essence that is based on the karsa (wish/intention of a human) in life.

The legal factor itself affects the enforcement of laws due to nonadherence to the enactment of laws, in particular, the absence of implementing regulations that are much needed to apply legislation. Besides, the uncertain meaning of words in the law results in the
implications of its interpretation and application. The law enforcement factor has some
disadvantages that are limited ability to play his role and with whom he interacts, lack of
desire to think of the future of this country due to limited knowledge, closed attitude to
changes, and attitudes that are more concerned with personal interest rather than the interests
of the society.

The insufficient factors of facilities can inhibit the enforcement of the law because it will
not be possible that law enforcement can carry out their duties without adequate facilities.
Factors of society also become one that affects the enforcement of the law, if the community
itself has an open mind and has an excellent educational background, it will be easier for the
law to be applied. People who are already aware of the law will be less likely to commit
violations and criminal acts. Cultural factors are influential because some regions in Indonesia
are still using customary law, which is the Law of Customs; this law is considered more
effective to cause a deterrent effect than the written law. For example, in Aceh province,
adultery performed by couples who do not have a bond of marriage will be given a penalty of
a whip in front of the crowd.

These factors also affect the case of the law that occurred in Bunga Mayang North
Lampung District about the polemic of distribution of oil fuels in remote areas. It is one of
many similar cases that occurred in Lampung province. The legal certainty has been reached
as the settlement of the case is deemed to be under Act No. 22 of 2001. It is challenging for
the judge to accommodate The Three Principles: justice, benefit, and legal certainty in one
verdict. At least the judge must choose one of these principles; however, it would be sensible
to put justice and benefit first. Also, for the community, the purpose of the law is not achieved
because it is considered unfair and not beneficial if the perpetrators of the criminal, who help
the surrounding communities who are struggling to get fuel oil, were sentenced to eight
months imprisonment.

This situation is because the area of Bunga Mayang is located near the sugar factory
PTPN VII Bunga Mayang which is in accordance with article 33 paragraph (3) of the Law of
the Republic of Indonesia Number 22 of 2001 that in a location near any factory should not be
established Gas station with the purpose of minimising the government's subsidized oil fuel to
not be misused for industrial purposes. The nearest public refueling station (Gas station) is 40
kilometers away from the Bunga Mayang region, not to mention that the Gas station is often
out-of-stock. These circumstances should be taken into account by the government to improve
the prevailing laws and regulations. The legal factor is the most influential in the enforcement
of the law.

Sometimes the laws made by legislative agencies lead to the obscurity of the words in the
law that lead to confusion in the interpretation and application. Because the law is often made
not following the circumstances of the community, therefore, Act No. 22 of 2001 about Oil
and Gas needs to be revised, especially in the rules regarding the implementation of
distribution in remote areas. It is easier to change the legislation than to change the society
itself because the rules are made for the public order. Thus, the regulation should be made
following the facts and conditions that exist in the community in order to achieve the
fundamental purpose of the law.

4 Conclusions

4.1 Conclusion
Based on the research and discussions above, it can be concluded that the agenda priorities by Joko Widodo-Jusuf Kalla, Nawa Cita, about the equitable development and economics that led to the increase in the need for oil fuel results in less prevailing laws and regulations. It can be seen from the legal fact based on the decree of the Kotabumi District Court number: 66/Pid. Sus/2017/PN. Kbu as one of the applications of Act No. 22 of 2001 on Oil and Gas which, in which the distribution of oil fuels was slightly curtailed by the difficult permits obtained. Both subsidized and nonsubsidized oil fuels must still obtain permission from BPH Migas. Law, Government Regulation, Presidential Regulation, and Ministerial Regulation also explain that the permit of business activities upstream and downstream oil and gas must be obtained from the permission of the Minister of ESDM delegated to BPH Migas based in Jakarta South. It is not possible that these permits are easily reachable by people living in remote areas where they need fuel oil materials to meet the needs of everyday life while fuel oil distributors in the area are difficult to access.

Moreover, some people who tried to help the distribution of oil fuel in the remote area were sentenced. This fact raises the assumption that the enforcement of Act No. 22 of 2001 about Oil and Gas does not reach justice and benefit to remote areas, therefore, it is necessary to make revisions to the law, especially in the licensing of the distribution in remote areas.

4.2 Recommendation

Based on the above conclusions, the suggestions provided are:

1. The government, in this case, is the legislature as a lawmaker deemed necessary to revise Act No. 22 of 2001 about Oil and Natural Gas, in particular, to simplify the rules of granting distribution permits of petroleum in remote areas. So that the government's presence and the legal purposes of justice, legal certainty, and benefits can all be felt by Indonesian.

2. To all policymakers and authorities in order to relentlessly build governance that is clean, effective, democratic, and trustworthy by prioritizing efforts to restore public trust. It is to realize Indonesia, which is free from corruption, full of dignity, and trustful.

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