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\textit{ICOLEG 2021}

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Preface

The 2nd International Conference on Law, Economic, Governance (ICOLEG) is an annual event hosted by Faculty of Law, Universitas Diponegoro, Indonesia.

"The Wave of Digitalization on Digital Society: Challenging Ethics and Law in Moral Boundaries" has been chosen at the main theme for the conference, with a focus on the latest research and trends, as well as outlook of the field. Call for paper fields to be included in ICOLEG 2021 are: Law, Economic, Governance, Politics, Development, etc.

The conference invites delegates from across Indonesian and Southeast Asian region and beyond and is usually attended by more than 100 participants from university academics, researchers, practitioners, and professionals across a wide range of industries. We select around 60 papers for proceedings. The conference itself is supported by Asosiasi Penyelenggara Program Studi Ilmu Hukum Indonesia (APPSIHI) and Southeast Asia Academic Mobility (SEAAM).

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Legal Analysis of Property Transfer Tax Regulations in Notarial Transaction Agreements Amidst the Digitalization of Society 5.0

Albert Lodewyks Siahaan1, Budiman Ginting2, Muhammad Yamin3, Keizerina Devi4  
{albertlodewyksiahaan@gmail.com}

Universitas Sumatera Utara, Indonesia1, 2, 3, 4

Abstract. This study aims to find alternative ways to use digital technology in answering the problem of implementing the transfer of land and building rights taxes in the sale and purchase deed. In notarial transaction agreements, property transfer tax is mandatory and is collected based on statutory regulations. Property transfer tax consists of income tax, value-added tax, sales tax on luxury goods, and property title transfer fee. It is calculated according to the Regional Tax and Retribution Law which takes the highest value of the Sales Value of the Taxable Object or transaction value. This causes legal uncertainty, as there are many cases where the calculation basis is fabricated to reduce the tax that must be paid prior to the signing of the agreement. This causes a large potential loss for the state if the calculation is based on the Regional Tax and Retribution Law. This is normative juridical research, which utilizes materials from books, laws, articles, and other legal materials. The results indicate that the basis for calculating property transfer tax in notarial transaction agreements should not be taken from the highest value between the Sales Value of the Taxable Object or transaction value, but rather from the fair market value. The Regional Tax and Retribution Law should be revised with the support of digitalization so that tax potential can increase.

Keywords: Legal Analysis, Property Transfer Tax, Notarial Transaction Agreement, Digitalization

1 Introduction

Taxes are the contribution of citizens to the state based on the law (enforceable) without consideration, which can be directly appointed and used to pay for general expenses [1]. This definition emphasizes the functions of tax, namely its budgetary and regulatory functions [2].

Taxes highly contribute to the survival of society and the state. They are considered as political and strategic levies as mandated by Article 33 Paragraph (2) of the 1945 Constitution. They are political in nature as tax collection is considered a constitutional order and are strategic in nature as they are the main foundation for the state in financing government and development activities. For citizens, taxes are a concrete means of contribution towards the state to hopefully improve public and state welfare.

The legal event of a transaction in a notarial transaction agreement involves the buyer and seller being in a transaction agreement that is notarized by a notary or a land titles registrar. When the agreement has been signed, a property transfer tax must be immediately paid. In property transfers, a notary is an integral and efficient role in the tax reporting, paying, and
validating processes and is a necessary part of the process from the start of the transaction up
to the land rights/certificate has become the property of the buyer.

The objects in property transfers in notarial transaction agreements are land and the
buildings erected on it. Ruwiastuti [3] defines land as “an area with economic potential that is
able to support communities (forests, rivers, mountains, mineral resources, and agricultural
land) and is known as a cultural crossroad of the surrounding communities”. Regarding this
definition, land construction is considered the same as an area. The territory is terminologically
defined as an area of authority, command, supervision, or the area surrounding a province or
district. The definition of land in land construction is closely associated with administrative
areas.

The value of a property transfer tax is obtained from the basic calculation value of tax
imposition, namely the highest Sales Value of the Taxable Object (SVTO) or transaction value
following Article 87 Paragraph (2a) and Paragraph (3) of Law Number 28 of 2009 concerning
Regional Tax and Retribution, followed by the types of property transfer tax as regulated in
other tax laws. The transaction price is used if it is the highest value, as the SVTO is usually
much lower than the market and transaction values.

SVTO that are far below the market and transaction prices can cause problems in
implementing this regulation. This is in contrast with the objective of transferring management
rights of property title transfer fees and taxes for residential areas to local governments, which
is to ensure that regions become more advanced and familiar with potential land value according
to the population density and economic development of the area.

2 Research Methods

This is normative research, specifically legal research that uses secondary data sources or
data obtained through library materials by examining research on legal principles, sources, and
theories taken from books and statutory regulations as well as regulations under laws such as
presidential, government, ministerial, and regional regulations related to this research.

3 Discussion

In notarial transaction agreements, the object of a property transfer tax is the land itself.
The land has a philosophical value as it has economic, cultural, and historical values. This
understanding of land use was strengthened by Dixon [4], where he defined land as “Both the
physical assets and the right which the owner or others may enjoy in or over it”.

Land plays a crucial role in the development of human life. Throughout history, land has
been used as a medium for humans and since post-Pleistocene times, land has been utilized to
farm after previously hunting and gathering food [5]. This period of land cultivation marks the
development of human civilization in Indonesia.

In various scientific studies such as social, legal, cultural, and economic science, the land
is a key asset in human lives. It has always been associated with the existence of a nation and
the center of culture emergence [6]. Various wars have been declared to conquer the land.
The importance of land in human lives is due to its many benefits, namely: 1. The land is a natural
asset that provides space for other physical assets, such as housing; 2. The land is a social space
where people interact; 3. Land provides space for infrastructure (roads, water, sanitation,
electricity) that is beneficial for the community; 4. The land is an economic asset that can be sold, inherited, or used as collateral for loans; and 5. Land can increase the income of its owner in many ways, for example by erecting businesses or rental accommodations (Urban Sector Network and Development Works) [7]. These examples show that land is the main source of welfare for humans.

Land plays a crucial role in maintaining human lives. Its functions are divided into several dimensions:

a. The strategic function of land from cultural and ecological dimensions: the interdependence between organisms and the environment; as a component of the environment, the land is dependent on other elements [8].

b. The strategic function of land from the socio-political dimension: land can determine the social status of the owner. This relates to land ownership rights, in which the landowner has the authority to own and manage the land. The more land a person owns, the greater the authority regarding land utilization. This authority also relates to the social functions of land which must consider the public interest. As a limited natural resource, land ownership must be distributed as equitably as possible by the state through limiting land ownership. This will indirectly ensure that an individual will not be able to disrupt public peace through irresponsible land use. In land management, the stance and attitude of the government are important factors in supporting actions that are in line with public interests.

c. The strategic function of land from the economic dimension: the land is a means of production that can provide income as well as improve the welfare of the owner. This can be seen from an economic point of view: the land is one of the production factors, the others being labor and capital [9]. The land is considered the most durable factor of production as its value tends to increase over time, unlike vehicles, cars, or cellphones which experience economic depreciation. This is in line with its socio-political dimension, where land is also a source of power in addition to being a source of income. It can be said that the larger the land owned by a person or a group, the greater their influence on the government [10]. This can be seen in the development of an area; it is determined based on the interests of the owners of the largest amount of land. It is known that in addition to having an impact on the economic sector, the development of an area will indirectly impact the socio-political sector of the surrounding communities.

Article 33 Paragraph (3) of the 1945 Constitution states that: “The land, the waters, and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people”. Two elements need to be considered from this statement, namely state control and its philosophical implication. State control over land and buildings does not mean full ownership but rather the authority of the state, as the highest form of authority of Indonesia, to:

a. Manage and administer the designation, use, supply, and maintenance of the land, water, and skies.

b. Determine and regulate the rights for ownership over (part of) the land, water, and skies.

c. Determine and regulate legal relations between individuals and legal actions concerning the land, water, and skies.

The SVTO of land determined by the regional government is often much lower than the market and transaction prices which often results in problems in the process of paying property transfer tax in notarial transaction agreements in Indonesia. For this reason, the transaction price is often used in place of the SVTO.

In its essence, appraisals are estimates or opinions based on rational reasons or analysis. The feasibility of an appraisal is determined by the availability of sufficient data, as well as the
ability and objectivity of the appraiser. According to Hidayati and Harjanto [11], land appraisal is a process to provide estimates and analyses on a property (land and buildings) based on acceptable facts obtained from field research.

According to Kurdinanto in Luky [12] the value of land is determined by two types of factors that have a strong relationship, influence, and attraction to said land, namely:

a. Measurable factors, which can be processed scientifically using academic logic. These factors are planned and their physical form can be observed in the field, for example, accessibility (distance and transportation) and infrastructure networks (city facilities and infrastructure such as roads, electricity, offices, and housing).

b. Unmeasurable factors, which appear independently and are uncontrollable. Wilcox in Luky [12] states that these factors can be further classified into three types, namely: 1) Customary factors and institutional influences. 2) Aesthetic, enjoyment, and pleasure factors such as the type of neighbors and entertainment available. 3) Speculative factors, such as anticipated changes in land use and consideration of monetary changes.

Advances in information technology have caused the information to be disseminated very quickly. Anyone can very easily access and disseminate various types of information. One important piece of information is land value, as it is the basis for determining the SVTO which is then used to determine the amount of tax to be paid. Due to land appraisals being required to be carried out in a quick and streamlined manner, a certain form of media is needed to solve this problem. One of them is the Web-Based Geographical Information System or also known as WebGIS [13].

Society 5.0 is a society that can solve various challenges and social problems by utilizing various innovations that were born in the era of the industrial revolution 4.0 such as the Internet on Things (internet for everything), Artificial Intelligence (artificial intelligence), Big Data (large amounts of data), and robots to improve the quality of human life. Society 5.0 can also be interpreted as a concept of a human-centered and technology-based society. In order to carry out legal development and implement the rule of law, technology is needed to help the law achieve its legal goals. As the systems handling taxation become more digitalized, several problems can potentially arise. These include technical problems such as both the system itself and the internet are prone to errors and virus attacks and the technological literacy of taxpayers in utilizing digital systems [14].

4 Conclusion

In determining its value, it is time for property transfer tax in notarial transaction agreements to stop using the highest value of the SVTO or transaction value under the Regional Tax and Retribution Law, so that the law can be more appropriately amended by establishing one sole value basis. As the needs of the public are higher than their obligation to follow the law, many have falsified property transaction prices. Through digitalization, it is possible to determine the basis of property transfer tax not from the highest value of the SVTO or transaction value but rather from the fair market price which can always change according to existing conditions. The development of technology should support the implementation of the law to keep up with the fast economic development of Indonesia, which causes delays in determining SVTO.
Acknowledgments

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Efforts to Prevent FFB Theft in Plantation SOEs through Optimizing CSR Funds by Involving the Police

Alimuddin Sinurat¹, Budiman Ginting², Ediwarman³, Mahmud Mulyadi⁴

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. The main objective of establishing a Plantation BUMN, especially for the production of palm oil, is to obtain economic benefits and state revenues to realize public benefits. One of the factors that cause state-owned plantation companies to suffer losses is because of the rampant palm theft. This study discusses the problem of palm oil theft in state-owned plantations in terms of prevention through optimizing CSR funds by involving the role of the National Police. The urgency of efforts to prevent palm oil theft by involving Babinkamtibmas, Ditpamobvit, and Korsabhara is carried out to focus on pre-emptive and preventive efforts. This research method is normative juridical and qualitative analysis. The results of the study found that the increasing number of cases of palm oil theft in state-owned plantations caused economic losses for companies, investors, and the state. It was concluded that efforts to prevent palm theft in state-owned plantations through optimizing CSR funds by involving the assistance of the National Police were very effective in reducing or at least reducing the rate of palm theft, which in turn could increase the value of palm fruit production, increase company revenues and state revenues from plantation products. So that the state's goal of establishing Plantation SOEs is maximally achieved in the context of implementing public benefits such as fulfilling the needs of many people. It is hoped that the State-Owned Enterprises Plantation will form a partnership with the National Police by focusing on pre-emptive and preventive measures to prevent and reduce palm oil theft by the CSR mandate in the Company Law.

Keywords: Theft, State-Owned Enterprises, Plantations, Police, CSR

1 Introduction

The purpose of the Republic of Indonesia to establish a State-Owned Enterprise in the Plantation sector (BUMN Plantation) is to obtain economic benefits and state revenues; public benefit as the fulfillment of the needs of many people; actively participate in guiding and assisting entrepreneurs from economically weak groups, cooperatives, and the community; as well as pioneering business activities that have not been implemented by the private sector [1].

Plantation SOEs are engaged in palm oil commodities, namely the Nusantara Plantation Limited Company (PTPN), which is part of the total number of SOEs in Indonesia which currently number 114 companies [2]. All state-owned plantation companies from PTPN I to PTPN XIV under the leadership of PTPN III as a Holding Company since 2014 [3]. All subsidiaries form a single commercial entity [4].

Currently, the state share through direct investment in PTPN IV is only 10%, not up to 51% because PTPN IV has become a subsidiary of the “holding company” PT. Perkebunan Nusantara III (Persero). The abolition of the status is carried out by transferring state-owned shares in
PTPN IV to PTPN III as the parent of the plantation BUMN. The legal basis for the establishment of a BUMN holding is stated in Government Regulation No. 72 of 2016 concerning Amendments to Government Regulation No. 44 of 2005 concerning Procedures for State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies.

Based on the facts, there are still many palm oil thefts in state-owned plantations that can harm the company and the state. This issue has attracted stakeholders' attention to how weak efforts to prevent palm oil theft are. Outsiders are no exception, company insiders are also involved, almost every day in places that are still within the plantations belonging to PTPN II, PTPN III, and PTPN IV.

In cases of palm oil theft within the state-owned plantation companies are not prevented optimally, the state plantation companies will continue to experience large economic losses. In the end, the achievement of the goals of its establishment will also be disrupted because the results achieved will decline and will inevitably affect the state's efforts to provide public benefits and the welfare of the people.

One of the efforts to prevent palm theft in state-owned plantations is to optimize the use of Corporate Social Responsibility (CSR) funds. The purpose of prevention is carried out by focusing on pre-emptive and preventive efforts by involving the role of the Indonesian National Police (Polri), especially the Community Order Supervisory Unit (Babinkamtibmas), the Directorate for Security of Vital Objects (Ditpamobvit) of the Samapta Bhayangkara Corps (Korsabhara). For pre-emptive purposes, Plantation SOEs can ask for help and cooperate with Babinkamtibmas, while for prevention they can ask Dirpamobvit and Sabhara for assistance.

2 Method

This type of research method is normative juridical with qualitative analysis. Analyzing the primary legal material in Law No. 40 No. 2007 concerning Limited Liability Companies and Law No. 19 of 2003 concerning BUMN which regulates CSR about the duties and functions of the Police in the field of prevention as regulated in Law No. 2 of 2002 concerning the Police. From the legal material, it will be investigated the implementation of the duties and functions of the Police in the Plantation BUMN environment to prevent the theft of palm oil.

3 Results and Discussion

3.1 Stakeholder Theory

According to John Elkington in “Cannibal with Forks: The Triple Bottom Line of Twentieth Century Business” (1997), says that:

“If a company wants to remain sustainable, then it needs to pay attention not only to the interests of shareholders (profit), but also to pay attention to the welfare of the

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1 The legal basis for the establishment of a BUMN holding is stated in Government Regulation no. 72 of 2016 concerning Amendments to Government Regulation No. 44 of 2005 concerning Procedures for State Capital Participation and Administration in State-Owned Enterprises and Limited Liability Companies.
Stakeholder theory states that the basic obligation of management is not to maximize the financial success of the company, but to ensure its survival by balancing the conflicting demands of various stakeholders. Companies must be managed for the benefit of stakeholders, customers, suppliers, owners, employees, and local communities. The rights of these groups must be ensured and, furthermore, the groups must participate, in some sense, in decisions that substantially affect their well-being.

Thus, stakeholder theory or stakeholder primacy influences the law in the corporate sector to direct the management of the corporation to the interests of the stakeholders. Stakeholder theory that influences law in the field of corporations is because, the theory of “a stakeholder theory of the modern corporation” believes that modern corporations have an obligation to ensure their survival by balancing the conflicting demands of various stakeholders. These stakeholders consist of: stakeholders, customers, suppliers, owners, employees, and local communities.

Corporations that aim to ensure their survival by balancing the demands of these stakeholders must be managed with Good Corporate Governance (GCG). This is because, according to the Forum for Corporate Governance in Indonesia (2001), it states that GCG is a set of regulations that stipulate the relationship between management stakeholders, creditors, the government, employees, and other internal and external stakeholders about their rights and obligations. them, or in other words the system that directs and controls the company [6].

Good Corporate Governance is a healthy corporate governance procedure that has been introduced by the Indonesian government and the International Monetary Fund (IMF) [7]. According to The Indonesian Institute for Corporate Governance (IICG), Corporate Governance is a series of mechanisms that direct and control a company so that the company's operations are run by the expectations of stakeholders [8].

Corporate Governance is a series of structured processes used to manage and direct or lead business and corporate endeavors to increase corporate values and business continuity. Good corporate governance is a structure, system, and process used by company organs as an effort to provide added value to the company in a sustainable manner in the long term, while taking into account the interests of other stakeholders, based on morals, ethics, culture, and other applicable rules.

The term good corporate governance emerged in the late 1980s which was introduced by the Cadbury Committee in a report known as the Cadbury Report [9]. The word governance is defined as the activity or manner of governing, while the meaning of governance is having the power or right to govern [10].

Good corporate governance is defined as a company that has been managed properly and correctly and is based on the principles of fairness, accountability, responsibility, transparency. With this principle, the value of the company in the long term will increase without ignoring the interests of other stakeholders. The implementation of the principles of good corporate governance is an important step in building and restoring public trust in the company [11].

The relationship between stakeholder theory and this research is that the implementation of good corporate governance (GCG) in state-owned plantations is not solely for the benefit of the company owner (in State), but for the public interest, namely all stakeholders, especially the community around coconut plantations. palm oil owned by the State-Owned Plantation.
### 3.2 Cases of Palm Theft in Plantation of SOE's

The following several cases of palm oil theft also show the amount of loss, but if not handled or prevented can cause considerable losses and have an impact on company and state revenues. This is because palm theft is carried out continuously, even almost every day in several plantations belonging to PTPN II, PTPN III, and PTPN IV.

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Loss</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Desa Manunggal, Helvetia.</td>
<td>4 ton palm (Rp. 8,000,000)</td>
<td>Polres Belawan</td>
</tr>
<tr>
<td>2.</td>
<td>Kebun Tanjung Jati, Blok K, Afdeling X.</td>
<td>10 TBS (Rp. 600,000)</td>
<td>Polres Binjai</td>
</tr>
<tr>
<td>3.</td>
<td>Afdeling I, Blok V, Tanjung Mulia, Pagar Merbau, Deli Serdang.</td>
<td>600 TBS (Rp. 750,000.000)</td>
<td>Polres Deli Serdang</td>
</tr>
<tr>
<td>4.</td>
<td>Desa Tanjung Putus, Padang Tualang, Langkat.</td>
<td>2 TBS</td>
<td>Polres Langkat</td>
</tr>
<tr>
<td>5.</td>
<td>Perbaungan</td>
<td>4 TBS (Rp. 120,000)</td>
<td>Polsek Perbaungan</td>
</tr>
<tr>
<td>6.</td>
<td>Areal Afd III Blok 11, Batang Serangan, Tebing Tanjung Selamat, Padang Tualang, Langkat.</td>
<td>40 kg</td>
<td>Polres Langkat</td>
</tr>
</tbody>
</table>

*Fig. 1. Palm Theft in PTPN II (Source: PTPN II).*

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Loss</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Afdeling II Blok A 3 TM 2004</td>
<td>2 TBS</td>
<td>Polres Labura</td>
</tr>
<tr>
<td>2.</td>
<td>Desa Nagori Sei Mangkei, Bosar Maligas, Simalungun.</td>
<td>500 kg, 11 sack, and 67 TBS</td>
<td>Polres Simalungun</td>
</tr>
<tr>
<td>3.</td>
<td>Kanas Afdeling 9, Bilah Hulu, Labuhan Batu.</td>
<td>10 ton/day</td>
<td>Polres Labuhan Batu</td>
</tr>
<tr>
<td>4.</td>
<td>Kanas Afdeling 3, Bilah Hulu, Labuhan Batu.</td>
<td>30 TBS</td>
<td>Polres Labuhan Batu</td>
</tr>
<tr>
<td>5.</td>
<td>Kanas Afdeling 5, Bilah Hulu, Labuhan Batu.</td>
<td>11 TBS</td>
<td>Polres Labuhan Batu</td>
</tr>
<tr>
<td>6.</td>
<td>Kebun Silau Dunia, Afdeling I, Damak Urat, Sipispis, Sergei.</td>
<td>10 TBS (Rp. 600,000)</td>
<td>Polres Sergei</td>
</tr>
<tr>
<td>7.</td>
<td>Afdeling V Blok 89 TM 2004, Nagori Banjar Ulu, Simalungun.</td>
<td>3 sack</td>
<td>Polsek Bosar Maligas</td>
</tr>
<tr>
<td>8.</td>
<td>Afdeling 3 Kebun PTPN III Sei Putih, Galang.</td>
<td>17 TBS</td>
<td>Polsek Galang</td>
</tr>
<tr>
<td>9.</td>
<td>Tanah Raja di Afdeling V Blok 305, Desa Leberia, Teluk Mengkudu, Sergei.</td>
<td>23 TBS (Rp. 550,000)</td>
<td>Polres Sergei</td>
</tr>
</tbody>
</table>

*Fig. 2. Palm Theft in PTPN III (Source: PTPN III).*
The thieves come from community members who do not have permanent jobs, or work but lack income, including women [12], and women who act as middlemen [13]. Palm oil thieves also involve company insiders such as foremen, employees [14], watchmen, security units (security guards) so that the perpetrators are safe from stealing every day [15]. The foreman and his friends even threatened the garden security guard [16], so that they were free to go in and out for theft [17]. Also involved are local government officials [18], including employees who are protected by company management [19]. The perpetrator also threatened the garden assistant and even his family was also threatened by the thief [20].

### 3.3 Factors Causing Palm Oil Theft in State-Owned Plantations

The rise of cases of palm oil theft in state-owned plantations, in addition to economic factors, employment opportunities, is also inseparable from the tenuous relationship between the company's existence and the surrounding community and environment [21]. Repressive actions regardless of status and economy against the thieves actually widen the distance between the company and the surrounding community and in turn will increase the quantity of palm oil theft.

The company must find an alternative solution by involving the National Police in overcoming palm oil theft in Plantation SOEs by focusing on preventive actions through pre-emptive and preventive efforts.

### 3.4 The Role of the Indonesian National Police in the Prevention of Palm Oil Theft

Comparative studies aim to be congruent, not likely to equal the overall norm [22]. As the efforts to prevent crime in Japan are played by *Koban* and *Chusaizho* [23], while in Indonesia it is played by Babinkamtibmas to take pre-emptive action, and for preventive efforts carried out by Dipamobvit and Sabhara [24].

<table>
<thead>
<tr>
<th>No.</th>
<th>Afdeling/Block</th>
<th>Kind of Land</th>
<th>TBS</th>
<th>Police Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Afdeling VI Blok 05-S Kebun Marihat</td>
<td>46 TBS</td>
<td>Polres Pematang Siantar</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Afdeling I Blok 2010/Bt.4 Kebun Marihat</td>
<td>25 TBS</td>
<td>Polres Pematang Siantar</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Areal Blok 86 UV Afdeling I, Meranti Labuhan Batu</td>
<td>14 TBS</td>
<td>Polres Labuhan Batu</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Perkebunan Aek Kanopan, Labuhan Batu Utara</td>
<td>5 TBS</td>
<td>Polres Labuhan Batu Utara</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Afdeling Aek Nauli</td>
<td>1 bunch/40 kg</td>
<td>Polsek Parapat</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Padang Matainggi Nagori Teladan, Bosar Maligas, Simalungun</td>
<td>6 sack</td>
<td>Polsek Bosar Maligas</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Bah Jambi Simalungun</td>
<td>2264 TBS (Rp. 15,634,330.000)</td>
<td>Polres Simalungun</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Afdeling I, II, IV dan V (Kebun Adolina), Batang Terap, Sergei</td>
<td>5 ton/day (Rp. 652,963.905)</td>
<td>Polres Sergei</td>
<td></td>
</tr>
</tbody>
</table>

*Fig. 3. Palm Theft in PTPN IV (Source: PTPN IV).*
3.4.1 Babinkamtibmas Polri

The role of the National Police, among others, is to create and maintain public security and order, including law enforcement, protection, protection, and community service [25]. The new paradigm of Polri is currently forming the Babinkamtibmas unit which is an important part of the concept of Community Policing (Polmas) which has been adopted from Japan since the issuance of the 2005 National Police Grand Strategy.

It is this Babinkamtibmas that can be expected as the frontline in carrying out pre-emptive efforts. The principle is to establish a partnership between the Police and the community to identify root causes, analyze, set priorities for action, evaluate the effectiveness of efforts to maintain public order and improve the quality of life of the community [26].

Babinkamtibmas uses the one village one Babinkamtibmas pattern. Its role is not to apply the law repressively to criminals, but how to minimize the crime rate through pre-emptive measures, so that repressive efforts against palm oil theft are expected to decrease. This is a manifestation of the National Police in creating and maintaining security, public order (kamtibmas), as well as protection, shelter, and community service.

Pre-emptive efforts include actively participating in shaping community skills, providing legal guidance and counseling to the community, human resource development, sports activities, mental education of citizens, establishing partnership forums such as the Police and Community Partnership Forum (FKPM) and the National Police and Community Partnership Center (BKPM), organize socio-cultural activities, monitor all developments in the village actively, conduct visits or visits, villages, patrols, socialize with the community, and others.

3.4.2 Ditpamobvit, Korsabhara Baharkam Polri

One of the national vital objects (Obvitnas) and certain objects that are included in the scope of duties and authorities of the Ditpamobvit, Korsabhara, and Baharkam Polri are BUMN. The provision of assistance services is carried out through pre-emptive and preventive actions with the principle of synergy between the Police and Plantation SOEs. The provision of security assistance is carried out based on a request from the Plantation BUMN [27].

If pre-emptive efforts are carried out far from the potential for criminality in the community, then preventive efforts are carried out in places that have the potential or are prone to possible factors for the occurrence of palm oil theft. Therefore, Babinkamtibmas, Ditpamobvit, and Korsabhara must be involved in efforts to prevent palm oil theft within Plantation SOEs.

An open pre-emptive effort is carried out to create security and order in the company environment by building coordination with the Obvitnas managers and certain objects as well as community members around the company's location and building partnerships with communities around the company.

The preventive efforts that are openly carried out are in the form of: regulating the traffic activities of people, goods, and vehicles in the company's environment; guarding the location to anticipate the occurrence of crime within the company; escort, supervision, an inspection of people, goods, documents, and vehicles entering/exitng the company.

Carry out patrols in the location, the environment around the company, both inside and outside the company environment by using a vehicle or on foot. Also, carry out permanent and incidental guarding by placing guard posts by the area of the object.

In addition, it also carries out covert efforts (intelligence) such as: detecting potential vulnerabilities that may occur both from within and from outside the company's environment;
supervision of guests, employees, goods, and documents; as well as raising (cooperation) with employees and the community around the company.

3.5 Optimization of Corporate Social Responsibility Funds for Plantation SOEs to Prevent Palm Oil Theft

The main factor that has been an obstacle so far faced by the Police is the lack of operational costs to carry out all pre-emptive and preventive programs. As a result, the efforts made are only mediocre. Therefore, for the sake of the company itself, the community, the state, and for the public benefit, there is nothing wrong if the Plantation BUMN can allocate CSR funds to help carry out the pre-emptive and preventive tasks of the Police within the company.

The implementation of CSR in Romania concluded that there is a positive relationship between CSR and the value of the company reaching above 75% [28]. Meanwhile, in Indonesia, CSR implementation is still low, below 50% on average [29]. FFB theft in state-owned plantations is very massive and serious. Generally, the perpetrators are palm ninja around 10% to 15%. In fact, it is the palm oil mafia that holds up to 85% of the proceeds of the theft, while 90% is organized crime [30].

It is the right solution if Babinkamtibmas, Ditpamobvit and Korsabhara are involved in early prevention, not for repressive measures like what was done by the Detectives. Efforts to combat palm oil theft so far have been through the role of the Detective Unit, by arresting and taking action as well as processing the law against the perpetrators of palm oil theft, it has not reduced the number of cases.

Meanwhile, for pre-emptive and preventive efforts, there is almost no cooperation between State-Owned Enterprises in Plantation and the Police. It should be understood that a crime if it only relies on repressive efforts will not always have a deterrent effect, but instead the crime will increase. It can be said that the phenomenon of palm oil theft in the Plantation BUMN environment is not something extraordinary because the efforts made so far are still mediocre.

The Internal Supervisory Unit (SPI) which is expected to be the task force and front guard in the State-Owned Enterprises in the Plantation Company to tackle fraud is also not effective [31]. In fact, there are still many cases of fraud that occur, not only theft, but also embezzlement, corruption, and others [32]. Corruption in BUMN has weakened GCG values and has an impact on state losses [33]. Prevention efforts are difficult for SPI, because it only focuses on monitoring and reporting to the Board of Directors on fraud that occurs [34].

Babinkamtibmas, Ditpamobvit, and Korsabhara have limited resources to enter the State-Owned Enterprises Plantation to make prevention efforts, but actually very effective in preventing palm oil theft through social approach efforts, guidance, counseling, information, and development, and various other activities to empower all the potential of the community to support the success of the goal of realizing security and order in the community around the company.

The reason for optimizing CSR funds in order to prevent the widespread theft of palm oil is not only to increase the company's economic income, but also because Plantation SOEs have social and environmental functions as mandated by Article 74 of the Limited Liability Company Law (UUPT) which mandates Social and Environmental Responsibility (TJSL) [35]. The regulation does not rule out the possibility of an allocation of CSR funds from the company to support the creation of security and public order in the Plantation BUMN environment.

Economic losses experienced by PTPN II, PTPN III, and PTPN IV as a result of rampant palm oil theft can in turn affect state losses. The social and environmental functions of the company will have an impact on the social and environmental development of the company in
various fields, such as the construction of infrastructure for schools, roads, bridges, subsidies, scholarships, and others [36].

TJSL must be carried out by companies that carry out their business activities in the field and/or related to natural resources. TJSL can also be carried out by other companies even though their business activities are not engaged in natural resources. The regulations do not limit the criteria that companies must fund through CSR. This is based on the principle of fiduciary duty where the Board of Directors is the organ that is fully responsible for managing the company [37].

To implement CSR, it is based on the policy of the Board of Directors to take the attitudes and actions it deems necessary. How necessary or not CSR funds are channeled to prevent palm oil theft with the help of the Police to carry out various early prevention efforts against the rampant palm theft in the Plantation BUMN environment.

TJSL is implemented by the Board of Directors based on the company's annual work plan after obtaining approval from the Board of Commissioners or the General Meeting of Shareholders (GMS) by the Articles of Association (AD) unless otherwise stipulated in the laws and regulations. The company's annual work plan contains an activity plan and budget needed for the implementation of CSR.

Although the Board of Directors has full responsibility for taking the attitude and action of allocating CSR funds for the prevention of palm oil theft within the company, it must still obtain approval from the Board of Commissioners or the GMS. This effort is solely for early prevention and reducing the rate of palm oil theft which continues to increase and in turn, will have an impact on decreasing the value of palm fruit production.

As it is known that crime prevention efforts are an effective alternative solution to reduce crime rates. This method is the prevention of crime without the use of punishment (prevention without punishment). Of all the scopes of criminal policy, prevention is better than taking action because prevention will look at potential criminogenic factors through various social and environmental approaches [38], such as fostering public legal awareness [39].

A non-penal approach is needed to overcome various social and criminal problems or at least can reduce social problems and potential criminals so that they do not continue by looking at the root of the problem in society. To minimize the crime rate, it cannot only be done through the application of criminal law, but approaches other than criminal law such as social approaches, improving the community's economy, and others are actually more effective in reducing crime rates [40].

4 Conclusions

Efforts to prevent palm theft in state-owned plantations through optimizing CSR funds by involving the assistance of the National Police are very effective in reducing or at least reducing the rate of palm oil theft. This method, in turn, can add value to the production of palm fruit in state-owned plantations, increase corporate revenues and state revenues from state-owned plantations. So that the state's goal of establishing Plantation SOEs can be maximally achieved in the context of implementing public benefits such as fulfilling the lives of many people. It is hoped that the State-Owned Enterprises Plantation will form a partnership with the National Police by focusing on pre-emptive and preventive measures to prevent and reduce palm oil theft based on the mandate of Corporate Social Responsibility or Social and Environmental Responsibility in the Company Law.
Acknowledgments

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Prerogative Right of the President in Granting Pardon
(Comparative Analysis on a Number of Countries)

Andryan¹, Eddy Purnama², Suhaidi³, Faisal Akbar Nasution⁴
{andryan@umsu.ac.id}

Universitas Sumatera Utara, Indonesia¹,²,³,⁴

Abstract. President’s prerogative rights are derived from special and independent rights without involving other branches of power. We need to observe state administrative norms in some countries in the world relating to the president’s pardon granting authority. This research applies the normative judicial method with conceptual and comparative approaches aimed to see the history and application of prerogative rights in a number of countries, especially the president’s prerogative right in pardon granting. Pardon is a valid executive action to entirely or partially release the legal consequence of a guilty verdict on a criminal act committed by a person. The authority to grant clemency or pardon is often included in the scope of the king or president’s prerogative rights. The involvement of other branches of power in the pardon granting mechanism shall not automatically reduce the president’s power (prerogative). Almost all modern countries tend to adopt a government system that attempts to place all governance models. In some countries, the head of state’s pardon power is explicitly called prerogative right, though the involvement of other branches of power remains possible in its mechanism.

Keywords: Prerogative Rights, President, Pardon, A Number of Countries

1 Introduction

Historically, prerogative rights, seen from the perspective of state administrative law, derived from the United Kingdom state administrative system. In the United Kingdom state administrative history, the king’s power (authority) [1] actually came first compared to the parliamentary (House of Commons) sovereignty. The upheaval taking place at that time, as a resistance to the King’s absolute arbitrary power, had resulted in the Revolution of 1688 and had forced the King to delegate a part of his power to the House of Commons that represents the people. The residues of such King’s power are then called prerogative rights.

According to Dicey, these prerogative rights refer to the independent power residues at any time being on the King’s hands, although they are exercised by the King himself or by his Ministers. Since prerogative power does not originate from or is not stipulated in the laws and regulations drawn up by the parliament, it embodies discretionary power. Another reason why prerogative power exists in the United Kingdom state administrative system is the parliamentary government system it adheres to, where there is a strict difference between the positions of the head of state and the head of government.

With the head of state position being held by the King/Queen of the United Kingdom, the principle used is king is indefeasible. This principle serves as a ground for the King/Queen of the United Kingdom to be granted prerogative power, namely the special power fully inherent
in the King/Queen of the United Kingdom. Therefore, it is understandable that prerogative power remains available as a system in the state administration of the United Kingdom. Dicey mentioned a number of prerogative rights in the United Kingdom, such as declaring war or amicable settlement and dissolving the parliament. Meanwhile, Bagir Manan said that even though prerogative power in the United Kingdom is not an enumerative description, it comprises, among others [2]:

a. The power to mobilize the army for a war;
b. The power to enter into an international agreement and to build international relations;
c. The power to give clemency.

In the book *Two Treatises of Government*, John Locke revealed prerogative power as the power to undertake a discretionary act for a public interest, without observing the prevailing legal provisions, even by opposing the law itself. Locke justified that the existing laws are unable to accommodate the countless existing issues. It is even impossible to predict a law that can provide solutions to all existing public interests. Such a special power called prerogative power is therefore required. Locke further said that prerogative power is simply a power to do good (to practice virtues) virtue for the public without any law/rule.

In the governance system of modern countries, prerogative rights are owned by the heads of state (kings and presidents) and the heads of government in particular sectors declared in the constitution. An example of the exercise of these rights is when France granted prerogative right to its President to discharge the head of government and to dissolve the National Assembly following his prior consultation with the Prime Minister and the Chairmen of the National Assembly. Another example is the right of the President of the United State of America to veto the law approved by Congress. This right is also considered equivalent to the full authority granted by the constitution to an executive body within the scope of its governance authority (particularly for the system applying strict separation of powers, such as the United States of America) to establish political and economic policies.

Pardon or clemency granting has been recognized since the 15th century, first found in French law and the Latin term *perdonare* (to give freedom and to represent a gift from the authority). This pardon granting continued to develop and in the 18th century, it was known in an absolute kingdom in Europe as a gift from the king (*Vorstelijke Gunst*) that granted clemency to a penalized (convicted) person.

This act of clemency was based upon the king’s kindness. The king was considered the source of power, including the source of justice, and the right to adjudicate was fully in the king’s hands. However, following the development of modern countries, judicial power has been separated from government power due to the influence of the *Trias Politica* concept, which prohibits the arbitrary interference of the government power in the judicial power. Thereby, pardon granting turns into an effort of correction to a court decision, particularly in its implementation.

During the middle ages, the power to grant Pardon (clemency) in the European countries was held by various bodies, including Roman Catholic Churches and particular local authorities, but during the sixteenth century, this power was commonly concentrated in the hands of the king. During the Post-Reformation era in the United Kingdom, the kingdom’s prerogative rights as “the king/queen’s kindness” were used for three main purposes:

a. As an introduction to a not yet acknowledged self-defense, lunacy, and minority;
b. To develop a new method to deal with the enactors not yet acknowledged by the laws; and

c. To delete or disqualify a criminal charge.
In Indonesia, provisions on pardon application procedure have been available since the Dutch colonial era. They were provided in separate legislation, namely *Gratieregeling*, contained in *Staatsblad* 1933 Number 22. During the Japanese colonial era, provisions on pardon granting were only available for the decisions passed by a regular (civil) court. After Indonesia’s independence, there is a provision on pardon granting in Article 14 Paragraph (1) of the 1945 Constitution, determining that pardon, amnesty, abolition, and rehabilitation shall be granted by the President.

Pardon is a long-known term in Indonesia and has been expressly set out in Article 14 of the 1945 Constitution as the Indonesian constitution stipulated by its founders on 18 August 1945. This term pardon etymologically originates from the Dutch word “*gratie*” and the English word “granted”, which means “sentence reduction” granted by the head of state (President) to a convict.

Pardon is President’s judicial authority to reinstate justice relating to a court decision through sentence reduction, clemency granting, or charge deletion. The general principles of pardon are, among others, as follows:

a. Pardon is a Convict Right. Principally, a pardon application is a right given by the law to a convict to request clemency to the President.

b. Pardon may only be applied for “Penalty decisions which have obtained permanent legal force”. Defined as “Court decisions which have obtained permanent legal force”, are: 1) First instance Court Decision not being filed for appeal or appeal to the Supreme Court within the time frame determined by the Criminal Procedure Code; 2) Appeal court decision not being filed for an appeal to the Supreme Court within the time frame determined by the Criminal Procedure Code; 3) Appeal decision at the Supreme Court.

c. Pardon may only be applied for particular penalty decisions. Those particular penalty decisions shall be limited only to: 1) Death penalty decision; 2) Lifetime penalty decision; and 3) Imprisonment penalty decision for a minimum of 2 (two) years.

d. Pardon may only be applied once if the application is granted by the President.

e. Pardon application shall not postpone the execution of any decisions, other than death penalty.

f. The President has the authority to grant or refuse a pardon following a legal consideration from the Supreme Court.

Pardon granting power exists in the constitutions of almost all countries in the world; therefore it becomes part of a modern political feature. The question raised in this research is whether or not pardon granting in Indonesia and some countries in the world is the prerogative right of the president as the head of state.

2 **Research Method**

This research applies the normative legal research method. Marzuki said that legal research is a process to find legal rules, legal principles, and legal doctrines to address the legal issues faced [3]. The approaches used are conceptual and comparative. The conceptual approach is used to see the concept of the president’s prerogative right in line with the adhered constitutionalism and state of law concepts, while the comparative approach is used to see the history as well as the application of prerogative rights in some countries.
3 Results and Discussion

3.1 Pardon as Prerogative Right in a Number of Countries

According to Black’s Law Dictionary, a pardon is an executive action alleviating or stipulating a penalty for a crime. It is a mercy from the authority alleviating a penalty of an offense and recovering the lost rights and privileges as the consequences thereof. Pardon is an action taken by the president in granting clemency to a person by way of amending, deleting, or reducing the penalty given by the judge. In the legal context, amnesty can be in the form of a government official’s action of downgrading a criminal act.

The practice of pardon was first found in the United Kingdom. At that time, a king had a prerogative right called a gift from the king (vorstelijk gunst) to forgive almost all forms of crime committed by a person in opposition to the kingdom. This clemency is defined as the king’s affectionate nature. Thereby, since the beginning of its emergence, a pardon has indeed become the king’s prerogative right that shows his special nature. As time passes, the power to forgive as part of the process requires rechecking on the judicial system that is often considered unfair. Unfair penalties can be moderated through pardon granting by the Executives [4].

The authority to grant clemency or pardon is often included in the scope of the king or president’s prerogative rights. The term prerogative rights originated from the Latin words praerogativa (chosen to vote first), praerogativus (asked to vote first), praerogare (asked before others), and the German word Das Vorrecht (privilege). According to Azize [5], prerogative rights are power rights which application has no limitation and intervention. Wahjono [6] also said that the president’s prerogative rights derived from special and independent rights. Hence, prerogative rights are the independent authorities owned by a President. Based on the above elaboration, the prerogative concept can be defined as a special feature owned by a particular independent and absolute institution in which authority is indefeasible by other institutions or branches of power. In the modern state government system, these rights are often owned by the heads of state, kings or presidents, and the heads of government in particular sectors determined in the constitution [7].

During the European dark ages, a king usually has absolute power; even a king may claim the country as his own. Such a statement illustrates that a king is the whole representation of the existence of a country. The absolute power indicating a king’s special feature is called prerogative rights. Historically, prerogative rights as the special feature of a king were first applied in the United Kingdom government. These rights grant privileges to political authorities to make their own decisions, even sometimes without reasons other than their personal interests [8].

In the United Kingdom, the power to grant clemency to criminals is a privilege owned by a king, where he is capable of reducing any penalty that has been decided on a person. In its early implementation, there is no limitation to the king’s pardon granting power. However, in its development, particularly during the reign of King Charles II of 1660 to 1685, clemency may be granted to all forms of crime, other than impeachment [9].

Different from the United Kingdom, in the United States of America at the end of the 18th century, when the legal apparatus was developed for its constitutional interest, the constitutional drafters did not include provisions on the president’s authority to grant pardon in the Constitution. This was triggered by the great number of people rejecting the rule, as they thought it would be a big mistake if pardon granting authority was given only to one branch of power. That reason was based upon the American condition at that time under the reign of George III,
which was considered a tyranny, resulting in fear that such power would provide legitimation to his government [9].

3.2 Pardon in the Constitutions of Various Countries

The power to forgive crime actors has become the privilege of almost all authorities worldwide since ancient times. According to Moore [10], a pardon is a legal action of the executives to entirely or partially release the legal consequence of a guilty verdict on the criminal act committed by a person. In a modern democracy, the power to grant clemency lies in the hands of their executive heads. The Kings of the United Kingdom have been applying the power to forgive for centuries. This power had not been written in its legal code until the seventh century. As time passes, the authority to forgive is practiced as a form of supervision on the development of the judicial system that is often known as mean and unforgiving. The penalties considered unfair or unjust may be moderated through pardon granting by the Executives [4].

In some countries, the president’s power to grant clemency to crime actors comes in various names, such as “the right to grant clemency”, prerogative of mercy and amnesty granting, pardon right, power of mercy, power to consent, and clemency granting. Despite the various terms used, they have the same meaning, namely a branch of the president’s power to forgive the crime actors. Though clemency is a king’s right of kindness, in its implementation and technically, it is not always directly granted by the president or king. In Canada, for example, a pardon is granted by the Governor General of Canada or a Council Governor (Federal Cabinet) as a prerogative right. An application for pardon is filed to the National Council for Conditional Release.

Countries like Brazil use the term exclusive power. In Algeria, the constitution states that the president has the power and right to grant pardon and reduce or alleviate penalty. Rwanda states that the president has the authority to use prerogative right following the procedure stipulated by the law and after consultation with the Supreme Court. Besides those countries, Bangladesh, Brunei Darussalam, Jordan, Denmark, and Chile, the authority to grant clemency is also explicitly called the prerogative right of the head of state (king or president). A number of countries use the term prerogative of mercy, while some others use the term president’s special attribution (Chile). These terms actually have the same meaning, substantially understood as clemency.

4 Conclusion

Based on the constitutions of a number of countries in the world, we may conclude that the authority to forgive through pardon granting mechanism is a substance of the constitutions of most countries in the world. In these countries, the head of state’s pardon granting power is explicitly called prerogative right, though the involvement of other branches of power remains possible in its mechanism. A number of state constitutional norms have also been examined and they normatively mention the involvement of other branches of power in the application of pardon authority through the use of various terms such as recommendation, hearing, information, consultation, advice, adjustment, concurrence, and others. Similar is the case in Indonesia, where the state administrative norms also state that the president shall grant pardon and rehabilitation by consistently observing the Supreme Court.
References

Liability of Internet Intermediaries in Copyright Infringement: Comparison between the United States and India

Anggara Hendra Setya Ali¹, OK. Saidin², Kholis Roisah³, Ediwarman⁴
{anggara_hsa@yahoo.com¹, saidin@usu.ac.id², r_kholis@yahoo.com³, ediwarm@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia¹, ², ⁴
Universitas Diponegoro, Indonesia³

Abstract. The internet has changed the behavior of society and human civilization as a whole. While it has led to many positive developments, it has also resulted in the copyright infringement of intellectual property distributed on the internet. As it would be almost impossible to hold internet users responsible for copyright infringement, it is more effective to hold internet intermediaries responsible instead. Internet intermediaries are parties or companies that provide access for internet users to copyrighted content, for example, internet service providers, social media platforms, marketplaces, and websites. This research analyzes the responsibility of internet intermediaries in copyright infringement in Indonesia and comparing the results to the United States and India. The objective of the research was to find out the liability of internet intermediaries on online copyright infringement through the criminal and civil law. This is normative research that is analyzed qualitatively using descriptive methods. Based on the results of the discussion and analysis, it is concluded that it is highly necessary to have laws regulating the liability of internet intermediaries in order to provide legal protection for copyright holders and legal certainty for business actors, especially those engaged in the digital sector.

Keywords: Copyright Infringement, Internet Intermediary, Comparative Law

1 Introduction

Through the internet, the development of technology has transformed all aspects of human life [1]. The world has become borderless and significant social changes have occurred in a short span of time. Armed with the main advantage it has on offer, namely a network that reaches all over the world, the trade, advertising, health, education, and entertainment sectors, especially in the era of the industrial revolution 4.0 today, have considered internet technology a necessity [2]. At the same time, the development of the internet has become a double-edged sword because even though it largely contributes to human progress, it is also an effective means of illegal acts, especially in the field of intellectual property, namely copyright infringement [3].

Law Number 28 of 2014 concerning Copyright (Copyright Law) recognizes the internet as a media for declaring copyright. Likewise, Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law) also states that intellectual property distributed on the internet are electronic documents that must be copyright-protected. However, neither the Copyright Law nor the EIT Law has specified the
extent to which internet intermediaries are held responsible regarding copyright infringements. These unclear regulations have also created legal uncertainty for internet intermediaries themselves and can additionally contribute to various online copyright infringements. Examples include illegal movie streams, fake books and software sold on online trading sites (marketplaces), and so on [4].

It is very difficult and impractical to hold direct infringers accountable because of their sheer numbers and legal issues following their arrest. Therefore, the liability of internet intermediaries [5] has become an important topic as they [6] are considered to be involved as contributory infringers [7].

Currently, several countries have special rules regarding the liability of internet intermediaries for copyright infringement, such as the United States and members of the European Union [8]. This problem has also received attention in African countries such as Kenya, Morocco, and Tanzania [9]. India, a country in the priority watch list category, also has regulations regarding the liability of internet intermediaries. These consist of safe harbors, notices and takedowns, OSP requests, and regulations for P2P and web-hard service providers.

The first recorded case regarding the liability of internet intermediaries was the case of Playboy against Frena in 1993 [10]. Frena was found responsible for uploading photos belonging to Playboy which had copyrighted material. Even though there has been no related claim or case in Indonesia to date, as a country that has ratified the TRIPs Agreement, Indonesia needs to provide clearer regulations regarding the responsibilities of internet intermediaries.

2 Research Methods

This is normative legal research, which aims to explain legal principles, vertical and horizontal synchronization, legal comparisons, and legal history [11]. The purpose of normative juridical research is to determine or recognize a positive law and its implementation regarding a particular problem [12]. This research uses the comparative method, in which the legislation and implementation regarding the liability of internet intermediaries in the United States and India are reviewed and compared.

With online access to various regulations and academic articles from different legal systems, it is possible to make comparisons to analyze how other countries face similar problems, which we may face in similar ways [13].

3 Results and Discussion

3.1 Liability of Internet Intermediaries on Copyright Infringement in Indonesia

There are no clear regulations regarding the extent of the legal liability of internet intermediaries on online copyright infringements. However, according to the author, they can be liable for both criminal and civil crimes, namely:

3.1.1 Criminal Liability

In the realm of criminal law, internet intermediaries can be held accountable as an accessory or medeplichtige, specifically assistance before a committed crime by providing opportunities,
means, or information. This is similar to provocation (*uitlokking*), the difference being in the intention or will. In criminal assistance, the criminal intent already exists while in provocation cases, the intent is created by the provocateur [14].

As a legal consequence for acts committed by internet intermediaries as accessories of criminal acts, the provisions of Article 57 Paragraph (1) of the Criminal Code state that the accessory shall be sentenced to a lighter sentence than the perpetrator, specifically two-thirds of the maximum punishment of the crime committed.

Possible punishments according to the Copyright Law include imprisonment ranging from 1 (one) to 10 (ten) years in prison, as well as a fine of 100 million to 4 billion rupiahs according to Article 113. In addition, user-generated content (UGC), for example, e-commerce, can also be subjected to the provisions of Article 114 of the Copyright Law, as this article does not take into consideration whether the place of commerce is offline or online. The sanction for these business actors is a maximum fine of 100 million rupiahs.

Based on Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Transactions and Information (EIT Law), copyright is recognized as an electronic document that must be protected. Therefore, internet intermediaries can also be held accountable. This is also confirmed in Article 15 Paragraph (2) which states that “Electronic system operators are responsible for their actions”. Meanwhile, criminal liability regarding online copyright infringement is based on the EIT Law. Based on Article 32 Paragraph (1) and (2) in conjunction with Article 48 Paragraph (1) and (2) of the EIT Law, the maximum penalty is imprisonment for 8 and 9 years, respectively, and/or a maximum fine of 2 and 3 billion rupiahs, respectively.

Therefore, based on the provisions in the Copyright Law and the EIT Law, internet intermediaries can be held liable for criminal acts if deemed to have contributed to copyright infringement. However, based on the provisions of Article 95 Paragraph (4) of the Copyright Law, before the issuance of a criminal charge, an alternative resolution must be sought through mediation.

### 3.1.2 Civil Liability

Civil liability can be divided into two, namely: (a) liability due to privity of contract, and (b) liability due to law. Furthermore, liability due to law is further classified into two types, namely (i) liability solely due to law and (ii) liability due to the actions of individuals.

For online copyright infringements, internet intermediaries are considered to have participated in copyright infringement as regulated in Article 99 of the Copyright Law even though the violation was committed by the users.

This is in accordance with Article 1365 of the Civil Code, which punishes both deliberate and accidental actions [15] as contained in Article 1366 of the Civil Code. Therefore, internet intermediaries that do not take preventive steps or respond to notifications of copyright infringement are considered responsible for losses based on negligence or inadvertence. The creator, copyright holder, or rights owner can file a claim to the Commercial Court.

### 3.2 Regulations on Internet Intermediary Liability in Some Countries

Although common and civil law systems are distinguished not only in terms of historical heritage and origins, but also in handling various problems including legal sources, the legal profession, and legal education, there are clear similarities between the two, namely having to deal with various aspects of legal problems [16]. Therefore, comparing the legal system of two
countries, namely the United States and India, both of which have different legal systems from Indonesia, is very intriguing.

3.2.1 The United States of America

Initially, the liability of internet intermediaries for copyright infringement was imposed in the United States based on jurisprudence, namely through judge-made law. However, this often resulted in various and inconsistent decisions.

This can be seen from several cases that occurred, where several judges decided that the internet intermediary is responsible for violations only because of the occurrence of the violation, for example in the case of Playboy Enterprises against Frena [17]. However, some judges decide using arguments and theories about legal responsibility such as direct, contributory, and vicarious liability, for example in the case of the Religious Technology Center against Netcom On-Line [18].

The case of Religious Technology Center against Netcom On-Line Communications Services, Inc. was tried and decided by Judge Ronald A. Whyte in the California Federal Court. In his decision, the judge decided that even though the defendant's (Netcom) system was only used to make reproductions by a third party (user), the defendant was deemed guilty of an infringement because when Netcom found out about the violation, it still allowed its existence and in turn enabling its continued dissemination to other internet users.

After this case and also as a form of response and follow-up to the WIPO Copyright Treaty in 1996, the Digital Millennium Copyright Act (DMCA) was unanimously approved by the Senator of the United States on October 12, 1998, and then signed by President Bill Clinton to become law on October 28, 1998.

The DMCA has been divided into 5 (five) titles, namely: (1) WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998, (2) Online Copyright Infringement Liability Limitation Act, (3) Computer Maintenance Competition Assurance Act, (4) Miscellaneous Provisions, and (5) Vessel Hull Design Protection Act. The Online Copyright Infringement Liability Limitation Act (OCILLA) which is later known as DMCA 512 or safe harbor provisions regulates online copyright infringements.

The DMCA 512 regulates the extent to which the internet intermediary must be held responsible for online copyright infringement, namely:

a. Internet intermediaries are not responsible for material posted by others on their site unless they receive a credible notice or clear evidence of a violation.

b. Reproduction through transmissions, including caching is not subject to the responsibility and allows the network to function efficiently.

c. The notice and takedown provision requires internet intermediaries to act quickly and efficiently.

Furthermore, the criteria for internet intermediaries to be protected by these safe harbor provisions are: (i) service providers may only provide transmission, routing, or connection for online communication; (ii) service providers may not take the initiative to transmit any material; and (iii) service providers may not change the material transmitted by their users. In addition, service providers are also required to provide notification regarding their policies in dealing with suspected copyright infringement to their users. The notification is part of the rules that must be approved when the user intends to become a member of the services provided.

The enactment of DMCA 512 can at least provide legal certainty for internet intermediaries against claims from creators, copyright holders, and related rights holders. In addition, it can also provide legal protection for intellectual property circulating on the internet. This is because
when a copyright infringement occurs, internet intermediaries are obliged to immediately remove the content in question from their system.

3.2.2 India

Like Indonesia, India is also a country that is placed on the USTR 2020 Special 301 Report, as many online copyright infringements occur in India [19]. However, India seems to be one step ahead of Indonesia in regulating internet intermediaries. This is due to the judges of the Indian Supreme Court who succeeded in issuing laws for the greater good of the Indian people [20].

Regulations regarding the liability of internet intermediaries first appeared in The Information Technology Act 2000 (IT Act 2000). In Article 2 Paragraph (1) letter w, an intermediary is defined as “any person who on behalf of another person receives, stores, or transmits that message or provides any service with respect to that message”.

The IT Act 2000 was then amended in 2008 and was later called the IT Act 2008. This differs from Indonesia in that the IT Act 2008 India regulates the extent to which internet intermediaries are responsible for online copyright infringements. This can be seen in the provisions of Article 79 of the IT Act 2008 which relieves internet intermediaries from responsibility regarding third-party information, data, or communication links, even if copyright infringements are present.

Internet intermediaries can be relieved from legal responsibility only if they transmit information or store content without initiating, modifying the contents, or selecting the recipients, and have carried out due diligence.

However, the exceptions in the provisions of Article 79 Paragraph (1) and (2) of the IT Act 2008 do not apply if the internet intermediary participates in law violations, either through conspiracy, provocation, persuasion, or possessing actual knowledge of the violation and failing to delete/remove access from the data. Therefore, if the internet intermediary has been proven to have committed the acts mentioned above, it will be subject to legal repercussions.

The liability of internet intermediaries for copyright infringement between United States and India is presented in the table below:

<table>
<thead>
<tr>
<th>No.</th>
<th>United States of America (USA)</th>
<th>India</th>
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<tr>
<td>1.</td>
<td>Based on jurisprudence (case)</td>
<td>Based on jurisprudence (judge-made law)</td>
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<td>3.</td>
<td>a. Internet intermediaries are not responsible for material posted by others on their site unless they receive a credible notice or clear evidence of a violation.</td>
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<td>b. Reproduction through transmissions, including caching is not subject to the responsibility and allows the network to function efficiently.</td>
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<td></td>
<td>c. The notice and takedown provision requires internet intermediaries to act quickly and efficiently.</td>
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<tr>
<td></td>
<td>a. Internet intermediaries can be relieved from legal responsibility only if they transmit information or store content without initiating, modifying the contents, or selecting the recipients, and have carried out due diligence.</td>
<td></td>
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<td></td>
<td>b. Safe harbour provision do not apply if the internet intermediary participates in law violations, either through conspiracy, provocation, persuasion, or possessing actual knowledge of the violation and failing to delete/remove access from the data.</td>
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</tbody>
</table>
4 Conclusion

Although there are no laws regarding the liability of internet intermediaries on online copyright infringement, they can be subject to criminal liability through the concept of inclusion, specifically Article 56 of the Criminal Code. They can also be subject to civil liability by opposing the law as stated in Article 1365 of the Civil Code and negligence as stated in Article 1366 of the Civil Code. In addition, based on cases in the United States and India, it is necessary to revise the Copyright Law to regulate the liability of internet intermediaries by detailing the terms and obligations in preventing online copyright infringement or when an infringement occurs. This aims to provide legal protection for copyright owners as well as justice and legal certainty for internet intermediaries and their users.

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Civil Rights of State-Owned Enterprises in Managing Rights to State Land

Ayu Trisna Dewi1, Tan Kamello2, Muhamamad Yamin Lubis3, Edi Ikhsan4
{ayutrisnadewi@dharmawangsa.ac.id1, tankamello@usu.ac.id2, yaminlubis16@gmail.com3, edil@usu.ac.id4} 
Universitas Sumatera Utara, Indonesia1,2,3,4

Abstract. State-Owned Enterprise (SOE) is a public legal entity whose majority of shares belong to state assets. SOE is a business entity generally subject to Law Number 40 of 2007 concerning Limited Liability Company, acting as a civil subject in the private law domain. In the management of state land by SOEs, there are multiple interpretations concerning the definition of state land and its management concept. The problem in this research is related to regulating the civil rights of SOEs in managing state land. This is a descriptive study using a normative legal approach and qualitative data analysis. The problem discussed was the civil rights of SOEs in managing state land due to their authority in managing state land. This research describes how to regulate the SOEs’ civil rights in managing state land descriptively using a normative legal approach and qualitative data analysis. The problem discussed was the civil rights of SOEs in managing state land due to their authority in managing state land. The results indicate that SOEs have differences in civil rights arrangements compared to other private legal entities because of the public nature attached to SOEs and their submission to Law on Limited Liability Company. In the practice of SOEs, the characteristics of a public company are more apparent than the characteristics of a private company. Due to their form of ownership, the civil rights of SOEs are the same as other private legal entities. There is a disharmony of regulations related to the position of civil rights of SOEs in the management of state land. To avoid such disharmony, there needs to be a formulation of a new and consistent legal arrangement established by the Indonesian Government.

Keywords: Civil, SOEs, Management, State Land

1 Introduction

State-Owned Enterprise (SOE) is a business entity whose majority of shares and management belong to state assets. SOEs are representatives of the State related to land, water, space, and natural resources contained there. Those assets are controlled directly or indirectly by the state for the welfare of all Indonesian people. Thus, SOEs can be said as legal business entities with the characteristics of public companies as regulated in Law Number 19 of 2003 concerning State-Owned Enterprises. SOE is one of the drivers of the Indonesian economy, which is expected to encourage efforts to improve the welfare of the Indonesian people. In carrying out its duties and functions, SOE carries out production functions and carries out procuring functions (goods and services procurement). SOEs also have an essential role in their direct involvement in allocating economic resources for the community.
Establishing SOEs in Indonesia cannot be separated from the mandate of Article 33 of the 1945 Constitution, a constitutional foundation for their existence. Even though it is not directly written or explained in the 1945 Constitution, Article 33 of the 1945 Constitution states that the Indonesian economy is organized based on the principles of a family system. The State should control all critical sectors for the country and affect the people's livelihoods. The earth (land), the water, and all of the natural resources therein are controlled directly or indirectly by the state for the greatest welfare of the people. The use of the term “control directly and or indirectly” illustrates the implementation of state sovereignty. However, the concept of implementing state sovereignty according to the intention and aim of Article 33 of the 1945 Constitution is the sovereignty viewed from internal and external perspectives. When viewed from the meaning of the term “earth” in Article 33 of the 1945 Constitution, it refers to land. There are still multiple interpretations regarding the land's actual ownership and owner authority and who has the right to transfer the rights to the land and or manage the land. Such multiple interpretations arise because Article 33 of the 1945 Constitution mentions that the land is “State Property”. Nevertheless, based on the perspective of Land Law, the use of the term “State Property” is not correct because a legal relationship of land is not a relationship based on ownership rights, but the rights to control over the state land by the state. According to Sembiring, the categorization of land as “State Property” should be replaced by “Government Property”. This misperception stems from the inability to distinguish between “state” and “government” because, according to him, the government is the one that can have ownership rights over land, not the state. 

The arrangement and management of SOEs can no longer be carried out with practices that can lead to inefficiency. As a comparison, SOEs or companies in developed countries are characterized by transparency, accountability, and good corporate governance. They become the essential aspects that modern and global corporate businesses must fulfill. The development of business cooperation of SOEs or companies among countries depends on financial gain and the principles of good corporate governance. There needs to be some clarity regarding SOEs's the private or public characteristics of SOEs by adapting the functions and objectives of privatization applicable in limited liability companies. The need for such clarity viewed from the philosophy of SOEs is an interesting phenomenon to study. In carrying out their business activities, as the business entities established by the state under the provisions of Article 9 of the Law on SOEs, SOEs are divided into two forms are SOEs in the form of a Public Company and SOEs in the form of Persero (Limited Liability Company). 

SOE is in the form of Persero belonging to a civil law subject concerning legal entities subject to the Limited Liability Company Law and the Civil Code as the source of material law. The status of a legal entity as a legal subject is authorized to take legal action, such as establishing agreements with other parties and conducting sale and purchase activities that are carried out by its management or legal personality. The term legal personality is now always defined in the sense of a unit separate from its members so that it has gained legal capacity and litigation capacity. Therefore, to be a legal person means to be the subject of rights and duties capable of owning real property, entering into contracts, and suing and being such in its name, separate and distinct from its shareholders. 

Disharmony of legal arrangements occurs because the regulation of the SOEs Law is juxtaposed with the provisions of the State Finance Law. The State Finance Law categorizes the assets of state-owned companies as part of state finances. This provision seems to provide legitimacy for the state to have the right to intervene in the management of Persero-based SOEs, which are independent legal entities. This is what ultimately leads to changes that impact both the normative and practical order of SOEs management. The state’s continuous interference in the management of Persero-based SOEs leads to various problems and sometimes even raises...
the perception of an indication of monopoly. Meanwhile, the SOE Law has explicitly confirmed the validity of all the provisions and principles of limited liability companies in the management of Persero-based SOEs as stipulated in the Limited Liability Company Law [5]. Such a regulation confirms that all principles of independence of Limited Liability Company shall apply to Persero-based SOEs.

Table 1. Number of SOEs by Type 2015-2019

<table>
<thead>
<tr>
<th>Type</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Perum</em> (Public Company)</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td><em>Persero Tbk</em> (Limited Company)</td>
<td>20</td>
<td>20</td>
<td>17</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td><em>Persero</em> (Liability Company)</td>
<td>84</td>
<td>84</td>
<td>84</td>
<td>84</td>
<td>83</td>
</tr>
<tr>
<td>Total</td>
<td>118</td>
<td>118</td>
<td>115</td>
<td>114</td>
<td>113</td>
</tr>
</tbody>
</table>

Source: Databoks-katadata [6].

During the last five years, the number of limited liabilities SOEs type decreases. The problem that can be identified from the rationale elaborated above is functional disharmony between the privatization functions of Persero-based SOE and the social functions that SOEs must carry out under the mandate of the elucidation of Article 33 of the 1945 Constitution regarding the management of state land, either directly or indirectly controlled by the state. This has triggered debates among groups who state that the objectives and roles of SOEs must be clearly defined. However, on the one hand, profitability and social functions are the two characteristics of SOEs that distinguish them from cooperatives or private businesses. Thus, the problem of this study is formulated into the question “How is the position of civil rights of SOEs in managing state land based on the prevailing laws and regulations?”.

2 Research Method

This is descriptive research using a normative legal approach. The data were analyzed using qualitative data analysis by elaborating the regulations regarding the position of SOEs as a civil law subject. Most of the data sources were secondary data, for example, is in related regulations from laws, books, and national and international journals.

3 Results and Discussion

3.1 Regulation about SOEs in Indonesia

State-Owned Enterprises as separate legal entities in the form of a Limited Liability Company, the main characteristic of SOEs as separate limited liability companies is a clear separation between the management of state land and state assets. Besides, the common law system also explains a separation of power between the Limited Liability Company and its owners (a significant characteristic of the corporation is the distinction between the business and its owners), Black’s Law Dictionary states that an entity, other than a natural person, who has sufficient existence in legal contemplation that can function legally, be sued or sue and make decisions through agents as in the case of a corporation [7]. In current practice, the assets separated from a legal entity are regulated in the Law on Limited Liability Companies.
However, for SOEs as Legal Entities, separating state assets that should refer to the aforementioned legal provision has different perceptions to date. Such different perceptions are motivated by the fact that different laws and regulations that govern the assets of a legal entity have their respective versions. Besides, due to the absence of a comprehensive and consistent legal foundation regulating such a problem, separate assets of the legal subject of Persero-based SOEs continue to invite different opinions and debates [5].

A separate legal entity status owned by SOEs, which has received recognition in Law Number 19 of 2003, has enforced all principles of independence of Limited Liability Company into SOEs institutions, especially for Persero-based SOEs. However, disharmony related to the provisions concerning state-owned enterprise (SOE) institutions in the statutory regulations has resulted in a confusion of law at the normative level [5]. The disharmony occurs in the normative arrangement between Law Number 19 of 2003 concerning SOEs (SOEs Law) and Law Number 17 of 2003 concerning State Finance (State Finance Law) and Law Number 40 of 2007 concerning Limited Liability Company (Limited Liability Company Law). Furthermore, Article 11 states that all provisions and principles that apply to Limited Liability Company are also applicable to Persero as stipulated in Law Number 40 of 2007 concerning Limited Liability Company. Besides being a subject of civil law, i.e., legal entities, Persero-based SOEs are also subject to the general principles in the law of contract and or agreement regulated in the Civil Code when conducting a cooperative relationship or an agreement with other parties or legal subjects. Such collaborative work should not conflict with Article 1313 in conjunction with Article 1338 in conjunction with Article 1320 of the Civil Code in all legal actions in state land management [8].

The Civil Code explains that every subject of civil law, both legal entities and individuals, has the same rights and obligations in a legal relationship, whether originated from a contract sourced from the Law or a contract sourced from the Agreement. In arranging an agreement or a contract, the consensus from the parties involved in the agreement is the most crucial point during the pro codification period. This principle is called the principle of freedom of contract. Article 1108 of the Civil Code states that binding power is a legal consequence of the consensus produced in the agreement [9].

Public legal entities and private legal entities should have the same and equal position as civil law subjects. However, there are still differences in regulations in practice when SOEs take legal actions regarding civil rights in managing state land and or related to other production sectors that concern many people's lives. It seems that public legal entities have broader authority than private legal entities because they can make decisions or regulations that bind other people who are not members of public legal entities. Thus, public legal entities have a more dominant position than other civil legal entities even though both are the same civil law subjects. The domination takes place because the state-owned enterprise is a legal entity with a sovereign body as the state’s representatives in managing the rights to state land and other natural resources by following Article 33 of the 1945 Constitution.

Furthermore, disharmony of legal arrangements also occurs because the regulation of the SOEs Law is juxtaposed with the provisions of the State Finance Law. The State Finance Law categorizes “state company assets as part of state finances”. This provision seems to provide legitimacy for the state to have the right to intervene in the management of Persero-based SOEs, which are separate legal entities. This is what ultimately leads to changes that impact both the normative and practical order of SOEs management. The state’s continuous interference in the management of Persero-based SOEs leads to various problems and sometimes even raises the perception of an indication of monopoly. Meanwhile, the SOEs Law has explicitly confirmed the validity of all the provisions and principles of limited liability companies in managing
Persero-based SOEs as stipulated in the Limited Liability Company Law. Such a regulation confirms that all principles of independence of Limited Liability Company shall apply to Persero-based SOEs [5].

The management of state land by SOEs can be described by regulating the state’s rights to control land as stated in Article 33 of the 1945 Constitution and Basic Agrarian Law which are delegated as the rights to manage the state land by SOEs. The Basic Agrarian Law does not explicitly provide a firm and precise definition of Management Rights. It only mentions the term “management” in the General Elucidation of Number 2 of Part II of the Basic Agrarian Law, i.e., granting rights to land by the State to an individual or legal entity under a particular right on the land-based on its function and purpose, including the right of Ownership, Right to Cultivate, Right of Use of Structures, and Right of Use. Those rights can be interpreted as a concrete form of management rights over the state land given to a ruling body (Department, Service, or Autonomous Region) to be used in implementing their respective duties [10].

3.2 Managing Right to State Land by SOEs

At the first time, the term “state land” was introduced by the Dutch colonial government as staats lands domein as contained in Article 519 of Burgerlijk Welboek (BW) and Agrarisch Wet (staatsblad 1870-55) along with its all implementing regulations, including Agrarisch Besluit (staatsblad 1870-118), Koninklijk Besluit (staatsblad 1875-199a), and Zelfsbestuurs Regelen (staatsblad 1872-117). However, since the issuance of Basic Agrarian Law, state land has not been regulated in the Basic Agrarian Law. The regulation of land controlled by the state is regulated in Article 1 and Article 2 of the Basic Agrarian Law, which explains that land controlled by the state is an elaboration of the state’s rights to control over land, water, and airspace. Nevertheless, many legal products still use the misconception of state land. State land is often associated with the land that belongs to the state, but it does not. Such understanding is derived from the literal translation of the domain of the state, and it is no longer appropriate to use. It is suggested to use the term “the land controlled by the state” as regulated by the Basic Agrarian Law.

State land is not the land “owned” by the state, reflecting as if there is a private legal relationship between the state and the land controlled by the state. The legal relationship between the state and the land controlled by the state is a public legal relationship. Therefore, the meaning of “directly and indirectly control over the state’s land” can be interpreted as management rights.

The first use of the term “Management Rights” is regulated in Regulation of the Minister of Agrarian Affairs Number 9 of 1965 concerning Converting Tenure Rights to State Land and Provisions of Further Policies. Article 2 of the Regulation of the Minister of Agrarian Affairs states that the meaning of state land is the land controlled directly or indirectly by the state. Moreover, for the State agencies’ interests, the rights to use the land are also granted to a third party. Therefore, the rights to control as mentioned above are converted into management rights as intended by Article 5 and Article 6. The management rights over the land last as long as the land is used to benefit the state institutions. Moreover, the meaning of institutions as stipulated in Article 1 of Regulation of the Minister of Agrarian Affairs includes Departments, Directorates, and Autonomous Regions. Then it is also added in Article 7 that “other agencies that require control of state lands to carry out their duties” can also be granted Management Rights. Furthermore, it is also explained that there is a separation between SOEs’ capitals derived from state assets and those derived from Non-State Budgets, which are used as the additional capitals in establishing SOEs. The wealth obtained from the profits of state land
management by SOEs and private entities is not included as the state assets. However, the development and the management of the profits are based on sound corporate principles as regulated in the privatization of corporate legal arrangements and the related regulations. Just like a business entity that runs its business to make profits, SOEs can act like other private businesses entities, profit-oriented [11].

However, in reality, public legal entities have broader authority than civil legal entities because they can make decisions or regulations that bind other people who are not members of public legal entities. Therefore, public legal entities have domination through their stronger position than other civil legal entities even though both are the same civil law subjects. The domination takes place because SOEs are legal entities that have a sovereign body as the state’s representatives in managing the rights to state land and other natural resources by following the intent of Article 33 of the 1945 Constitution.

4 Conclusion

SOEs are public legal entities that also have the characteristics of private legal entities. Therefore, SOEs are also subject to the principles of civil law and limited liability company law. This is because the capital owned by SOEs with the status of limited liability companies (Persero-based SOEs) is not a state asset. The ratification of Persero-based SOEs is legalized by the Minister of Law and Human Rights. There are two objectives in managing state land by SOEs: social objective and economic objective (profit). However, in practice, there are different views on the position of civil rights between SOEs and other private legal entities because SOEs are public legal entities with private legal entity characteristics after having been privatized since the New Order era.

References


A Comparative Study on the Legal Protection of Indigenous Peoples Rights towards Traditional Knowledge in Brazil and Indonesia

Billy Panjaitan¹, Kholis Roisah²
{billypanjaitan3@gmail.com¹, kholisroisah.fh.undip@gmail.com²}

Universitas Diponegoro, Indonesia¹,²

Abstract. International law has provided regulations – Convention on Biological Diversity and Nagoya Protocol – to protect indigenous peoples’ rights to Traditional Knowledge (TK). Countries could implement these established international standards to protect indigenous peoples towards their TK. This comparative study aims to describe how countries implement international standards of TK protection to the national level. Brazil and Indonesia share the resemblance of: (i) being developing countries; (ii) countries with abundant biodiversity; (iii) and having concern for TK protection arrangement in the international community. The method used in this research is a normative judicial approach. This research shows, Brazil and Indonesia show resemblance by acknowledging indigenous people’s rights constitutionally and having a registry system to anticipate the misappropriation to TK. Furthermore, the difference on both countries to this matter are mainly divided into several aspects: (i) the definition of TK. Brazil associates TK with biodiversity, while Indonesia defines it in a wider scope; (ii) the rights given to indigenous peoples to TK. Brazil regulates specific rights given to indigenous peoples, while Indonesia only gives recognition right of indigenous peoples to TK from its Patent Law; (iii) Prior and Informed Consent. Brazil has stipulated the methods of acquiring TK, one of which is to earn Prior and Informed Consent. Indonesia has also regulated the Prior and Informed Consent principle, but hasn’t laid down the technical methods; (iv) Benefit Sharing regulation. Brazil has regulated the benefit-sharing process, procedure, and outcome (monetary and non-monetary benefits), while Indonesia doesn’t specify the ends and means to conduct a Benefit Sharing; and (v) institutions that oversees. Brazil established two specific bodies to oversee the rights of indigenous peoples to TK, while Indonesia, in its regulation, only appoints a Minister, but doesn’t clearly specify which ministry body. In general, it could be concluded Brazil has conducted positive and Indonesia is using the defensive protection method in regards to indigenous peoples’ rights towards Traditional Knowledge.

Keywords: Indigenous Peoples Rights, Traditional Knowledge, Brazil, Indonesia

1 Introduction

Generally, indigenous peoples are known for a certain group of people who lives in rural areas, but actually, it is more than that. Indigenous peoples become integrated – spiritually, socially, and culturally [1] – with their area due to the fact that those areas provide them with their basic survival needs. Consequently, that kind of relationship creates economic dependence on their ancestral lands [1]. Furthermore, as a consequence of such dependence on land – mostly,
by the management of natural resources in their environment – indigenous peoples establishes
a specific kind of empirical experience. Such experience is known, in most cases, as Traditional
Knowledge (TK) [2]. TK can be used as information to formulate traditional medicines made
from genetic resources (GR) from plants, animals, or microorganisms so that they have
properties for the treatment and healing various diseases [2].

TK has a lot to offer. TK can be utilized for academic purposes, research and development
material, and/or a commercial commodity [3]. For instance, a research conducted by Kate and
Laird accentuates the huge amount of commercial revenue – mostly from the biogenetic
industrial sector: pharmaceuticals, botanical medicines, personal care and cosmetic products,
etcetera – from GRs is between US$ 500 Billion and US$ 800 Billion. Furthermore, Kate and
Laird explains, “TK is widely used in the botanical medicine industry as the basis for terminating
safety and efficacy, to develop agronomic practices for cultivation of materials and to guide the
development of new products” [4]. Needless to say, GRs and TK have been widely used in the
pharmaceutical industry, namely: penicillin, quinine, atropine, menthol, taxol, morphine,
salicylic, borneol, digitalin, and so on are all natural product based [5]. Moreover, in most cases,
the ones who seek TK comes from a country: (i) that has a variety of natural/genetic resources;
or (ii) that has less diverse communities, where there aren’t many indigenous peoples.
Therefore, parties who have a certain interest in TK are, mostly, foreigners [6]. These people

In the paragraph above, the light has been given to the fact that foreign parties – to the TK

Biopiracy has been known from various cases, namely: Shiseido case (Indonesia v. Japan)
[8], Ayahuasca Case (Brazil v. the United States) [9], and many more. Cases like these
demonstrate, not only that the utilization of TK is useful to certain individuals and/or parties, it
also demonstrates a similarity: biopiracy tends to be transnational. Since it is transnational, what
has the international community do about it? Internationally, discourse on the protection of the
rights of indigenous peoples towards its traditional knowledge has shown significance over the
years, namely by the establishment of the Convention on Biological Diversity (CBD) and
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits
Arising from Their Utilization to the Convention on Biological Diversity (Nagoya Protocol)
[10].

The international community – through World Intellectual Property Organization (WIPO) –
has provided international forums regarding the protection for TK [11]. WIPO proposes two
kinds of protection: (i) Defensive Protection, which uses a source of TK database to prevent
granting intellectual property right to TK or GR; or (ii) Positive Protection, which gives
protection from the establishment of law. Although defensive protection gives the preventive
measures of certain individuals to claim TK as their own, it doesn’t necessarily give sufficient
protection to acts of biopiracy. In any case, the establishment of law is the main mechanism in
an effort to achieve sufficient protection, and subsequently fair compensation for the custodians
of TK [10].
International law – namely, CBD and Nagoya Protocol – has given general standards to the protection of TK of indigenous peoples, but it won’t be truly useful if states, don’t establish their own regulation. The CBD stipulates that biological resources and associated TK should be considered as property owned by the nation-state of origin [12]. Generally, countries that put weight of concern on this problem are countries that are abundant in animal and plant diversity. This gives the country a wide variety of GR, which are often linked to TK.

Indonesia and Brazil are known for being a mega-diversity country because it has many types of plants and animals [13]. They also share the same concern of TK protection by actively participating in international forums [14]. Due to the similarity in status between Brazil and Indonesia as a mega-diversity country, this study will compare the regulations – regarding the protection of indigenous peoples’ rights towards TK – between these two countries. Comparisons are intended as a guiding tool for understanding the differences and similarities in this particular context.

2 Method

The method of research used in this article is a normative judicial approach, often referred to as library law research. The research specifications used are descriptive analytical and qualitative analysis.

3 Results and Discussions

Brazil, as one of the party to the CBD, regulates its biodiversity through the Law No. 13.123/2015 about Access to Genetic Resources and Associated Traditional Knowledge and Regulates the Sharing of Benefits (Law 13.123). Law 13.123 regulates access to components of genetic heritage, protection and access to related traditional knowledge and fair equitable sharing of benefits to conserve and sustain Brazil’s biodiversity. Industries relating to fields of practice, such as pharmaceuticals, chemicals, personal care, cosmetics, horticulture, seeds and agricultural inputs, the food and biotechnology sectors, that exploit biodiversity are subject to this law. Then, a year later, Decree No. 8.722/2016 (Decree 8.722) further implements specific aspects concerning, inter alia, the requirement to provide information on relevant research activities involving components of genetic inheritance or associated traditional ties through an electronic registration [15]. Both of these regulations are no different on its objective: (i) recognizes the rights of farmers and communities to freely sell biodiversity products; and (ii) to use, conserve, manage, store, produce, modify, develop and enhance reproductive materials that contain genetic inheritance or related TK [16]. Thus, it should be duly noted that Brazil’s concern to indigenous peoples’ rights to TK is governed by regulations regarding biodiversity.

Indonesia is also the party to the CBD. Indonesia is an archipelagic country that has various tribes with a variety of customs, arts, and culture which has great potential in terms of TK. Unfortunately, Indonesia hasn’t regulate a specific law that protects indigenous peoples rights to TK, but it can’t be neglected that Indonesia has some provisions that can be linked to the protection of TK. Some of these provisions are written in Law No. 5/2017 about Cultural Advancement (Cultural Advancement Law), Law No. 13/2016 (Patent Law), and Law No. 41/1999 (Forestry Law). While this is true, Indonesia has arranged bills that actually provides specific protection to indigenous peoples’ TK, namely: (i) Indigenous Peoples Bill, as a step to
provide recognition, protection, and empowerment of indigenous peoples; and (ii) Traditional Knowledge and Traditional Cultural Expressions Bill (TKTCE Bill).

Nevertheless, this study’s objective is not to find who is better than the other, simply it’s to find what are the main resemblance and differences between these two countries regarding the protection of indigenous peoples rights towards traditional knowledge.

3.1 Main Resemblance

Both of these countries regulates in a very different way, but somehow shows common resemblance, and there are two of them. First, both of these countries regulates indigenous peoples’ rights constitutionally. Article 231 of the Constitution of The Federative Republic of Brazil and Article 18B paragraph (2) of the 1945 Constitution of The Republic of Indonesia clearly admits indigenous people and their traditional rights.

Second, registry system. Both of these countries have an online registry system that has the capacity to document traditional knowledge in their territory, namely: (i) The National System of Management of Genetic Resources and Associated Traditional Knowledge (Brazil); (ii) Data Pokok Kebudayaan or Main Cultural Data (Indonesia); and Pusat Data Nasional Kekayaan Intelektual Komunal Indonesia or The National Data Center for Indonesian Communal Intellectual Property (Indonesia) [17].

3.2 Difference

The scope of this comparison is classified into, at least, five main components: (i) Definition of TK; (ii) Indigenous peoples rights to TK; (iii) Prior and Informed Consent (PIC); (iv) Benefit Sharing; and (v) Institutions that oversee the interest of indigenous peoples rights to TK.

3.2.1 Definition of TK

It is crucial to know how countries define TK. Since the international community hasn’t agreed on one universal definition [18], due to dynamic nature [19], it is highly important to know how countries define TK. A particular definition will lead to a sufficient scope of protection, and also able to generate legal certainty.

Brazil defines TK in Article 2 (II) of the Law 13.123 as information or practices of indigenous people, traditional communities, or traditional farmers about property, or direct or indirect use related to genetic heritage. Indonesia defines TK in the Elucidation of Article 5 letter (e) of the Cultural Advancement Law, as all ideas and notions in society, which contain local values as a result of real experiences in interacting with the environment, developed continuously and passed on to the next generation. TK includes crafts, clothing, health methods, herbal medicine, traditional food and drinks, as well as knowledge and behavioral habits about nature and the universe. On the other hand, TKTCE Bill defines TK as community knowledge obtained as a result of real experience in interacting with the environment. Further, Article 4 of the TKTCE Bill states TK’s scope: which includes technical knowledge in traditional contexts, traditional skills, innovation in traditional contexts, traditional practices, traditional learning, and knowledge that underlies a way of life that is passed down from generation to generation, including TK related to genetic resources, medicine, and other intellectual creation.

In short, it can be concluded that Brazil’s definition of TK is narrower – only associated to genetic resources and/or biodiversity – while Indonesia’s definition of TK is broader that includes all sorts of traditional forms and discoveries.
3.2.2 Indigenous Peoples Rights to TK

Although both states admit and recognizes indigenous people’s rights by its constitution, these rights must be regulated specifically on another regulation. Brazil explicitly recognize indigenous peoples rights to traditional knowledge in Article 10 of the Law 13.123 which governs the rights to, inter alia: (i) recognition; (ii) identification; (iii) benefit; (iv) included in any decision-making process; (v) use or sell products; and (vi) conserve, manage, store, produce, exchange, develop and improve reproductive material, containing genetic heritage or Associated Traditional Knowledge (ATK).

Meanwhile, rights to TK in Indonesia is not specifically being regulated. Article 26 of the Patent Law implicitly recognizes the right of indigenous peoples to the inclusion of TK when an invention is related to and/or derived from a TK. On the other hand, Article 27 of the Indigenous Peoples Bill states that indigenous peoples have the right to maintain, develop, teach, protect, and develop their customs, culture, traditions, TK, and intellectual property. Article 1 number 3 of the TKTCE Bill also recognize indigenous peoples as holders of TK rights. Further, Article 15 paragraph (2) of the TKTCE Bill emphasizes utilization of TK by parties other than the community members must involve indigenous peoples. Also, Article 49 of the TKTCE Bill states that indigenous peoples have the right to file a law suit if they suffer damages as a result of illegal harvesting, abuse, or public misdirection.

The provisions in Brazil are clearer, more specific, and guarantee the various rights of indigenous peoples to their TK. Meanwhile, the positive law in Indonesia only acknowledges it implicitly. On the other hand, the draft provisions to the rights of indigenous peoples to TK are more specific, comparing to the provisions that are included in Indonesia’s Patent Law.

3.2.3 Prior and Informed Consent

The concept of Prior and Informed Consent (PIC) is an internationally recognized concept. PIC is known mostly from Article 8 (j) of the CBD that partially states “... with the approval and involvement of the holders of such knowledge.” Article 8 (j) of the CBD stipulates a kind of ownership position of TK holders. Furthermore, the consent and involvement as stated in these provisions certainly implies that indigenous peoples can reject the wider application of their knowledge [5].

Brazil has regulated PIC specifically in the Article 9 and 10 (IV) of the Law 13.123. Article 9 of the Law 13.123 states “Access to associated traditional knowledge from an identifiable origin is dependent on obtaining prior and informed consent”. Further, PIC is reiterated in: (i) Article 15 of the Decree 8.722, concerning traditional methods in acquiring TK from the community; (ii) Article 16 Decree of the 8.722, concerning PIC process (ex: explanations, benefits, etcetera); and (iii) Article 17 of the Decree 8.722, concerning the language of PIC.

Indonesia has also regulated PIC in the Article 37 of the Cultural Advancement Law, but it should be noted first that TK in the Cultural Advancement Law is stipulated as the Object of Cultural Advancement, as seen in Article 5 (e) of the Cultural Advancement Law. Further, Article 37 of the Cultural Advancement Law mainly states parties – industries and/or foreign parties – who will utilize TK for commercial purposes are required to have a permit from the Minister. Finally, Article 37 paragraph (4) of the Cultural Advancement Law clarifies the PIC provision will be further regulated by a Ministerial Regulation. However, apparently, the draft of this Ministerial Regulation hasn’t even been drafted [19]. Meanwhile, TKTCE Bill has stipulated these provisions in: (i) Article 1 point 13, concerning the definition of PIC – an
agreement given by the holders to the users; (ii) Article 1 point 14, concerning the form and terms of an agreement; and (iii) Article 38, concerning the requirement of PIC to access TK.

In Brazil, either the main or the technical provisions are clearly regulated, hence the legal certainty towards indigenous peoples’ rights at hand is assured. While on the other side, Indonesia has regulated the term of PIC – which needs a permit from the Minister and not from the indigenous peoples – in its law but hasn’t regulated it even further for technical directions.

3.2.4 Benefit Sharing

The concept of Benefit Sharing is widely known as Access and Benefit Sharing (ABS) based on Article 5 paragraph 5 and Article 7 of the Nagoya Protocol, which mainly stipulates access and benefits arising from TK must be predetermined upon mutually agreed terms with the indigenous peoples involvement [20].

Brazil regulates rights to benefit sharing in Article 10 (III) and 19 of the Law 13.123, alongside Article 12 of the Decree 8.722. Generally, Article 10 of the Law 13.123 states that indigenous peoples have the right to benefit directly or indirectly from any economic exploitation of TK by third parties. Further, the sharing or benefits resulting from economic exploitation through finished products or reproductive materials arising from the access to genetic inheritance or associated TK can be done in two ways, namely monetary and non-monetary – as stipulated in Article 19 of the Law 13.123. Moreover, Article 12 of the Decree 8.722 reasserts that indigenous peoples have the right to participate in making decisions regarding ABS.

On the other side, Indonesia in its Article 26 paragraph (3) of the Patent Law provision states the sharing of benefits and/or access of GR and/or TK utilization is implemented in accordance with statutory regulations and international treaties in the field of GR and TK. Explanation of the recent Article elucidates the reasons for mentioning the origin of TK in the description – of an invention – so that it is not claimed by other countries, and in order to support ABS. Other than that, Article 23 and 30 of the Forestry Law requires the utilization of forests are aimed at obtaining benefits for the welfare of the community and must cooperate with local communities. Conversely, the TKTCE Bill – namely Article; 15 paragraph (4), 16 paragraph (1), and 17 – obligates benefit sharing by users (outside the community) and also stipulates the forms (monetary and non-monetary) and the agreement requirement of benefit sharing.

In this case, it can be clearly seen that Brazil regulates benefit-sharing as a clear right to the indigenous peoples in their territory, while Indonesia regulates benefit-sharing without explicitly stating that it is one of the indigenous peoples’ rights.

3.2.5 Institutions

As it has been explained above, in order to acquire TK from indigenous peoples, the party who’s interested in utilizing them must conduct PIC and, thereafter, shall determine the ABS. These requirements are essential in the fulfillment of indigenous peoples’ rights. However, in order to respect these rights, one should protect and guard these peoples – usually, the government – to make sure that they are not being defrauded by legal loopholes and so on. Therefore, an institution that oversees indigenous peoples’ rights is essential.

Brazil, under the Ministry of Environment, appoints two bodies in this regard: (i) The Genetic Heritage Management Council (CGEN); and (ii) The National Fund For the Benefit-Sharing (FNRB). Article 4 of the Decree 8.722 describes CGEN’s numerous responsibilities, inter alia; coordinate drafting and implementation of policies regarding access to TK and the
sharing of benefits, determine technical standards of ABS agreement, supervise the access to GR or TK, create and maintain a database of information related to TK, etc. On the other hand, FNRB by Article 96 of the Decree 8.722 – instituted by Law 13.123 and controlled by the Ministry of Environment – will receive money from monetary benefit-sharing and fines, and aims to support actions and activities that recognize the value of GR and associated TK, and promote their sustainable use [21].

Article 6 of the Cultural Advancement Law stated Cultural Advancement is coordinated by a Minister. A Minister’s responsibility was again reiterated on Article 36 of the Cultural Advancement Law in terms of the permit to access and utilize TK, but it was not clearly specified which ministerial body was appointed to handle these matters – PIC or ABS – in the Cultural Advancement Law. Further, Article 15 of the Cultural Advancement Law stipulated Sistem Pendataan Kebudayaan Terpadu (Integrated Cultural Data Collection System). It functions as a system that collects, one of which is TK. This system was later realized by the Ministry of Education and Culture. Although this is true, Article 43 of the TKTCE Bill has actually provided a stipulation where the President can appoint several ministerial institutions to provide certain expertise in order to regulate further the utilization of TK – either supervision regulation, ABS bodies, protocols, and so on.

Therefore, it could be concluded, regards to the Institutions that deals with TK, Brazil’s way of handling it is more specific by forming CGEN and FNRB. While Indonesia, to this day, has just provided data system by the Ministry of Education and Culture, and none other.

4 Conclusion

Internationally, CBD and Nagoya Protocol has actually laid down regulation towards the protection of indigenous peoples’ rights in regards to their TK. Indonesia and Brazil are one of the most diverse countries – in terms of natural resources. While being diverse in natural resources, these countries are also responsible for the TK that is being provided by indigenous peoples. In order to protect indigenous peoples’ rights towards TK, international treaties are not enough when there comes a local conflict in their respected countries.

Brazil and Indonesia show common resemblance in their regulations, inter alia: (i) the Constitution’s recognition of indigenous people’s traditional rights; and (ii) online registry systems to provide the registration of TK – effort to the defensive protection of TK. On the other hand, these two countries also show major differences in regards to indigenous peoples’ TK rights protection. Namely, these differences are shown by different: (i) Definition of TK; (ii) Indigenous peoples’ rights to TK; (iii) PIC provisions; (iv) ABS provisions; and lastly (v) Institutions that oversee indigenous peoples’ rights.

Broadly speaking, in Brazil, the protection of TK is pursued by means of positive protection – by issuing positive laws – that give indigenous peoples rights over their TK. Furthermore, Indonesia is currently conducting protection in the form of defensive protection using data systems as means of TK registration. Even so, in its development, Indonesia continues to strive for positive protection to regulate indigenous peoples over their TK through the Indigenous Peoples Bill and TKTCE Bill.

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Improving the Role of Ombudsman as a Monitoring Institution of Public Organization in Indonesia

Budi Ispriyarso¹, Siti Malikhatun Badriyah²
{budiispriyarso@live.undip.ac.id}

Universitas Diponegoro, Indonesia¹,²

Abstract. The Ombudsman in Indonesia is regulated based on Law Number 37 of 2008 concerning the Republic of Indonesia’s Ombudsman. One of the Ombudsman’s legal product results in public scrutiny is a recommendation. Based on the existing facts, 60 percent of the Ombudsman’s recommendations were not complied with by the reported institution. The purpose of this study is to strengthen the function and authority of the RI ombudsman as a public service supervisory agency. The problems are: 1). What is the Ombudsman’s role as a public administration supervisor in Indonesia; 2). How to increase the Ombudsman’s role as a supervisor in delivering public services. The research method used in this research is normative juridical emphasizing secondary data. The results showed that the Ombudsman role was not optimal as a supervisory agency for implementing public services, especially concerning the recommendations issued, many of which were not obeyed by the reported institutions. The Ombudsman in the future must be strengthened by giving the Ombudsman the authority to directly apply administrative sanctions on the reported institution. The Ombudsman does not only provide recommendations, but so that the Ombudsman becomes an adjudicator. Therefore, it is necessary to immediately issue a Presidential Regulation that further regulates this matter.

Keywords: Ombudsman, Public Service, Recommendation, Supervisory Agency

1 Introduction

Indonesia is a welfare state. It can be seen from the goal of establishing the state, namely creating the welfare for all Indonesian people. The concept of the Welfare State is contained in the Paragraph IV of the Preamble to the UUD NRI 1945. It affirms that the objective of the formation of the Indonesian Government is to protect the entire Indonesian nation and all the blood of Indonesia, promote public welfare and educate the nation’s life. Concerning the welfare state, in the body of the Constitution of the Republic of Indonesia (after this referred to as UUD NRI 1945), it also reflects that the Indonesian state is a Welfare State. Some of these articles, among others, are Article 27 (citizens have the right to decent work and education), Article 31 (educational services), Article 33 (natural wealth is used for the most excellent welfare of the people), Article 34 (the poor and neglected children are cared for by the state). Indonesia has 14 articles on welfare in the UUD NRI 1945, more than other countries (Norway, America, Japan). Norway only includes 3 articles in its constitution (Article 110, 110a and Article 110b); in Japan, there is only 1 article in its constitution related to welfare [1]. However, these countries have a better welfare level than Indonesia. In the Indonesian state, the reality is that matters related to welfare have not been fully achieved as regulated in its constitution.
In the Welfare State, this is reflected, among others, by the existence of services provided by the state to its people, for example, in cheap/free education, cheap housing, affordable public transportation, health services, and soon.

Public service is one of the crucial public administration goals, including the implementation of public services, public affairs (public interests and public needs), and distribution of public service equally [2][3][4].

In connection with these public services, in Indonesia, it is regulated in the Act No. 25 the Year 2009 concerning Public Services (the Act on Public Services). Public services in Indonesia are still perceived as poor, this can be seen, among others, the low quality of public services organized by government officials and state, high levels of abuse of authority in the form of corruption, collusion and nepotism, long bureaucracy and/or unclear service standards [5][6][7]. Based on an international transparency survey, namely the Global Corruption Barometer, as many as 30% of Indonesians who use public services have to pay bribes [8].

The Ombudsman carries out supervision of the delivery of public services in Indonesia. The existence of the Ombudsman in Indonesia is regulated through the Act No. 37 the Year 2008 concerning the Republic of Indonesian Ombudsman. This institution is an independent institution with authority to issue recommendations regarding completing reports to be executed and/or followed up to improve the quality of good government administration.

Many recommendations from the Ombudsman were not followed or implemented by the reported agency in practice. As expressed by Mahfud MD (Coordinating Minister for Politics, Law and National Security Affairs) [9], the Ombudsman has become the supervisor of public services in Indonesia. However, it was found that there are still many recommendations from the Ombudsman that have not been implemented by government agencies/institutions.

Based on the description above, it can be seen that the role of the Ombudsman as a public service supervisory agency in Indonesia is still not as expected, especially from the many recommendations that have not been complied with by the reported agency. The problems that arise are as follows:

a. What is the role of the Ombudsman as a supervisor in the implementation of public services in Indonesia?
b. How to increase the Ombudsman’s role as a supervisor in delivering public services?

2 Research Methods

The approach method used in this study is a normative (non-doctrinal) method, namely research whose main data comes from secondary data (data obtained from literature review materials which include primary legal material, secondary legal material, and tertiary legal materials), books/literature, scientific journals, research results, articles, etc. related to the ombudsman problem.
3 Results and Discussion

3.1 The Ombudsman’s role as a Supervisor in the Implementation of Public Services in Indonesia

In Indonesia, supervision of the implementation of public services consists of external and internal supervision. It is stated in Article 35 of the Act on Public Services 2009. External supervision is held by community supervision, supervision by the Ombudsman, and supervision by the House of Representatives, the Provincial Regional People’s Representative Council (DPRD I), Regency/City Regional People’s Representative Council (DPRD II). Internal supervision is held by supervision by direct superiors following statutory regulations; and by functional supervisors.

According to the Act Number 37 the Year 2008 (Article 1), the Ombudsman is included in the external supervisory role and is independent. The Ombudsman of the Republic of Indonesia, starting now referred to as the Ombudsman, is a state institution with the authority to supervise the implementation of public services both organized by government officials and state. Including those organized by State-Owned Enterprises, Region-Owned Enterprises, and State-Owned Legal Entities as well as private entities or an individual who is assigned the task of administering certain public services whose funds partially or wholly originate from the state revenue and expenditure budget and/or regional revenue and expenditure budget.

The legal basis for the Ombudsman in Indonesia is the Act Number 37 the Year 2008. The rationale for the need to form an Ombudsman in Indonesia is to improve further the protection of people’s rights from State administrators who are considered detrimental in providing public services to them. People who feel aggrieved by state officials can complain to an independent institution known as the Ombudsman. The duties of the Ombudsman include examining reports of suspected maladministration in public services, examining the substance of the report, following up on reports that fall within the scope of the Ombudsman’s authority, coordinating and cooperating with state agencies or other government agencies as well as civil society organizations and individuals, etc.

Maladministration is behavior or acts against the law, exceeds authority, uses authority for purposes other than those of the said authority, including negligence or neglect of legal obligations in the provision of public services carried out by the administration of state and government which cause material and/or immaterial harm to the community and individuals [10]. In comparison, the ombudsman function is the Ombudsman. His function is to supervise the implementation of Public Services organized by public service providers (central and local governments, State/Regional Owned Enterprises, and private bodies or individuals assigned the task of carrying out certain public services). Public service is an activity or a series of activities to fulfill services following laws and regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers (Article 1 number 1 of Law Number 25 the Year 2009).

Antonius Sujata [11] argues that the Ombudsman generally has the following roles: 1). Creating general principles of good governance; 2). Upholding democracy by providing the best possible service to the community; 3). Protecting Human Rights; 4). Eradicating Corruption. The four roles of the Ombudsman as stipulated in the Ombudsman Regulation No. 4 the Year 2010 concerning Organization and Work Procedures in the Ombudsman, among others, are receiving consultation and verification, conducting field investigations, following up on reports, monitoring the process of recommendations, mediation, and decisions special gambling. The
way the Ombudsman works includes how and in what way the Ombudsman receives public reports, the administrative research process, the process of compiling a resume, compiling requests for clarification, and issuing recommendations from the Ombudsman [12]. The definition of recommendation (Ombudsman) based on Article 1 (7) of the Act Number 37 the Year 2008 is a conclusion, opinion, and suggestion based on the results of the Ombudsman investigation to the reported superior to be implemented and/or followed up in order to improve the government administrations quality. Recommendations are the last way to resolve maladministration; the Ombudsman still has several non-litigation methods, namely conciliation, mediation, particular adjudication, and advice [13].

3.2 Increasing the Role of the Ombudsman as a Supervisor in the Implementation of Public Services

Based on the description above, in brief, based on the duties and functions of the Ombudsman, it can be said that the role of the Ombudsman is vital in the implementation of public services in Indonesia. Ombudsman is in the context of overseeing the implementation of public services to make state and government apparatus that is effective and efficient, honest, clean, open, and free from corruption, collusion, and nepotism.

The critical role of the Ombudsman in this public service, as expressed by the President of the Republic of Indonesia, Ombudsman has been helping to improve the public services’ quality in Indonesia. Likewise, the deputy chairman of the Ombudsman, Lely Pelitasari Soebekty, that the role of the Ombudsman in completing reports by the Ombudsman does not all have to be resolved through recommendations, this is because reports can be completed before the Recommendation stage, namely through a corrective action scheme based on the Final Audit Result Report (LAHP).

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>Number of Public Complaints</th>
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<tbody>
<tr>
<td>1</td>
<td>2014</td>
<td>5753</td>
</tr>
<tr>
<td>2</td>
<td>2015</td>
<td>5694</td>
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<tr>
<td>3</td>
<td>2016</td>
<td>7287</td>
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<td>4</td>
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<td>5</td>
<td>2018</td>
<td>7817</td>
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<tr>
<td>6</td>
<td>2019</td>
<td>7258</td>
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Throughout 2020, the Indonesian Ombudsman has received public reports related to public services implementation totaling 7,204 reports. The reports consist of 6,522 regular reports, 559 Rapid Responses, and 123 are self-initiated investigations. From public reports based on allegations of maladministration, there are three categories of complaints mostly. Namely reports on protracted delays amounting to 31.57%, deviation of procedures as much as 24.77%, and not providing services as much as 24.39%. Meanwhile, based on reporters’ distribution, the highest number of reports was at the Head Office with 1,641 reports, North Sumatra with 319 reports, East Java with 307 reports, North Sulawesi with 273 reports, and South Kalimantan with 165 reports [14].

The Ombudsman’s role in public service delivery supervision is vital to suppress/reduce maladministration. However, in reality, the Ombudsman, who, among other things, has a legal product in the form of a recommendation, is often not obeyed by the reported party. Many state
officials who get recommendations from the Ombudsman do not follow up on the Ombudsman’s recommendations [15]. The compliance of government agencies in implementing the Ombudsman’s recommendations of the Republic of Indonesia is deficient. Over the past few years, only 40 percent of the Ombudsman’s recommendations have been followed. The rest ignored these recommendations. In other words, 60 percent of the reported institutions did not comply with the Ombudsman’s recommendation [16]. Compared with other countries, for example, Thailand, implementing the ombudsman recommendation is 90 percent. Australia has 99 percent the compliance level with the execution of the ombudsman recommendation, the compliance level with the execution of the ombudsman recommendation in Indonesia is still deficient.

The non-compliance with the Ombudsman’s recommendation was partly since the Ombudsman’s recommendation did not have a compulsion for the reported institution conducting maladministration. Sanctions for the reported institution that does not implement the Ombudsman’s recommendation, the Ombudsman will publish the reported supervisor who does not implement the recommendation and submit a report to the House of Representatives President. Also, the reported party and the reported superior may be subject to administrative sanctions following the legislation’s provisions. It is as regulated in the provisions of Article 38 of the Act 37/2008, which states that:

1. The Reported Party's superiors and the reported party must execute the Ombudsman's Recommendation.
2. The Reported Party’s superior is obliged to submit a report to the related Ombudsman regarding the implementation of the Recommendation which has been carried out along with the results of the examination within no later than 60 (sixty) days from the date of receipt of the recommendation.
3. The Ombudsman can request information from the Reported Party and/or their supervisors and carry out field checks to ensure the Recommendation’s implementation.
4. Suppose the Reported Party’s supervisor and the reported party do not implement the Recommendation/only part of the Recommendation for reasons that the Ombudsman cannot accept. In that case, the Ombudsman can publish the Reported Party’s superior who did not implement the Recommendation and submit a report to the President and the House of Representatives (DPR).

Furthermore, Article 39 of Law Number 37 of 2008 regulates the following administrative sanctions:

“The Reported Party’s superiors and the Reported Party who violate the provisions referred to in Article 38 paragraph (1), paragraph (2), or paragraph (4) will be subject to sanctions of administrative in accordance with the provisions of laws and regulations”.

Based on the description above, it can be seen that many ombudsman recommendations were not implemented by the reported agency, because the sanctions were not strong enough. The recommendation is only a suggestion or suggestion even though there are administrative sanctions. The Ombudsman’s recommendation is not like a court decision which has executorial power. Sanctions for non-compliance with the Ombudsman’s recommendations convey to superiors or the President and the DPR to follow up if they occur in the event that the Ombudsman's recommendations are not complied with and moral sanctions, namely the
publication of the reported party and the reported supervisor, in addition to administrative sanctions regulated by legislation.

The aforementioned factors are the causes of the many ombudsman recommendations that were not implemented by the reported agency. Therefore, going forward, this Ombudsman must be strengthened so that the recommendations are implemented by the reported agency.

Strengthening the Ombudsman in the future can be done by giving the Ombudsman the authority to directly impose administrative sanctions on agencies that do not carry out their recommendations. Thus, it is hoped that the reported agency can comply with the recommendations issued by the Ombudsman. However, in granting the authority to give administrative sanctions, it must be noted that there is no overlap with other institutions.

The Ombudsman of the Republic of Indonesia must be given stronger authority, not only limited to issuing recommendations, but must also be an adjudicator. Although there is already an Ombudsman regulation No. 31 Year 2018 concerning Special Adjudication, but until now, since the issuance of the Public Service Law, there has been no presidential regulation regarding the provision of compensation payments. When a special adjudication decision by the Ombudsman states that the organizer has committed maladministration and is obliged to provide compensation, there is no legal basis. Therefore, it is necessary to issue a Presidential Decree as the legal basis.

4 Conclusion

The following can be concluded based on the description above: 1). The Ombudsman has a vital role as a supervisory agency for implementing public services in Indonesia. Its role can be seen from its duties, functions, and authorities. The Ombudsman role has helped improve the quality of public services in Indonesia. Many ombudspersons received reports of public complaints about administrative maladministration. The Ombudsman then follows up on the incoming reports, among others, by conducting administrative research processes, compiling resumes, compiling requests for clarification, and issuing recommendations from the Ombudsman. However, not all of the completion of the Ombudsman report has to be completed through a recommendation. The report can be completed before the Recommendation stage, namely through corrective action based on the Final Audit Result Report (LAHP). 2). The recommendations of the Indonesian Ombudsman, in practice, are often not complied with by the reported institutions; a number, 60 percent of the reported institutions do not comply with recommendations. It is because the recommendation of its binding strength is only a suggestion or recommendation, even though in its development it is equipped with administrative sanctions for the reported institution that does not implement the Ombudsman’s recommendation. There are still many ombudsman recommendations that have not been implemented. Ombudsman’s recommendation does not have forced power. Therefore, the Ombudsman must be strengthened by giving the Ombudsman the authority to directly impose sanctions (administrative sanctions) on the reported institution that does not implement the recommendations given. Thus, it is hoped that the reported institutions can comply with the recommendations. The Ombudsman of the Republic of Indonesia must be given stronger authority, not only limited to issuing recommendations, but must have become an adjudicator. Therefore, it is necessary to immediately issue a Presidential Regulation that further regulates this matter.
References


The Importance of Agency Law for Indonesia as a Fundamental for Fair Business Activity

Budi Santoso
{budisantosotmg@lecturer.undip.ac.id}
Universitas Diponegoro, Indonesia

Abstract. This article aims to discuss the importance of agency law and assess whether or not Indonesia should have an agency law. The method used is normative juridical by prioritizing secondary data in the form of problematic agency regulations in Indonesia and comparing with agency regulations of others countries, especially the United States. Agents are an integral part of Indonesia’s business activities, whether small-scale businesses or large-scale businesses, especially foreign businesses, are entering Indonesia. Agency is a legal relationship between the power of authorizer (principal) and the authorized (agent) party and the potential for legal problems to arise. Indonesia currently does not have an agency law; this can result in the absence of legal certainty for resolving agency problems and no guarantee of a fair solution for the parties. This article considers the Indonesian government’s need to enact an agency law immediately.

Keywords: Law, Agent, Principal, Indonesia

1 Introduction

Indonesia does not yet have an agency law that regulates the legal relationship between principals and agents, even though many countries already have agency laws, such as the United States and Agency Law. Malaysia has an agency law that is regulated in part X of the Contract Act 1950. Singapore in Ch. 15 is also regulated regarding agency. European Communities is organized into 86/653/EEC on self-employed commercial agents. In the United Kingdom, the agency is regulated in the National Law in the Commercial Agents Regulations of 1993. Meanwhile, the India agency is regulated in Section 182 of the Contract Act 1872.

In Indonesia, the regulations governing agents are Regulation of the Minister of Trade of the Republic of Indonesia No. 11/M-DAG/PER/3/2006 regarding the terms and procedures for the issuance of registration certificates for agent distributors of goods and or services. This regulation is administrative and not substantive, so that the rights and obligations of principals and agents, liability for third parties for losses suffered by third parties, are not regulated in this regulation.

Indonesia’s agency format has grown faster than the set of regulations that underpin it. The set of rules that form agency in Indonesia is still based on general rules, namely, rules regarding agreements, rules relating to granting authorizer's power, and administrative nature from the Indonesian Ministry of Industry and Trade.

The absence of agency law in Indonesia makes legal relations between the parties not guaranteed to be resolved fairly. In the United States, the problems that arise in the agency sector
are several rules; agency law, contract law, tort law. Apart from that, the Restatement (Second) of Agency also pays close attention.

This article aims to discuss the basic principles, importance, and problems that can arise in agency relationships and the rules that are the basis for solving these problems.

2 Basic Principles and Importance of Agency

According to Hemphill and Long [1], The basic philosophy of agency is rooted in the ancient Roman legal tradition, which in Latin: “Qui facit per alium facit per se” which mean “who does the act/action through another party is like doing one’s deed/action” [2]. Likewise, Dale Baze states that an agency is a legal relationship whereby one person, an agent, is authorized by another, a principal, to act on that person’s behalf, and is empowered to do what the principal could lawfully do in person [3].

In an agency agreement, the principal gives the agent authority to carry out specific jobs under supervision and responsibility. However, certain conditions still require the principal to do the job himself and cannot be delegated to the agent. The principal’s obligation to carry out his actions is often known as a non-delegable obligation, which is a specific obligation that requires the principal to do it himself, for example, making or preparing a statement under oath, signing a policy, making a contract with lawyers, being present as a witness in court etc. [4][5]. Thus, there are three main parties in the agency, namely the principal, agent, and the third party.

Principals, often equated with masters or employers, are parties who have the right to give instructions to an agent, whether to do specific legal actions and how these actions should be done, while the other party is an agent. Agents themselves can be grouped into the class’s servants or employees. Besides, there are other parties between the principal and the agent’s agency relationship, namely the third party.

Lieberman and Siedel [6] describes the relationship between the parties in an agency relationship as shown in the figure 1.

![Fig. 1. Agency relationship.](image)

Based on the agency’s basic philosophy, the agency relationship is built on the basic principles of trust (fiduciary duties) and the principle of respondent superior. First, the basic principle of fiduciary duties, in Black’s Law states that “agency is the fiduciary relation which
results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act” [7].

Fiduciary duties arise when someone delegates or authorizes another person to perform specific legal actions for and on behalf of and for the benefit of the party giving the authority. This legal relationship creates a moral obligation to obey one another, which is often known as the doctrine of fiduciary duties.

Davidson explains fiduciary duty, the legal duty to exercise the highest degree of loyalty and good faith in handling the person’s affairs to whom the duty is owed [8][9]. In Black’s Law, it is explained that a person was having duties involving good faith, trust, extraordinary confidence, and candor towards another. A fiduciary “includes such relationships as executor, administrator, trustee, and guardian” [7].

Thus, the fiduciary is the soul or spirit of the agency relationship that is formed between the principal and the agent. In terminology, the word fiduciary can be used both in context as a noun or adjective. When fiduciary is defined as a noun, it refers to a person who should take action for and on behalf of others and other parties’ benefit. When the word is interpreted as an adjective, it refers to a relationship of trust, which means that there is a fundamental principle in that relationship, namely trust, and confidence [10].

Second, the doctrine of respondeat superior. The point stated that the principal, employer, was responsible for losses suffered by third parties due to the agent’s mistakes, assistant, worker, as long as the act was committed within their work scope.

Thus, the doctrine of respondeat superior is not based on the idea that the master has committed an error, but this is a specialty of a strict liability doctrine, that responsibility for an adverse action is only based on the occurrence of a particular action or action and is not based on mistakes committed by people who have to compensate for specific actions.

The simple philosophy is that the master has paid the servant to do specific actions. If the helper makes a mistake, the master should pay compensation that arises because of the servant’s actions. In other words, someone should pay, and the master is the party in the best position to make the payment and bear the loss. However, the respondeat superior requires a wrongful act, which is wrong according to the Law by the assistant.

The superior respondeat doctrine is only applied to servants and not non-servants because the master does not have the right to exercise control over non-servants, and because there is no authority to supervise the acts committed by the servant, this party is not the master.

3 Agency Problematics (Agency Problems)

Armour et al. [11], in their writings, stated that agency problem is often referred to as the jargon “an agency problem” or “principal-agent problem”, also Dorsey [12], in his article highlighting “agency problem” concerning alcohol distribution in the United States. Cohen [13] examines the collusion problem in agency law. Rasmusen [14] highlighted agency problems concerning Agency Law and Contract Formation.

The absence of agency law in Indonesia is substantial means that the agency’s substantial problems in Indonesia do not have legal certainty, resulting in an inability to provide justice to the parties. There are many substantial problems in the agency sector, but in this article, we limit the substance problem of who the agent is, the principal, the parties’ rights and obligations, the principal’s liability for losses incurred by the agent to third parties.
3.1 Substance Problems Who is the Agent

In the Regulation of the Minister of Trade of the Republic of Indonesia No. 11/M-DAG/PER/3/2006 regarding the terms and procedures for the issuance of registration certificates for agents or distributors of goods and or services. Article 1 states that an agent is a national trading company acting as an intermediary for and on behalf of the principal based on an agreement to carry out marketing without transferring rights over physical goods and or services owned/controlled by the principal who appointed it.

Based on the provisions stated in Article 1 above, the agent has characteristics; Agent is a national trading company, acting as an intermediary, acting for and on behalf of its principal. The principal and the agent’s legal relationship is stated in an agency agreement. The purpose is to market goods or services, and there is no need to transfer rights over goods or services authorized by the principal.

In Black Henry Campbell [7], the meaning of the agent is:

“Agent, a person authorized by another (principal) to act for or in place of him, trust another’s business. One represents and acts for another under the agency’s contract or relation. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the letter, and to render an account of it. One who acts of or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. One who deals not only with things, as does a servant, but with a person, using with own discretion as to means, and frequently establishing contractual relations between his principal and third persons. One authorized to transact all business of principal, or all principal’s business of some particular kind, or all business at some particular place”.

If the provisions regarding Agent in Indonesia are compared with the definition of the agent in the Black’s law dictionary, as is also used in agency law in the United States, basically there are similarities in several things, namely:

a. The agent acts primarily for and on behalf of its principal;
b. Most of the legal relationships between the principal and the appointed agent are stated in the agreement, only in the provisions of Regulation of the Minister of Trade (Permendag) No. 11/2006 does not explicitly state that it is stated in a written agreement;
c. The agent does not require the transfer of rights to goods or services entrusted to him by the principal;

The difference between an agent’s meaning in Indonesia and the U.S. lies in who can act as an agent. Following the provisions of the 2006 Regulation of the Minister of Trade above, the agent must be in the form of a business entity, namely a national trading company, which cannot be an individual. It is understandable because the regulation is only explicitly made to regulate trade intermediary companies, domestic trade, and foreign trade, which requires that they be in the form of a business entity. Meanwhile, an agent’s concept in agency law in the U.S. can be carried by an individual, as long as the person concerned is classified as a person who can sign a contract, meaning that he is not under interdiction, children, crazy, and soon. Thus, as referred to in the 2006 Minister of Trade Regulation, the agent’s concept is indeed
narrowed down to only being a company and not aimed at individual agents. It means that an agent in the form of individual outside the context of the agent’s conversation, as mentioned in the 2006 Minister of Trade Regulation.

According to the 2006 Minister of Trade Regulation, an agent’s concept is the status of a trade intermediary, which of course becomes an intermediary between the principal and a third party. It means that an agent’s existence is indeed associated with trading or business activities and is not related to an agent’s appointment outside of trading activities. Whereas in the U.S., the appointment of an agent, although generally related to business activities, is possible to appoint an agent for matters that are not related to business activities. It can happen simply by making a power of authorizer. For example, asking for help from fellow students to return books to the library has been an agency in its simplest form. Furthermore, the factors or aspects of the obligation to ask for principal approval in several ways, namely the authority to supervise or control the agent’s actions in carrying out his duties by the principal, and how much authority to exercise discretion from the agent, is also an indicator of the presence of agents in the U.S. It is different from the definition of an agent as stated in the 2006 Minister of Trade Regulation above, which is only given the meaning of a national trading company acting as an intermediary for and on behalf of the principal based on an agreement to carry out marketing without transferring rights to physical goods and or services owned/controlled by the principal who appointed it.

Another aspect that distinguishes agency in Indonesia from that in the U.S. is emphasizing the principal and the agent’s legal relationship. In the agency concept in the U.S., it is explicitly stated that the legal relationship between the two is based on fiduciary duties, something that is not explicitly stated in the agency relationship as stated in the 2006 Minister of Trade Regulation.

In the agency concept in the U.S., the word fiduciary can mean as an adjective “it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence”.

Thus, it can be concluded that the definition of an agent in the 2006 Minister of Trade Regulation is only interpreted as a noun, not interpreted as an adjective.

### 3.2 Substance Problems Which are the Principals

Article 4 of the Regulation of the Minister of Trade of 2006 states that the appointment of agents, sole agents, distributors, sole distributors can be carried out by producer principals, supplier principals based on the approval of producer principals, small investment companies engaged in trading as distributors/wholesalers, offices representatives of foreign trade companies.

In Black’s Law, the term “principal” describes one who has permitted or directed another (agent or servant) to act for his benefit and subject to his direction and control, such that the acts of the agent become binding on the principal. Principal includes in it meaning the term “master”, a species of the principal who, in addition to other control, has a right to control the physical conduct of the species of agents known as servants, as to whom special rules are applicable concerning harm caused by their physical acts.

The agency system in the United States does not differentiate whether it is a producer principal, a supplier principal, a FDI (Foreign Direct Investment) company, or a representative office of a foreign company. Whatever the form of business, business specifications, there is no question, the most important thing is that the party who will act as the principal is the party who meets the requirements to act as the principal, namely the party who appoints another person to
represent him, for and on his behalf has committed specific legal actions, under the order, command, as well as supervision. Who can act as principal? Everyone except minors or minors can make contracts, employ helpers in their capacity as agents or non-agent servants, and have the legal capacity to give consent operational at the acolytes.

Thus, the United States system puts more emphasis on its substantive issues to be able to act as a principal. Whereas in Indonesia, perhaps the separation of principal forms into several fields (producer principal, supplier principal, etc.), it is indeed useful administratively for the government to further regulate, but substantively it cannot be found in fact who can act as principal in general in world agency in Indonesia.

Furthermore, it can be concluded that the regulation of the Minister of Trade of Indonesia does not regulate who can acts as principal substantively, but only administrative matters as principal are regulated.

3.3 Problems of Rights and Obligations of the Parties

Article 20 of MOT No. 11/M-DAG/PER/3/2006 states that:

a. Agent, sole agent, sub-agent, distributor, sole distributor, or sole sub-distributor is entitled to education and training to improve skills and after-sales service from the principal and regularly receive information on product development.

b. If necessary, agents, sole agents, distributors, sole distributors may employ foreign national experts in the technical field under applicable regulations.

c. Agent, sole agent, distributor, and sole distributor are obliged to protect the principal’s interests and confidentiality against the goods and/or services that are brokered following what has been agreed in the agreement.

d. A producer principal supplying goods with sustainable use within a minimum time limit of 1 (one) year is obliged to provide spare parts or after-sales service and fulfill the guarantee or guarantee following the agreed agreement.

The formulation of the provisions of Article 20 above is so simple. It does not mention in full the parties’ rights and obligations, in this case, the agent, distributor with the principal, the principal’s rights and obligations, the rights and obligations as an agent, and the distributor many other regulations have formulated. The possibility of the government only limiting matters deemed necessary for the government, to be formulated in regulations following its authority, namely the issue of education and training from principals, as formulated in Article 20 above, while other rights and obligations which affect only two parties are fully delegated to be upheld in the agreement made by the parties. In the agency law system in the United States, the rights and obligations of principals and agents are regulated.

3.3.1 The Agent’s Liability to the Principal

If the agency is stated in a written agreement or contract, the parties must comply with the mutually agreed agreement. It does not matter whether the agency relationship is written, contractual, or not. The general rules relating to the agency stipulate fiduciary duties, namely that the agent has “debt” with the principal. This obligation arises through an agency agreement. These obligations are because the agency relationship is a relationship of trust and confidence. Fiduciary duties mean a person in a position of trust and confidence, a person in a position of trust and confidence. Also, the agent may be obliged to comply with obligations arising from coercive legal provisions unless the parties agree otherwise.
There are several obligations attached to the agent to its principal, namely:

a. Duty of good faith;
b. Duty of loyalty;
c. Duty to obey instructions;
d. Duty to notify the principal;
e. Duties to account;
f. Duty to conduct business with reasonable skill and diligence;
g. Duty to communicate and obtain instructions in case of difficulty;
h. Duty to segregate funds;
i. Duty not to make any secret profit;
j. Duty not to delegate authority;
k. Duty not to use information obtained in the agency’s course against the principal.

3.3.2 Principal’s Obligations to Agents

Except for gratuitous Agent, Agent has the right to get compensation from the principal as agreed in the agency agreement. Gratuitous agents are that person volunteered to help another, and the person being helped accepted this assistance, also includes a person who volunteers services without an agreement or an expectation of payment. Some agency agreements entitle the agent to special compensation, such as sales commissions. Other obligations that apply to principals in their agents are to provide a safe, comfortable place to work and provide security for tools and equipment needed to work. In general, the principal’s obligations to the agent are as follows:

a. Compensation, the principal must pay the agent for all services that have been performed as agreed in the agency agreement. Thus, compensation means a payment from the principal to the agent for services (payment of service). This compensation may consist of customary compensation and commission;
b. Reimbursement, the principal must reimburse all costs incurred by the agent concerning doing work that the principal instructs the agent. The obligation to replace all these costs is called a reimbursement. However, the principal is not obliged to reimburse the agent’s costs if it occurs due to the agent’s mistake or carelessness in carrying out his work. For example, the agent transfers something of value to the wrong person. The agent does not have the right to ask for reimbursement for the costs incurred because of his mistakes.
c. Indemnity, the agent has the right to guarantee that all instructions given by the principal are following applicable legal provisions. The agent also has the right to guarantee that he will not be involved in taking personal responsibility if he has performed his duties following the instructions given to him. The agent’s right to get a guarantee of protection for losses that arise in carrying out his duties from the principal is called indemnity.
d. Cooperation, the principal should cooperate with his agent and assist the agent in carrying out the work delegated to him. Principals are not allowed to take actions that prevent delegated work to their agents. For example, when a principal gives rights to an exclusive territory agent and creates exclusive territorial rights, the principal cannot do business in competition with his agent or appoint other parties or allow other parties to compete with the agent he appointed. If the principal does this, then the principal is responsible for the agent’s losses, whether in the form of failure to sell or loss of profit.
e. Save working conditions, generally accepted laws require the principal to provide security for the equipment that will be used by agents and employees and comfortable working conditions for agents and employees. For this reason, the principal has the right to check the
agent’s workplace and his employees and warn the agent and employees who help him with matters relating to areas he deems unsafe.

3.4 Principal Liability for Third Party Losses

Regulation of the Minister of Trade (Permendag) No. 11/M-DAG/PER/3/2006 does not regulate matters relating to principal liability for losses suffered by third parties due to agents’ actions.

In the agency law system in the United States, the principal is responsible for what has been stated in the contract and responsible for the mistakes (tort) made by the agent appointed. Following the Respondeat Superior doctrine, if an agent takes action within the scope of his work, the principal will be responsible for losses incurred to third parties caused by the agent’s actions. The principal is also responsible for the third party’s losses due to the agent’s negligence, but the principal has the right to demand compensation from the agent who made the negligence.

The principal who has delegated the agent’s authority to make a contract with a third party will be responsible for anything that results from signing the contract later. Thus, the third party can demand the contract’s implementation and demand compensation if the principal fails to carry out the contract. In this case, the appointed agent may also be responsible for a third party in certain circumstances.

Thus, as a general rule, the agent is not personally responsible for all contracts he makes with third parties on behalf of his principal. However, there are exceptions to this generally accepted principle in some countries, such as the Law in England, which states that an agent of a principal who resides outside the U.K. is responsible even though he clearly signs a contract identifying himself as an agent.

In the United States, there are some exceptions to the generally accepted rules above, namely [6]:

a. When the agent provides services, which are classified as undisclosed or partially disclosed by the principal;
b. When the agent does not have authority over the action taken or the action exceeds the limit of his authority;
c. If the agent enters into a contract with a third party on his own behalf.

The agent’s liability to third parties is based on the agency’s classification agreement signed with the principal. Agency agreements can be classified into three groups: fully disclosed, partially disclosed, and undisclosed.

A fully disclosed occurs when the third party who signs the contract knows or has sufficient knowledge that the agent in carrying out his work acts as an agent of a specific principal, the principal’s identity is known to the third party, whether it is notified by the agent or through other means. In cases like this, the contract is actually made between the principal and the third party. Thus, the principal is fully responsible for the third party signing the contract because the third party is willing to sign the contract because of the principal’s reputation. The entire contract agent is not responsible for the third party unless the agent guarantees in the contract signed by the third party that the principal will carry out the contract.

Partially disclosed occurs when an agent in carrying out the duties delegated by the principal to him shows his identity as an agent and does not reveal his principal’s identity. The third parties who make transactions with agents do not know about the principal’s identity through other sources. The agent’s failure to notify the principal’s identity may occur due to several reasons, including:
a. The principal gives instructions to agents not to disclose or disclose the identity of the principal to third parties;
b. Agent forgets to disclose the identity of the principal to the third party.

In the event of a situation as above, both the principal and the agent are jointly responsible for the third party; this is because the third party’s motivation to sign the contract is based solely on the reputation and integrity of the agent, while the principal is not identified.

Undisclosed agency occurs when a third party is not aware of either the agent or the principal’s identity. In such circumstances, the principal is called an undisclosed principal. An agency agreement that is not told who the principal and the agent are is against the Law (unlawful). The undisclosed agency usually occurs or is used when the principal feels that the clause in the contract he makes will be changed if the principal’s identity is known. For example, a wealthy person is likely to ask his agent to hide his identity when he asks his agent to buy a specific house he wants; this is because if the home seller knows the identity of the affluent prospective buyer, it is likely that the seller will increase his bid price from usually.

The undisclosed agency holds both the principal and the agent responsible for the third party signing the contract. By not disclosing the agent’s status to the third party, the agent acts as the principal to the third party, while the principal has delegated authority to the agent; thus, both the principal and the agent are responsible for the third-party conducting transactions with the agent. An agent who has incurred costs in doing work delegated by the principal to the agent is entitled to reimbursement of all principal expenses.

Concerning the issue of liability, the general principle applies that whether the principle, in this case, is disclosed, partially disclosed, or undisclosed ultimately depends on the third party’s knowledge while conducting the transaction with the agent.

If the third party knows, or ought to know, that the agent has committed an act in his position as the principal’s agent, and the third party knows the principal’s identity, this is classified as a disclosed principal. If the third party knows or knows that the agent is acting as agent for the principal, but the third party does not know its identity, this is classified as partially disclosed. If the third party does not know or improperly knows that the agent is acting in the principal’s interest, then this is classified as an undisclosed principal.

The agent appointed by the principal to perform specific legal actions for and on behalf of the principal in conducting transactions with third parties may cause losses to the third party. Losses incurred to a third party due to the agent’s actions can qualify into several classes of action, namely, the tort of the agent (error), negligence, intentional torts (mistake intentionally), or caused due to fraud [15][16].

### 3.5 Indonesia and the need for an Agency Law

The need for an agency law in Indonesia is urgent to realize considering its existence is inseparable from a series of business activities in Indonesia, both small scale and large scale, both for products and services. Almost all matters relating to the company, both the company’s existence and matters relating to the activities of the company, have received adequate regulations in the form of laws. For example, laws governing the existence of business entities, such as the Law on LLC (Limited Liability Company), Cooperatives, SOEs (State-Owned Enterprises). Laws relating to company activities, such as the compulsory company registration law, the company documents law, the intellectual property law, the bankruptcy law, and the suspension of debt payment obligations and soon. However, the Law that regulates the relationship between a company and its agent or distributor has not been regulated in the form of a law.
If Indonesia is to make a law in the agency sector, what has been drafted in the United States in the form of Restatement of Law-Agency, Restatement (Third) of Agency Current through April 2006, can be used as a comparison.

In the Restatement of Agency, the agency arrangement is grouped into chapters divided into several topics.

a. Chapter I. Introductory Matters;
b. Chapter 2. Principles of Attribution;
c. Chapter 3. Creation and Termination of Authority and Agency Relationships;
d. Chapter 4. Ratification;
e. Chapter 5. Contracts and Other Transactions with Third Parties;
f. Chapter 6. Torts- Liability of Agent and Principal;
g. Chapter 8. Duties of Agent and Principal to Each Other.

The Introductory Matters sub contains matters relating to terminology and definitions. The definition regulates the boundaries, the scope of the central theme used as the object of regulation, namely regarding the meaning of the agent referred to in the Law. Simultaneously, the terminology provides limitations regarding several things that are always related to the main object, namely agency. Thus, terminology regulates many things, whereas definition regulates only a few things.

The definition is only given for agency and manifestation in the agency’s restatement. Agency in the Restatement of Law - Agency is given a basic definition as a relationship built based on trust that arises when a person (principal) gives explicit consent to the other party (Agent) to carry out specific actions for and on behalf of and under the supervision of the principal and for in this case the agent expressly agrees or gives his consent in other ways to commit certain acts. While the manifestation emphasizes that for the existence of an agency relationship, it is required that the parties, either the principal or the agent, must show a statement that expressly approves the agency relationship, there must be an intention to give authority to the agent for the principal. There must be an intention to approve it receive authority to perform specific legal actions for agents. A clear statement can be shown through a written agreement, words, or other actions.

Terminology defines the meaning of many things related to the agency in general, and this can be sure to be found in many articles of the agency law. Several things that need attention and need explanation in terminology are related to many terms related to Subagent; Coagents; Disclosed, undisclosed, partially disclosed principal; Unidentified Principals; Gratuitous Agent; Authority, implied authority, express authority; Actual authority, apparent authority; Estoppel; Respondent superior; Fiduciary duties; Notice; Person; Power given as security; authorized Power; Superior and subordinate coagents; Trustee and ` agent trustee.

The principles attribution section is the central part of the regulation regarding agency related to the agency relationship’s basic principles: the relationship between the principal and the agent and vice versa and the relationship between the two with third parties. These basic principles are the principal capital in relation to problems that may arise in the agency relationship, whether possible problems arising between the principal and the agent, or between the agent and a third party, or between the principal and the third party, or between the third party and the principal and his agents. Thus, the role of principles attribution is so significant because it will be used as the primary reference for solving problems that may arise; the absence of regulating some principles in the attribution principles will lead to different interpretations when a dispute arises in court a later date. For this reason, accuracy, thoroughness, and prudence are the main assets in formulating what should be formulated in this segment, and a broad
understanding of the substance, contributing to formulating the basic principles of agency relations.

The main object of the agency relationship between the principal and the agent is a matter related to the authority that will be delegated from the principal to the agent. Thus, the authority issue deserves to be placed as the central part of the attribution principles segment, the next new one related to doctrines related to agency issues. In the Restatement of Agency Law in the U.S., principles attribution contains only two main parts: actual authority and related doctrines.

Actual authority is explained that the agent’s actions are said to be the actual authority if the agent’s actions or actions will bring legal consequences or legal consequences for the principal. Next, matters related to the scope of actual authority, apparent authority, and response superior are also regulated. In the related doctrines section, some things related to agency doctrines are explained: estoppel to deny the existence, liability of disclosed principal, restitution of benefit. Estoppel, to deny agency relationship, provides an arrangement that aims to prevent agents from refusing to be responsible for third parties by denying the existence of an agency relationship with their principals.

Liability of Undisclosed Principal, this provision regulates matters relating to the principal’s responsibility to third parties for contracts made by their agents carried out outside their authority limits. In contrast, the third-party intends to enter into a contract with the agent itself. Due to their ignorance of the principal’s identity, the third party can sue the principal. However, in such a condition, rules must be made that limit the third party’s rights to be able to file a lawsuit against the undisclosed principal. First, a third party cannot sue a principal who has good intentions, and the principal has cleared the matter with his agent. Second, the third party cannot sue the principal if the third party has decided to solve the problem with the agent and not with the principal.

Restatement of benefit, if the principal earns income in an unfair way or through fraudulent ways through an agent’s actions, then the principal must be responsible for claims of income obtained unfairly.

The section on the creation and termination of authority and agency relationships regulates how it is formed or how agency relationships arise between the principal and the agent. For the next step, several matters relating to the termination of the agency relationship between the principal and the agent are regulated.

This sub is divided into several sections or topics:

a. Topic 1. Creating and Evidencing Actual Authority;
b. Topic 2. Capacity to Act as Principal or Agent;
c. Topic 4. Termination of Agent’s Power;
d. Topic 5. Agents with Multiple Principals.

Creating and Evidencing Actual Authority, this section regulates several matters relating to agency relationships between principals and agents. The agency relationship does not require a specific legal form; thus, it can be stated in a written form or orally. However, provisions can be made that require the agency relationship to be stated in a standard form, namely in writing or certain records for specific agency fields, or agency relationships that are longer than one year may be required in written form. For this reason, it must be affirmed in the regulations that the absence of such a legal form or a written form or certain records that regulate the agency relationship results in the principal not being bound by the agent’s actions.

Capacity to Act as Principal or Agent, this section regulates the requirements that must be met to act as a principal or as an agent. In some cases, exceptions must also be regulated; for example, can minors act as agents or principals?
Termination of Agent’s Power, this section regulates how agency relationships end. This segment can be divided into three parts, namely Termination of Actual Authority, Termination of Apparent Authority, Termination of Power Given as Security, or Irrevocable Proxy.

Actual authority requires a clear statement of consent from the principal, which must be communicated to the agent. As for apparent authority, the principal’s agreement statement must be communicated to a third party. Actual authority is the delegation of authority received by the principal’s agent, while the principal’s authority is called the express authority.

Sometimes some agents do not have actual authority but can still give the impression that the agent has the authority and a third party trusts this. Agency rules still allow binding principles based on apparent authority to protect third parties in a situation like that.

Apparent authority arises when a principal’s actions cause a third party to believe that the agent is given the authority to take specific actions on the third party. It needs to be emphasized that “apparent authority” only occurs in situations where there is an impression of authority and not in situations where there is the actual authority, which happens or is created by the principal. Meanwhile, irrevocable proxy concerns relate to irrevocable power in the agency relationship between the principal and the agent.

4 Conclusion

Indonesia immediately needs an agency law to provide a legal basis for agency business activities already rife. Indonesia can use the United States Agency Law as reference material for making Indonesian agency laws, given the complexity of the United States Agency Law’s content.

References


Criminal Liability of Investigators on Wrongful Accusations during Investigations

Dadi Purba¹, Ediwarman², Madiasa Ablisar³
{dadipurba88@students.usu.ac.id¹, profediwarman25@gmail.com², ablisar@yahoo.co.id³}
Universitas Sumatera Utara, Indonesia¹, ², ³

Abstract. Having the authority to designate a person as a suspect, investigators can potentially be subject to criminal charges if the designation is not following existing procedures. This results in the deviation of the original investigation objective. This study aims to find out how the criminal liability of investigators who make mistakes in determining suspects and other aspects related to the responsibility of investigators. The accountability of investigators that wrongfully determine a suspect is rarely challenged for various reasons, one of them being on duty. In this case, the investigator's actions are in the context of carrying out their duties only to be subject to the police code of ethics. The problems analyzed in this paper are the criminal liability of investigators who wrongfully determine suspects during the investigation process and efforts to eliminate further occurrences. This is normative juridical research using the descriptive analysis method, analyzing the application of criminal law through the criminal liability of investigators who commit procedural errors in using force during the investigation process. The results show that investigators who were wrongfully determining suspects can be held accountable if their actions are classified as criminal acts. Procedural errors committed by investigators can be eliminated by increasing the professionalism and quality of human resources and reforming regulations.

Keywords: Criminal Liability of Investigators, Determination of Suspects, Procedural Errors

1 Introduction

The Indonesian National Police is a subsystem of the Criminal Justice System (CJS). The CJS is a crime control system consisting of police, attorney, court, and correctional institutions [1]. In addition, it is also a system that exists in society to tackle crime, with the police being at its forefront [2]. According to Harkrisnowo [3], the police are the gatekeepers of the CJS. As a subsystem of the CJS, the police are assigned to carry out investigations that will produce police investigation reports (PIR) to be used as guidelines in settlement cases. The police are often criticized due to their excessive use of force in carrying out their duties. Adji [4] argues that “such behavior has been internalized, especially in investigations in order to extract confessions from suspects”. The investigation process is the most crucial stage in the CJS as the Police are authorized to use force. This can potentially cause administrative and procedural errors and abuse of authority that can cause both material and immaterial losses.

Deliberately or not, the amount of authority possessed by police investigators can potentially lead to the abuse of authority. An investigator may deliberately abuse his/her authority and tasks refuging behind the scope of their authority.
John Emerich Edward Dalberg Acton, also known as Lord Acton, once made a statement that connected corruption with power, namely, “Power tends to corrupt, and absolute power corrupts absolutely” [5]. This can be applied to investigators; they have great authority and can very easily commit corruption. In this case, corruption is defined as “corrupt, evil, bad, broken, bribe, destroy, or change” [6] and abuse of authority in carrying out coercive measures during investigations.

Investigators are rarely held accountable for excessive use of force; most offenders are only processed through pretrial lawsuits. The objects are Article 77 and Article 95 of the Criminal Procedure Code, even though wrongful accusations have a significant impact.

<table>
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<tr>
<th>No</th>
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<th>Number of Lawsuit with Suspect Determination</th>
<th>Rejected Lawsuit</th>
<th>Accepted Lawsuit</th>
<th>Note</th>
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<tr>
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<td>21</td>
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<td></td>
</tr>
<tr>
<td>2</td>
<td>2016</td>
<td>24</td>
<td>22</td>
<td>2</td>
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<td>266</td>
<td>248</td>
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<td></td>
</tr>
</tbody>
</table>

The data in Table 1 shows, since 2015, after the enactment of the Constitutional Court Decision No. 21/PUU-XII/2014 on April 28, 2014, from 2015 to 2020, 266 pretrial lawsuit cases have been filed by the suspect to the district court of North Sumatra. Two hundred forty-eight files were rejected, and 18 files were accepted, which indicated wrongful accusations in determining the suspects.

Previously, it was challenging to make the investigator responsible for such a procedural error in determining the suspect. This is because, in Indonesia, legal formalities are prioritized in determining criminal liability based on mistakes in the form of dolus (a fraudulent address or trick used to deceive someone) and culpa (acts of commission and omission in both tort and contract cases). The legal rules contained in the Criminal Procedure Code that regulate the criminal liability of investigators using excessive force are inconsistent with legal norms, enabling these cases to be resolved through criminal proceedings and pretrial lawsuits. In addition, there is a legal vacuum in these cases as fines are prioritized. These inconsistencies and lack of legal norms are due to the legal-political system in Indonesia being dominated by the civil law system. This system was inherited from the Dutch and is internalized in the Indonesian legal system, especially in the liability of illegal acts. Civil law can be characterized as laws and regulations that have been codified [7]. This is in line with the opinion of Kahn-Freund [8], who stated that the success of transplantation depends mainly on the political system involved, while Legrand [9] and Seidman [10] view laws as culturally formed constructs and cannot be transplanted into other cultures.
2 Research Method

This is normative legal research utilizing library data (library research). This research mainly uses secondary data in the form of primary and secondary legal materials. The primary legal materials are the laws and regulations that regulate the criminal liability of investigators that commit procedural errors in determining suspects during investigations, for example, the Criminal Procedure Code and the Police Law. The secondary legal materials are the views of legal experts quoted from the literature to support the thought framework and analysis of the research object, namely relevant books and the results of scientific papers such as theses, dissertations, journals, papers, and research reports. Tertiary or supporting legal materials provide directions and explanations for primary and secondary legal materials, such as general and legal dictionaries, scientific magazines, journals, and materials outside the field of law that are relevant and can be used to complement the data in this research.

3 Results and Discussion

3.1 The Basis of Authority of Investigators in Determining Suspects

Article 17 of the Criminal Procedure Code states that an individual can be declared a suspect if sufficient initial evidence is provided. However, “sufficient initial evidence” is not clearly defined. It is only defined as the initial evidence that hints at a criminal act following Article 1 point 14 of the Criminal Procedure Code. Regarding this matter, legislators leave it entirely to the investigator's assessment [11]. This does not help clarify the definition of “sufficient initial evidence”. Even so, it must be obtained before determining a suspect or making an arrest [12].

As there is no specific definition contained in the Criminal Procedure Code, on March 21, 1984, four law enforcement institutions, namely the Chief Justice of the Supreme Court, the Minister of Justice, the Attorney General, and the Chief of the National Police, issued a Joint Decree as a result of the MAKEHJAPOL-I Joint Working Meeting on Improving Coordination in the Handling of Criminal Cases. One of the topics discussed was the definition of “sufficient initial evidence” as a requirement for arrest under Article 17 of the Criminal Procedure Code [13]. During the meeting, four definitions were proposed, namely: a) The police report only; b) Police report plus witness PIR/crime scene PIR/Investigation report/evidence; c) Police Report plus witness and crime scene PIR/Investigation report/evidence, and; d) Police report plus all other evidence. The meeting decided that sufficient initial evidence should be defined as a police report with one other piece of evidence regarding the four opinions.

The definition was later changed again after the Constitutional Court Decision Number 21/PUU-XII/2014 of April 28, 2015, with one of its amendments states that the phrases “initial evidence”, “sufficient initial evidence”, and “sufficient evidence” as stipulated in Article 1 Number 14, Article 17, and Article 21 Paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209). The definition contradicts the 1945 Constitution of the Republic of Indonesia in which “initial evidence”, “sufficient initial evidence”, and “sufficient evidence” are defined as having at least two pieces of evidence as contained in Article 184 of Law Number 8 of 1981 concerning Criminal Procedure Law.
Based on the Constitutional Court Decision Number 21/PUU-XII/2014 of April 28, 2015, the initial evidence in determining a suspect is considered sufficient if the investigator possesses two valid pieces of evidence as referred to in Article 184 of the Criminal Procedure Code. The valid evidence is witness statements, expert statements, letters, instructions, and defendant statements.

According to Yahya Harahap in page 285 of the book “Pembahasan, Permasalahan, dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali”, Article 184 Paragraph (1) of the Criminal Procedure Code has “limitatively” defined evidence which is valid according to law. Evidence is the sole method of proving the defendant's guilt. The court chairman, the public prosecutor, and the defendant or the legal advisor are only allowed to use valid evidence. Objects outside of those defined as evidence stipulated in Article 184 Paragraph (1) of the Criminal Procedure Code cannot be used in trials and do not possess proving power.

Determining an object as evidence that possesses proving power requires specific assessment procedures. Therefore, an investigator with sufficient credibility, integrity, and professionalism is required as errors in evaluating a piece of evidence or fact can result in wrongful determination. Errors are mainly caused by unprofessionalism, insufficient skills, and a lack of integrity and credibility in performing duties. Investigators can also protect themselves by claiming procedural errors as unprocedural, which transfers the accountability to the affiliated institution.

3.2 Criminal Liability of Investigators on Wrongful Determination of Suspects

Criminal liability is no different from other legal subjects; they are both bound to theories of criminal liability and subject to material and formal legal principles that apply. They only differ if an investigator commits a criminal act while exercising their authority according to the law.

The concept of criminal liability is made up of the conditions needed to impose a sentence on a criminal offender. Meanwhile, based on mono dualistic ideas (daad en dader strafrecht), criminal liability not only considers the interests of the public but also those of the offenders themselves. The process depends on fulfilling the conditions, which enables the offender to be sentenced and, in turn, legalizes their conviction. According to Galligan [14], if this requirement is ignored and there are no circumstances to indicate the offender can be sentenced, then the law and its institutions have failed to fulfill their functions.

Examples of criminal acts of investigators on evidence searching include requesting information from witnesses and or suspects without following applicable procedures, falsification of PIRs, tampering with evidence, ignoring witness statements, and threatening individuals to provide or withhold information.

The law does not only apply to the public but also to law enforcers themselves. However, being law enforcement officials themselves, there are some instances in which the application of material and formal criminal law differs between citizens and investigators.

a. Formal Criminal Law

Since the police had officially separated itself from the Indonesian National Army in 2000, the criminal justice process for police officers has generally been carried out according to the procedural law in force in the general court, which is based on Law Number 8 of 1981. The process starts from the existence of a police report, investigation, prosecution until examination in court.
Examination of criminal cases for police officers, from the investigation process to trial, is based on Law Number 8 of 1981 concerning the Criminal Procedure Code. This is contained in Article 2 of Government Regulation Number 3 of 2003 concerning Institutional Technical Implementation of General Courts for Members of the State Police of the Republic of Indonesia. It states that “In general, the criminal justice process for members of the State Police of the Republic of Indonesia is carried out under the applicable procedural law within the general court” [15].

b. Material Criminal Law

From a material law perspective, the criminal liability of investigators is different from the general public in that the sanctions being more severe. This can be seen in Article 422 of the Criminal Code Soesilo's [16] version, which states that “civil servants who in criminal cases use coercion, either to force people to confess or to lure people into giving testimony, are sentenced to four years in prison”. An example of those punishable under this article is police officers who use coercion in an investigation against suspects or witnesses so that they confess or provide specific information.

During investigations, the constitution grants the police the authority to summon, examine, arrest, detain, search, and confiscate suspects and items deemed related to criminal acts. However, in exercising this authority, officers must enforce due process. Every suspect has the right to be questioned following the Criminal Procedure Code; the undue process cannot be carried out.

This issue needs to be touched upon, as there are still many complaints regarding various investigations that deviate from the provisions of the Criminal Procedure Code. In addition, the actions of investigators are very contradictory to human rights, which must be upheld during investigations. Considering the principle of legal equality, the investigator as a legal subject must be held accountable if their actions fulfill the requirements of an offense. However, as they are given the authority to enforce the law and act upon, there are several provisions of the laws and regulations that justify or excuse the actions of an investigator who commits an act that fulfills the formulation of a crime, including:

a. Carrying out the provisions of the law as stipulated in Article 50 of the Criminal Code.

b. Carrying out orders given by competent authorities as stipulated in Article 51 of the Criminal Code.

c. Carrying out an invalid order as stipulated in Article 51 Paragraph (2).

d. State of emergency (Noodtoestand). The state of emergency is part of the necessary use of force (Vis Compulsiva), stipulated in Article 48 of the Criminal Code.

e. Forced defense (Noodweer) as stipulated in Article 49 Paragraph (1) of the Criminal Code.

Based on the description above, it can be seen that an investigator who commits a procedural error can be subject to criminal liability. Of course, the subjective and objective elements of a criminal act committed by an investigator must first be analyzed.

Didik Miroharjo explains that it is possible to hold investigators criminally liable for procedural errors was about excessive use of force, even without referring to the code of ethics and disciplinary law of the police. However, this depends on the impact caused by said errors. Investigators that commit acts classified as a criminal offense, for example, wrongful arrests that result in persecution, wrongful detentions, and shooting the wrong target, must be held criminally liable¹.

¹ Interview with Kabag Wasidik Polda Sumatera Utara, Dr. Didik Miroharjo S.H., M. Hum. on 11 March 2019 in Bag.Wassidik Ditreskrimum Polda Sumut Office
Alpi Sahari argues that criminal liability in Indonesia must rely on the principles of due process and equality before the law to avoid abuse of power. Investigators must be held accountable for their actions to uphold the rule of law, which requires fairness. Investigators cannot be held criminally liable for violations of standard operating procedures (SOP), but it can serve as a basis for criminal liability. Examples of this include the business judgment rule and veil piercing which is aimed at implementing essential justice [17]. For this reason, it is hoped that there will be a legal reform in the Police Law concerning the criminal liability of investigators who commit errors in investigations.

From several references analyzed by the author, the indicators of procedural errors that can cause investigators to be criminally liable for excessive use of force in investigations include:

a. The use of force that does not follow procedure and can be classified as a criminal act.
b. Procedure application that is not supported by administration and field data and can be classified as a criminal act.
c. A series of procedural errors that cause the investigation to deviate from its objective and can be classified as a criminal act.
d. Procedural errors that are contrary to statutory provisions and the result can be classified as a criminal act.
e. A court decision has a permanent legal force to free a person from all charges (vrijpracht) or release someone from a legal claim (ontslag van vervolging).

3.3 Efforts to Prevent Investigators from Wrongfully Determining a Suspect

Efforts to anticipate procedural errors, especially in determining a suspect during investigations, are carried out through penal and non-penal policies such as:

3.3.1 Penal Policies

The law must be enforced against investigators who commit procedural errors in determining a suspect if their actions can be classified as a criminal act. This is a manifestation of legal equality.

To ensure that the law is enforced against investigators who commit errors, it is necessary to apply the principle of functional differentiation, namely the separation of the unit that enforces the law on investigators to prevent the functional abuse of authority. Therefore, it is necessary to establish a functional unit that deals explicitly with investigators who commit procedural errors in carrying out their duties.

The procedure for determining a suspect must be regulated in a separate law to ensure legal certainty for both the investigator and the suspect. The procedures for holding investigators criminally liable also need to be precisely regulated to ensure the legal certainty of the suspected investigator during the law enforcement process.

3.3.2 Non-Penal Policies

Non-penal actions focus more on prevention are indirectly carried out without using criminal law, for example:

a. Upgrading Investigators Professionalism

Police professionalism is the fundamentals of attitude, way of thinking, actions, and behavior based on police science that is realized by maintaining security and upholding truth and justice. Three parameters can be used to measure professionalism, namely motivation,
education, and income. To produce quality law enforcers, the following principles must be fulfilled:

1. First, well-motivated. Motivation for an individual to serve as a police officer. A candidate must know and be motivated from the start because being a police officer is both a challenge and a demanding occupation. As a policeman, a person must be mentally and physically prepared and willing to serve the community. A police officer must never take half-measures;

2. Second, well-educated. Educational standards. The police are demanded to understand the modus operandi of a crime and know the legal instruments that must be imposed on offenders. Therefore, quality police education is a necessity. The modus operandi and techniques of crime sophisticate over time. This can be countered with advanced training;

3. Third, well-compensated. Salary is often seen as one of the keys to ensure professionalism and loyalty and prevent police misconduct. At the forefront of law enforcement, the police deserve to be well compensated. Therefore, it is necessary to improve police welfare. This can be done by granting police officers the status of functional officer, entitling them to functional allowance.

b. Education and Training

Education has a crucial role in forming the police culture in the Culture Formation Education Institution. Therefore, the police ought to pay more attention to their existence. The relationship between educators and the police should be intertwined with what Giddens called in Priyono [19] the dialectic of control. The police expect great results from educators in internalizing their normative culture to students. Likewise, the career and rank of the educators are greatly dependent on the police.

c. Improving the Facilities and Infrastructure of Investigation

The rapid development of science and technology, especially the development of information technology, has given birth to cybercrime. Criminal acts committed with technology cannot be investigated through conventional methods; high-tech equipment is needed to handle these cases. Investigating cyber crimes without utilizing up-to-date technology can potentially lead to procedural errors.

d. Integrity, Morality, and Mentality

The integrity, morality, and mentality of investigators are regulated in the Police Code of Ethics. A professional code of ethics is a demand, guidance, or moral guidance for a particular profession or a list of obligations in carrying out a profession compiled by and is binding to members of that profession. It contains ethical values that guide and control how individuals should act or behave in carrying out their profession.

e. Increasing Investigation Budget

The number of cases handled by investigators is far too high compared to the available budget. This is one of the potential factors that could lead to unprocedural actions.

f. Supervision and Control

The types of supervision can be classified from its scope:

1. Internal and External Supervision

A direct superior carries out internal supervision within an organizational unit. In the case of investigators, it is the Regional Investigator Profession and Security Function. External supervision is carried out by a supervisory unit outside the organization of the unit being supervised, such as supervision carried out by the National Police Commission.
(2) Preventive and Repressive Supervision

Repressive supervision is the supervision of activity after it has been carried out. In this case, it is carried out after using force to determine whether or not it is in line with the investigation plan. This can be done as needed to identify deficiencies during official duties.

(3) Active and Passive Supervision

Close supervision (active) is carried out at the place of activity. This means that supervisors accompany investigators who use force to provide instant corrections in error. This is different from remote supervision (passive), which is done through oral or written reports.

4 Conclusion

Following the Constitutional Court Decision Number 21/PUU-XII/2014/ of April 28, 2015, investigators have the authority to determine a suspect if supported by two valid pieces of evidence. The principles of due process and equality before the law must be considered in determining criminal liability to avoid abuse of power. Investigators must be held accountable for their actions to uphold the rule of law, which requires fairness. They cannot be held criminally liable for violations of SOP, but they can serve as a basis for criminal liability. For this reason, there will hopefully be a legal reform in the Police Law concerning the criminal liability of investigators that commit errors in investigations.

To eliminate procedural errors in determining suspects, the recruitment process of investigators must be equipped with special education that holds professionalism, mental health, integrity, and morality to a high standard.

References


Mitigation of Default Risk through Insurance in Peer-to-Peer Lending Financial Technology

Debora¹, Ningrum Natasya Sirait², Sunarmi³, Mahmul Siregar⁴
{deboratambun1983@gmail.com¹, ningrum.sirait@gmail.com², sunarmi@usu.ac.id³, mahmuls@yahoo.co.id⁴}

Universitas Sumatera Utara, Indonesia¹,²,³,⁴

Abstract. Mitigation of default risk through insurance is a solution to the high default rate. The non-collateral loan system in the Peer-to-Peer Lending (P2PL) is the reason for the high popularity of this service. Nevertheless, some legal problems result from the absence of collaterals from the borrower and P2PL provider in the event of default because no one guarantees the lender's rights. A borrower can run because the P2PL provider does not require the lender and borrower to meet face to face. In addition, a lender also has to spend much money collecting the borrower’s debt. This problem weakens the lender’s interest in investing, thus hindering credit accessibility in society. This study applied a normative legal research method using a conceptual approach. This study concludes that default risk mitigation has not explicitly been regulated in the positive Indonesian law, thus creating legal problems related to legal certainty and legal protection, especially for lenders investing their funds in P2PL services. The implementation of default risk mitigation through an insurance mechanism in providing P2PL service is the best scheme to provide legal protection for lenders in investing their funds which have implications for increasing public confidence in improving capital needs in Indonesia.

Keywords: Insurance, Default, Risk Mitigation, Peer-to-Peer Lending

1 Introduction

The presence of Financial Technology (Fintech) is the result of technological advancement that offers convenience in the loan system compared to banks. Although Fintech does not have access to finance, it is suitable for the market in Indonesia due to the significant internet penetration rates in Indonesia [1]. Based on the 2019-2020 Indonesian Internet User survey, internet users’ penetration rate is 73.7%. When combined with the projected figures of the Central Bureau of Statistics, the number of internet users in Indonesia is approximately 196.7 million users [2]. In Indonesia, Fintech users are dominated by millennial generations accustomed to online shopping through social media and e-commerce platforms whose payment systems use electronic payment instruments [3]. The Fintech product of great interest to borrowers is Peer-to-Peer Lending (P2PL), with a non-collateral loan system. The P2PL loan mechanism is more accessible with various schemes in its principal balances, interest rates, and payment periods [4].

P2PL is a marketplace that brings together lenders and borrowers through an electronic system using the internet network. P2PL is defined as a financial exchange between individuals without involving traditional financial intermediation institutions [5]. Just as a coin has two sides, so does P2PL service. Despite its advantages, P2PL also contains a risk for lenders.
Nevertheless, lenders often ignore such a risk because P2PL providers set high interest rates, much higher than bank interest rates. The most considerable risk in a non-collateral loan system is the possibility of default and borrower run. Article 43 letter c of Financial Services Authority Regulation (FSAR) Number 77/POJK.01/2016 is the basis for some P2PL providers to have no obligation to return the lenders’ funds.

Based on the Financial Services Authority (FSA) data in January 2021, the number of Fintech providers with official licenses is 149 companies. The Non-Performing Loan (NPL) rate above 90 days is at the level of 7.58% as of October 2020 [6]. This figure tends to be higher than the target of NPL on P2PL Fintech, which FSA has set to be below 1%. The risk figure of increasing NPL can weaken the guarantee of legal certainty and protection, especially for borrowers. This urges the FSA to immediately form a special regulation that governs risk mitigation for the implementation of P2PL. The increasing number of NPL on P2PL services, together with the development of P2PL companies, impacts the more complicated situation of online lending. Therefore, a person needs to understand the existing provisions before deciding to become a P2PL service user.

Article 21 of FSA Regulation Number 77/POJK.01/2016 emphasizes that both the Provider and User must mitigate risks from providing funds. Unfortunately, a risk mitigation model has not been expressly regulated by the FSA. Risk mitigation is all risks contained in the P2PL service, i.e., operational risk and credit risk. One of the efforts to mitigate the risk of default is through an insurance mechanism based on Law Number 40 of 2014. Insurance is an agreement in which the guarantor promises to the guaranteed party to receive an amount of premium as compensation for losses that the guaranteed party may suffer due to an unclear event. In terms of risk transfer needs, the insurance company functions as a guarantor for the risk of default to create a balance between P2PL Users and P2PL operators' interests.

Increasing capital in the community must be supported by protection for lenders in investing their funds in P2PL services. A strong collaboration involving the P2PL fintech industry, the credit insurance industry, and the government as policyholders is urgent to create a responsible digital financial ecosystem and support national economic recovery. Insurance is an important issue in the protection of users of P2PL services. The implementation of insurance as a model for mitigating the risk of default on P2PL has become necessary to realize protection for lenders in investing their funds in P2PL services.

Based on the rationale elaborated above, the problem of this study is elaborated into the following questions: (i) How is default risk mitigation regulated in the positive law in Indonesia? and (ii) How is insurance implemented as a model of default risk mitigation in P2PL services?

2 Research Method

This study used the normative legal research method by reviewing the material law containing normative legal rules [7]. The approach was carried out by examining various relevant laws and regulations and documents that can help solve the problem addressed in this study and explore how positive law in Indonesia regulates the problem. The research used a conceptual approach. The data sources were primary, secondary, and tertiary legal materials consisting of laws, regulations, views, and related doctrines.
3 Results and Discussion

3.1 Mitigation of Default Risk at P2PL in the Positive Law in Indonesia

The discourse of globalization has awakened the spirit of old debate where laws were transplanted from one place to another [8]. The legal systems that exist in the world can be classified into three generally recognized legal families that include civil law, common law, and socialist law [9]. Early P2PL services developed in countries that adopted a common law system. Singapore is a country that has chosen to accept the existence of Fintech even though a legal system regulating it is not yet stipulated. Unlike in Singapore, the emergence of Fintech in Indonesia leads to a shift in financial services that can present opportunities for financial inclusion.

In Indonesia's positive legal system, a loan agreement with an interest is based on an agreed provision between a lender and a borrower. This type of agreement is recognized or permitted in the customary and civil law systems. The amount of interest agreed is not stated, but it is said that the law does not prohibit it. An interest rate of 10% is not a crime, but it is called the abuse of circumstances in civil law. The lender applies a high interest to take advantage of the borrower condition who urgently needs money. The borrower is forced to agree to the interest set by the lender [10]. An easy process offered by P2PL includes a fast loan disbursement process. It only takes one day or even a few hours. The repayment time is usually very short and without collateral [11].

The implementation of P2PL activities involves several parties: P2PL provider, lender, and borrower. Article 18 of FSA Regulation Number 77/POJK.01/2016 states there are two agreements: an agreement between the provider and the lender and an agreement between the lender and the borrower. Meanwhile, an agreement between the P2PL provider and the borrower is not included in this rule. An agreement is an important instrument that frames the legal relationship of P2PL providers, lenders, and borrowers, and that secures transactions. The provider has a significant role in assessing the borrower's feasibility. In its practice, lenders provide loans to borrowers based on the P2PL provider's feasibility assessment results. Consequently, fintech companies must apply the precautionary principle in doing borrower assessments to reduce the risk of default.

The legal relationship of Service Providers, Lenders, and Borrowers will certainly create credit risk. The most considerable risk in P2PL services is generally a default. Therefore, a risk mitigation model is needed to prevent the risk of default in order to protect lenders' funds. Risk mitigation in P2PL requires identifying, measuring, monitoring, and controlling credit risks and operational risks that arise to mitigate such risks [12]. From a macro point of view, the big opportunity to enter the P2PL industry at a certain level can create uncontrollable macro risks. Meanwhile, from a micro point of view, most P2PL platform businesses are still in the growing stage [13].

Risk mitigation is an effort to prevent the emergence of various risks in the implementation of P2PL services. The risk studied in this research is the risk of default. FSA efforts in risk mitigation in P2PL services are outlined in the regulation of FSA Number 77/POJK.01/2016 as follows:

- Providers are required to apply for registration and licensing to FSA so that the FSA can supervise the activities of implementing the P2PL (Article 7);
- Providers are required to prepare and submit a report to the FSA every three months (Article 9);
c. Providers and Users are obliged to mitigate risks (Article 21);
d. P2PL providers become members of the Financial Information Service System (FISS) of the FSA to support the implementation of supervisory duties and information services in the financial sector (Article 22);
e. Providers cooperate and exchange data with information technology-based support service providers in order to improve the quality of P2PL (Article 23);
f. Providers are required to use an escrow account and virtual account (Article 24). An escrow account is a checking account at a bank in the Provider's name, which is a deposit and is used to receive and disburse funds from and to users of the P2PL service. Meanwhile, a virtual account is a banking service in identifying numbers of service providers (end users) to identify receipts and disbursements of funds from and/or to an account. Providers are required to set up a virtual account for each lender.

Risk mitigation management is also outlined in the regulation of FSA Number 13/POJK.02/2018. The P2PL service is a form of Digital Financial Innovation (DFI) growing rapidly in Indonesia. FSA realizes that the development of DFI causes risks that threaten the community. These risks may include business risks, legal risks, and information technology risks [14]. The escrow account and virtual account management show that, in performing DFI, each provider must pay attention to the aspects of user protection, mainly by applying the principles of risk management and prudence.

P2PL industry players have a Fintech Data Center (FDC) managed by AFPI which contains a track record of borrower transactions on all legal platforms. The function of the FDC has similarities with the Financial Information Service System. The P2PL platform is required to make a feasibility analysis of prospective loan recipients as a form of risk control. Although the role of regulators and the P2PL platform is very large in risk mitigation, lenders must choose a platform with a good reputation including having SNI ISO 27001 certification on information security management systems [15].

The absence of specific regulation governing obligation and risk mitigation model of default has led to some legal issues related to legal certainty and legal protection for users of P2PL services. In the context of default that impacts terrible credit, lenders are the most disadvantaged parties. Therefore, the legal protection of investor-owned funds is a crucial issue in implementing P2PL.

3.2 Implementing Insurance as a Risk Mitigation of Default in P2PL

A legal relationship does not always run perfectly or without any problems or disputes, including the non-collateral loan in P2PL service, which has placed lenders as concurrent creditors. In this system, in the event of default, repayment is not prioritized. This system does not provide proper protection to lenders; besides, it may cause borrowers to run easily because the parties have never met each other [16].
OJK has recorded a decrease in loan repayments as of August 2020 which reached 91.12%. However, in January 2021, the value of bad debt borrowers decreased even though the number of accounts increased. Non-current individual borrowers reached 188,928 people (Rp. 285.28 billion), while business entity borrowers were 494 entities (Rp. 39.01 billion). AFPI revealed that this new normal era brought P2P lending fintech players even more stringently in approving loan applications [18].

Insurance basically arises because of the human need for uncertain events. Thus, insurance has a function as a risk transfer and sharing. Credit insurance is a solution for borrowers who need loans for their business capital but do not have goods or objects that can be used as collateral. In the insurance agreement, the insurance company acts as the insurer for the risk and the insured party is willing to pay fees in the form of a premium to the insurer. The extent to which the insurance company bears the risk should be clearly stated to make claim submission easier.

To realize the application of credit insurance in P2PL Fintech, FSA as an institution that functions to implement a regulatory and supervisory system for all activities in the financial services sector establishes a regulation that requires P2PL fintech companies to cooperate with insurance companies. Therefore, legal protection for lenders against the risk of default in P2PL services is getting even better [19]. In order to achieve convenience and smoothness in credit accessibility in the community, protection must be provided for lenders in investing their funds in P2PL services. The transfer of default risk from borrowers to insurance companies is an effort to protect lenders from increasing their capital accessibility.

In credit insurance, there are three forms of loan repayment: (i) payment of the remaining loan without arrears and interest; (ii) payment of the remaining loan plus arrears and interest for a maximum of 3 months; and (iii) payment as much as the initial loan. The form of loan repayment depends on the agreement of the parties in the insurance agreement. Non-collateral credit schemes can be trusted by borrowers when supported by an insurance company to guarantee the lenders for secured debt. Although the role of regulators and the P2PL platform providers is huge in risk mitigation, Lenders can choose the most reputable platform. Insurance is one of the risk mitigation efforts in P2P Lending. Dominant legal P2P lending players have collaborated with insurance companies [20].

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<td>2. The amount covered in the event of default is 75% of the remaining principal. Default takes place when the borrower’s...</td>
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installment is not paid for four consecutive installments. With the guarantee of funding insurance coverage, the claim will run on the 5th week or one week after the failure of 4 consecutive installment payments.

3. The funding guarantee program is not mandatory for the user.

4. Funding insurance will pay a claim of 75% of the remaining principal with an estimated time of 6 weeks to 12 weeks after the claim is submitted.

5. The Non-Performing Loan (NPL) rate as of April 2021 is 5.56%.

| 2 | KoinWorks [22] | 1. KoinWorks cooperates with PT Mitra Ibisnis Terapan, PT Fuse Nano Tekno, and PT Futura Finansial Prosperindo to provide credit insurance for specific borrowers at KoinWorks. If the borrower experiences default, the claim for credit insurance will be disbursed by the insurer, where the claim provides coverage for the principal amount of the borrower’s initial debt.

2. The NPL rate as of March 2021 is 1.36%.

3. The amount covered in the event of default is 20% -100% of the remaining principal.

| 3 | Investree [23] | 1. Investree cooperates with PT Asuransi Simas Insurtec;

2. The amount covered in the event of default is 90% of the principal, excluding interest and late fees.

3. The claim period is 91 days (according to the calendar) after the loan due date.

4. Investree pays the premium, so Investree is also a policyholder.

5. The NPL rate as of April 2021 is 2.26%.

Table 1 above describes the amount to be covered in the event of default is 75% of the remaining principal of the loan. The insurance company will pay the lender within six weeks of being declared a default. The amount is adjusted to the risk borne by the lender where the borrower gets a loan in a short time and without including collateral. P2PL funds managed by Fintech are derived from investors, both individuals and companies [24].

In principle, each P2PL provider defines its internal policies to mitigate the risk of default. The use of credit insurance in the P2PL fintech service does not necessarily affect the level of non-performing financing or NPF when a default occurs, but it can protect lenders’ funds. The basic principle in protecting P2PL service users is that the provider must carry out such basic principles as transparency, fair treatment, reliability, data confidentiality and security, and fast, simple, and affordable resolution of users’ disputes. However, the transfer of risk through insurance is one of the best risk mitigations for the possibility of default of the borrowers due to unexpected events.
4 Conclusion

Positive legal arrangements regarding risk mitigation in the implementation of P2PL still exist in several regulations. These regulations include (i) Financial Services Authority Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing and Lending Services; (ii) Financial Services Authority Regulation Number 18/POJK.03/2017 concerning Reporting and Requests for Debtor Information through Financial Information Service System; and (iii) Financial Services Authority Regulation Number 13/POJK.02/2018 concerning Digital Financial Innovation in Financial Services Sector. The absence of specific regulations regarding credit risk mitigation can result in weak legal certainty and legal protection for P2PL users.

Indonesia has a great potential to become a market in developing P2PL services due to the high public interest. Therefore, if the risk of default can be reduced, the P2PL service has the potential to continue providing benefits for its users. In principle, each P2PL provider defines its internal policies to mitigate the risk of default. Implementing default risk mitigation through an insurance mechanism in providing P2PL service is a mitigation model that can provide legal protection and certainty for lenders in investing their funds.

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References

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Protection of Indonesian Migrant Workers through One-Stop Service for Placement and Protection of Indonesian Migrant Workers

Dian Cahyaningrum¹, Luthvi Febryka Nola²
{cahyaningrum@yahoo.com¹, febi_80@yahoo.com²}

Center for Research of the Indonesian House of Representatives, Indonesia¹,²

Abstract. The number of illegal Indonesian Migrant Workers (PMI) continues to increase. To that end, the Law Number 18 of 2017 on Protection of Indonesian Migrant Workers has stipulated the establishment of a program known as One-Stop Service for Placement and Protection of PMI (LTSA). This program is expected to prevent and reduce the number of illegal PMIs. However, not all regions have created such program. For this reason, this study aims at raising the issue on how to regulate the program, how to identify the difficulties in implementing it, and how to find the solutions. With normative legal research method and secondary data, the study shows that LTSA has been regulated under the Law Number 18 of 2017 and the Government Regulation Number 59 of 2021. The program offers placement and protection services for PMIs in an integrated and coordinated manner. However, it has faced several difficulties in its implementation including: the establishment of the program is merely a recommendation; the program is not clearly regulated; the implementing regulations are not immediately formed; lack of coordination; and the human resources, budget and infrastructure are limited. In addition, the public opinion on the difficulty in arranging formal departure also affects the PMI interest in LTSA. In some regions, illegal departure through a third party has also become a culture. These difficulties have resulted in the placement and protection of PMI through the program to not work optimally. Therefore, to overcome such difficulties, the Law Number 18 of 2017 must be revised immediately.

Keywords: LTSA, PMI, Illegal PMI, Placement, Protection Services

1 Introduction

The number of illegal Indonesian Migrant Workers (Pekerja Migran Indonesia/PMI) overseas is quite alarming. As stated by the Head of the Indonesian Migrant Worker Protection Agency (Badan Pelindungan Pekerja Migran Indonesia/BP2MI), Benny Rhamdani, the number of PMI officially and legally registered at BP2MI is about 3.7 million and spread over 150 countries. However, based on data from the World Bank says on the contrary, the number of PMI overseas reaches 9 million people. A significant difference around 5.3 million PMI that are not recorded at BP2MI. Approximately 80 percent of the people in the figure have allegedly taken illegal procedures to arrive in the country of placement [1]. In addition, within a year serving as Head of BP2MI, Benny Rhamdani has thwarted 610 people who went overseas to work illegally. The illegal PMI were sent by mafia who are backed up by people with attributes
of power, including police, TNI, Immigration, Embassy, Ministry of Manpower, and BP2MI itself [2].

Ironically, the number of illegal PMI is predicted to increase during the Corona Virus Disease 2019 (Covid-19) pandemic, which has hit the world since March 2020 and has not shown any signs to stop spreading. Executive Director of Migrant Care, Anis Hidayah predict that the number of illegal PMI, those without official documents, will rise up by 30-40% compared to the last year’s number. The number of illegal PMI in the last year period estimated based on the number of placements reaches 21,000 people [3].

The increase in the number is, on the one hand, mainly affected by the fact that the job market in the country has not recovered due to the pandemic. On the other hand, Indonesia is still considered to having difficulty finding countries of placement as the end of the pandemic is unclear [3]. Further, the Covid-19 pandemic has also caused the number of unemployed to increase for many affected companies have laid off their employees. The unemployment rate in Indonesia has increased from 4.9% to 7% (9.7 million people) during the pandemic [4]. This unemployment also consequently drives the PMI to work overseas illegally due to the pressure to make ends meet.

The increasing number of illegal PMI needs serious attention as they are prone to problems and human rights violations. Some of the problems include unpaid salary, physical abuse, sexual harassment, human trafficking, and even death. These problems can happen due to the fact that they are not recorded, which consequently leads to limited protection, on the one hand. On the other hand, they are unable and afraid to report what has happened to them because they must deal with the local law enforcement officials. They can be threatened with being deported or repatriated by the government in the country of placement as they do not have official documents. The number of repatriated PMI is quite large. As stated by Rhamdani, 169,000 PMI were repatriated, excluding 760 bodies and 640 ill PMI from January 2020 to mid-March 2021 [2].

In view of these cases, the PMI must work overseas legally, in accordance with the provisions of the applicable laws and regulations, in order to have full protection. To protect them, Indonesia has established Law Number 18 of 2017 on Protection of Indonesian Migrant Workers (Undang-Undang Nomor 18 Tahun 2017 tentang Pelindungan Pekerja Migran Indonesia) which has come into force since November 22, 2017. Law Number 18 of 2017 replace Law Number 39 of 2004 on Placement and Protection of Indonesian Workers Abroad (Undang-Undang Nomor 39 Tahun 2004 tentang Penempatan dan Pelindungan Tenaga Kerja Indonesia), which is no longer in line with the development of PMI protection needs. One of the sub-substances regulated in Law Number 18 of 2017, which is not regulated under the Law Number 39 of 2004 is one-stop service for placement and protection of Indonesian Migrant Workers (Layanan Terpadu Satu Atap/LTSA).

The LTSA is one of the programs intended to improve the PMI placement and protection management and to serve the community. It offers legal certainty and convenience in the PMI placement services in order to reduce, prevent, and even eliminate any illegal PMI. In addition, this program will record and protect them before, during, and after working overseas. Given its significance, the Ministry of Manpower has continued to encourage the role of local governments to establish and reinforce its establishment to improve its governance, services, and protection. The LTSA has only been established in 45 locations throughout Indonesia so far [5].

For those reasons, this study aims to examine the LTSA in relation to PMI protection. The issues proposed here are as follow: 1) how the LTSA is regulated; 2) How the LTSA services
are implemented and what the barriers to the implementation are; and 3) What the possible solutions to overcome the barriers in the implementation are.

Studies about the LTSA in relation to PMI protection have been conducted by some researchers, including Afdal and Felicia who specifically wrote the effectiveness of the LTSA in Batam in reducing the number of illegal PMI overseas [6]. This writing is a sociological legal research which examines the effectiveness of the LTSA in Batam and the efforts to take to increase it. In another study, Nuraeni and Yuliastuti [7] analyzed the effectiveness of LTSA to protect PMI. The writing analyzes the effectiveness of LTSA in Cirebon and Kupang. The two studies were written before the establishment of the Government Regulation Number 59 of 2021 as the implementing regulations of the Law Number 18 of 2017 which regulates the LTSA. Therefore, in contrast to several previous studies, this study comprehensively examines the regulation of LTSA after the establishment of the Government Regulation Number 59 of 2021, the implementation of the LTSA along with its barriers, and the solutions to overcome the barriers.

2 Research Method

This study is a normative legal research, which is conducted based on library research by analyzing secondary data [8]. It uses two types of secondary data; primary legal materials (legislation) and secondary legal materials (explain primary legal materials) [8]. The primary legal materials referred to related laws such as Law Number 18 of 2017, Government Regulation Number 59 of 2021 concerning the Protection of Indonesian Migrant Workers, etc. In the meantime, the secondary legal materials include books and journals. The data, in turn, are analyzed using descriptive qualitative method by accurately describing a particular situation or phenomenon [9] and understanding it in depth [10].

3 Result and Discussion

3.1 The One-Stop Service for Placement and Protection of Indonesian Migrant Workers Regulation

In the Law Number 18 of 2017, PMI is every Indonesian worker who meets the requirements as job seekers who are willing to work overseas and registered in the local government agencies responsible for the manpower affairs. In the meantime, PMI is every Indonesian citizen who will work, is currently working, or has worked to earn wages outside the Republic of Indonesia territory. Referring to this definition, PMI includes: 1) those who work for an employer with a legal entity; 2) those who work for individual or household employers; and 3) seafarers and fishers.

The PMI placement is undertaken according to the provisions of the applicable laws and regulations; the Law Number 18 of 2017 and the Government Regulation Number 59 of 2021 as its implementing regulations. Any placement which does not follow the legal procedures will lead the PMI to be illegal. Here, illegal procedures include documents and personal data falsification and manipulation; incomplete documents; ignorance to the placement procedures and mechanisms that have been set under the laws and regulations; and absence of work visa
Several factors driving illegal PMI are low education, limited employment opportunities, and poverty. These factors have resulted in an increase in the number of illegal PMI during the Covid-19 pandemic. Other factors include limited access to information and lack of public knowledge on the procedures of PMI placement and protection. In addition, persuasion, enticement, and temptation to get high salary in a simple process from irresponsible individuals (brokers in this case) are also the factor causing illegal PMI [11].

Therefore, to prevent illegal PMI and increase PMI protection and their families, the Law Number 18 of 2017 which is better than the Law Number 39 of 2004 regulates placement and protection services. Based on Article 38 paragraph (1) of the Law Number 18 of 2017, the placement and protection services are undergone by the central and local governments in a coordinated and integrated manner. In providing such services, they can both establish an LTSA. The Law Number 18 of 2017 mandates to further regulate the LTSA under the government regulations. As the implementation of this mandate, the Government Regulation Number 59 of 2021 is applied and has come into force since April 7, 2021.

The Government Regulation Number 59 of 2021 mentions that the LTSA is a service system which provides information, fulfills requirements, and handles PMI problems. The system is integrated in an inexpensive, easy, and efficient public service without discrimination (Article 1 Number 19). Basically, the establishment of LTSA is taken to create and improve effective, efficient, transparent, fast, and high-quality services without discrimination and in a coordinated and integrated manner. For this reason, the establishment is considered essential, especially to areas where the PMI come from (areas of origin), crossing areas, and other areas with certain criteria set by the Minister.

With the establishment of LTSA, PMI placement and protection services can be completed effectively, efficiently, inexpensively, and quickly as the LTSA coordinates and integrates eight agencies or institutional services in term of desks. The eight desks include manpower; complaints and information; citizenship and civil registration; health; immigration; police; complaints and information; Citizenship and Civil Registration; health; immigration; police; banking; and social security. These 8 desks are intended to bring the placement and protection services closer to PMI in terms of: a) job market information; b) procedures for the placement and protection of PMI; c) counseling and job guidance; d) information for obtaining education and job training; e) information on the implementation of the PMI placement; f) job seeker registration services; g) verification of placement agreements, work agreement and work visa documents; h) verification of population data; i) information and access to health examination facilities; j) issuance of passports; k) issuance of police record certificate; l) banking information and services; and m) information on social security membership services.

The LTSA also works as an organizer for pre-departure orientation, an activity to provide briefings and information for PMI who will go and work overseas, so they can have mental readiness and knowledge to work overseas, understand their rights and obligations and are able to overcome any problems they will face (Article 1 number 11 of the Government Regulation Number 59/2021). In addition, the LTSA also runs as a place for consultation, mediation, advocacy, and legal assistance for CPMI, PMI, and/or their families.

The PMI placement and protection service is carried out in coordination with the relevant agencies at the center and the region levels and according to the provisions of the legislation. Due to the information technology advances, the implementation of LTSA is available on an integrated online system between the central and local governments for effectiveness and efficiency.

In view of the fact that the LTSA is formed by the governor and/or the regent or mayor, the responsibility for the formation also rests with them. Their duties and responsibilities in
implementing the LTSA are: 1) providing facilities for information technology-based PMI placement and protection service system; 2) allocating budget for the LTSA operations in accordance with their authority; 3) ensuring the implementation of services for PMI by assigning relevant apparatus personnel in the related local government; and 4) controlling the implementation of LTSA.

Further, the Government Regulation Number 59/2021 stipulates that the head of provincial government and/or the head of district or city government, ex officio, act as the persons in charge of the LTSA. As the persons in charge, their duties include the followings: 1) coordinating and controlling the implementation of LTSA; 2) determining the technical implementer for the implementation of LTSA proposed by the agencies that run it; 3) guaranteeing the quality of PMI placement and protection services according to the provisions of the legislation; 4) reporting the implementation of LTSA to the Minister who runs the manpower affairs through the governor at the provincial LTSA or the regent or mayor at the district or city LTSA. In carrying out their duties, the persons in charge are responsible to the governor or the regent or mayor. In connection with the 8 desks at the LTSA, the LTSA membership also consists of elements that run in the fields of manpower, population administration, health, immigration, police, psychology, banking, and social security.

3.2 Barriers in the Implementation of LTSA Services and Protection

The Law Number 18 of 2017 has regulated the existence of LTSA which is designed as a service system for PMI. After being enacted for almost four years, the Law has led to the establishment of a number of LTSA s organizing PMI departures in several provinces and/or districts or cities. The law enforcement theory offered by Soerjono Soekanto is used to find out the barriers faced by the local governments in establishing the LTSA. According to him, five factors affect the enactment of a law or regulation. The factors include 1) the law itself; 2) the law enforcement; 3) facilities and infrastructure; 4) culture; and 5) community [12].

Legally, the barrier results from the Law Number 18 of 2017 itself which does not require the local governments to establish an LTSA, but only recommends that they do so. Such recommendation is literally seen from the word “can” in Article 40 letter i and Article 41 letter k. In addition, Article 30 paragraph (4) of the Government Regulation Number 59/2021 also mentions that the recommendation for establishing an LTSA focuses on the PMI’s areas of origin, their crossing areas, and areas with certain criteria. Consequently, not all provinces and/or districts or cities have established one. Another barrier to happen is due to the fact that both the Law Number 18 of 2017 and the Government Regulation Number 59/2021 do not specifically and clearly mention the LTSA design. Such barrier has resulted in the provincial and/or district or city governments having different attitudes towards the establishment of LTSA. Some are waiting for the formation of laws and regulations that specifically regulate it including North Sumatra, and some have established it such as Cirebon, Indramayu and Subang. Some others have designed it by integrating it with public service centers. This includes Banyumas, Banyuwangi, Kebumen, Batang, and Pamekasan [13].

Like the Government Regulation Number 59 of 2021, the Law Number 18 of 2017 only regulates the LTSA in general. Only one article, Article 38 in this case, specifically regulates it. The three remaining articles include Article 8 paragraph (3) which is related to the technical protection for PMI before working, Article 40 mentioning the duties and responsibilities of the provincial government, and Article 41 associated with the duties and responsibilities of district or city governments. The Law further mandates to regulate the LTSA under the Government Regulation. The general regulations in a law have a positive side. They can last longer and are
more flexible. However, they do not apply legal certainty. The Government Regulation which
specifies the existence of LTSA does not come at the right time. Article 90, for example, has
actually stated the time limit for the Government Regulation, which is 2 years after the Law is
enacted. However, the government has violated the time limit and the regulation on LTSA has
only been made available since in April 2021. Even more sadly, this Government Regulation is
incorporated with the Government Regulation Number 59 of 2021 on the Implementation of
PMI Protection, not the Government Regulation which specifically deals with the LTSA.

Further, there seems to be an inconsistency between Article 8 paragraph (3) of the Law
Number 18 of 2017 and the general provisions. The Law, for instance, mentions that the LTSA
is a form of technical protection for PMI before working, while the general provisions mentions
it as an administration or document service. Such inconsistency can certainly confuse the law
enforcers. The technical protection and administrative protection have different meanings. The
technical protection means protection in terms of work security and safety [14], whereas the
administration suggests completing documents and determining work terms and conditions [15].
Consequently, the protection services provided by the LTSA commonly vary. Some merely
serve administration process, and others attempt to protect and help solve the problems faced
by CPMI or PMI.

In term of the law enforcers or implementers, the LTSA has experienced lack of
coordination among the related agencies. The eight desks or agencies/institutions which
organize the PMI placement and protection services include the Ministry of Manpower with job
vacancies, the Ministry of Law and Human Rights with travel documents (passports), the
Ministry of Health with medical examination facilities, the Police with police records, the
Ministry of Home Affairs with the integrated service system and population information; and
BPJS (Badan Penyelenggara Jaminan Sosial/Social Security Administrator) with PMI social
security. Basically, such coordination plays an important role in an integrated service. However,
in practice, each agency encounters sectoral ego in view of budgets and data confidentiality.
This has led a number of important agencies running PMI services are reluctant to join the
LTSA, including the immigration service to process passport for data security.

In regard to facilities and infrastructure, the LTSA requires similar places where services
are carried out in an integrated manner. Unfortunately, not all regions have the budget to provide
them. Service facilities including computers are also limited. In addition, the poor internet
network in some areas has also become an obstacle in providing online placement and protection
services for PMI. Further, the quality and number of human resources required by the LTSA is
very limited in the regions, whereas an integrated PMI data collection system is very much
needed. Such data collection system certainly requires significant funding and resources. There
has not been a single integrated PMI data collection system to date. The BP2MI has its own
PMI data on its Sistem Komputerisasi Tenaga Kerja Asing/SISKOTKLN (Computerized
System for Foreign Workers). Similarly, the Ministry of Manpower has its own system.
Regarding the number of PMI, the data at the district/city level varies. Here, the data on the
repatriation of PMI is not even available. In practice, the LTSA does not serve the PMI until
they return to their areas of origin. During the Covid-19 pandemic, in particular, this data plays
a significant role in supporting their administration. With accurate data, the PMI protection is
expected to carry out properly.

According to the cultural perspective, being an illegal PMI has become a culture. The PMI
are also accustomed to using the third party or broker services to arrange their departure due to
practicality and simplicity, their ignorance of PMI placement procedures, and so on. Using the
third party of broker services undeniably provoke problems, including the amount of levies and
document manipulation which leads to illegal PMIs. In view of the community perspective, the
PMI’s home of origins are generally conservative and are not familiar with an integrated service system. The only thing they know is that they have to follow procedures and provide documents from different agencies to be able to work overseas, in which the process is money and time consuming.

3.3 Solution

Referring to the barriers in implementing the LTSA regulations, the establishment and implementation of LTSA for PMI is not as simple as it seems considering many factors, including coordination among agencies, funding and human resources, are involved. The general LTSA regulations mentioned in the Law Number 18 of 2017 and the absence of obligation to establish an LTSA according to the Government Regulation Number 59 of 2021 causes the barriers to be unaddressed. In the meantime, the LTSA plays very important part especially in preventing illegal PMI. To this end, the obligation on its establishment needs to be clearly mentioned in the Law. In addition, types of services are also stated and properly provided as they involve many factors, not merely technical factors. Here, the types of service will affect each and every agency involved. If, they are clearly stated, the relevant agency will take full responsibility. The scope of service also needs to be addressed to identify departure or repatriation preparation. Most of the existing LTSA only provide departure preparation service. In view of the general explanation mentioned in the Law Number 18 of 2017, repatriation is part of the LTSA service.

Basically, the LTSA is required to provide repatriation service for PMI as the stakeholders in the LTSA organize the same service. Here, an integrated repatriation service needs to be implemented as it does not ideally stop when the PMI return to their home of origins, but also reintegrates the process both socially and economically. In Sri Lanka, for example, repatriation service is designed and organized in an integrated manner by a special agency, the Sri Lanka Bureau of Foreign Employment/SLBFE (Sri Lanka) [16]. However, as Indonesia does not own a special agency that organizes such service, and many stakeholders are involved it, this leads to the LTSA as a one stop service for repatriation to play an important role.

Due to the large number of stakeholders and systems taking part in PMI data collection, the Law needs to points out that the LTSA needs to be supported by an integrated data collection system, which can accordingly make the study of PMI policies to be more effective. In addition, such system can also offer online service, which is likely to do by the LTSA, to accommodate and manage administration such as the Philippines having currently designed One-Stop Service Center for Overseas Filipino Workers (OSSCO) [17]. Nevertheless, the PMI data security system must be taken into account.

To increasingly gain public trust in the LTSA performance, the Law needs to set time limit for the provided services and impose strict sanctions if the time limit is ignored. A clear formulation in the law will certainly be followed by implementing regulations. Additionally, human resources, budgets and internet networks also require attention and improvement, especially from the local governments. Here, they also need to socialize the importance of becoming legal PMI.
4 Conclusion

The LTSA is regulated under the Law Number 18 of 2017 along with its implementing regulations, the Government Regulation Number 59 of 2021. It plays an important role in providing placement and protection services for CPMI, PMI, and/or their families. With its existence, the placement and protection services can be undertaken in an integrated and coordinated manner among the relevant agencies at the center and in the regions and in line with the provisions of the legislation. Such integration and coordination enables the placement and protection services to carry out effectively, efficiently, quickly, easily, and inexpensively. In addition, it is expected to prevent, reduce, and even eliminate any illegal PMI.

In the implementation process, the PMI services and protection through the LTSA have faced a number of barriers ranging from ambiguity, inconsistency to delays in the formulation of implementing regulations that lead to legal uncertainty. This is seen from the fact that not all regions have established an LTSA. Limited facilities and infrastructure including funding, internet network, and human resources also hinder the establishment. At least, conservative community and cultural factors greatly influence the PMI to take the illegal procedures.

Therefore, the LTSA regulations mentioned in the Law Number 18 of 2017 require reinforcement and details. Here, the Law is expected to be able to regulate the LTSA in more details by including the definition of the LTSA (in term of articles, not explanations), institution, scope of service, its specificities compared to other integrated service institutions, support for an integrated PMI data collection system, funding, time limit for the services and LTSA socialization to the community.

References


Legal Political Analysis of Failure Factors of Extradition Treaty Ratification between Indonesia and Singapore

Dio Poliando Panggabean¹, Suhaidi², Ediwarman³, Jelly Leviza⁴
{dio.panggabean35@gmail.com¹, suhaidi@usu.ac.id², profediwarman25@yahoo.com³}
jelly@usu.ac.id⁴

Universitas Sumatera Utara, Indonesia¹, 2, 3, 4

Abstract. Indonesia has been exploring an extradition treaty with Singapore since 1970’s but still fails to ratify the extradition treaty due to the mismatch between the conditions proposed by the Singaporean Government. This normative legal research to reveal the main causes of the extradition treaty ratification failure. After a long negotiation process, Indonesia and Singapore agreed on an extradition treaty followed by a defense cooperation agreement (DCA). Several legal factors have caused the failure to follow up the extradition treaty including the integration of the extradition agreement package with the DCA and the clause that Singapore has the right to conduct military training by involving third parties in Indonesian territory. Moreover, Singapore adheres to the Common Law legal system that stipulates extradition through courts. Furthermore, some political factors have contributed to the failure of the extradition treaty including the absence of a guarantee from the Singaporean government that fugitives and their assets can be brought to be processed by Indonesian law. Domestic legal politics and international relations greatly influence the decisions to ratify the extradition treaty indicating that there is a certain motive behind the insertion of the defense cooperation agreement into the extradition treaty.

Keywords: Analysis, Ratification, Extradition, Singapore

1 Introduction

Extradition is the product of rational exchanges between 2 or more countries. One of the fundamental aspects relating to extradition requests can only be carried out by the order of the executive. This means that the extradition decision is fully sovereign in the hands of the president as the head of state. There is an opinion claiming that the extradition request is based more on the political interests of the president than on the law itself [1].

The massive cases of international crimes have caused the perpetrators to flee abroad. Therefore, in the context of handling and anticipating criminal acts, an instrument in the form of international cooperation for law enforcement is needed to carry out legal processes in both the requesting country and the requested country. This should be manifested in an extradition treaty.

The government has been working hard to explore extradition treaties since the 1970s with several neighboring countries such as the Philippines, Malaysia, Thailand, Australia, Hong Kong, South Korea, and Singapore. Almost all of these countries have accepted the Indonesian government’s invitation, except the Singaporean government that has not responded due to the differences in the legal system between the two countries.
These differences have made the Indonesian Government experience obstacles in realizing the ratification of the extradition treaty with Singapore. In practice, the Singaporean court can cancel the requests to bring corruptors out of its country due to court decisions. In the Continental system, legislation or codification is used as the main law. Meanwhile, in the Anglo-Saxon system, precedent (previous court decisions) and customs are the main sources of law. The Anglo-Saxon system places the court as the party determining whether a person can or cannot be extradited.

A common law system requires that extradition processes must go through a trial stage which cannot be resolved through a single court level. In Indonesia, on the other hand, the extradition process generally does not take a long time because it is part of the executive power, not the judiciary as in common law countries. Thus, an extradition process can be carried out in a relatively short time.

Despite the differences in the legal system between the two countries and less smooth negotiation, the process of negotiation does not stop. Indonesia and Singapore have once collaborated in the defense sector called the Air Combat Maneuvering Range (Air Combat Training Ground) in Pekanbaru which was built by Singapore to be used together with Indonesia. The two countries are close to each other and have good diplomatic relations. However, both of the countries have not ratified the extradition treaty. This is despite the fact that the extradition treaty process with Singapore has been started since 1974. The long process is due to the complicated extradition treaty issue related to bilateral issues which are quite complicated and a tug of war between political and legal interests between the two countries.

The Indonesian and Singaporean governments signed a memorandum of understanding on extradition done by the respective Foreign Ministers witnessed by Indonesian President Susilo Bambang Yudhoyono and Singaporean Prime Minister Lee Hsien Loong on 27 April 2007 at the Tampaksiring Palace, Bali. Considering the contents of the agreement are related to politics, security, and sovereignty or sovereign rights of the country, the ratification is then carried out by law.

The constraint and obstacle to the failure of ratifying the extradition treaty are the conditions proposed by the Singaporean Government which are deemed incompatible with the main substance of the agreement. Insertion of the Defense Corporate Agreement (DCA) into the extradition treaty by Singapore by asking an area in Indonesia to be used as a military training ground is considered inappropriate. The Indonesian government refused it following the decision of the House of Representatives. Singapore’s request is unusual. The government has made many extradition treaties with various countries without such a request in the agreement.

There are allegations that the Singaporean government deliberately did not follow up on the extradition treaty to protect Indonesian fugitives. They were involved in such various problems as crimes or corruption, smuggling, reclamation, and several other problems. Therefore, Singapore has received reprimands from various domestic and international entities such as Non-Government Organizations (NGOs) and international organizations that consider Singapore to be uncooperative in handling corruption. The evidence leading to these allegations is that most of the Bank Indonesia Liquidity Assistance (BILA) recipients who caused a loss of hundreds of trillions of rupiah in state finances are believed to be in Singapore, and they are not processed according to the local laws. This research analyzes legal political factors on the failure of extradition treaty ratification between the Indonesian and Singaporean governments.
2 Research Method

This is normative legal research which is also called doctrinal legal research. The law is often conceptualized as what is written in legislation (law in the book) or law that is conceptualized as rules or norms which become standard behavior guidelines for people that are considered appropriate relating to extradition. In addition, this study uses a descriptive method by providing the data regarding the symptom or phenomenon as accurately as possible, in this context, the inhibiting phenomena causing the failure to ratify the extradition treaty between Indonesia and Singapore.

3 Results and Discussion

3.1 Brief History of the Extradition Treaty between Indonesia and Singapore

The long history of the absence of a bilateral agreement (extradition) between Indonesia and Singapore is thought to be motivated by the conflict of political and economic interests between the two countries. Indonesia has an interest in promoting the rule of law (e.g., corruption eradication), while Singapore has an interest in maintaining its reputation as one of the economic centers in ASEAN. Therefore, dirty money (money from corrupt practices in Indonesia) can easily come and go via Singapore [2].

The extradition treaty between Indonesia and Singapore is difficult to implement. Singapore has shown a change in attitude since the end of 2004. During the bilateral meeting attended by the prime minister of the Republic of Singapore and the president of the Republic of Indonesia in Tampaksiring, Bali, on 4 October 2005, a mutual understanding emerged that the negotiation process for the extradition treaty and the new cooperation agreement in a defense sector would be carried out parallelly.

The parallelization is carried out in the political field, including three agreement negotiations: defense agreement, extradition treaty, and counter-terrorism agreement. This indicates a good relationship but raises pros and cons from various elements of society because the agreement involves the political and defense sectors.

The meeting held in Langkawi on 14-15 May 2007 was effective. Two weeks before the Summit Conference, Indonesia and Singapore have concluded the Extradition Treaty and Defense Cooperation Agreement (DCA). After going through a fairly long and dynamic negotiation process for more than 30 years, on 27 April 2007 in Tampaksiring, Bali, Indonesia and Singapore agreed on a defense cooperation agreement. The agreement was signed in a package with an extradition treaty.

The signing of the agreement triggers pros and cons which makes Indonesia and Singapore caught in a very serious dilemma. The criticism of the agreement is regarding several areas agreed to be used as the military training ground. Some international legal experts argue that determining Indonesian territory as a joint military training ground is a violation of the territorial law sovereignty of the Republic of Indonesia.

Here’s the characteristic of extradition treaty between Indonesia and Singapore [3]:

a. Transfer of case or right of prosecution in the event that the state is asked not to surrender its citizens whose extradition is requested by the requesting country.
b. For an extradition respondent who is detained based on a request for temporary detention, there is no time limit for detention until the formal request for extradition must have been received by both parties through diplomatic channels.

c. Criminal penalty of at least two years against extraditable criminals.

d. The treaty is retroactive 15 years after the treaty enters into force against all extraditable crimes.

e. The application of the prima facie principle or sufficient evidence of the alleged crime if the crime occurred in the jurisdiction of the requested party.

f. It does not clearly regulate whether or not a respondent of extradition who is threatened or sentenced to death can be extradited.

g. The types of crimes for which the perpetrators can be extradited are regulated in the list of crimes as many as 29 types of crimes and other criminal acts that can be extradited according to the extradition laws of both parties and the laws that ratify obligations under international conventions to which both parties are parties.

h. The extradition respondent who is detained but the requested state still requires additional information and the additional information is not received by the requested state within the specified time, the person can be released. The release does not prevent the requesting country from submitting a new extradition request for the person.

The extradition treaty between Indonesia and Singapore is actually the first step in following up the ratification of the extradition treaty that has been signed. Basically, DCA is the body that defines the terms and conditions of implementing the Military Training Area (MTA) and Implementation Agreement (IA). Therefore, it needs to be further elaborated [4].

Defense cooperation between Indonesia and Singapore is one of the forms of Indonesian diplomacy in establishing bilateral cooperation with Singapore. The extradition treaty is the first step in improving the relationship between Indonesia and Singapore. Previously, Singapore only entered into extradition treaties with British Commonwealth countries and only interacted with certain countries. Indonesia and Singapore formed a joint technical meeting that specifically discussed the follow-up to the extradition treaty. In the end, the political interests between the two countries played a major role in following up the extradition treaty [5].

An ongoing extradition treaty cannot practically override global cooperation with institutional channels. The role of INTERPOL as an international organization accommodating the national police of its member countries is still needed because of its important role in preventing, eradicating, and pursuing perpetrators of both national and international crimes. At the regional level, for example, cooperation involves the police institutions of ASEAN member countries [6].

There are some several cases of extradition dispute between Indonesia and Singapore [7]:

<table>
<thead>
<tr>
<th>No.</th>
<th>Fugitive</th>
<th>Case</th>
<th>Court Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sudjino Timan</td>
<td>Corruption in PT Bahana Pembinaan Usaha Indonesia causing total state loss in 1995-1997 amount of Rp. 369 billion and US$ 178 million</td>
<td>Supreme Court No. 434/K/Pid/2003 on 2 December 2004 sentenced 15 years in prison, fined Rp 50 million, substitute compensation Rp. 369 billion and US$ 98 million</td>
</tr>
<tr>
<td>2</td>
<td>Samadikun Hartono</td>
<td>Corruption using liquidity aid from Indonesia Central Bank causing total state loss Rp. 169 billion in 1997-1998</td>
<td>Supreme Court No. 1696/K/Pid/2002 date 28 May 2003 sentenced 4 years in prison, fine Rp 20</td>
</tr>
</tbody>
</table>
Resided in apartment Beverly Hills, Singapore and Had Fuji Film Factories in China and Vietnam


The absence of ratification extradition treaty has made it difficult for Indonesia through its law enforcement apparatus to bring back the perpetrators of corruption cases to trial. Through the extradition treaty, the government can easily handle to coordinate with the law enforcers, both Indonesia and Singapore, and the jurisdiction will be broader in tracking and pursuing suspects, especially suspects in corruption cases to repatriate corrupt assets that cause state loss around 1.300 trillion rupiah.

3.2 Factors Affecting the Failure of the Extradition Treaty Ratification between Indonesia and Singapore

Indonesia and Singapore are still not bound by an extradition treaty. In resolving the extradition case, the two countries are guided by legal principles and rules regarding extradition that have been generally adopted by countries throughout the world. An extradition institution has been recognized and accepted by international criminal law scholars as international customary law [8].

International law explicitly states that a country has the right to grant or refuse a request for submission of a criminal who is hiding in its territory if there is no previous extradition treaty. Due to the absence of an extradition treaty, a country can make extradition based on good relations and the need of its legal or political interests, although theoretically, an extradition treaty is an absolute requirement.

The extradition treaty between Indonesia and Singapore is an agreement that the Indonesian government has been pursuing for a long time. After Indonesia signed the anti-corruption convention (United Nations Convention Against Corruption 2003) and ratified it, Indonesia has shown the international community its high commitment and seriousness in preventing and eradicating corruption. This is in line with the government’s objective to ratify the extradition treaty, i.e., to repatriate the corruptors.

Indonesian corruptors who fled to Singapore took advantage of the absence of an extradition treaty. They know that Indonesia has not been able to implement the extradition treaty with Singapore because it has not yet been ratified. Even though the government is aware of the existence of these corruptors, Indonesia is still hit by the absence of extradition ratification.

The absence of extradition treaty ratification can be overcome by using Mutual Legal Assistance and covert extradition which are guided by the principle of reciprocity between the two countries. Returning corruption without repatriating assets is futile because it must be done through formal legal procedures and based on the treaty ratification by both countries.
The failure to ratify the extradition treaty between Indonesia and Singapore is caused by difficulties to accommodate the interests of each country. Therefore, the two countries often use multilateral cooperation platforms (especially ASEAN) as a forum to communicate and take advantage of Interpol's existence to handle transnational criminal cases. However, the effectiveness of this effort is not so significant, constrained by the problem of differences in their respective legal system and sovereignty.

Several legal factors are leading to the failure of following-up the extradition treaty in Indonesia [9]:

a. The integration of the Extradition Treaty with DCA is inappropriate because extradition and DCA are two different dimensions. The integrated extradition treaty package is inappropriate as if Indonesia sells its territorial sovereignty to Singapore as its military training ground to secure an extradition agreement to repatriate Indonesian money that has been brought to Singapore [10].

b. The Singaporean government said that there was no need to make an Implementing Arrangement because the contents of the agreement made in Tampaksiring, Bali, had already been comprehensive. Differences in interpreting the contents of the DCA are fatal in a bilateral agreement. An agreement cannot be ratified if it has a tendency of multiple interpretations on the provisions contained therein. Such a different interpretation can fail the ratification of the extradition treaty.

c. The Singapore government has the right to involve a third party in military training on Indonesian territory. This authority has exceeded the sovereignty of the Indonesian nation. In addition, the term of the Indonesian-Singaporean DCA is valid for 25 (twenty-five) years. In practice, such an agreement has never been done by Indonesia. The usual period in a bilateral agreement is 5 (five) years. The DCA agreement should only be carried out in a temporary period. This is intended to easily make changes that are more profitable for Indonesia.

d. An impractical extradition treaty can repatriate corrupt assets and money directly because it only regulates the repatriation of people. Singapore adheres to an Anglo-American legal system or known as a Common Law System. In this system, the party deciding whether someone is extradited is the court, not the government. The Indonesian government’s request for repatriating corruptors (extradition) entirely depends on the Singaporean court decision. Therefore, the signed extradition treaty becomes difficult to implement when faced with the application of Singaporean law [11].

e. The principle of reciprocity states that the requesting country can repatriate a perpetrator if the request is replied to by the requested country. In this context, the extradition treaty can actually be implemented without ratification, but the Singaporean government will not follow this principle because it is detrimental to its position [12].

In addition to legal factors, political factors also contribute to the failure of following-up the extradition treaty in Indonesia, namely:

a. The transfer of fugitives and their assets from Singapore to Indonesia is still uncertain due to their movability. There is no guarantee from the Singaporean government that the fugitives and their assets can be taken for processing under Indonesian law. Thus, the Indonesian government’s reason for agreeing with the DCA is that Singapore has agreed on an extradition treaty that is not in favor of Indonesia.

b. Some clauses are detrimental. In Article 6 of the Implementing Arrangement (IA), Singapore has the right to conduct joint military training with Indonesia in the areas called Alpha 1, Alpha 2, and Bravo areas; whereas these areas have strategic national defense facilities. The condition becomes much weirder when the Indonesia-Singapore DCA can only use
Indonesian territory, and it is not possible for the Indonesian National Armed Forces to carry out military training in Singapore. The National Armed Forces are only allowed to use Singapore’s military facilities [13]. This clause should refer to the principle of balance where the position of the two parties involved in the agreement is balanced and mutually beneficial so that it can accommodate the political interests of each country [14].

c. There are differences in views between the stakeholders. While the Indonesian government views the cooperation as beneficial, the House of Representatives considers that the ratification of the extradition treaty with the inclusion of DCA violates the territorial sovereignty of the Republic of Indonesia [15].

The Indonesian government thinks of the importance of fighting for the extradition treaty with Singapore considering the material losses caused by corruptors who have fled to Singapore. As a matter of fact, the extradition treaty should not include a DCA agreement. This political stance (making an extradition treaty with Singapore) is taken because if Singapore and Indonesia do not carry out the extradition, corruptors from Indonesia can flee to farther countries and it will become more difficult for Indonesia to trace the corruptors who carry out money laundering, especially in Singapore.

The postponement of extradition between Indonesia and Singapore is also related to the existence of political and legal interests between the two countries which are considered to be lame due to different perspectives and political interests. For Indonesia, extradition is one of the ways to repatriate state assets. Singapore, on the other hand, seeks to bring the realm of extradition cooperation to a broader level with the condition of inserting a defense cooperation agreement. Under this agreement, Singapore can take advantage of Indonesia’s geographical area [16].

The amendment to the extradition treaty between Indonesia and Singapore is also one of the factors leading to the failure of the Indonesian government to agree on an extradition treaty with Singapore. One of the most important amendments to the extradition treaty is that it applies not only to corruption crimes but also to other crimes such as murder, narcotics, forest burning, and other serious crimes. In addition, the amendment made in this extradition treaty is that the arrest of criminals who have fled to Singapore are retroactive for 15 years since the extradition treaty was agreed. This is certainly not approved by Singapore.

The conflict of political and legal interests of each country is also an obstacle, especially in terms of exchanging information on the identity of the criminals. This problem will arise when the extradition treaty is implemented. The existence of cooperation in the military/defense sector inserted in the extradition treaty, as in the case between Indonesia and Singapore, is practically an inhibiting factor. In the context of DCA, Singapore wants military cooperation with Indonesia, while this is a threat to Indonesia’s territorial sovereignty because the agreement will probably make Singapore indirectly control the Indonesian military power and territory [17].

Based on the factors and interests elaborated above, Indonesia can apply the international standard in eradicating corruption by utilizing the legal framework and so forth. In addition, Indonesia can urge the international community to eradicate corruption regarding issues related to the extradition efforts of corruptors through the application of Mutual Legal Assistance (MLA), asset recovery, and other legal institutions.
4 Conclusion

The ratification of the extradition treaty between Indonesia and Singapore is influenced by the direction of domestic legal political policies. The direction of international relations that has not yet been determined greatly influences the decision on the following-up the extradition treaty. Indonesia is at a disadvantage position, so it is very reasonable to reject ratification because the position of the extradition treaty is not proportional. Therefore, the Indonesian government decided not to ratify the extradition treaty. From the elaboration of the legal and political factors above, the causes of the failure to ratify the extradition treaty between Indonesia and Singapore are political and legal considerations such as differences in the legal system and terms of the agreement which require defense cooperation that does not benefit Indonesia at all. The tug of war of interest indicates a certain motive behind the insertion of defense agreement into the extradition treaty.

References

Optimization of Legal Protection for Women and Children Against Violence and Human Trafficking in Central Java

Dyah Wijaningsih¹, Elfia Farida², Muh. Afif Mahfud³
{dyah.wijaningsih@gmail.com¹, elfiaundip@gmail.com², afifmahfud4@gmail.com³}
Universitas Diponegoro, Indonesia¹, 2, 3

Abstract. Violence against woman and children has reached public space, working institution and educational institution. Presidential Regulation No. 65 of 2020 on Ministry of Woman Empowerment and Child Protection was stipulated to optimize legal protection for children and woman in Indonesian law and reality through analysis of woman violence and children in Central Java. This article is based on sociolegal approach which focus in implementation of Presidential Regulation No. 65 of 2020 Ministry of Women Empowerment and Children Protection. Analysis is based on empirical data comparison about implementation of this regulation as well as quantitative (statistic) data as empirical result. This study is to identify problems with approaches such as statute approach, sample survey from multiple sources, ethnography observations, in-depth interviews, and case studies analysis. This research shows that Presidential Regulation No. 65 of 2020 as an effort to protect women and children against violence has not been optimum. This is due to limited access to legal aid/services, lack of legal knowledge, case/report collection. There remains high rate of crime against woman and children. According to the data of Commission for Child and Woman Protection, there are about 1.413 cases in 2019 and this number increase to 2.389 cases in 2020. Gender issues in development still show the gender gap, so efforts to optimize the protection of the law on the rights of women and children from various forms of violence and trafficking crimes are urgently needed.

Keywords: Protection for Child and Woman, Violence and Trafficking of Woman and Child, Violence Against Woman and Child in Central Java

1 Introduction

No one left behind is understood as equality principle in Sustainable Development Goals (SDGs). SDGs implementation is based on universality principle, integration and inclusivism to ascertain that no one left behind. The multi dimensional implementation of SDGs needs human development investment to increase his capability in maintaining sustainable civilization. According to Amartya Sen, the last purpose of human development is to guarantee the fulfillment of basic necessity for every person. It means human is center and purpose of development itself not only as instrument of development. One important idea in his justice and development concept is human agency freedom which means freedom of every one to choose and achieve meaningful thing, to pay attention social interaction among people and open up public participation [1].
The locomotive of Sustainable Development implementation is woman empowerment in every aspect of life. The development of Gender Empowerment Index in 2010-2019 show that woman has an active role in politic, decision making and economic. Data of human development based on Gender from Central Bureau of Statistic’s in 2019 showed that there was more significant increase of woman role than in previous year but gender gap still exist. There are five presidential directions on Protection of Woman and Child Right namely increasing of woman role in business, increasing of mother and family in child education and nurturing, decreasing the number of child worker and prevention of child marriage. Those directions are in harmony with propose of woman protection against violence.

Protection of woman and child right from violence threat is an absolute human right of child and woman. This is also guaranteed under Article 28B and 28G of Indonesian 1945 Constitution. It means, state has obligation and responsibility to give special protection over child and woman dignity from all kinds of violence.

In accordance with facility development, legal material is getting more sophisticated but not in line with moral increase, legal awareness in society and professionalism of law officer. This bring out prosperity and justice as legal purpose can not be actualized. Such a critical condition cause many over lapping legal materials and legal uncertainty of human protection and respect as a kind of human right. It can be seen from various violences of human roght such as discrimination and human traficking.

In Indonesian legal practice, eventhough article 27 (1) of Indonesian 1945 Constitution has clearly regulated that all Indonesian citizen deserves on equality before the law but in legal enforcement aspect, women are always marginalized in a lot of sectors namely economic, education, health, job and politic. In many perspectives, women and children are the most vulnerable parties for being victim of violence, discrimination and human traficking.

In 2020, legal Resource Center for Gender Equality and Human Right in Central Java found that there are 83 violence against woman in this pandemic time. This number consists of 22 cases of domestic violence, violence in courting relationship, 47 sexual slavery cases, 4 rape cases and 9 sexual harassment cases. The range of victim age namely sexual slavery victim is about 15 year and domestic violence victim is 32 until 40 year old in many cases, sexual harassment victim. Those ranges of victim’s age bring out special attention because not only in private sphere, sexual harassment and it happens in all level.

Violence against women and children has reached public sphere, working and educational institution. From perpetrator aspect, people with strong relationship are also found as perpetrator such as family member and friend. Law as instrument in achieving justice for victim as well as perpetrator has not been attained because legal discourse on violence and sexual harassment is only limited toward perpetrator analysis and not from victim mental and psychological recovery or victim rehabilitation. Even in socio cultural space, there is negative stigma toward victim of sexual harrashment. In conscience perspective, they are victims who deserve on support for mental and psychological recovery. Meanwhile, gender discrepancy and bias need extra effort to be solved because it cause a lot of effects in this pandemic time. One of related phenomenon is many women are unlisted as social aid recipient.

Based on Kompas, August 4, 2020, some of women who took role as family head stem from poor family who didn’t have access over social aid and public service which are provided by government. They are unlisted because of living with parent or relatives. Another issue was number of women as head of family was different among institutions. Central Bureau fo Statistic showed that number of family which were lead by women reached 15.17%. It is different form Integrated Data of Social Prosperity which is number of family with women as head reach 19%. Meanwhile, Ministry of Village, Development of Disadvantaged Regions and Transmigration
showed higher number of women as family leader who accept temporary unconditional transfer is about 31%. The difference of data among authorized institution bring out confusion, uncertainty and shows another phenomenon namely there a lot of family under woman leadership which are not listed as social service recipient. This also be a sharp critical for Ministry of Woman Empowerment and Child Protection because this aspect is tightly related to their task as stated under Article 3 point f of Presidential Regulation Number 65 of 2020 to maintain gender and child data.

The issue of women as family head who are unlisted as social aid recipient is not only caused by administration process but also there is no clear, certain and strict regulation on such a woman in Indonesian Law. This is impact of Article 31 and 34 of Law No. 1 of 1974 on Marriage which only recognize man as family head and woman as housewife. This condition make women as family head can not access a lot of facilities and not considered in many aspect. The role of woman as family head brings out multi burdens and a lot of difficulties. Besides, state also has not paid attention and recognize such a woman as subject who deserve on recognition and protection. More over, they also get negative stigma related to their existence in society. The socio cultural perspective of society on women is trapped on motherhood mindset which finally crystallize woman stigma. Such a mindset put woman as vulnerable and disadvantaged party. Another impact is there are many women who work as farmer, sailor and etc., don’t get recognition over their profession and choose to write down their profession in identity card as housewife (Kompas, 3 Agustus 2020).

Research result shows that discrepancy between household which is led by man and woman. The household under man leadership has higher level of prosperity than under woman leadership. Based on Kompas data, August 5, 2021, Indonesian woman profile 2019 stated that number of literate men is 97% than woman rate 93%. The average of salary for male is 3.9 million higher than woman’s salary (2.39 million). The household which are lead by woman has fewer transportation asset, household asset and other assets such as computer, laptop, gold and land. Based on UN DESA analysis, in some states lead by women include single mom, it tends more vulnerable to fall in poverty than in a complete parents. Previous explanation shows that the government program is important to reach woman as family leader in social program to increase their prosperity.

Related to the issue of human trafficking, in 2018, Woman Empowerment, Child Protection, Citizen Control and Family Plan Service Office in Central Java found that there were 48 cases of human trafficking. This number increase twice or about 196% than in 2017 which only 17 cases (solopos.com). This has been a matter whether law enforcement has reached and protects child and woman human right. In this pandemic time, at the midst of economic crisis and high unemployment number in Central Java Province as one of the province whose most migrant worker. In 2019, Central Java sent 60.432 migrant worker and in 2021, this province has sent about 26.419 migrant worker (Kompas). The problem behind this issue is most of them work as unskilled worker such as maid, gardener, driver. Such kind of worker is very vulnerable on violence, exploitation and discrimination. The high number of migrant worker has been a matter for Indonesian Migrant Protection Board. More over, inaccuracy and difference of data related to Indonesian migrant worker happen among Ministry for Foreign Affair, Ministry of Labor and World Bank. The migrant worker is also always able to escape from authorized party supervision because of strong network. Besides, Indonesian rule has not made a strict and heavy sanction for human trafficking perpetrator. Article 297 of Indonesian penal code has not been just enough for human trafficking victim because of very mild threat of punishment namely 6 years in jail. In another hand, prevention over this crime is hard to be executed because of limited regulation and minimum awareness of the perpetrator and law officer.
Presidential Regulation No. 65 of 2020 on Ministry of Woman Empowerment and Child Protection is made to optimize child and woman protection. However, this regulation has not brought benefit for society because in reality there are many social facts which prove that woman and child rights have not been fulfilled and discriminated.

2 Research Method

This article use socio-legal method because of necessity to determine the implication of regulations for society in empirical context [2]. This article focus on Presidential Regulation No. 65 of 2020 on Ministry of Women Empowerment and Child Protection. This regulation is analysed and compared with empirical data related to implementation of this rule. This article used quantitative data as empirical result.

3 Result and Analysis

3.1 Woman in Legal Order

Gender equality is an important indicator of human development. Some studies show the importance of gender equality as a kind of human right and prerequisite of human development. Meanwhile, an effort to increase woman status in society to be equal with man is obstructed by patriarchal system in our law and social system [3]. So that, fulfillment of woman and child protection is task that must be solved in all situation and condition include in Pandemic Covid-19 time.

The implementation of legal protection toward woman has not been ideal. Law is human creation contains human behavior norm. It is the mirror of human intention about how people must be guided and directed. So that, law must contain idea, morality, custom and consent of society in which law is created. This idea is related to justice [4].

Based on data, women are in need of justice. Law is tightly related to society as social basis. In such a condition, law must pay attention and serve people need and interest. Relationship between need and service create a system. The idea of legal value in Radbruch perspective consist of justice, utility and legal certainty in society [5]. The concept of law and justice not only exist for legal certainty but also utility within. So that, implementation of justice surpass the truth. Justice is just behaviour and treatment. Justice also can be understood as equal/equilibrium, hold the truth and not arbitrary [6]. So that, realization of legal protection for woman must give utility at the midst of social change include in woman environment.

Law enforcement to the society is interactional relationship between law and society. Society is place the law stem. Law stems and developes in line with change in human society. It is predistined that society always developes the same as law. In formal, law is static but it also can be very active because this regulates society. Society with all human behaviour within must be responded well by law [7]. In social change of woman, law must also respond it in a good manner.
Table 1. Relation between Legal Problem and Social Problem

<table>
<thead>
<tr>
<th>No.</th>
<th>Legal Problem</th>
<th>Social Problem</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Administration of Justice which is Quick, Cheap and Fast</td>
<td>Inaccordance between citizen’s necessity and court facility</td>
</tr>
<tr>
<td>2</td>
<td>The formation of civil service arbitration tribunal</td>
<td>The government role, job and intervention is bigger and need ne way in handling the case</td>
</tr>
<tr>
<td>3</td>
<td>Provide legal aid</td>
<td>The cause of social discrepancy os difference public economic</td>
</tr>
<tr>
<td>4</td>
<td>Development of economic law</td>
<td>Economical development bring out more intensive interaction between individual and public life. It makes the tension continously increase</td>
</tr>
</tbody>
</table>

Source: Rahardjo [8].

In progress toward woman protection, law face social change in woman sphere namely legal problem. Legal problem at the midst of society paradigmatic transition about woman, formal administration in woman cases, inoptimum legal aid for woman and interaction between law and woman which make intention between both of those.

### 3.2 The Importance of Woman Protection

Definition of protection can be found in many literatures namely dictionary, regulations and expert’s definition. In Indonesian Language Dictionary, protection is pace to protect, protect. Meanwhile, In Law No. 23 of 2004 on Eradication Violence Against Woman define protection as all efforts to provide safety for victim which is done by family, advoate, social institution, police, prosecutor, court or other parties in temporary or through judge stipulation [9].

CEDAW Convention considers Universal Declaration of Human Right that confirm non discrimination principle and all of the people are born in equal freedom as well as dignity. Every one deserves on right and freedom within without difference include gender difference. Because woman discrimination is violence against equal right and human dignity. This can obstacle development of people prosperity and bring out more difficulties for woman development to serve the state and human being. CEDAW convention explain that there must be change in man traditional role as well as woman role in society to achieve the same protection without any discrimination [10].

CEDAW Convention is made and validated to attain legal protection for woman based on equality with man and this must be guaranteed under competent national court and other governmental institution, effective protection for woman from any kinds of discrimination. Article 6 of CEDAW regulate that member parties must make good and precise regulation to eradicate all kinds of woman traficking and exploitation for prostitution interest [10]. This article means that member states which have ratified this convention must make regulation to eradicate woman trafficking and exploitation for prostitution interest. Indonesia as one of member state must eradicate all kinds of human traficking and violence to Indonesian women and protect their right as a kind of human right.
Data above shows that 299,913 violence cases against women have happened in 2020. This number decrease about 31% from previous year. In 2019, the number of violence against woman is about 431,471 cases. The decrease of cases number significantly in 2021 is not good news but must be analysed and paid attention because the decrease is caused by the worse of data collection. The number of spreaded questionnaire decrease about 100% from previous year. In 2020, there were 239 agencies which involved in data collection but in 2021 there were only 120 agencies. The most important to be analysed is 34% of those agencies stated that there was increase of woman violence report in this pandemic era. Report data of National Comission For Woman show dractical increase about 60% from 1.413 cases in 2019 to 2.389 cases in 2020 (Kompas 10/14/2020).

Besides woman, child is vulnerable party over violence. In pandemic era, child has very big potency over domestic violence. The change of life stylem economical pressure and lack of knowledge about child nurturing make violence against children increase.

Online Information System of Woman and Child Protection from January 1 until September 23 show that violence against children in Indonesia is about 5,697 cases with 6,315 victims. Based on information, some violences against children in pandemic era are caused by boredom of parent in guiding their child in online learning at home, economical pressure and less knowledge about nurturing. In 2016, based on Online Information System of Woman and Child Protection, there are 94 cases and there are 78 cases in 2017. 90% of those cases are sexual harrassment against children and others are domestic violence. In 2018, there were 39 violence cases. Eventhough those data tends to decrease but in realities there are more cases because just a few people are brave to report his case.

Regulation related to child protection has been clearly mentioned under Article 28B verse 2 of Indonesian Constitution 1945 which state that every child deserve to live, grow and develope as well as deserve on protection against violence and discrimination. Based on that article, child has constitutional right to get protection ever their right and this must be regulated under other regulations to guide and protect child physical and psychological development.

Woman and child trafficking also be serious discourse because the increasing of human trafficking number. Witness and Victim Protection Agency found that number of report continously increase from year to year. In 2015, there are 46 reports and in 2017 increase until
177 reports, in 2019 this number increase until 176 reports. Meanwhile, this number increase until 120 reports.

Child in human trafficking is protected by regulation such as Law No. 35 of 2014 on Convention of Child Right which state that child is future generation that must be protected from any kinds of crime and discrimination.

In central Java, from 2016 until 2019, Citizen Control, Family Planning, Woman Empowerment and Child Protection Office stated that such violence happen to little and adult girl. The most cases are sexual harassment namely 3.140 cases. Other cases are psychological violence 1.336 cases and physical violence 1.166 cases. High number of violence cases toward women and children means law awareness is high enough. However, it is ironic because many government policies have not given deterrent effect for public. This data also means that commitment government to woman and child protection has not been maximum.

The increasing of violence against child and woman in Central Java is a real proof in violation of woman and child right. It must be government attention in increasing protection toward child and woman, to provide safety for woman and child. Presidential Regulation No. 65 of 2020 on Ministry of Woman Empowerment and Child Protection is an effort to optimize woman and child protection under special bureau in Ministry. However, there are remain several problems, unclear coordination between institutions and many regulations have not paid attention child and woman right, those regulations also have not been maximum in operationalisation.

Indonesian constitution regulate equality before the law. Article 27 verse 1 Indonesian 1945 Constitution state that all citizens have equal position before the law. This article emphasize that human dignity must be respected and fight against all kinds of discrimination include race, religion and gender. John Rawls explain that to embody justice as legal basis and only formal-administrative is still important. Because, based on formal administrative, law must give minimum guarantee that every one must be treated equal.

In Article 15 Law No. 35 of 2014 on Child Convention, it is regulated that child deserves on protection from any kinds of involvement in violence. Article 1 CEDAW state that every discrimination, exclusion, limitation which influence, diminish or eliminate recognition, enjoyment, the use of human rights and freedom in politic, economic, social, culture or every thing, by woman through their marriage status, on behalf of equality between man and woman.

State obligation is to provide guarantee for child and woman right through policy making and its implementation. It means such recognition and implementation is not only limited on de jure but also de facto. It is caused, woman always become object of discrimination eventhough woman and child is a kind of human right violation. The government step to to protect woman and child right namely create a competent national court to uphold the law.

To accommodate protection of woman and child right over violence as stated under Presidential Regulation No. 65 of 2020 is an effort to guarantee effectiveness of protection to child and woman. However, law exist to create prosperity and guarantee the security. So that, there must be a lot of efforts to optimize the attainment of purpose in such regulation and this must reach all people.

3.3 Kinds of Legal Protection for Woman

Analysis on construction of woman and child right has a wide sphere include written law or regulation but unwritten law in society, patriarchy culture which has ingrained in society culture that must be diminished through out the time by education, gender education pattern and
child right in a family as well as good regulations in family. This also must be supported by
good regulation to provide guarantee on right protection in educational context.

Woman as part of recognized citizen under Indonesian law deserves on equal right,
recognition on its existence in social structure as stated under Article 28D of Indonesia
Constitution that every one deserves on recognition, guarantee, protection and legal certainty
based on justice and equal treatment.

Many social facts namely unlisted woman as family head, gender and child violence, human
trafficking are proofs of law enforcement ineffectiveness which has not reached the purpose.
The formation Ministry of Woman Empowerment and Child Protection as regulated under
Presidential Regulation No. 65 of 2020 has been milestone of protection itself.

Any kinds of protection to woman must be actualized in society especially for woman and
child as well as effective regulation in government to comprehensively reach necessity of
woman include health, education, economy, social, politic and protection against
discrimination.

3.4 Findings

Based on research, it can be found that:

a. Inoptimum implementation of law enforcement on woman empowerment and child
protection bring out high crimes on woman and child. The implementation of legal
protection can be interpreted as protection by legislation and data collection in detail but this
is constrained because of the limitations of human resources, the efficacy of the pendaatam,
the limitation of understanding filling in the data collection format, inadequate
documentation facilities, and the reluctance of victims to be recorded/reported cases.

b. Inopiunm work of institution related to child empowerment and protection cause data that
can not provide clear description on existing condition. Crime against woman and child is
an iceberg phenomenon that’s hard to be accomplished.

c. There are a lot of regulations on child and woman protection that can not reach woman and
child right in entirity.

4 Conclusion

The increasing of violence against woman and child in Central Java is real finding that
government effort has been inoptimum to protect woman and child right. Act as a kind of legal
certainty must be milestone of law enforcement to attain prosperity for all people as the purpose.
However, data and cases that have been found must be discourses on how regulation can
represent and protect the right and obligation of every people include woman and child in the
midst of social problems. This substance of Presidential Regulation No. 65 of 2020 has been
inoptimum to empower woman and protect child which cause many women and children right
are violated. In the future, this presidential regulation must be reviewed for people prosperity.
It is important to optimize and represent all people necessity. This also can answer social problem
on gender and child.
References

Protection of Owners or Holders of Rights to Trademarks of Imported Goods in Indonesia

Elfi Haris¹, OK. Saidin², Ningrum Natasya Sirait³, Maria Kaban⁴
{elfi.hariss@gmail.com¹, saidin@usu.ac.id², ningrum@usu.ac.id³, mariakabans@yahoo.com⁴}
Universitas Sumatera Utara, Indonesia¹.².³.⁴

Abstract. International trade is increasing following advances in information technology and globalization. One of the violations of law that may occur in international trade is a violation of the rights to a trademark. This study aims at describing the legal protection of trademark owners or right holders in Indonesia. This study uses a normative legal research method with primary and secondary data sources. The findings show that the protection for the owner or holder of the rights to a trademark given by the Government of Indonesia in import transactions is still limited to goods traded for commercial purposes. Protection of consignments and passenger baggage has not been provided. In addition, government protection is also passive because it must be based on the owner or holder of the rights to a trademark application to the Commercial Court. Then the Commercial Court issues a suspension order to the Directorate General of Customs and Excise. Another mechanism is through the recording of the rights to a trademark (recordation) at Customs and Excise. This implies that there are two trademark registration mechanisms in Indonesia. The Indonesian government should change the rules for protecting trademarks, especially in international trade, so the trademark owners’ or holders’ rights and consumer rights are appropriately protected.

Keywords: IPR, Trademark, Import, Customs and Excise

1 Introduction

In the current era of globalization, international trade is snowballing. International trade is a trade between countries that includes sending goods out of the country (exports) or bringing goods into the country (imports). Professor Erman Rajagukguk argues that international trade relies a lot on intellectual property rights (IPR). Technology transfer from developed countries to developing countries can only take place if developing countries respect the IPR of developed countries [1].

Bainbridge states that Intellectual Property Rights are an area of law concerning legal rights associated with creative effort or commercial reputation and goodwill [2]. Meanwhile, Saidin says that IPR is a material right, the right to something that comes from the brain's work, the work of the ratio [3]. Two rights can be attached to an object: first, the right to tangible object (material), i.e., the physical right to the object itself, and the second, the right to immaterial object, i.e., the Intellectual Property Rights (IPR) to the object.

Although IPR is an intangible right, it is still recognized as property and must be protected. John Locke, a natural law figure who laid the foundations of thinking about human rights, in his book “Two Treatises on Civil Governmental”, stated that since birth, humans have had natural rights, which are also called basic rights. These basic rights are the right to life, freedom and
independence, and the right to property or the right to own something. To maintain and guarantee these basic rights, the people enter into an agreement that gives birth to a state. Therefore, the state should protect basic rights.

Protection on IPR is also a consequence of being a country that ratifies The Agreement on Trade-Related Aspect of Intellectual Property Rights (TRIPs). Based on Law Number 7 of 1994, Indonesia is obliged to provide equal protection to its citizens and citizens of other countries participating in the TRIPs agreement. Whatever is provided to its citizens must also be provided to the citizens of the other participating countries [4]. The Indonesian government must protect IPR from forgery, abuse, and other acts of irregularities.

To control imports or exports of goods resulting from IPR violations, e.g., violation of the rights to a trademark, the Directorate General of Customs and Excise is appointed as the gatekeeper of the Indonesian customs area. Although several regulations have been issued to protect violations of imported goods resulting from violations of trademarks, currently circulation of imported goods allegedly violating trademark rights in the territory of the Republic of Indonesia is still found. Therefore, it is necessary to do a study related to the following problems:

a. The extent to which the protection of trademark rights is provided to imported goods in Indonesia.
b. The mechanism for protecting trademark rights to imported goods in Indonesia.

2 Research Method

This study uses a normative legal research method, a scientific research procedure, to find the truth based on the scientific logic of law from the normative side [5]. The object of this study includes primary legal materials in the form of statutory regulations and secondary legal materials such as law books, journals, articles, and other relevant sources. The data illustrate the extent to which the protection of the owner or holder of rights to a trademark can be guaranteed for their imported goods entering Indonesia.

3 Results and Discussion

3.1 Trademark in Indonesia

Law Number 15 of 2001 concerning Trademarks defines a trademark as a sign in the form of image, name, word, letters, numbers, color arrangement, or a combination of these elements which has distinctive power and is used in trading activities of goods or services. In an almost similar definition, Philip Kotler states that a trademark is a name, term, sign, symbol, design, or a combination thereof that shows the identity of the product maker or seller [6]. Furthermore, Saidin states that with a trademark, the product of similar goods or services can be distinguished based on their origin, quality, and assurance of the product's originality [3].

A trademark is basically a sign of identifying the origin of goods and or services (an indication of origin) from a company with goods and or services from other companies [7]. Every company must care about the importance of its product trademark because the trademark will be introduced to the public and become a guarantee of the product quality. Moreover, the increasing popularity of advertising leads to difficulties in selling a product without a trademark.
It will be challenging to advertise mineral water, for example, without any specific trademark. People buy mineral water by mentioning its trademark, not its type.

David I. Bainbridge argues that trademarks can be seen as serving two main purposes: first, reflecting the fact that a registered trademark is an item of property, to protect business reputation and goodwill, and, secondly, to protect consumers from deception [2]. Thus, we can understand that the law enforcement related to trademarks does guarantee not only the rights of trademark owners or holders but also guarantees the rights of consumers to obtain goods of genuine quality.

Protecting the owners or holders of the rights to a trademark is a mandate of the law. There are two systems of trademark protection: declarative system and constitutive system. The declarative system will protect the first user of the trademark, while in the constitutive system, the protection is provided to the party registering the mark. Indonesia adheres to the constitutive system, so there is an obligation to register a trademark to obtain state protection. In 2019, there were 90,879 trademarks registered in Indonesia, 13.47% of which were registered trademarks from foreign countries. The data show the high expectation of the owners or holders of the rights to a trademark to get protection in Indonesia.

### Table 1. Trademark Registration in Indonesia from 2015 to 2019

<table>
<thead>
<tr>
<th>Trademark Registration</th>
<th>Application for Entry</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Domestic</td>
<td>46,298</td>
</tr>
<tr>
<td>Foreign</td>
<td>15,492</td>
</tr>
<tr>
<td>Total</td>
<td>61,790</td>
</tr>
</tbody>
</table>

Source: Annual Report 2019 of Directorate General of IPR, Ministry of Law and Human Rights

### 3.2 Import Mechanism in Indonesia

Import is an activity of bringing goods into the Indonesian customs area, which includes land, water, and the air space above them and certain places in the Exclusive Economic Zone and continental shelf. The entrance of imports to Indonesia is through the sea, air, and land routes. However, along with the development of technology, the entrance of imports to Indonesia is growing, which can be through pipelines, cable networks, or wireless networks.

Goods arriving in Indonesia are unloaded at the seaport and then hoarded in a Temporary Storage (TS). In some instances, hoarding can be done at a place other than TS with a permit from the Customs and Excise. The hoarding is intended to wait for the customs clearance process. In this process, Customs and Excise ensure that the imported goods meet the applicable provisions. Imported goods complying with the provisions will be given an import agreement, while imported goods that do not meet the provisions will be enforcement. In certain cases, imported goods can be re-exported, i.e., by sending them back to the country of origin. This can occur due to delivery errors; the owner cannot fulfill the licensing conditions or other reasons. The import process scheme can be described as follows:
Article 82 of Law Number 17 of 2006 authorizes Customs and Excise to conduct customs inspection on imported or exported goods after submitting customs notification. The customs inspection system consists of 2 (two) types: the self-assessment and ex-officio assessment systems [8]. In addition, Article 82 regulates the self-assessment inspection system by stating that the inspection is conducted after the customs notification is submitted. This customs inspection is carried out to ensure that the imported goods follow what has been notified, not goods that are prohibited or restricted to import.

There are several models of import customs notification, which have been adjusted to the procedures for the entry of imported goods into Indonesia, including:

a. The type of notification by a general importer or producer importer with legal entity status is called Notification for Import of Goods (NIG). This import is carried out by a company with a Business Identification Number (BIN) with the status of an importer.

b. Notification of the baggage of passengers and crews of transportation means is called Customs Declaration (CD). In certain cases, a Special Goods Import Declaration (SGID) can be used.

c. Notification of import of consignments is called Consignment Note (CN). In certain cases, a Special Goods Import Declaration (SGID) can be used. These imports are carried out by courier service companies and marketplaces that are registered as importers.

The biggest import in Indonesia is using NIG. The import of consignments has begun to increase in recent years due to the increasing online shopping. Various goods are sent through courier services, ranging from goods with low values to high values and local brands to well-known brands. The same case is applicable in the imports brought directly by passengers. Passengers take advantage of the exemption value of up to USD 500 per passenger to shop overseas and be brought to Indonesia as souvenirs and sometimes merchandise.

3.3 Protection of Owners or Holders of Rights to Trademark against Imported Goods

The speed of the releasing process of imported goods from a seaport is important in a series of national logistics systems. In addition, one of the indicators used by the World Bank in defining the level of ease of doing business in a country is trade across the border. Therefore, the process of checking or law enforcement on imported goods at the seaport must be precisely measurable and shall not result in high costs for national logistics. Based on the data reported by the World Customs Organization (WCO) member countries, one form of customs crime is
counterfeiting or imitating other people’s products [9]. The term “counterfeiting or imitating other people’s products” in legal language is an IPR infringement.

The legal basis for Customs and Excise to supervise imports violating IPR is Article 54 of Law Number 17 of 2006, which reads, “At the request of the owner or holder of the rights to a trademark or copyright, the head of the commercial court can issue a written order to Customs and Excise officials to temporarily suspend the release of imported or exported goods from the customs area which, based on sufficient evidence, are suspected to be the results of infringement of protected trademarks and copyrights in Indonesia”.

Supreme Court Regulation Number 6 of 2009 mentions the authority of Customs and Excise officials as regulated in Article 54 with the term judicial temporary suspension. Meanwhile, among Customs and Excise, the term is known as judicial schema [10]. In this case, the position of Customs and Excise is passive because suspending imported goods suspected of violating copyright or trademark can only be done if there is a written order from the head of the commercial court.

The obstacle in the process of temporary suspension through this judicial schema is associated with time. The process of releasing goods from the seaport is very fast. For imported goods with the green line service category, the time required from submitting customs documents to approval for releasing the goods is only in a matter of minutes. At Belawan Seaport, the average time for hoarding, from the time the goods are unloaded from the ship (stripping) to the goods leaving the seaport (Gate out), is less than 3 (three) days. Therefore, if the owner or holder of the rights to a trademark will apply for a temporary suspension, it must be done before the goods leave the seaport. In other words, the time to apply for a temporary suspension is less than 3 (three) days.

Considering the promise of the commercial court service that issuing a temporary suspension is 2 (two) days after the registration of the application at the commercial court [11], a temporary suspension is unlikely to be implemented if it does not have sufficient information before imported goods suspected of violating the trademark arrive at the seaport.

In addition to the temporary suspension authority based on the judicial schema, Customs and Excise officials are also given suspension authority based on the position (ex-officio schema) [10]. This authority is regulated in Article 62 of Law Number 10 of 1995, which states that suspending the release of imported or exported goods can also be carried out because of the position of the Customs and Excise Officials. Nevertheless, this can only be done if there is sufficient evidence that the goods are or originate from a violation of rights to a trademark.

For a suspension using an ex-officio schema mechanism, the owner or holder of a trademark must submit a recordation application to Customs and Excise followed by the appointment of an examiner with the capability of identifying the authenticity of the recorded trademark. The term Recordation is used in Article 1 point 17 of the Finance Minister Regulation Number 40/PMK.04/2018 concerning Recordation, Prevention, Protection, Temporary Suspension, Monitoring, and Evaluation to Control Import or Export of Goods Resulting from Violation of Intellectual Property Right. Recordation means inputting Intellectual Property Right data into the Directorate General of Customs and Excise database. If the recordation is approved, the trademark is inputted into the customs recording application system (CEISA IPR).

The obstacle in this ex-officio schema is related to the recordation process carried out by the owner or holder of the right. Due to the obligation to register a trademark at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights, as stipulated in Law Number 15 of 2001 and the recordation obligation at the Directorate General of Customs and Excise, Ministry of Finance, then two registration processes must be carried out by the
owner or holder of the rights to a trademark. From the business communities perspective, all work units of ministries and local governments are integrated into the system of the Unitary State of the Republic of Indonesia. The registration of trademarks in Indonesia should only be done once. Furthermore, the ministries requiring trademark-related data can make data exchange agreements.

Based on data in the Intellectual Property Recording Application System of the Directorate General of Customs and Excise, in March 2021, only 15 owners or holders of Intellectual Property Rights were recorded in the CEISA IPR Application System, 13 of which were related to trademarks [12]. This number is far from the number of trademarks registered in the Trademark Registration System of the Directorate General of IPR. In 2019, it reached 90,879 trademarks. This condition might be caused by ignorance or reluctance of the right owners or holders to a trademark to do recordation. In fact, they also really hope for protection and assurance from the government in both domestic and international trade.

Another article that regulates IPR is Article 55 of Law Number 10 of 1995, which states that to apply for a temporary suspension, the right owner or holder must submit a guarantee in the form of an operational cost of IDR 100,000,000.00 [13]. For a judicial schema, the guarantee must be submitted by the right owner or holder simultaneously as submitting a suspension order from the commercial court. Meanwhile, for an ex-officio schema, the guarantee must be submitted after the notification of temporary suspension submitted by Customs and Excise to the right owner or holder.

Temporary suspension, both for the judicial schema and ex-officio schema, is not applied to imports of consignments or imports brought directly by passengers. The import mechanism through consignments is developing so rapidly that it potentially becomes an entry point for goods resulting from violation of the rights to a trademark. As a member of the World Trade Organization (WTO) that has ratified the TRIPs, Indonesia must provide complete and intact protection of trademark rights while still paying attention to the history and culture of Indonesian law.

Even though trademark infringement in international trade is a global problem, it will be complicated to formulate a rule that applies in all countries (unification), even among countries that adhere to the civil law system. There are linguistic differences that may lead to different interpretations. Another factor that must be considered is the problem of cultural differences among various systems. Many legal writers and historians have described the uniqueness of various legal systems and the relationship between the law and the culture [14].

At the regional level, ASEAN countries also see the importance of protecting Intellectual Property Rights for the member countries, especially in realizing the ASEAN Economic Community (AEC). For this reason, the ASEAN Framework Agreement on Intellectual Property Cooperation was signed in Bangkok on December 15, 1995. The most critical points of this Agreement are: (i) it recognizes the vital role of IPR in the implementation of trade and investment flows among ASEAN Member Countries and the importance of cooperation in intellectual property right in the ASEAN regions; and (ii) it expresses a desire to foster closer cooperation in the field of IPR and related fields to provide a solid basis for economic progress, the realization of ASEAN Free Trade Area, and prosperity among ASEAN Member Countries [15].

Therefore, Indonesia must reformulate the rules for the protection of trademark owners or holders, especially in the context of international trade, while still paying attention to the values of the Indonesian nation, which are crystallized in the values of Pancasila.

Several regulations need to be revised, like Law Number 20 of 2016 concerning Trademark and Geographical Indication. The Law should include some additional articles regarding
trademark protection of imported goods and trademark registration database management. Similarly, Law Number 17 of 2016 concerning Customs should add some articles regarding imported good intellectual property rights. It should cover not only copyright and trademark protection but also cover all types of intellectual property rights. Moreover, the regulation should include ex-officio schema temporary suspension because the available law only regulates judicial schema. Furthermore, the legal protection should be expanded to all import mechanisms, including hand-carry baggage, postal and courier services, and e-commerce. The law should also regulate a more straightforward temporary suspension procedure.

4 Conclusion

The research finally concludes that:

a. The regulations on controlling infringement of trademarks of imported goods should be revised by adding the need for broader supervision on imports of consignments and imports of passenger baggage.

b. The mechanism for protecting the rights to a trademark for imported goods should be simplified, including by making a data link for registering the trademark of the Directorate General of IPR to the Directorate General of Customs and Excise. This mechanism can eliminate the recordation process at Customs and Excise and eliminate guarantees for operational costs.

References

https://www.aseanip.org/About.
The Existence of Dayak Customary Council in Settlement of Criminal Cases Based on Local Awareness (Decision Study of Dayak Customary Council Section No. 01/SMAD-PA/I/2011)

Esmi Warassih Pujirahayu¹, Cahya Wulandari²
{esmiwarassih.undip@gmail.com¹, cahyawulandari1984@gmail.com²}

Universitas Diponegoro, Indonesia¹, ²

Abstract. This article describes the Dayak Customary Council’s existence in the resolution of criminal cases based on local wisdom (Study of Dayak Traditional Council Session Decision No. 01/SMAD-PA/I/2011) by describing the position of the Dayak customary court and analysis of the MADN decision against the Thamrin customary violators. The existence of indigenous peoples with their traditional rights has received constitutional recognition in Indonesia. Although customary courts’ existence is gradually being eliminated due to the unification of law in Indonesia, in practice, several criminal cases are resolved through customary institutions. Settlement of criminal cases through customary institutions is considered more in accordance with existing local wisdom and can realize the values of justice desired by the parties in the case and restore the balance of the cosmos. One of them is the Dayak Customary Council’s role, which passed Decision No. 01/SMAD-PA/I/2011 by basing the customary trial on the 1894 Tumbang Anoi Peace Agreement. Dayak Customary Institutions get legitimacy through the Regional Regulation of Palangka Raya City, which regulates Dayak Customary Institutions. Recognition of indigenous peoples’ traditional rights can certainly not be separated from the customary laws that apply in the community and become the basis for the settlement of cases through customary institutions that exist as long as they have not been accommodated in state courts. Therefore, it is necessary to have synchronization, codification of recognition, and enforcement of customary law, which is still firmly adhered to by indigenous peoples in resolving criminal cases. It is done to restore further the cosmic balance (fulfilling justice between the parties in the case, the community, and the surrounding environment).

Keywords: Local Wisdom, Dayak Customary Institutions, Customary Law

1 Introduction

Now, customary courts’ position is as far as possible being eliminated with legal unification. However, in reality, the customary courts are still alive among the indigenous peoples [1]. There are several customary courts, including the Gampong Court in Aceh, the Adat Court in Papua, the Nagari Adat in West Sumatra, and several adat institutions recognized by indigenous peoples, including the Dayak Customary Council in Palangka Raya City, Central Kalimantan. The existence of indigenous peoples and their traditional rights have received constitutional recognition in Article 18 B of the 1945 Constitution of the Republic of Indonesia. When customary courts must be abolished while the existence of indigenous peoples and their
traditional rights are recognized in writing by the state, of course, it becomes a matter that is a dilemma [2].

Customary courts cannot be avoided at the level of practice in indigenous peoples because it has a philosophical relationship and is closely related to the local community’s culture. Even in Central Kalimantan, there is the Central Kalimantan Provincial Regulation No. 1 of 2010 concerning Amendments to the Regional Regulation of the Province of Central Kalimantan No. 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan. The decision of the Dayak Customary Council Session No. 01/SMAD-PA/I/2011 which tried one of the sociologists, shows that the customary court, which in this case is the Dayak Customary Council (MADN), has an important position in the indigenous Dayak community. The process of solving cases through MADN is considered to restore the disturbed cosmic balance due to legal cases that have occurred. The customary judiciary is often considered to be more able to fulfill the community’s sense of justice because decisions are based on the laws that live in the customary community itself [3].

Based on this background, the authors analyzed the Dayak Customary Council Session Decision No. 01/SMAD-PA/I/2011 and will elaborate further in the form of a discussion. This article describes the Dayak Customary Council’s existence in the resolution of criminal cases based on local wisdom (Study of Dayak Traditional Council Session Decision No. 01/SMAD-PA/I/2011) by describing the position of the Dayak customary court and analysis of the MADN decision against the Thamrin customary violators.

2 Research Methods

The research was carried out with a qualitative research type through a philosophical normative approach based on the existing problems. Research is analyzed using interdisciplinary legal and social sciences, explaining an extensive legal phenomenon and its relation to power relations and the social, cultural, political, and economic context in which the law is located [4]. This study uses secondary data in the form of written rules owned by the Dayak indigenous people in Palangka Raya, the Dayak Customary Council’s decision, several articles, and supporting books for discussion.

3 The Role of Traditional Law in the Process of Settlement of Criminal Procedures

3.1 Position of Dayak Customary Judiciary

Although the State Courts have obtained legitimacy to settle existing legal cases, customary courts are often used in resolving cases in certain indigenous peoples, especially in this case, the Dayak indigenous people. One of the procedures for resolving criminal cases is penal mediation that promotes restorative justice through an agreement between the parties with traditional characteristics of law, cultural pluralism, moral values, and religion [5]. In Central Kalimantan, customary courts play an important role in creating harmony between Dayak tribes. The existence of the Dayak Customary Institution itself has been recognized in the Regional
The existence of customary courts confirms the validity of customary criminal law, which cannot be separated from the laws that live in society. According to Wignjosoebroto [6], customary law develops locally, is homogeneous, exclusive, generally unwritten, exists as general principles in specific communities, is used from generation to generation as a tradition that is believed to be in the resolution of cases that occur in society [7]. Customary crime (offense) is an act that violates feelings, a sense of justice, and collective decisions that exist in society, causing a cosmic imbalance in society and causing a reaction of indigenous people [8].

The Dayak Indigenous People are genuinely full of meaningful symbols, which are obeyed, trusted, guarded, and implemented to this day. The traditional Dayak languages are full of meaning about life, full of values that guide life. The process or social change shows the validity of the theory of the process or direction of social change, which assumes that growth symptoms mark human history. According to certain stages, when viewed from the Unilinear Theory of Evolution (Single Straight Line), humans and social experience development at first, a simple form then becomes complex even to the perfect stage [9]. Starting from symbols and slogans of meaningful ancestral heritage, interpreted as guidelines in the life maintained and trusted by the Dayak Indigenous people, which were then outlined in writing in the 1894 Tumbang Anoi Peace agreement Regional Regulation on Dayak Customary Institutions was formed.

The Tumbang Anoi Peace Agreement is an agreement to end conflicts that occur as a result of mengayau (finding and cutting off human heads). This agreement was attended by approximately 1000 people and it was agreed that there were 88 Articles of Customary Law and 8 Articles of the Life Rules of Belom Bahadat which regulate the life of the Dayak tribe to always be peaceful. The Tumbang Anoi Customary Agreement regulates the fine (singer) in the event of a violation and becomes the basis for resolving cases that occur among the Dayak Indigenous people in Central Kalimantan. Belom Bahadat and Budaya Betang, which has been passed down from generation to generation, has undergone such changes to become almost perfect and can be accepted, implemented, and obeyed even by people outside of the Dayak Indigenous community itself.

Philosophically, Belom Bahadat and Budaya Betang is a form of fulfilling adaptive needs, which arise and emanate from humans’ nature as thinkers and morals. Humans need a culture that is a guiding system in living together. This integrative need includes the realization of a sense of justice, collective sentiment (togetherness), the creation of self-confidence and self-existence in the environment [10]. Apart from being viewed from a social theory with an interpretive approach, the existence of customary courts can also be viewed from a legal perspective based on the role and function of the judiciary. Formal justice roles and functions are often considered overloaded, a waste of time, costly and unresponsive to public interests, or considered too formalistic and too technical [11].

The existence of the Dayak Customary Institution itself has been recognized in the Regional Regulation of the Province of Central Kalimantan No. 16 of 2008 concerning Dayak Customary Institutions in Central Kalimantan. The process of resolving criminal cases through customary institutions uses a deliberative approach to achieve peace between parties, also known as penal mediation. For some instances, the settlement uses customary courts that philosophically solve problems by giving existing decisions and ends the problems [12]. The problems that exist are ended through peace between the parties to break the chain of revenge and restore the cosmos’ balance.

Ukur [13] states that the harmony and balance of the cosmos in the Dayak community are known as Hadat (adat), which includes life and behavior to create order and harmony. This
custom has become a hereditary tradition, institutionalized in society, and functions to regulate the order of community life to become orderly and orderly [14]. It is certainly in line with the provisions of Article 2 of the 2019 RKUHP regarding the basic idea of balance by accommodating the laws that live in society as long as they do not conflict with Pancasila values and general principles recognized by the people of the nations. There is a balance between the values of justice and legal certainty and a balance of protection for victims and perpetrators.

Comparison for several variables between customary council and state’s council are:

<table>
<thead>
<tr>
<th>No.</th>
<th>Variable</th>
<th>Customary Council</th>
<th>State’s Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Scope</td>
<td>Disputes in customary cases and criminal cases among the members of the indigenous peoples concerned, also applies to people outside of the Dayak indigenous peoples who commit crimes related to the Dayak indigenous peoples</td>
<td>Indonesian citizens</td>
</tr>
<tr>
<td>2</td>
<td>The law being used</td>
<td>The 1894 Tumbang Anoi Peace Agreement</td>
<td>National law (for criminal law is KUHP, KUHAP)</td>
</tr>
<tr>
<td>3</td>
<td>The consequences</td>
<td>The resulting customary decisions are final and binding between victim and offender</td>
<td>Judge decision has permanent legal force (in kracht van gewijsde)</td>
</tr>
<tr>
<td>4</td>
<td>Institution</td>
<td>Traditional institution (Mantir Let Adat, Dayak Customary Council, National Dayak Customary Council</td>
<td>Police, Prosecutors, Courts</td>
</tr>
</tbody>
</table>

### 3.2 Analysis of the Decision of the Dayak Customary Council

Recognition of the Dayak Customary Institution had consequences in existing criminal cases’ settlement process. A Customary Session was held against Thamrin Amal Tomagola, a sociologist who became an expert witness at the Bandung District Court trial. Thamrin’s statement was related to the case of Ariel Peter Pan’s porn video, which was stated in front of the Bandung District Court trial that it was deemed to have hurt the dignity of the Dayak Indigenous people who uphold customs, manners, and morals. Thamrin stated by referring to his research results those sexual relations before marriage are not something that violates the provisions and is common among the Dayak community. This statement offended the Dayak community. In Palangka Raya, more than 1000 Dayak residents staged a peaceful demonstration against Thamrin Amal Tomagola’s statement. The Dayak action at the Palangka Raya City Roundabout was marked by the reading of the statement of the Dayak Customary Council (MADN) signed by the President of MADN. MADN considered Thamrin’s statement offending the Dayak people’s feelings, dignity, and worth.

The statement also insulted the Dayak people’s customs, prioritizing the Belom Bahadat principle (living in manners and customs in various aspects of life). In solving the case, MADN asked Thamrin to take responsibility for what had been stated before the positive law and fulfill the demands of the Dayak customary law to avoid disharmony and horizontal conflicts that could damage the lives of the Dayak indigenous people. MADN also required Thamrin to openly apologize to all Dayak people through print and electronic media. Regarding this statement, Thamrin underwent a customary hearing in Palangka Raya City.
The customary trial was conducted by MADN, which was named the Dayak Maniring Tuntang Menetes Hinting Bunu trial, which took place in the Betang Tingang Ngaderang (Betang Mandal Wisata) Room in Palangka Raya, Central Kalimantan between the Dayak people and Thamrin as a form of protecting the dignity of enforcing Dayak customary laws against delegitimation, demoralizing, insulting or insulting the Dayak people. Apart from that, the principle of Thamrin’s statement is not in accordance with the Dayak community’s view, which considers sexual relations without marital ties as normal, is considered to hurt feelings, undermines dignity, and is harassment of the customs of the Dayak tribe.

During the trial, Thamrin Amal Tomagola was found guilty. The hearing, which seven Dayak traditional leaders chaired, ordered Thamrin to retract his statement stating that ordinary Dayak people had husband and wife relations outside of the bond of marriage. Thamrin, who was present at the hearing, was willing to accept and agree to the customary court council’s decisions, retracted his statement, and apologized to all Dayak people in front of the trial. Then, during the customary session, Thamrin also had to pay a fine for customary events worth IDR. 77,777,777 will be used for traditional events and must also revoke the research results related to this matter. Through a customary hearing witnessed directly by the President of the Dayak Customary Council (MADN), traditional leaders throughout Kalimantan, elements of the Central Kalimantan Muspida, and hundreds of people who witnessed the trial were named the Maniring Tuntang Manetes Hinting Bunu Customary Court (decided a prolonged grudge) between The Dayak and Tamrin Amal Tamagola people mean to break the prolonged grudge towards a better peace between the two parties. The trial was held for the first time and was final and binding. The customary trial aims to achieve peace, reconciliation, kinship and still maintain the dignity of the Dayak tribe as a whole. The charges against Thamrin were based on the Tumbang Anoi 1894 agreement.

Even though so far, the customary courts in Central Kalimantan have only been recognized by the Regional Regulation of the City of Palangka Raya and have been defeated by the law, in practice, it has become an alternative in settlement of cases pursued by the community to get the justice that is expected, not merely justice procedural but more on substantive justice. It is proven by the existence of 96 Dayak Damai Tumbang Anoi Adat Articles, which are the basis for the settlement of cases at the Dayak customary court, Central Kalimantan. Even singers (customary sanction) have grown along with developments in society, such as Katiramu (the term fine in customary provisions) refinement of what was initially called Jipen. Jipen is more about the meaning that after committing an offense, the perpetrator will receive sanctions from the victim in whatever form the victim wants.

At this time, Jipen has been known as Katiramu, which this term has followed changes throughout for good. The language that is not good is refined from jeepen to Katiramu. The amount of Katiramu is translated by the Damang agreement (customary figure); for example, in Palangka Raya, 1 Katiramu is equal to a nominal IDR 250,000, - and while according to Simpei Ilon as a Dayak traditional leader said that Katiramu could also be valued according to the current price of gold, gold 90 grams. Katiramu is based on the 96 Article of the Peace Agreement Tumbang Anoi. In the process of solving the case, the final agreement may not only be a fine given but also for cases of rape apart from being married. If it turns out that based on the meeting results between the parties, it is revealed that the perpetrator promised to marry the victim or had a previous relationship.

The customary judiciary, in this case, is an implementation process regarding the settlement and decision-making of a case based on the rules of customary law. The concept in customary law and customary justice is the root of restorative justice, which aims to restore the parties’ position (perpetrators, victims, and society) as before the occurrence of a case [15].
Sociologically, customary courts are part of indigenous peoples’ traditional rights, which still exist and are used by the community even though they do not receive recognition in statutory regulations [16]. Hence, the law cannot be properly understood if it is separated from social norms as part of living law, as Northop’s opinion was quoted by Bodenheimer [17]. Often the laws are felt to be unable to bring about justice as expected by the community, primarily indigenous peoples, because the existing laws are static and do not follow society’s developments [18]. The State of Indonesia’s legal system, which is more inclined to civil law, makes law enforcement officials not accustomed to making legal discoveries so that indigenous people use their customary institutions to decide cases based on customary law.

4 Conclusion

It is a dilemma when indigenous peoples’ position and their traditional rights are constitutionally recognized in the 1945 Constitution, but it cannot be appropriately implemented in practice. The existence of customary law is still recognized as long as it does not conflict with general provisions, Pancasila and Human Rights as stated in the provisions of Article 5 Paragraph (3) sub-b of the Emergency Law No. 1 of 1951. However, in practice, customary law does not get a legal umbrella in the process of implementing the settlement of criminal cases in particular, even though the enforcement of customary courts and autonomous courts have been abolished on the grounds of legal unification. It is what then the customary courts at the practical level are born to decide on a case based on the applicable customary law. The process of solving cases using customary courts based on applicable customary law is considered to be more able to realize the justice desired by certain indigenous peoples and restore the cosmos’ balance. The settlement process is more based on peace and breaks the chain of revenge.

Therefore, further regulation is needed related to synchronization and accommodation of customary law in indigenous peoples at every stage of the existing criminal case settlement process. The shift in the purpose of punishment is more on the basic idea of balance, which applies written law and laws that live in society, not only legal certainty but prioritizing justice. Peaceful restoration of the parties’ conditions is necessary so that a balance in society can be realized.

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References


Cybernotary as Support for Cybersecurity and Resilience

Finna Nazran¹, Tan Kamello², Hasim Purba³, OK. Saidin⁴
{finanazran@gmail.com¹, tankamelo77@gmail.com², hasim.purba@usu.ac.id³, saidin@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. Cybernotary is intended to facilitate and accelerate the process of creating authentic deeds, including complying with all actions, agreements, or provisions required by law and ensuring all requested statements from interested parties are stated in the authentic deed. Strong, professional, and reliable institutional support is needed to ensure that the objectives of cyber defense can be achieved. This research analyzes the impact of the cybernotary in supporting Indonesia's cyber defense and security. This research implements a normative juridical method using a conceptual approach. The data sources are primary, secondary, and tertiary legal materials. The results of this study indicate that cybernotaries facilitate and accelerate the process of creating authentic deeds, including complying with all actions, agreements, or provisions required by law and ensuring all requested statements from interested parties are stated in the authentic deed. To increase the competence of notaries on information technology systems, it is necessary to have appropriate regulations with the agreement of all related parties. In addition, these regulations must be registered at the national level, not sectoral. Hopefully, the enforcement of government authority in cybersecurity and resilience respects human rights, as the concept of a cybernotary is always associated with long-distance services.

Keywords: Cybernotary, Security, Resilience, Cyber

1 Introduction

Globalization has awakened the age-old debate on the consequences of laws being implemented from one place to another [1]. Changes due to development occur rapidly, especially in the field of information and communication [2]. The fourth industrial revolution, also known as Industry 4.0, is marked by artificial intelligence, supercomputers, genetic engineering, nanotechnology, autonomous cars, and innovation. These changes occur exponentially, impacting economies, industries, governments, politics, and laws. In this era, the shape of the world is increasingly seen as a global village. Based on the McKinsey Global Institute analysis, Industry 4.0 has a tremendous and broad impact, especially in the labor sector. In this era, robots and machines will eliminate many occupations [3].

New problems have emerged for human resources in Industry 4.0 as this era requires reliable, superior, and specialized human resources. In the legal profession, a position such as a notary is required to improve their services to the community by maximizing existing information technology. In Industry 4.0, notaries must have critical thinking skills, solve problems, communicate, create, and collaborate.

It is common to classify the existing legal systems into three prominent legal families or traditions, namely civil law, common law, and socialist law [4]. The notarial profession operates
globally on two legal systems: a Notary in a nation of laws and a Common Law Notary commonly referred to as a Public Notary. Although both are notaries, they differ in functions and authority. Indonesia adheres to a civil law system that uses written laws or regulations as its primary source of law [5]. Notaries act as a trusted third party to bridge cooperation contracts/agreements in electronic transactions, which will more frequently utilize cybernotaries. The influence of technology on the activities of notaries disturbs the existing status quo; computer-literate notaries will make appropriate changes and welcome the assistance of technology, while those who are not will choose to stick to current procedures.

However, there has been no specific regulation to date in Indonesia regarding the mechanism for deed creation using electronic media, which incidentally is a branch of the cybernotary system [6]. The cybernotary is intended to facilitate and accelerate the process of creating authentic deeds, including complying with all actions, agreements, or provisions required by law and ensuring all requested statements from interested parties are stated in the authentic deed. Creating a notarial deed through online methods is expected to facilitate involved parties. However, the use of online technology is faced with legal problems [7].

The implementation of the cybernotary is a form of adjustment to the needs of society and the times. It can also support cybersecurity and resilience in Indonesia, which require strong, professional, and reliable institutional support to ensure that the objectives of cyber defense can be achieved.

2 Cybernotary in Achieving Defense and Security

2.1 Cybernotary Concept in Indonesian Positive Law

In line with the launch of Industry 4.0, digital technology has become the choice for most people to carry out almost all activities, including domestic and cross-border commercial transactions. This shift in transactional behavior has changed the form of contracts or agreements made by the public in their daily activities; electronic contracts have become the norm for electronic transactions. To anticipate this new phenomenon, the Indonesian government has issued a series of regulations that regulate and provide legal and implementational certainty and the legality of electronic transactions, including electronic contracts, following Government Regulation Number 82 of 2012 concerning Electronic Systems and Transaction Implementation.

In Europe and America, cybernotary operations using digital signatures have been implemented since several years ago. European countries whose notaries have switched to digital signatures using public key technology are Spain and the UK, supported by relevant changes to their respective government regulations. In the United States, seven states have implemented digital signatures in notarial practice since 2007. Japan has utilized cybernotary for the past 15 years [8].

The term Cybernotary was first introduced by the American Bar Association (ABA) in 1994. This concept states that a person who carries out cybernotary activities is someone who possesses specialized skills in the field of law and computers. Furthermore, this concept perceives the function of a cybernotary to be analogous to Latin notaries. They can facilitate international transactions, electronically authenticate documents, and verify legal capacities and financial responsibilities [9].
The E-Notary concept proposed by France represents the perspective of civil law or Continental European legal system. In contrast, ABA's proposal on cybernotary represents a common law or Anglo-American system perspective. Thus, as a country that adheres to the civil law system, Indonesia is more suited to adopt E-Notary. However, the explanation of Section 15 Paragraph (3) of Notary Law explicitly states the term Cybernotary. Based on these facts, there are opinions stating that Indonesia should not adopt the concept of Cybernotary as it is and suggest its reconceptualization to better suit Indonesia.

The birth of technology has resulted in convergence (integration) in technology, communication, media, and information (telematics). At first, each of these technologies appeared to run separately (linearly) from one another, but now all of these technologies have become increasingly convergent. Telematic convergence is marked by the birth of new technology products that combine the capabilities of information and communication systems, are based on computer systems, and are strung together in one local, regional, or global electronic system network [10].

In the future, the legal prospects of cybernotary may be used as a means to support the activities of a notary. Activities carried out in the millennial era can be conducted using a conventional system. Notaries and relevant parties utilize the internet to create authentic deeds as written evidence regarding circumstances, events, or legal actions. The cybernotary is an idea born in the millennial era under current technological developments that require legal reform, as stated by Salim HS. In the book An Introduction to the Philosophy of Law (1954), Roscoe Pound states that law is a tool of social engineering or, in other words, a tool for community reform [11].

The development of information technology has greatly influenced people's lives, which prompted the government to issue Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. The development of information technology has inevitably led every activity to shift and or move from conventional systems to electronic systems; notary services are no exception known as Cybernotary. A notary can use technology in carrying out notarial work such as e-notary or Cybernotary. However, some people question the validity of the deed made in the Cybernotary system. They argue that Cybernotary is contrary to the principle of the tabellionis officium fideliter exercebo, which means that a notary must work traditionally [12]. Therefore, a regulation should be made to improve the competence of notaries to utilize information technology systems. Considering the shift of such change is massive, all parties must implement e-notary, and the policy must be at the national level, not sectoral.

There are two main aspects of cybernotary, namely authority and technology. Progress in the economic sector has interconnected these two aspects. Rapid economic changes require notaries to process contracts immediately; one of the means to support the acceleration of this process is information technology. Apart from playing a role in contract creation, notaries are also authorized to validate signatures, store deeds, provide Grosse, copies, and excerpts of deeds, and keep documents underhand. In addition, the development of information technology has also greatly influenced lives and prompted the government to issue Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

Several terms are used to describe the use of technology by a notary in carrying out their work, such as e-notary and cybernotary. In Indonesia, the concept often uses the term cybernotary. This concept raises various opinions, both in favor of and against. The main problem that arises is the validity of deeds made using cybernotary. Some argue that cybernotary
contradicts the principle that has been held so far, namely the principle of *tabellionis officium fideliter exercebo*, which means that a notary must utilize traditional means [12].

The opportunity to implement cybernotary is widely open with the existence of supportive regulations. Several applicable laws and regulations, including Article 15 Paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, which states that in addition to the authority as referred to in Paragraph (1) and Paragraph (2), the Notary possesses other authorities regulated in the laws and regulations. As stated in the regulations on Electronic Information and Transactions, this includes the implementation of cybernotary. Notaries tend to agree that archiving will be much more efficient if done electronically rather than physically. Therefore, a regulatory basis that can improve the competence of notaries on information technology systems is needed. Considering the massive nature of the changes, the implementation of e-notary must be agreed upon by all parties, and the policies must be registered at the national level, not sectoral.

2.2 Implementation of Cybernotary to Support the Cybersecurity and Resilience of Indonesia

The Cybersecurity Strategy of Indonesia acts as a standard reference for all national cybersecurity stakeholders in compiling and developing cybersecurity policies in their respective agencies. It is developed in line with the basic values of the life of the people and nation, namely Sovereignty, Independence, Security, Togetherness, and Adaptiveness [13].

Legal developments create reliable ways to store and retrieve information. Two hundred years ago, there were no photocopiers or computers. The parol evidence rule dealt with the main problem of documentary evidence, namely the authenticity of contracts and deeds [14]. Many jurisdictions have arranged for the receipt of electronic evidence as legal proceedings. This issue has also been dealt with regionally, such as through Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, which states that electronic signatures cannot be denied its effectiveness and legal acceptance as evidence in legal proceedings solely on an electronic basis. Likewise, Section 9 (1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) states that contracts will not lose effectiveness and legal validity if made using electronic means. It is generally accepted that evidence in electronic format is acceptable in legal proceedings [15].

Cybernotary is not simply digitalizing the duties of a notary but rather adding value to electronic documents, for example, legalizing electronic documents. However, its implementation will take considerable time as many things need to be prepared. One of them is the amendment to Section 1868 of the Civil Code, which states that authentic deeds are deeds in a particular form that has been determined by the law and made in the presence of public authorities.

The concept of cybernotary has always been associated with long-distance services, for example, remote deed making. According to Edmon Makarim, cybernotary is, in principle, not much different from regular notaries. The involved parties still meet face to face with the notary. However, the difference is that the parties read the draft on their respective computers and after agreeing, the parties electronically sign the deed at the notarial office. Making a deed does not have to be perceived solely in papers. Functionally a deed can be done electronically without denying the applicable rules and regulations.
In the millennial era, notarial services are adapting computerized systems, which is a new phenomenon. R.A. Emma Nurita stated that the notarial world is a phenomenal world with various attributes and activities carried out by notaries daily, including providing the best service for their clients. By law, a notary is expected to help and serve those requiring authentic written evidence regarding circumstances, events, or legal actions. On this basis, those who are appointed as notaries must have a passion for serving the community. Therefore, a notary serves no purpose if the community does not require them [16]. This strengthens the role of Indonesian cybersecurity to strengthen defense and security, as the existence and involvement of the community greatly determine the importance of cybersecurity in Indonesia. The concept of Cybernotary is just the opposite. A physical meeting is not absolute, and it can be replaced by telecommunication technology through a virtual meeting. Virtual meeting in making a deed has ignited a legal debate to compare between a conventional notary deed and an electronic notary deed [17].

In order to properly carry out cybersecurity, robust, professional, and reliable institutional support is needed to ensure the goals to be achieved. This ensures that the foundations of Indonesia's cybersecurity and resilience can face various multidimensional threats/attacks, both from within and outside the country. The government and the People's Representative Council are drafting a bill on cybersecurity and resilience (CSR). It is hoped that governmental actions in the field of cybersecurity and resilience respect human rights.

Implementing the cybernotary concept is not just a common need but also protects notaries and strengthens the defense and security of the nation. In addition to explaining the best practices regarding e-notary in various countries, problems arising from conventional notarial methods can be prevented by implementing cybernotary. For example, a notarial deed document that uses paper can be faked, whereas if utilizing electronic media, the potential for forgery is slim to none. In fact, electronic documents have a more up-to-date recording system to prove forgeries easily. Functionally, all things done on paper can also be done in electronic documents, so its authenticity can be equated. This is supported by the functional equivalent approach doctrine used in the Electronic Information and Transactions Law.

3 Conclusion

Cybernotary is intended to facilitate and accelerate the process of creating authentic deeds, including complying with all actions, agreements, or provisions required by law and ensuring all requested statements from interested parties are stated in the authentic deed. The concept itself is open for implementation with the existence of several supportive applicable laws and regulations, including Article 15 Paragraph (3) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position, which is hereinafter called Law on Notary Positional Change. To increase the competence of notaries on information technology systems, it is necessary to have appropriate regulations with the agreement of all related parties. In addition, these regulations must be registered at the national level, not sectoral.

The implementation of the cybernotary concept is not just a common need but also protects notaries. The Cybersecurity Strategy of Indonesia acts as a standard reference for all national cybersecurity stakeholders in compiling and developing cybersecurity policies in their respective agencies. It is hoped that the enforcement of government authority in cybersecurity and resilience respects human rights, as the concept of cybernotary is always associated with long-distance services.
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References


Policy Formulation Regarding Psychological Action Against Juvenile Offenders

Fitri Yani¹, Alvi Syahrin², Madiasa Ablizar³, M. Eka Syahputra⁴
{pidana80@gmail.com¹, alviprofr@usu.ac.id², ablisar@yahoo.co.id³, m.ekaputra@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. The government has not taken into account the psychological impact of criminal sanctions on juvenile offenders. In Indonesia, including in North Sumatra, they are only sentenced to job training. Such criminal sanction does not significantly reduce the number of offenders and does not positively improve the behavior of the offenders. The study aims at finding alternative criminal sanctions such as psychological sanctions instead of common sanctions based on the judge's decision, namely the imprisonment, fines, and/or social work. The problems in this research are: 1) what is the current criminal law formulation for juvenile offenders? 2) in the context of criminal law reform in Indonesia, how should the criminal law formulation for juvenile offenders be in the future? This normative juridical legal research aims to describe the current criminal law formulation for juvenile offenders stipulated in statutory regulation. The results show that in reforming criminal law, psychological impact needs to be taken into account in enforcing Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by enforcing psychological sanctions instead of fines. These include stimulus activities carried out by a psychologist to provide psychiatric therapies to improve the nature and behavior of juvenile offenders and ensure that they do not repeat their actions. This can be done through psychological interviews and tests, psychotherapy or counseling, therapy or training programs, and hypnotic therapy. Through these activities, criminal law can be reformed for the better.

Keywords: Policy Formulation, Psychological Action, Juvenile Offenders

1 Introduction

The 1945 Constitution is the foundation of the state, which guarantees the independence of the nation from colonialism, as it is not following humanitarianism and justice. Likewise, as the philosophy of Indonesia, Pancasila is also the foundation of the state. The second principle of Pancasila, just and civilized humanity, and the fifth principle, social justice for the whole of Indonesia, are the state's goals, which are interconnected with one another. The protection of the Indonesian people should be based on Pancasila to ensure that the goals of the state are achieved. It is crucial to ensure the protection of juvenile offenders so that the juvenile criminal justice system does not negatively impact offenders’ intellectual, mental, and behavioral abilities in the future. Therefore, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was reformed. Job training was assigned as a substitute for fines; this was proven ineffective in reducing the number of juvenile offenders [1].

Based on the data obtained from the case tracing information system of the Medan district court, there were a total of 499 (four hundred and ninety-nine) juvenile cases from 2020 to 2021,
comprising narcotics, child protection, and theft [2]. The increasing number of juvenile cases proves that imprisonment and job training do not change the behavior of juvenile offenders.

In handling juvenile cases, Indonesia utilizes several legal products such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which aims to protect the legal interests of children. However, the Indonesian State Court has imposed imprisonment and restorative justice in quite a few cases [3].

From May 2016 to May 2017, the Prosecutor's Office of Kupang sentenced 5 (five) juvenile offenders to job training. This has become a benchmark for reforming criminal law, but even so, the job training fails to reform the offenders and the number of juvenile cases has even increased. Therefore, the problems faced in this research are as follows: 1) what is the current criminal law formulation for juvenile offenders? 2) in the context of criminal law reform in Indonesia, how should the criminal law formulation for juvenile offenders be in the future? There are weaknesses and deficiencies in the current application of criminal law. Criminal policies need to be formulated to protect juveniles and improve themselves and not repeat criminal acts. This will be realized through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. However, these laws have several weaknesses and shortcomings. Therefore, the author proposes that these laws take into account the psychological side of the juvenile offender in the process of criminalization, determining the aspects of jurisdiction and the subject of criminal acts, and formulating criminal acts, liability, sanctions, and guidelines.

In addition, this criminal policy formulation should be oriented to the concept of child protection, as the policy draft regarding juvenile protection is part of the national criminal law reformation. An integral policy must be adopted to effectively protect juvenile offenders, namely a combination of penal and non-penal means, specifically psychological sanctions.

2 Literature Review

2.1 Policy Formulation

The juvenile criminal justice system is being reformed through the formulation of policies regarding juvenile offenders. In handling these offenders, psychological action should be taken before court sessions and during the sentence. However, this has not been applied consistently in several provinces as no related regulations exist. Policy formulation is defined as the reformulation of sanctions. The term policy originates from the English language while also existing in the Dutch language as the word Politik. Reformulation policies can be identified with policies in reformulating the prevailing laws. In criminal law, policy formulation is defined as policies that formulate criminal law norms formed by the legislature [4].

2.2 Psychological Action

Psychology is a science and applied science that studies human behavior, mental functions, and mental processes through scientific procedures. A person who practices psychology is known as a psychiatric. A psychiatric tries to improve a person's life through specific interventions on mental functions and individual and group behavior, which are based on
physiological, neurological, and psychosocial processes. Psychiatric action is taken to ensure that juvenile offenders change for the better and realize their mistakes through stimulus measures. These include psychological therapy in the form of advice, counseling, and therapy towards the values of religion, morals, and ethics as alternative sanctions for these offenders [5].

2.3 Juvenile Offenders

A juvenile is a person under 18 (eighteen) who is suspected of committing a criminal act. Children are the next generation; the future of the nation depends on their actions. Therefore, it is a common obligation to ensure that they grow and develop properly for the sake of the nation. Everyone needs to know the rights and the obligations of children. As a vulnerable group, children require protection of rights. Humans are supporters of rights from birth, and among these rights, some are absolute, which requires the protection of everyone. Such rights also apply to children. However, children have special rights that arise due to their vulnerabilities. These vulnerabilities have made the world realize that protecting children's rights is necessary to create a better future for humanity. The definition of a juvenile offender is a child who has broken the law. Juvenile delinquency occurs in children with social disabilities [6].

3 Research Methodology

This is normative juridical research that reviews/analyzes secondary data in legal materials, mainly primary and secondary legal materials. The law is approached as a set of regulations or positive norms in the statutory system that regulates human life [7].

4 Results and Discussion

The current policy formulation has been implemented as a form of criminal law reformation by following per under the socio-political, socio-philosophical, and socio-cultural values of Indonesia that act as social, criminal, and law enforcement policies [8]. The reformation uses both a policy-oriented and a value-oriented approach [8]. It is part of the social policies as it is intended to solve social problems, including humanitarian issues, to achieve the goal of the state to protect society and enforce the law. The reformation is part of an effort to renew the legal substance to increase the effectiveness of law enforcement. Viewed from a value-oriented approach, the criminal law reformation is an effort to reorient and reevaluate the socio-political, socio-philosophical, and socio-cultural values that act as fundamentals and provide normative and substantive content of the ideal criminal laws. Sanctions associated with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and applied in several cases such as in Kupang are fines, job training, and others. These cases usually utilize restorative justice and impose imprisonment. Examples can be seen in Table 1.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Case</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>MMT</td>
<td>Suspect charged with sexual assault</td>
<td>The defendant was sentenced to criminal sanctions as stated in Article 82 of Law</td>
</tr>
</tbody>
</table>

Table 1. Examples of Juvenile Cases that are Subject to Job Training
against the victim named BT, 3 years old

Number 23 of 2002 concerning Child Protection, based on decision Number: 268/Pid.Sus-Anak/2015/PN.Kpg. The verdict is a cumulative penalty in imprisonment and fines; the fine penalty is replaced with job training.

2. MAL MK is a 17-year-old child charged with repeated sexual assault against the victim, ASL, 6 years old.

These acts are regulated and subject to criminal sanctions in Article 81 Paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The suspect was found guilty based on decision Number 270/Pid.Sus-Anak/2015/PN. Kupang and the verdict is a cumulative penalty in imprisonment and fines; the fine penalty is replaced with job training.

Source: Widiantari [1].

4.1 Current Formulation of Criminal Policies

Criminal law must consider the objective of national development, namely creating a just and prosperous society that is evenly distributed spiritually and materially based on Pancasila. Therefore, criminal law is aimed at tackling crimes and reforming the sanctions for the welfare and protection of the public. Actions that cause (material and/or spiritual) harm must be prevented or overcome by criminal law. The use of criminal law must also take into account the cost and benefit principle and the abilities of law enforcement institutions to ensure that there are no cases of everlasting [9].

The formulation of criminal policies must take into account the criteria for criminalization, conduct comparative studies, use policy and value approaches, and aim to improve public welfare. It is expected to produce a law product that is more effective and efficient in overcoming and eradicating crime in society [10].

The limitation of a penal facility is that it demands the optimal use of non-penal facilities, as it can eliminate/erase the causes of crimes. In addition, non-penal means can be more effective because of their preventive nature, while penal means are more repressive, namely taking action and eradication after a crime has occurred [10].

In the future, criminal policy formulations should focus on juvenile offenders in reforming criminal law in Indonesia. According to Barda Nawawi Arief, not all drafts of the criminal law are included in the General Section of Book I, including the guidelines on criminalization. Both used and unused drafts are taught in criminal law lessons, mentioned in law books, and generally taught to law students. However, because it is not explicitly stated in the Criminal Code, these drafts are often forgotten; they may even be forbidden to be used in court decisions. According to the author, the existence of an explicit criminalization guideline, for example, Book I and the elucidation of the Criminal Code for Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, does not mean that criminalization is only limited to the provisions stated in the guidelines. In general, criminal law, both contained in and outside the Criminal Code, only serves as guidelines and does not rule out the possibility of other provisions that are not mentioned to be applied [11].
In his book “Comparative Law in a Global Context: The Legal Systems of Asia and Africa,” Werner Menski states that legal studies must be directed to find alternative perceptions around the world, justice, and various practices in solving practical problems by accommodating opposing interests while fulfilling the requirements of substantive justice. Legal issues concern the way we perceive and place ourselves in our environment [12]. Juvenile cases have developed from committing traditional to modern crimes. They are the product of the environment and modern technology. As an instrument that plays an essential role in combating juvenile cases, the law should continue to develop and be one step ahead to ensure that it is never late in preventing and eradicating crime, including those committed by juveniles. Satjipto Rahardjo states that law is not a static institution; it develops and changes over time due to the close reciprocal relationship between law and society [13].

4.2 Subsequent Criminal Policy Formulations

Policy formulation is the initial stage of crime prevention in the penal policy. It can be interpreted as an effort to formulate a law that can be used to tackle crime. The formulation stage is the most crucial, as errors can render prevention and control efforts ineffective at the application and execution stages. Subsequent criminal policy formulations are part of the criminal law reformation, particularly the reform of material criminal law. According to Sudarto, the reform of criminal law must be comprehensive, covering material and formal law and the enforcement of the law itself. The reformation must be concurrent; otherwise, problems will arise in its implementation [11]. It is necessary to reform the system for formulating criminal sanctions against juvenile offenders, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In addition to imprisonment and fines, sanctions should be aimed at improving the psychological behavior of the offender to ensure that they do not repeat their actions. Psychological sanctions will help protect juvenile offenders through activities that provide psychological stimulation, which will, in turn, help them change for the better.

5 Conclusions

Currently, juvenile offenders are subject to sanctions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002, as well as several criminal regulations such as the Criminal Code, which impose cumulative criminal sanctions, namely imprisonment and fines in which job training are imposed instead of fines. Several decisions apply restorative justice in sentencing juvenile offenders.

The criminal law should be reformed to protect juvenile offenders and ensure they change for the better. Therefore, it is necessary to formulate alternative forms of sanctions that must be conceptualized in statutory regulations. Psychological sanctions are a better alternative in preventing juvenile crimes and rehabilitating offenders than fines and/or job training which have a negligible impact on the behavior of offenders.

In reforming the criminal law, subsequent formulations of criminal policies regarding juvenile crimes should bind psychological sanctions to statutory regulations to ensure that they are applied to protect juvenile offenders for the sake of the country.
References


Advantages and Disadvantages of Implementing the Electronic Information and Transactions Law on Freedom of Speech

Hary Isdyanto¹, Alvi Syahrin², Madisa Ablisar³, Mahmud Mulyadi⁴
{haryisdyanto@gmail.com¹, alviprofdr@usu.ac.id², ablisar@yahoo.co.id³, mahmud_mulyadi@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia¹.².³.⁴

Abstract. Freedom of speech and expression is a fundamental right in a democracy. Technological developments in Indonesia, especially social media, have become a significant necessity in carrying out various activities. However, the existence of the Law on Electronic Information and Transactions (EIT Law) has posed a threat to freedom of speech and expression as it can be used against people suspected of violating these laws. The EIT Law can be abused to arrest those criticizing the government. This paper aims to explore the right to freedom of speech in the corridor of national law. The application of the EIT Law has created contradicting opinions in society to ensure the Indonesian national law implements the suitable formulation of the freedom of speech. This normative legal research analyzed laws and regulations and collected field data from law enforcers and academics to determine the application of the EIT Law. This research is intended to obtain an accurate picture of sanctions application relating to freedom of speech and expression in the EIT Law. These sanctions must be imposed professionally and not selectively. Whenever possible, there should be alternatives to these criminal sanctions to prevent the disruption of the right to freedom of speech in Indonesia.

Keywords: Advantages and Disadvantages, EIT Law, Freedom of Speech

1 Introduction

Indonesia is a constitutional state, which means that all behavior is regulated by the applicable laws under Article 2 Paragraph (3) of the Constitution of the Republic of Indonesia. Apart from being a constitutional state, Indonesia adheres to a democratic system where the people have the right to show their expression. Many that speak and express themselves, especially in social media, do so in a positive manner. However, some abuse freedom of speech, causing legal problems and social conflicts.

The Law on Electronic Information and Transactions (EIT Law) was enacted to address legal issues and problems related to information technology and electronic transactions. However, various countries are far ahead in their development of cyberlaw. For example, Singapore and America have developed and perfected cyberlaw ten years ago. Malaysia has the Computer Crime Act 1997, the Digital Signature Act 1997, and the Communication and Multimedia Act 1998. Singapore has The Electronic Act 1998 and the Electronic Communication Privacy Act 1996. Australia, New Zealand, and other European countries also possess cyberlaw to protect their people and countries from cybercrime [1].
Related parties must continue to evaluate the development and implementation of the EIT Law to maintain and provide legal certainty for online transactions. The EIT Law should resolve issues arising due to the misuse of information technology and electronic transactions that are detrimental to the public. This law should positively impact the general public following Article 4 of the EIT Law. Article 4 states that information technology and electronic transactions should educate the general public, develop the national economy, improve public services, and provide a sense of security, justice, and legal certainty for users and organizers of the information technology. The issuance of the EIT Law will assist law enforcers in Indonesia in eliminating cybercrime, including those related to e-commerce and pornography [2].

Law and technology develop alongside each other. However, the law simply cannot keep up with rapid and dynamic technological developments. This imbalance opens up unlawful acts, such as criminal acts using mobile phones, computers, laptops, and other devices. In the last few years, technology has developed and advanced rapidly. Information and communications technology has become very widespread, which has a tremendous impact, such as the rapid development of mobile phones. The discoveries and developments in technology have undeniably facilitated human life [3].

Currently, many people abuse freedom of expression by ignoring the applicable laws and regulations. This can be seen in the rampant cases of hate speech, which can be defined as “provocation, instigation, or insult from one or more parties to another regarding various aspects such as race, gender, disability, skin color, sexual orientation, nationality, religion, and others”. Deploying hateful banners, spreading fake news on social media, and vilification are examples of hate speech [4].

For a democratic country, freedom of speech and expression plays a significant role in national development. Considering that the Draft Criminal Code is still being revised, it is crucial to inject pro-democracy human rights values into the new criminal law of Indonesia. In this study, the values in question are the rights to freedom of speech and expression, which are essential for exercising the control function of state administration. One of the efforts to guarantee freedom of speech and expression is to eliminate criminal sanctions for related transgressions. Based on the background of the problems outlined above, the researchers intend to study the corridors of freedom of speech and expression in the Law on Electronic Information and Transactions.

2 Research Method

This is normative research that examines problems based on concepts, opinions, and legal materials using the statutory approach as a benchmark.

This research uses secondary legal sources such as the Criminal Code, Law Number 11 of 2008 concerning EIT, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning EIT, and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination. The primary legal sources are books, online sources, and papers related to the issues in question.

The data were collected by observing online cases, especially those related to the EIT Law. The data included primary data from online observation and secondary data from law books, legal journals, and related laws and regulations. Observational data were then analyzed descriptively by taking into consideration legal theories, laws, and regulations.
3 Results and Discussion

The EIT Law has raised many conflicting opinions. Two articles are often considered unjust; namely, Article 27 Paragraph (3), which includes “all who deliberately and illegally distribute and or transmit and or provide access to electronic information and or documents that are insulting and or defamatory in nature” and Article 28 Paragraph (2) which involves “all who deliberately and illegally distribute information to incite hatred or enmity towards certain individuals and or groups based on ethnic group, religion, race, and inter-group relations”.

Freedom of speech and expression has been discussed in the Constitutional Court. In filing Articles 134 and 136 bis and 137 of the Criminal Code regarding insults to the President/Vice President, the Constitutional Court decided to terminate these articles. The Court decided that “insults” can create legal uncertainty as it is prone to misinterpretations, for example, determining whether a statement is considered criticism or insult. Criminal sanctions can also hinder the right to freedom of expression through oral, written, and attitude in protests. This article is declared constitutionally contradicting with Article 28, 28D Paragraph (1), 28E Paragraph (2), and Paragraph (3) of the 1945 Constitution. It can hinder efforts to communicate and obtain information, guaranteed by Article 28F of the 1945 Constitution [5].

Controversial cases of applying the EIT Law include:

a. Prita Mulyasari, August 15, 2008. Prita sent an email containing her and her friends’ complaints regarding services at the Omni International Hospital in Tangerang. At that time, the email message was accidentally spread to many mailing lists. Knowing this information, Omni Hospital took legal steps. Prita was charged with Articles 310 and 311 of the Criminal Code concerning Defamation and Article 27 Paragraph (3) of the EIT Law. As a result, Prita was faced with a possible six-year prison sentence. However, the Tangerang District Court did not impose any charges before the Supreme Court appealed to 6 months in prison with one year probation. Four years later, Prita was finally released after reconsidering her case was granted by the Supreme Court on 17 September 2012. Prita’s case is interesting to study both in terms of law and justice because, on the one hand, it was proven that she had committed defamation and humiliation. After all, she was considered to have defamed Omni Hospital and its doctors, whereas, on the other hand, she was only trying to share her bad experiences with her friends. According to Article 28 of the Indonesia 1945 Constitution, Prita’s right to do is protected by the Law.

b. Muhammad Arsyad, a former student activist at Universitas Hasanuddin Makasar, was detained due to accusations of insulting a member of the Golkar (Golongan Karya political party) central board, Nurdin Halid. The informant was Abdul Wahab, a relative of Nurdin Halid. He reported this case with the accusation that Arsyad had insulted Nurdin Halid through a BlackBerry Messenger (BBM) status, which read “No Fear Nurdin Halid Koruptor!!! Jangan pilih adik koruptor!!!” (No Fear Nurdin Halid Corruptor!!! Do not elect a corruptor’s younger brother!!!) Regarding this accusation, Arsyad was named as a suspect on August 13, 2013. One month later, on September 16, 2013, Arsyad’s release was granted.

c. Ervani Handayani had to deal with the law as she posted on Facebook about her husband’s job transfer on May 30, 2014. She posted a status that was deemed to have defamed her husband’s boss. After coming across the post, Ayas, the boss in question, reported the post to the police on defamation charges. The public prosecutor charged Ervani with multiple articles, including Article 45 Paragraph (1), Article 27 Paragraph (3) of Law Number 11 concerning Electronic Information and Transactions, and Article 310 Paragraph (1) of the Criminal Code concerning Defamation. Ervani’s release was granted on November 17, 2014.
d. Florence Sihombing was a postgraduate student of Notary Law at Universitas Gajah Mada (UGM). Florence was deemed to have insulted Yogyakarta citizens through uploads shared on Path in August 2014. As a result of her actions, Florence was charged with Article 27 Paragraph (3), Article 45 Paragraph (1), Article 28, and Article 45 Paragraph (2) of the EIT Law. In March 2015, the prosecutor filed a request for six months in prison with a probation period of 12 months and a fine of IDR 10 million instead of 3 months of confinement. The Yogyakarta District Court sentenced Florence to two months in prison.

e. In November 2014, Fadil Rahim, a civil servant in the Gowa Regency, was reported to the police because he was considered to have insulted and defamed Ichsan Yasin Limpo, who served as the Regent of Gowa, South Sulawesi. Initially, Fadil shared his criticism through a Line group consisting of seven people. Fadil stated that he considered the Regent to be an authoritarian. In the ruling, Fadil claimed that Ichsan always put emotions first. This criticism made the Regent upset which caused him to report Fadil to the police. As a result, Fadil was sentenced to 19 days in prison. He was also threatened to be fired from his position as a civil servant.

f. In 2012, Baiq Nuril Maknun, an honorary teacher at SMAN (Public Senior High School) 7 Mataram, West Nusa Tenggara (NTB), received a call from the principal, which would be referred to as M. In the conversation, M talked about immoral acts he had committed with a woman who was also acquainted with Nuril. Feeling harassed, Nuril recorded the conversation. In 2015, the recording was widely circulated in Mataram and infuriated M. Nuril was later reported to the police for recording and distribution. On September 26, 2018, through an appeal verdict, the Supreme Court sentenced Nuril to 6 months in prison and a fine of IDR300 million instead of three months in prison. The sentence was given because the judge considered that Nuril had committed a criminal act following Article 27 Paragraph (1) in conjunction with Article 45 Paragraph (1) of the EIT Law. However, on 29 July 2019, President Joko Widodo signed a Presidential Decree regarding granting amnesty for Baiq Nuril Maknun. With the issuance of this decree, Nuril is free from any legal sanctions [6].

The above cases show that law enforcement against the people is considered eliminating the right to freely express opinions as regulated in Article 28 of the 1945 Constitution. However, there are deviations in several articles or often referred to as inconsistent articles of the IET Law. The perpetrators do not realize that their actions are against the law. Freedom of speech is also regulated in Law Number 39 of 1999 concerning Human Rights, which says everybody is free to have, say, and disseminate his/her opinion by speaking and or in writing through printed and electronic media with due regard to religious values, morality, order, public interest and the integrity of the nation. This provision has become a debate in public regarding law enforcement against the perpetrators who violate the IET Law.

Based on the YLBHI (Indonesian Legal Aid Institute) data, there have been approximately 351 cases of violations of civil rights and freedom scattered throughout Indonesia since the enactment of the EIT Law. In addition, the Southeast Asia Freedom of Expression Network (SAFEnet) has recorded hundreds of complaints related to the EIT Law. Some cases have been decided by the court, which grants permanent legal force; some are left hanging, while others have been peacefully resolved.
Figure 1 shows that since the enactment of the EIT Law, there were 3 cases in 2008, 1 case in 2009, 2 cases in 2010, 3 cases in 2011, 5 cases in 2012, a significant increase to 22 cases in 2013, 36 cases in 2014, 30 cases in 2015, another significant increase to 83 cases in 2016, 52 cases in 2017, 29 cases in 2018, 22 cases in 2019, and 34 cases in 2020 [7].

In Indonesia, freedom of speech and expression is not without limits and boundaries; there are values of Pancasila as the basis of the state that must be respected to maintain tolerance and respect for the rights of fellow citizens. International instruments also provide several provisions regarding the forms of freedom of speech and expression that can be infringed. Article 19 point 3 of the ICCPR (International Covenant on Civil and Political Rights) states that freedom of speech and expression must respect the rights and good name of others and cannot pose a threat to national security, order, health, and public morals. These provisions clearly state that freedom of speech and expression is a derogable right, which is a right that can be detracted. Furthermore, Article 20 of the ICCPR states that: (1) Any propaganda for war shall be prohibited by law, and (2) any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.

Article 20 clearly states that freedom of speech and expression can be detracted to maintain a conducive situation. This article also obliges the prohibition of actions that could threaten peace.

Anyone is free to express an opinion, but the existing provisions of the current country and place need to be considered. These boundaries appear to be influenced by the social morals, order, and politics of a democratic society. Social morals also limit freedom of speech and expression, and existing regulations act as norms to maintain social and political order [8].

Indonesia is undergoing rapid developments in the field of information technology, especially online content and social media. It has caused its citizens to be familiar with cyberspace. Suggestions, ideas, and reactions towards the behavior of others can easily be uploaded on social media, spread rapidly and widely, and can be accessed by anyone, anywhere. Even without intent, content or opinions expressed in social media can harm the rights of others and even cause psychological damage. Indonesia currently upholds the EIT Law, which was issued in 2008 and amended in 2016. This law limits freedom of speech in electronic information technology, especially concerning the content that affects the rights of others.

The EIT Law has raised conflicting opinions. Those that hold to democratic principles think that freedom, which is the right of every citizen protected by law, must be upheld entirely without any restrictions. At the same time, the government views that freedom of speech and
expression must have limitations as the state, and in turn, freedom of speech and expression should be based on Pancasila. Limitations also serve to protect the rights of others and to maintain security and public order.

The public feels that the enforcement of the EIT Law is unsatisfactory, selective, and biased. Opinions often conflict in their discussion, especially if they are related to Law Number 39 of 1999 concerning Human Rights.

4 Conclusion

It can be concluded that in limiting freedom of speech and expression, the EIT Law serves to prevent the circulation of unaccountable information. This law was issued to protect people’s rights and not limit or prevent them from speaking up and expressing themselves. The EIT Law is one of the milestones in developing cyberlaw in Indonesia which functions to protect public interests regarding electronic information and transactions. In a democracy, opinions will always be conflicting, and the EIT Law is no exception. Freedom of speech and expression is also regulated in the 1945 Constitution, the Press Law, the Human Rights Law, and other laws. Pancasila is the official, foundational philosophical theory of Indonesia, in which all its precepts are interconnected to maintain the integrity of the Unitary State of the Republic of Indonesia.

Therefore, the EIT Law should be enforced justly and fairly, not as a means for the authorities to suppress government critics, to ensure that the law can protect the rights of freedom of speech and expression responsibly without the public being in fear of criminalization. On the other hand, the government must provide alternative policies, such as establishing a social media filtering body, before naming suspects and imposing criminal sanctions, as social media users may not realize that they have committed criminal acts. These measures can help to reduce the number of EIT Law infringements in Indonesia.

References

The Dilemma of Managing Limited Liability State-Owned Enterprises in Applying the Business Judgment Rule

Hasrul Benny Harahap¹, Bismar Nasution², Hikmahanto Juwana³, Mahmul Siregar⁴
{hbhlaw92@gmail.com¹, bismar.nasution@gmail.com², hikmah@ui.ac.id³, mahmul@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia¹, ², ⁴
Universitas Indonesia, Indonesia³

Abstract. State-Owned Enterprises (SOEs) should contribute to the national economy. Using the structure of a limited liability company as the basis for their management, limited liability SOEs place the board of directors as company managers responsible for the interests and objectives of the enterprise. As business entities, limited liability SOEs utilize the state financial system to ensure that the public aspect remains inherent in their management. This paper aims at analyzing the position of the board of directors based on the Business Judgment Rule in managing limited liability SOEs. This research uses a normative juridical method supported by library data. It aims at identifying the application of the business judgment rule principle by the limited liability SOEs board of directors. The results show that the structure of a limited liability company as the basis of the management protects directors based on the Business Judgment Rule. However, based on the state financial regulations, limited liability SOEs funds are considered part of state funds. Therefore, the losses of limited liability SOEs are considered state losses, which causes ambiguity in applying the business judgment rule in managing limited liability SOEs. Based on the principles of state funds, law enforcement officials hold the board of directors accountable as the organ that controls the company. Meanwhile, the limited liability company mechanism enables the state as a shareholder to sue the board of directors from both civil and criminal sides if proven to have made a business decision that exceeds the limits of its authority.

Keywords: Limited Liability SOEs, State Finance, Business Judgment Rule

1 Introduction

The political-economic system of a country shows the management of its state companies on a global stage. The current Indonesian economic system indicates the involvement of the state. We can see in the direction of SOEs, which aim to increase public welfare. In Indonesia, SOEs play two prominent roles: a state company seeking profits to increase foreign exchange reserves and as a tool for the government to provide services to the community to achieve the state's task of realizing the prosperity and welfare of its people [1]. Therefore, SOEs are classified into two types, namely public and limited liability companies.

Limited liability SOEs are subject to all the provisions and principles that apply to limited liability companies as stipulated in the Limited Liability Company Law (Law No. 40 of 2007)¹.

¹ See Article 11 of Law Number 19 of 2003 concerning SOEs.
In addition to being subject to SOE Law (Law No. 19 of 2003), the management of limited liability SOEs must also refer to the Limited Liability Company Law.

As the organ of management, the board of directors is fully responsible for ensuring SOEs achieve their interests and goals and represent SOEs inside and outside the court. This forms an interdependent relationship, where the actions and activities of the company depend on the board as the organ entrusted with the management. On the other hand, the company's existence is the reason for the existence of the board; without a company, there would never be a board of directors.

Limited liability SOEs were formed to maximize profits. However, the risk is always involved in efforts to gain profits. Business objectives are synonymous with taking risks, and the board of directors is responsible for managing that risk, as the board's function is to make decisions for the company. However, as long as the board carries out the management in good faith, within limits, and according to the provisions that have been previously determined, it is always protected by the Business Judgment Rule.

As a business entity whose capital comes from restricted state assets, the assets of limited liability SOEs are considered part of state assets. Therefore, the losses of limited liability SOEs are considered state losses. This view has led to various public debates, considering that SOEs are private entities with a public dimension. Mixing the two without clear boundaries has created a dilemma for SOEs in carrying out their business activities. The principles of corporate governance are confronted with state financial mechanisms with contradictory paradigms.

2 Management of Limited Liability SOEs

2.1 Position of SOEs in the Indonesian Economy

Indonesia expects SOEs to be one of the main drivers of the national economy, making them an essential pillar of development. They are expected to provide services and fulfill the needs and interests of the people at large and be the most significant contributor to the national economy. Various sectors that SOEs handle have played an important role in realizing these goals. As SOEs are a crucial part of the nation, it is appropriate that they are seen as pillars of the nation's economy.

SOEs are a source of national income, possess many assets from businesses that vary in scale and type, and are in charge of operational areas spread across almost all parts of Indonesia. As business entities, SOEs are not solely focused on profits but also prioritize public interest through relevant projects.

SOEs currently still play a crucial role in the national economy, significantly developing sectors not yet developed and sought after by private companies. As the government appoints SOEs to carry out pioneering projects, they are considered agents of development with all their strengths and weaknesses and the various controversies that accompany them.

Realizing the state's desire to make SOEs the pillars of the national economy requires concepts, thoughts, and extra work. The constitution has mandated the state to exercise a “monopoly” over important production branches and “control” many people's lives. SOEs have been successfully formed, but the results are below expectations. Professional management of state companies is a challenge; as business entities, SOEs are considered part of state finances, impacting its management system.

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2 See Article 5 of Law Number 19 of 2003 concerning SOEs.
On one occasion, Mohammad Hatta explained that “controlled by the state” does not necessarily mean the state itself becomes an entrepreneur, merchant, or dealer. It is more accurate to say that the state’s power lies in its authority to create regulations to strengthen the economy and prohibit the “exploitation” of the poor by the rich [6]. Mohammad Hatta wishes for a legal institution and norm that can competently manage SOEs to ensure that, as business entities, they can fully contribute to the national economy.

The norms governing life in organizations and society are only partially reflected in traditional sources of formal law such as laws and case decisions. There is an inevitable discrepancy between official law and actual practices. Therefore, rules should refer to existing procedures and a combination of official law and societal values, perceptions, and strategies that form hybrid laws [7].

Limited liability SOEs are treated as limited liability companies. Therefore, the management is handled by the board of directors as the party responsible for achieving the interests and goals of the company. The Limited Liability Company Law protects the board in making business decisions. However, this only applies to decisions taken to achieve company goals and fulfill the stipulated conditions. The protection ensures Limited liability SOEs as business entities can freely carry out their business activities as a form of support from the state in realizing public welfare through the development of the national economy.

2.2 Application of the Business Judgment Rule in Corporate Governance

Law No. 40 of 2007 regarding Limited Liability Companies has set clear standards on the accountability of the board of directors. The provisions of Article 97 Paragraph (5) of Limited Liability Company Law state that a director is free from responsibility for company losses if proven that 1) The losses arising are not due to the fault or negligence of the director; 2) The director manages the company in good faith and a prudent manner; 3) Management is carried out for the interests and objectives of the company; 4) The director does not show a conflict of interest; and 5) The director has taken steps to prevent losses. This law is crucial to ensure that directors can make business decisions. If not, it will contradict their position as risk-takers, thus indirectly stopping the company’s continuous improvement. Therefore, the inclusion of the business judgment rule in the Limited Liability Company Law dramatically supports the development of the business climate in Indonesia [8].

In general, the above provisions are the principles of the Business Judgment Rule commonly found in common law countries, albeit with a slight difference. The principles of the Business Judgment Rule only apply to business decisions. However, in the Limited Liability Company Law, this principle applies to “corporate management” which is a broader aspect compared to business decisions. This means that directors can be freed from their responsibilities not only in terms of business decisions but also in the management of the company if the five elements mentioned above are proven [8].

The Business Judgment Rule experienced its development as jurisprudence in American Common Law since the decision of the Louisiana Supreme Court regarding the case of Percy V Millaudon in 1829. It is one of the most popular theories to protect directors who act in goodwill. The main aim of this theory is to achieve justice, especially in the business decisions of directors of a limited liability company [9]. According to the Business Judgement Rule, a business judgment is considered in line with the duty of care if the decision-maker possesses information about the problem and believes that the data is correct, does not have a conflict of interest, decides in good faith, and has a rational basis for believing that the decisions taken will produce the best results for the company [10].
America has undergone enormous changes not only in the fields of technology, economy, and culture but also in its concept of development and legal principles. Its legal scenario has been integrated with individual freedom, prevention of abuse of power, and a unique constitution [11]. The principles put forward in the Limited Liability Company Law have provided a more stable and definite business atmosphere, as directors are protected in making business decisions as long as these decisions are made to achieve company goals and follow the company's rules and regulations.

In law, the Business Judgment Rule is defined as the specific condition after a reasonable examination in which a director shows no conflict of interest, carries out actions in good faith, is honest, and rationally believes that the activities are carried out solely for the benefit of the company [12]. The Business Judgment Rule shows that directors are given substantial authority but are not allowed to place their interests above the interests of the shareholders. In other words, directors are given carte blanche to make decisions that might turn out badly but not acted out of personal interest. This balance is reflected in the various prerequisites set by the court before directors can utilize the rule [12].

### 3 Limited Liability SOEs as Private Entities with a Public Dimension

As privately managed business entities, certain conditions in which the management of limited liability SOEs are open to the public. All or most of the capital of SOEs are owned by the state through direct participation from restricted state assets. Therefore, they are part of the state financial system and their losses are considered state losses. As business entities, SOEs are expected to contribute to the national economy and provide benefits for the community. This situation requires certainty and courage from the board of directors in carrying out business actions, as there are always risks involved in every profit-gaining effort.

Business risk cannot always be measured mathematically and is not solely based on both qualitative and quantitative information. Experienced entrepreneurs also use their instincts or hindsight to understand the size of risk. Business decisions often involve touches and gut feelings that cannot be verified by systematic analysis and are often intangible or not easy to understand. They are instincts, visions, or estimates of the state of market competition, cost structures, and the direction of industrial and economic growth. Business decisions are matters of instincts and gut feelings that cannot be systematically analyzed [13]. Directors of SOEs are not exempt from these statements; they also base their business decisions on instinct, personal touches, and gut feeling.

The dilemma regarding the accountability of SOE directors occurs due to the existence of several related laws and regulations, including Law No. 17 of 2003 concerning State Finance, Law No. 19 of 2003 concerning State-Owned Enterprises, Law No. 1 of 2004 concerning State Treasury, as well as Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Corruption. The dilemma stems from the capital of SOEs being part of state finances, which implies that SOE losses are also state losses.

Law enforcement and financial officers, including the Attorney General’s Office, Police, Corruption Eradication Commission, and Audit Board of Indonesia, have referred to several of these laws as a package of regulations that justify SOE finances being state finances. As this

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3 See Article 1 point 1 of Law Number 19 of 2003 concerning SOEs.
4 See the Jakarta Selatan District Court Decision in the case of the former managing director of Bank Mandiri, ECW Neloe.
implies that SOE losses can potentially harm the state, the board of directors is held accountable as they are responsible for its management. Since 2014, Corruption Eradication Commission has handled several corruption cases in the limited liability SOEs, which are considered state losses, as shown in Table 1 [14].

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of SOE</th>
<th>Position of the Defendant in SOE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>PT PAL Indonesia</td>
<td>President Director and Finance Director</td>
</tr>
<tr>
<td>2.</td>
<td>PT Jasindo</td>
<td>President Director</td>
</tr>
<tr>
<td>3.</td>
<td>PT Krakatau Steel</td>
<td>Technology and Production Director</td>
</tr>
<tr>
<td>4.</td>
<td>PT PLN</td>
<td>President Director</td>
</tr>
<tr>
<td>5.</td>
<td>PT Angkasa Pura</td>
<td>Finance Director</td>
</tr>
<tr>
<td>6.</td>
<td>Perum Perindo</td>
<td>President Director</td>
</tr>
<tr>
<td>7.</td>
<td>Perum Jasa Tirta II</td>
<td>President Director</td>
</tr>
<tr>
<td>8.</td>
<td>PT Perkebunan Nusantara Holding</td>
<td>President Director</td>
</tr>
</tbody>
</table>

Differing interpretations of various state financial regulations create legal uncertainty that hinders the duties of SOE directors in carrying out their business activities, as they can be accused of corruption based on causing state losses. If SOE funds are not considered state funds, then losses only affect the company itself as a legal entity. Failures can harm shareholders; the state as shareholders can sue for these losses as stipulated in the Limited Liability Company Law.

Article 61 Paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies states that every shareholder has the right to file a lawsuit against the company to the district court if they experience losses due to the actions of the company which are considered unjust and illogical as a result of the decisions of the General Meeting of Shareholders, Directors, and/or the Board of Commissioners. Article 97 Paragraph (6) of Law No. 40 of 2007 concerning Limited Liability Companies confirms that on behalf of the company, shareholders who possess at least 10% of the total shares with voting rights can file a lawsuit through the district court against members of the board who are responsible for the losses of the company.

Based on these laws, the state as the shareholder of limited liability SOEs has the right to sue the directors if they are proven to make decisions that are detrimental to the company, let alone if the decision exceeds the authority given to them. If there are illegal actions involved, shareholders can report them to investigators. This provision has been systemized in the Limited Liability Company Law and is referred to in managing limited liability SOEs. The internal mechanisms of limited liability companies provide room for the supervision of the board of directors in managing the company.

As a business entity, it is considered very naive to uphold company activities to the provisions of the state administration. Since its establishment, limited liability SOEs are considered private entities expected to benefit from its business activities. Since their capital originates from restricted state assets, the board of directors must ensure that this is returned in the form of profits and community benefits. This is not an easy task to do, as they are the first government institutions that utilize state funds required to return their capital in the form of profits. If limited liability SOEs are to be equalized with other government institutions, they should not be managed using the Limited Liability Company mechanism.

The Business Judgment Rule is internalized in the corporate regulations and provides room for directors to have the freedom to make decisions and optimize the company following the company's goals and objectives. In addition, this principle also provides flexibility for the
directors to carry out their executive functions and ensure that the company will run following its regulations to achieve its goals. As private entities with a public dimension, however, the position of a limited liability SOE itself can obscure the application of this principle. Law enforcement and financial officials may have different perceptions due to the capital of SOEs originating from state funds. Therefore, company regulations cannot be used entirely as a reference in managing limited liability SOEs.

Limited liability SOEs are considered unique in their position as organizations. On the one hand, they are demanded to carry out government policies and programs as development agents. On the other hand, they must continue to function as commercial business units operating based on sound business principles. In some cases, these two functions are ambivalent and often not compatible with each other. There is a possibility of conflicting perceptions within SOEs’ management, which can cause difficulty in determining strategic and operational steps [15]. Although a limited liability SOE has a public dimension, it must be managed like a private entity to get a good business format and to maximize profits as the goal of its establishment.

In managing limited liability SOEs, policies should provide certainty in conducting business. Law will play a role in economic development if it can create three qualities: predictability, stability, and fairness. Predictability means that the law provides certainty for an action taken. Stability means that the law can accommodate competing interests in society. The law must be able to create fairness, namely justice. If there is no standard of what is fair and what is right, then, in the long run, the law can lose legitimacy [16].

4 Conclusion

The establishment of limited liability SOEs is expected to support the realization of the national economy as an essential pillar of development. Their existence can hopefully improve public welfare. In addition to being bound by SOE Law, the management of limited liability SOEs is also based on the Limited Liability Company Law. The Business Judgment Rule is adopted in the Limited Liability Company Law to protect directors in making business decisions based on fiduciary duty.

SOE funds are considered state funds; this is an inherent principle in state financial regulations. Therefore, the losses of SOEs due to business decisions made by the board of directors are considered state losses. As the directors are responsible for managing limited liability SOEs, they are held accountable by law enforcement officials who refer to the principle as mentioned earlier. This situation causes ambiguity as the Business Judgment Rule protects the board. At the same time, the state as a shareholder can still exercise its right to sue the directors if they exceed their authority in making business decisions in both civil and criminal aspects.

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Sustainable Post-Mining Reclamation for Community Welfare in Ijobalit Village, East Lombok District, West Nusa Tenggara Province

I Gusti Ayu Gangga Santi Dewi1, Bambang Eko Turisno2
{ganggasanti@gmail.com1, beturisno@yahoo.com2}
Universitas Diponegoro, Indonesia1, 2

Abstract. With a high population growth rate with pumice mining, East Lombok Regency has resulted in many holes in the ground. The research objective was to determine the sustainable benefits of post-mining reclamation in Ijobalit Village, East Lombok Regency, and the benefits of mining product areas for the community’s welfare in East Lombok Regency, West Nusa Tenggara Province. This research can be broadly grouped into the realm of the Social Legal approach. In this case, there are two aspects of research: the legal research aspect, namely the object of research still exists in the form of law in the meaning of “norms” and social research, namely the use of methods and social science theories about the law. Based on the research results, the utilization of post-pumice mining reclamation in East Lombok Regency, West Nusa Tenggara Province, can improve the surrounding community’s welfare. Post-mining reclamation land results are used to expand existing community lands, such as developing plantations and tourism objects.

Keywords: Post-Mining Reclamation, Plantation, Tourism, Welfare

1 Introduction

Reclamation, in theory means an attempt to form new plains to meet the demand for land by hoarding areas [1]. Reclamation is an effort to increase natural land resources from economic, social, and environmental aspects by draining land or landfilling by adding a specific land volume into the sea and coastal areas. Reclamation is an activity of landfilling by incorporating some materials into coastal areas that are continuously flooded to obtain dry land on which buildings can be erected as a joint effort for the public interest [2][3].

Article 26 of the Presidential Decree of the Republic of Indonesia No. 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands states that the implementation of reclamation is obliged to maintain and pay attention to: a) Sustainability of life and community livelihoods; b) The balance between the interests of utilization and the interests of the conservation of the coastal environment’s functions and small islands; and c) Technical requirements for material picking, dredging, and stockpiling [4][5].

The positive impact of pumice mining is an increase in the area’s quality and economic value, reduce unproductive land, and improve the condition of aquatic habitats for community use. It is feared that the mining process that has not been going well will cause negative impacts, such as more material being washed away, resulting in silting of the waters. If it continues, it will threaten the ecosystem [6][7].
Various activities can prevent pumice mining with negative impacts according to the requirements permitting in environmental impact, location, and reclamation implementation that have been regulated in the applicable regulations. Suppose the conditions in the permit application are not implemented. In that case, the implementation of pumice mining can be rejected or even canceled by the government even though the reclamation results have been carried out.

Pumice mining in East Lombok Regency has a positive influence on the Regional Government of East Lombok Regency and the surrounding community with the results of the water sources. Previously, the village area of Ijobalit was a dry, barren area which was very difficult to get water. The results of pumice mining in East Lombok Regency in getting springs and tourism are seen as a prospect that brings some benefits for the general welfare.

The problems in this research are: 1) what is the potential for pumice mining in East Lombok Regency as a sustainable land area; 2) what are the benefits of pumice mining in East Lombok Regency.

2 Methods

2.1 Research Approach

This research can be broadly grouped into the Social Legal approach’s realm [8]. This research is carried out by reconstructing social reality by prioritizing the interaction between research and what is studied through sources and informants and paying attention to the context that shapes the input, process, research results, and interpretations.

2.2 Research Sites

The pumice mining area that has been managed as a tourist area and a part of the area as a plantation business is a potential utilized by the surrounding community. The research location will be carried out in the reclaimed pumice mining area in East Lombok Regency by looking at the conditions of land management as a residence and place of business and pre-existing tourism development.

2.3 Data Source

In this study, the sources of data were extracted from informants. Especially, residents who carry out pumice mining have benefited from reclaimed land, village officials around the research location, the National Land Agency of East Lombok Regency, the Environment and Forestry Service of NTB Province and the NTB Province ESDM Service. Meanwhile, the legal material in this research includes national law.

2.4 Data Collection Technique

Techniques for finding primary data, carried out through free/open or unstructured interviews directly with respondents met, are considered necessary for providing data in this study. This research is field research using the Verstehen or hermeneutic approach. Also, observations are made to obtain data about the research location in its physical aspects, such as
land-use patterns resulting from reclamation, land control, and community attitudes towards pumice mining.

To complement this research is by a library research on the theory of benefits which is associated with progressive law for society’s welfare and positive law in the form of regulations, laws and policies related to reclamation.

2.5 Data Processing and Analysis Techniques

The research was conducted through source and method triangulation techniques. Source triangulation is done by compare multiple data from various sources to systematize similarities and differences in views based on source situations when submitting data, qualifications, and their suitability with documents that become research data.

Triangulation method was carried out by conducting a strategy of checking through in-depth interviews and data collection techniques of participatory observation, especially the data collection of parties related to pumice mining in East Lombok Regency.

The interactive analysis was carried out using field notes consisting of descriptions and data reflections [9]. Classifying data is by through sorting, filtering, indexing and grouping. The results of the study are considered valid and reliable, then reconstruct and analyze the problem inductively qualitatively, starting from observations of specific problems, then drawing general conclusions [10].

This steps of data analysis technique in this research follow an interactive data analysis model that includes three activity, namely: data processing and reduction, data presentation, and making conclusions or verification. The conclusions in question are not conclusions equivalent to generalizations [11].

3 Discussion and Results

3.1 Pumice Mining in East Lombok Regency Potential

East Lombok Regency has some tourist locations divided into several categories: Nature Tourism, Religious Tourism, Historical Tourism, and Culinary and Family Tourism. The number of tourism objects makes East Lombok Regency visited by tourists from Bali and Sumbawa almost every weekend, even foreign tourists. It is also since East Lombok Regency has the potential for beautiful physical nature and hills due to its geographical location.

East Lombok Regency is a suburban city with several potentials to be developed as a tourist area considering its very strategic position with a variety of supporting activities. One of the efforts to develop tourism is by utilizing land from pumice mining in East Lombok Regency.

The result of pumice mining used as a tourist attraction involves the surrounding community. Pumice mining areas for plantation and tourism businesses can revive the surrounding community’s economic activities, such as making handicrafts for sale as souvenirs, as well as restaurant businesses and others that are very beneficial to the surrounding community.

The study results found that tourism development in the post-mining pumice area received a positive response from the East Lombok Regency government. The government has provided various assistance, such as the arrangement in the post-mining area—both funds and skills from the local government and supporting facilities.
Several factors, including support the development of a pumice mining product area for plantations and tourism objects in East Lombok Regency

a. Economic Factors
The development of pumice mining product areas for plantations and tourism objects requires costs for the construction of irrigation and various activity service facilities such as swimming, sports tours, restaurants, and visual beauty that is unique to attractive water areas. It is necessary to provide funds for management related to the ability of the community and local government policies to manage post-mining areas as tourism objects. Therefore, both local and provincial governments need a role and financial assistance by involving local Village-Owned Enterprises (Bumdes).

b. Social Factors
The pumice mining product area’s development is informed clearly, transparently, and completely covering, among other things, management, financing, and Environmental Licenses. The community provides input, suggestions and aspirations for the government in determining its policies.

c. Cultural Factors
The post-pumice mining area is a tourist attraction with specific characteristics by local culture. Local custom history gives a particular culture identity. It gives a particular identity to the area and creates a certain attraction with specific characteristics from one location to another based on local ecological, climatic, historical, or socio-cultural characteristics [12].

d. Environmental factor
Post-mining development in Ijobalit Village prevent negative impacts on the environment and utilizing less productive land to protect the environment by preventing negative impacts on the environment and utilizing less productive land. A development project with the selection of materials to be used, particularly waste management, prevents damage to soil ecosystems and natural forest resources by considering long-term sustainability factors [13]. Integrated and sustainable supervision of post-mining land development will work well with the natural resources and human resources around it. The development of pumice mining product areas for plantations is oriented towards environmental cleanliness by preventing pollution. Meanwhile, the development of the potential of the pumice mining product area for tourism is based on efforts to improve environmental quality by utilizing the authenticity of the environment that grows naturally, such as the forest around the post-mining area.

3.2 Benefits of Land after Pumice Mining in East Lombok Regency

The management and utilization of post-mining land are permitted by law, as long as it considers the limited carrying capacity, sustainable development, linkages of ecosystems, biodiversity, and the preservation of environmental functions. It is as stipulated in Article 15 of Law No. 16 of 2004 concerning Land Use, which reads: “The use and utilization of land on small islands and land parcels located on borders, lake boundaries, reservoir boundaries, and/or boundaries. Rivers must pay attention to the public interest and limited carrying capacity, sustainable development, the linkage of ecosystems, biodiversity and the preservation of environmental functions” [14].

The utilization of the pumice mining area in East Lombok Regency is aimed at residential areas with plantation business and beneficial for the survival and preservation of natural resource ecosystems. The community’s authority to utilize land in forestry areas is also explained in the Explanation of Agrarian Law Number II point 2, which states that “The State can give land controlled by the State to a person or legal entity with a right according to its...
designation and necessity. For example, property rights, right to cultivate, the right to build or use rights or give it in the management of an agency (Department, Bureau or Swantara Region).

Based on the explanation of Agrarian Law, the state can give land controlled by the state to citizens in need. Applications for land rights after pumice mining are aimed to the government either by legal entities or individuals based on the laws and regulations.

The land from the post-mining reclamation in Ijobali Village is used for plantations and for tourism which is managed by the surrounding community in collaboration with the government and to expand their land for a any specific purpose, namely inter-plantation business. The community is very enthusiastic that the land from the pumice mining product is used for tourism development in their area to improve their standard of living.

4 Conclusion

The potential of pumice mining land for plantations and tourism objects by involving the surrounding community in managing the post-mining area can improve the community’s welfare. Pumice mining areas for plantation and tourism businesses can revive the surrounding community’s economic activities, such as making handicrafts for sale as souvenirs and restaurant businesses and others, including forest conservation whose leaves and trees can be made home industry. Forest conservation in areas resulting from post-mining reclamation with land development facilities is sustainable cultivation of natural resources and human resources.

Based on Government Regulation No. 16 of 2004 concerning Land Use, the use of land from pumice mining in coastal areas is permitted by law, as long as it takes into account the limited carrying capacity, sustainable development, linkages of ecosystems, biodiversity, and the preservation of environmental functions. Utilization of the pumice mining area in East Lombok Regency and plantations as well as useful tourism objects for the continuity and preservation of natural resource ecosystems.

4.1 Suggestion

Theoretically, the development of potential in post-mining areas can be followed up with further any similar research for other reclamation of post-mining areas. This research was conducted in collaboration with local government agencies related to post-mining reclamation policymakers. The research was carried out with an in-depth post-mining study involving interested and competent parties as well as a comprehensive interdisciplinary science.

In practical terms, the use of mining product areas supports an increase in tourist visits both at home and abroad. The development of rock mining reclamation results is expected to have cooperation and partnerships between the government and investors.

References


Effectiveness of Law of the Republic of Indonesia Number 11 of 2020 on Job Creation towards Oil and Gas Downstream Business Supervision Implementation in Indonesia

Irawati¹, Paramita Prananingtyas², Idha Pratiwi Dyah Sinta Dewi³, Hari Sutra Disemadi⁴
{irawati@live.undip.ac.id¹}

Universitas Diponegoro, Indonesia¹, ², ³
Universitas Internasional Batam, Indonesia⁴

Abstract. Oil and gas are strategic non-renewable natural resources whose management needs to be carried out optimally to be utilized for the welfare of the people. This article analyses about the regulation and implementation of Job Creation Law especially on oil and gas downstream business supervision. The government hands over the implementation of activities in the downstream oil and gas sector to the Oil and Gas Downstream Business Supervision which called as Downstream Oil and Gas Regulatory Body, to supervise the implementation of the supply and distribution of Oil and the transportation of Natural Gas through pipes so that the availability and distribution of Oil can be guaranteed throughout the Republic of Indonesia and increase the utilization of Natural Gas in domestic. The Job Creation Law’s birth is expected to support the strengthening of the supervisory function for downstream Oil and Gas business activities. The duties and functions of the Oil and Gas Downstream Business Supervision have not been regulated in the Job Creation Law, meaning that the implementation of supervision of downstream oil and gas business activities still refers to Law No. 22 of 2001 and its implementing regulations related to the duties, functions and organizational structure of downstream oil and gas regulatory agency. Several regulatory changes in the Oil and Gas sector are required to support the duties and functions of downstream oil and gas regulatory agency, which need to be regulated in the Job Creation Law, including several provisions regarding LNG and CNG, Representative Offices, and Public Service Bodies and Dispute Resolution.

Keywords: Downstream, Oil and Gas Business Activities, Job Creation Law, Supervision

1 Introduction

The policy towards the petroleum industry in Indonesia has undergone significant changes. From 1970 to 2001, Pertamina served as regulator and the central business player in the domestic, upstream, and downstream petroleum industry. Since the promulgation of Law No. 8 of 1971 concerning Pertamina, BUMN has acquired monopolistic power in domestic exploration, processing, distribution, and sales activities. Foreign companies involved in the upstream sector have a contract status and must share profits directly with Pertamina. Simultaneously, processing and supplying BBM can only be carried out by these SOEs.

The control of the petroleum industry by Pertamina has caused many issues, including Pertamina’s inefficiency in performance, many financial leaks, and monopoly issues. The idea
emerged to form a world-class national oil and gas company that could compete with other state companies [1][2][3]. It then underlies the issuance of Law No. 22 of 2001 concerning Oil and Natural Gas. In principle, this new law seeks to return power to the state, Pertamina has the status of a BUMN and will take action as one of the oil and gas business actors in the upstream and downstream industries. The regulator’s role is left to government institutions, while Pertamina only plays one role as a pure operator [4][5][6].

With the enactment of the Oil and Gas Law, the implementation of oil and gas business activities from a philosophical aspect has undergone a very fundamental change. The Government is the policyholder in the oil and gas sector. The government then divides 2 (two) sections of oil and gas business activities which consist of upstream business activities, including exploration and exploitation activities, and (2) downstream business activities, including processing, transportation, storage, and commerce (including natural gas trading through transmission and distribution pipelines). Downstream Business Activities are generally business-related activities, where production costs and losses that may arise cannot be charged (consolidated) on the costs of the Upstream Business Activities. In order for the function of the Government as a regulator, supervisor, and supervisor to run more efficiently, the Upstream Oil and Gas Business Activities Executive Agency (BP Migas) was formed, while in the Downstream Business Activities the Oil and Gas Downstream Business Activities Regulatory Agency (BPH Migas) was formed.

To carry out the mandate of Law No. 22 of 2001, the Government then enacted Gov. Reg. No. 67 of 2002 concerning the Regulatory Agency for the Supply and Distribution of Oil Fuel and Business Activities for Transportation of Natural Gas by Pipe, which was later amended by Government Regulation No. 49 of 2012. The establishment of BPH MIGAS as The Regulatory Body was then emphasized again by the presence of Presidential Decree No. 86 of 2002 concerning the Establishment of a Regulatory Agency for the Supply and Distribution of Oil Fuel and Business Activities of Transportation of Natural Gas through Pipes which later underwent a change to Presidential Decree No. 45 of 2012 in order to improve the organization.

Based on Article 8 of Law No. 22 Of 2001, downstream oil and gas regulatory body was born because of the need for a Regulatory Body to regulate, determine and supervise the availability and distribution of Oil Fuel, National Oil Fuel reserves, utilization of Oil Fuel transportation, and storage facilities, Gas transportation rates. Natural through pipelines, Natural Gas Prices for Households and Small Customers, and the operation of Natural Gas Transmission and Distribution.

Downstream oil and gas regulatory agency is currently supervising fuel distribution in 7,251 distribution agencies throughout the Republic of Indonesia, with a total fuel distribution reaching 83.3 million KL/year. In the natural gas sector, downstream oil and gas regulatory agency supervises natural gas transportation and trading through pipelines with a transmission pipe length of 5,192.12 km and a distribution pipe length of 6,133.54 km.

Its implementers must supervise business actors considering many mafia downstream oil and gas activities, including fuel mixing, misuse and diversion of subsidized fuel, modification of fuel tanks, illegal businesses, or fake permits or expired permits [7]. Based on Downstream oil and gas regulatory agency data, throughout 2020, there were 281 cases with 1,341 66 KL of evidence [7]. The issuance of Law No. 11 of 2020 concerning Job Creation can be new hope for the regulation and supervision of oil and gas in Indonesia, so that it is interesting to study further how the provisions for controlling regulations on downstream oil and gas business activities in Indonesia after the enactment of the Job Creation Law and how the effectiveness of the implementation of supervision of the business of supplying and distributing BBM and increasing the utilization of Natural Gas in the country by the Regulatory Body. This paper will
analyze the effectiveness of the implementation of supervision of downstream oil and gas business activities carried out by Downstream oil and gas regulatory body after enacting the Job Creation Law.

2 Research Methods

This article’s approach method is juridical empirical, which focuses on the enactment or implementation of normative legal provisions in action at any particular legal event in society with the research specification in the form of descriptive-analytical [8]. This article’s type of data uses qualitative data obtained based on primary data sources collected through interviews, namely a conversation, a question and answer session between the researcher and the respondent who sits physically facing each other and is directed to a particular problem [8]. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. This article’s data collection method is carried out through field studies conducted by interviewing sources at Downstream oil and gas regulatory body, especially in the Legal and Public Relations section who can provide all information related to the functions and duties of downstream oil and gas regulatory agency in business activities. Furthermore, the data were analyzed using qualitative analysis methods.

3 Results and Discussion

3.1 Effectiveness of Law of the Republic of Indonesia Number 11 of 2020 on Job Creation towards Oil and Gas Downstream Business Supervision Implementation in Indonesia

Law No. 22 of 2001 requires the Regulatory Body to be an independent body. This is then confirmed in the provisions of Article 2 paragraph (2) of Government Regulation No. 67 of 2002, which states that the Regulatory Body established to regulate and supervise the supply and distribution of Oil and Gas Fuel and Transportation of Natural Gas via pipelines in Downstream Business Activities, is a government institution which in carrying out its functions, duties, and authorities is independent. According to Nurtjahjo [9], the objective of establishing this independent state institution was due to two things, namely: Due to increasingly complex state tasks that require sufficient independence for their operations and efforts to empower existing state institutions’ tasks by forming new, more specific institutions.

In order to provide an industrial sector engaged in Energy and Mineral Resources, the Job Creation Law amends, changes, or stipulates new regulations previously regulated in Law No. 22 of 2001 concerning Oil and Natural Gas. Amendments to several provisions in the Oil and Gas Law in Article 40 of the Job Creation Law. Broadly speaking, the provisions contained in the Oil and Gas cluster emphasize changes in Oil and Gas licensing, that Oil and Gas activities, both upstream and downstream, are carried out based on Business Licensing from the Central Government, previously Oil and Gas exploitation was carried out based on a contract. Cooperation. If there is one of the requirements stipulated in the Undertaking Licensing and/or it fulfills the requirements, the Central Government may impose administrative sanctions. The consequences of changing a cooperation contract to a simple business license, the status of the
ongoing cooperation contract, whether it must be regulated or remains valid, have not been carefully regulated [10][11][12].

The duties and functions of downstream oil and gas regulatory agency as the Regulatory Body for downstream oil and gas business activities have not been regulated in the Job Creation Law, meaning that the implementation of supervision of downstream oil and gas business activities still refers to Law No. 22 of 2001 and its implementing regulations related to duties, functions, and the organizational structure of downstream oil and gas regulatory agency. Government Regulation No. 25 of 2021 concerning the Implementation of the Energy and Mineral Resources Sector as an implementing regulation of the Job Creation Law also has not accommodated oil and gas business activities, including the Regulatory Body in it.

Downstream oil and gas regulatory body understands that the supervisory body is more appropriate in nature as a referee and not a regulatory body which is a technical regulator because the technical policy regulator is the authority of the Directorate General of Oil and Gas, which speaks entirely from upstream and downstream to standards of fuel quality specifications, etc. Meanwhile, downstream oil and gas regulatory agency has a smaller portion than that, but many business activities must be supervised. Downstream oil and gas regulatory agency must supervise approximately seven thousand channeling agencies, starting from Pertamina’s distributors (SPBU, SPBB, SPBN, etc.). In carrying out its duties and functions as a Regulatory Body, it is noted that downstream oil and gas regulatory agency has issued approximately ninety regulations, of which 90% are related to the tariff for transporting natural gas through pipelines and household gas prices for small customers, which are more directed at distribution and commercial problems.

3.2 The Effectiveness of the Implementation of Business Supervision for the Supply and Distribution of BBM and the Improvement of Domestic Gas Utilization by the Regulatory Body

The Job Creation Law for Oil and Gas clusters has not fully accommodated the Oil and Gas Downstream Regulatory Agency’s authority to carry out its duties and functions in the field of supervision of downstream oil and gas business activities. There are eight Law No. 22 of 2001 amended through the Job Creation Law, including article 1, article 4, article 5, article 23, article 25, article 52, article 53, and article 55. Besides, Law the Job Creation Law added article 23A, which was inserted between article 23 and article 24. Some of the changes made were the central government’s definition, the regulation of Oil and Gas business activities, and the procedures for imposing sanctions for violations in the implementation of Oil and Gas business activities.

Following the mandate of Law No. 22 of 2001 concerning Oil and Natural Gas, the explanation of Article 47 paragraph (3) states that downstream oil and gas regulatory body is an independent body, so if it is independent, then the budget portion is not incorporated in the Ministry. Besides, so far, downstream oil and gas regulatory body personnel are filled mainly by civil servants within the Ministry of Energy and Mineral Resources. Basically, everyone’s constitutional right to hold a public office. However, this provision does not mean that the restrictions imposed are prohibited if it is in the interests of capability, integrity, and professionalism. Independent institutions, in particular, have strategic main duties and functions with great independence. If it is not filled with integrity and independent actors, it will have a negative impact on institutional independence so that its goals will be challenging to achieve.

With Indonesia’s vast territory, the centralized supervision of downstream oil and gas regulatory agency significantly hampers downstream oil and gas regulatory body performance. The existence of representative institutions in the regions to respond to public
complaints can help downstream oil and gas regulatory agency carry out its duties and functions optimally. Currently, downstream oil and gas regulatory body has to supervise quite many business activities, namely approximately seven thousand oil and gas supply agencies, starting from Pertamina’s distributors (SPBU, SPBB, SPBN, and others). It is pretty tricky to oversee such a large number with BPH Migas, which currently does not have representative offices in the regions, so downstream oil and gas regulatory body is slow to respond to public reports.

There should be a special directorate in charge of supervision and law enforcement’s facilitation regarding an organization. Like the Forestry Law case, law enforcement can be done by the Forest Police, while in the Oil and Gas Law, enforcement cannot be done alone. As currently, many illegal fuel retailers do not have road permits. According to the dimension of legal sociology, this is not a mere legal issue but also a social problem carried out by people who do not have a job. If an approach is carried out with ordinary law enforcement, it will inevitably become chaotic, so it must use a regional-appropriate social approach. So, this becomes a necessity if there is no special supervision unit; thus, the supervision will not undergo development.

To support downstream oil and gas regulatory agency independence requires several regulatory changes in the Oil and Gas sector related to the implementation of its duties and functions that need to be regulated in the Job Creation Law and all implementing regulations for this Law. Among them what is needed by downstream oil and gas regulatory body are several provisions regarding aspects of personnel, funding, and equipment that have been listed in Law No. 22 of 2001 but still require improvement, including:

<table>
<thead>
<tr>
<th>Law No. 22 of 2001</th>
<th>Law No. 11 of 2020</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>The task area of downstream oil and gas regulatory body is stated in detail in Article 46 paragraph (3) letter a-f</td>
<td>Need to insert two new letters, namely letters g and h which mention the exploitation of LNG and CNG as well as other concessions determined by the Minister.</td>
<td>The task area of downstream oil and gas regulatory body is wider in scope than what is stated in Article 46 paragraph (3)</td>
</tr>
<tr>
<td>BPH Migas supervises the implementation of the supply and distribution of BBM and Natural Gas as stated in Article 46</td>
<td>A new article need to insert, namely Article 46A which regulates the establishment of the Supervisory Commission and Representative Offices in the regions</td>
<td>The supervisory function is not optimal because of the vast territory of the Republic of Indonesia and the number of business entities that is increasing day by day</td>
</tr>
<tr>
<td>Downstream oil and gas regulatory body is independent agency as stated which explain in the Article 47 paragraph (3)</td>
<td>A new article need to insert, namely Article 46B which regulates the pattern of financial management of the Public Service Agency</td>
<td>The finance department is still part of the Ministry of Energy and Mineral Resources</td>
</tr>
<tr>
<td>The disputes between business entities for Downstream Oil and Gas Business Activities are resolved by the Police Agency</td>
<td>A new article need to insert, namely Article 47A which regulates the procedure for resolving disputes by downstream oil and gas regulatory agency</td>
<td>Supervision and law enforcement are not progressing well</td>
</tr>
</tbody>
</table>
3.2.1 Regarding LNG and CNG

Law No. 22 of 2001 mentions the types of business activities whose supervision is within the task area of the Regulatory Body as contained in Article 46 paragraph (3). In fact, the supervision carried out by the Regulatory Body is broader than what has been stated in Article 46 paragraph (3), including the Regulatory Body also supervises LNG and CNG. Regarding these provisions, 2 (two) new letters should be inserted, namely letter g and letter h, which state that the Regulatory Body shall regulate and determine the concessions of LNG and CNG and other exploitation stipulated by the Minister.

3.2.2 Regarding Representative Offices and Public Service Bodies

The Regulatory Body is a government agency that is independent in carrying out its functions, duties, and authorities. In the context of controlling and evaluating the regulation and supervision of the supply and distribution of Oil and Gas Fuel as well as the transportation of Natural Gas in downstream business activities by the Regulatory Body, it is necessary to establish a Supervisory Commission consisting of the Minister of Energy and Mineral Resources as chairman and members of the Minister of Finance. Minister of Home Affairs, Minister of Law and Human Rights, Chief of the Indonesian National Police. The Regulatory Body also requires representative offices in the regions so that the supervisory function can run optimally. Representative offices in the regions need to be established considering the vast territory of the Unitary State of the Republic of Indonesia, and the number of business entities that are monitored which is believed to continue to increase in the future, while the Regional Autonomy Law has mandated that Government affairs in the field of Energy and Mineral Resources related to the management of Oil and Gas is the authority of the Central Government. On the funding side, the Regulatory Body can apply the financial management pattern of the Public Service Agency. Determination of the Regulatory Body’s cost budget must obtain approval from the House of Representatives, in which the budget is used to finance operational, administrative, asset procurement, and other supporting activities. This provision can be inserted between Article 46 and Article 47 of Law No. 22 of 2001.

3.2.3 Regarding Dispute Resolution

In the event of a dispute between business entities conducting Downstream Oil and Gas activities, the settlement is prioritized by deliberation to reach a consensus. If deliberation to reach a consensus is not reached, the Regulatory Body takes over the dispute’s settlement, whose decision is binding and must be obeyed by the parties. This provision can be inserted between Article 47 and Article 48 of Law No. 22 of 2001.

As for downstream oil and gas regulatory body, it is still conventional in carrying out its supervisory function, so it requires changes to be based on Information Technology, for example, recommendations for purchasing certain types of fuel by using applications. Currently, verification by downstream oil and gas regulatory body is still done manually through Pertamina parties.

The regulatory substance created should be able to become a new solution in order to avoid conflicts that have occurred so far [13][14]. By making changes to regulations in the sector of Oil and Gas utilization, it is hoped that it can support the implementation of monitoring of downstream oil and gas business activities by the Oil and Gas Downstream Regulatory Body and can increase the utilization and distribution and distribution of Oil and Gas through domestic
pipelines. This needs to be done considering that Indonesia is an archipelago that requires the distribution and distribution of Oil and Gas evenly throughout the Indonesian archipelago.

4 Conclusion

Based on the results and discussion that has been carried out, it can be concluded that the provisions contained in the Oil and Gas cluster in the Job Creation Law emphasize changes in Oil and Gas licensing, which were previously carried out based on a cooperation contract, currently changing based on Business Licensing of Central government. The duties and functions of the Downstream Oil and Gas Regulatory Body have not been regulated in the Job Creation Law, meaning that the implementation of supervision of downstream oil and gas business activities still refers to Law No. 22 of 2001 and its implementing regulations related to the duties, functions and organizational structure of Downstream Oil and Gas Regulatory Body. Several regulatory changes in the Oil and Gas sector are required to support the optimization of the duties and functions of BPH Migas, which need to be regulated in the Job Creation Law, including several provisions regarding LNG and CNG, Representative Offices and Public Service Bodies and Dispute Resolution.

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References


Progressive Law as an Alternative Solution to Eradicate Money Laundering from Drug-Related Transactions

Juna Karo Karo¹, Bismar Nasution², Sunarmi³, Mahmud Mulyadi⁴
{junajunakaban@ymail.com¹}

Universitas Sumatera Utara, Indonesia¹,²,³,⁴

Abstract. Cases of drug-related criminal offenses are often accompanied by money laundering, but in practice eradication of money laundering from drug-related criminal offenses often encounters problems due to the existing regulations. Thus, a progressive law is required, to allow investigation on the money laundering crimes when there are "assets that are known or reasonably suspected to be proceeds of criminal offences". In addition, coordination between the Police and Indonesian Financial Transaction Reports and Analysis Centre (INTRAC) can be realized through an integrated function to support the law enforcement institutions to eradicate money laundering.

Keywords: Progressive Law, Money Laundering, Drugs

1 Introduction

The increasing practice of money laundering, especially in Indonesia, has caused such losses to the state that clear efforts are needed to overcome them. Considering the increasing global competition in the financial services industry, some parties continue to question the efficiency of anti-money laundering efforts. International efforts have been carried out. The practice of money laundering has received considerable attention from countries all over the world. Moreover, the money in the practice of money laundering comes from serious crimes such as corruption, drug trafficking, and terrorism. Money laundering related to drug crimes is one of the predicate crimes that underlie money laundering crimes. Efforts to eradicate money laundering often encounter obstacles, particularly the legal provisions in its handling. The court proceedings on drug-related criminal offenses often reveal cases of money laundering. Public prosecutors in charge of such cases should be given special authority because these drug-related criminal offenses are categorized as serious crimes. Therefore, a regulation to accommodate the implementation of money laundering eradication is needed, that the eradication could depart from the current legal provisions which are still rigid and need to be reformed [1].

Prof. Satjipto argues that the culmination of legal method is when people dare to break free from the shackles of legislation and find new progressive ways. In this context, we no longer perform arithmetic in mathematics or spell out legislature articles; but rather act creatively and make the leap. We use the term “leap” to define that it is not merely following or bound by past habits (commonly referred to as jurisprudence or stare decisis) but by producing entirely new
decisions. Thus, a legalistic, positive-analytical method of law is referred to as rulemaking, while the creative and intuitive thinking above is referred to as rule-breaking [2].

Based on the background stated above, the problem of this study is formulated into the question “How necessary is a progressive law in supporting the eradication efforts of money laundering derived from drug-related criminal offenses?” With the effectiveness of the eradication of money laundering practices, there will be less circulation of illegal narcotics in Indonesia.

2 Research Method

Based on the objective of the research, this study uses a normative legal method, through which the law is conceptualized as norms, principles, or dogmas. According to Soerjono Soekanto, normative legal research consists of research on legal principles, legal systematics, levels of legal synchronization, legal history, and comparative law. Two approaches were used in this study. The first one was a statutory approach carried out by examining all laws and regulations related to the legal issues being handled. The second one was a conceptual approach that departed from the views and doctrines developed in the science of law.

3 Results and Discussion

3.1 Problems of Drug Trafficking-Related Money Laundering Practices

Money Laundering can be defined as money bleaching, money smuggling, or cleaning up money from illegal (dirty) transactions [3]. The term “money laundering” can be referred to using various terms, such as dirty money, hot money, illegal money, or illicit money.

According to Black’s Law Dictionary, the term Money Laundering means:

“Terms used to describe investment or other transfers of money flowing from racketeering, drug transactions, and other illegal sources into legitimate channels so that its original source cannot be traced”. Money Laundering is a federal crime. 18 USCA.195 [4].

Money laundering should be eradicated because it can always be attached to a predicate crime, leading to other crimes. A predicate crime is a principal offense that will determine whether a person has been proven to have violated the law. According to the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC), the common predicate crimes in Indonesia are corruption and drug trafficking which later develop into money laundering offenses.

Article 1 point 1 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Offenses stipulates that Money Laundering is any act that fulfills the elements of a criminal offense following the provisions of this Law. Furthermore, Article 3 of Law Number 8 of 2010 stipulates that any person who places, transfers, diverts, spends, pays, grants, entrusts, takes abroad, changes the form, exchanges with currency or securities, or other actions on Assets known or reasonably suspected to be proceeds of criminal offenses as referred to in Article 2 Paragraph (1) with the aim of hiding or concealing the origin of the Assets shall
be sentenced for money laundering offenses with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah) [5].

Motivated by these problems, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was issued as the pinnacle of the eradication of money laundering offenses derived from illicit narcotics and psychotropic trafficking. This convention requires every country that has ratified it to criminalize money laundering through statutory regulations.

3.2 Finding Money Laundering Practices from Drug-Related Criminal Offenses

Based on the elucidation of Article 74 of the Law on Money Laundering Criminal Offenses, investigators of predicate crime can investigate a money-laundering criminal offense if they find sufficient initial evidence of the occurrence of money laundering practice when investigating its predicate crime. Thus, investigation on a money laundering criminal offense shall not be carried out if investigation of its predicate crime has not been conducted.

Therefore, if during the prosecution of drug-related criminal offenses in court, investigators found a case of money laundering, they can proceed with an investigation on such a crime as long as they have sufficient related preliminary evidence. Furthermore, it can also be emphasized that the investigation on a money laundering criminal offense shall not (absolutely) be carried out if investigation on its predicate crime has not been conducted.

Moreover, if during a court trial on a drug crime, a case of money laundering from drug-related criminal offenses is found, then, based on Article 69 of the Law on Money Laundering Criminal Offenses, the law enforcement officers are not obliged to prove the predicate crime in advance. In the case of drug crime, investigations, prosecutions, and examinations in court proceedings against the money laundering criminal offense can be conducted.

The process of handling money laundering criminal offenses involves a relatively new institution, namely the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC). The involvement of the INTRAC is more on providing confidential financial information (financial intelligence) to law enforcers. The establishment of the INTRAC as a Financial Intelligence Unit (FIU) serves as a central institution that coordinates measures in handling money laundering [6]. INTRAC performs investigative functions, including collecting, storing, analyzing, and evaluating transaction information that is suspected and presumed to be a financial crime. The role of INTRAC is to meet the international standards of the Anti-Money Laundering (AML) regime in Indonesia. As the leading institution in tackling money laundering criminal offenses, INTRAC should have a concrete role in fighting money laundering, especially with such complex modus operandi. The role of the INTRAC will affect the capability of Indonesia in preventing and eradicating money laundering practices. To make it effective, sustainable support and coordination from all parties involved is obviously required, especially from the financial institutions and law enforcement institutions. The coordination between the two institutions can be realized through an integrated function including receiving, analyzing all financial-related information, and submitting to law enforcement institutions for further action [7].
3.3 Can the Public Prosecutor Directly Investigate/Prosecute a Money Laundering Case during the Trial of Drug Crimes Based on Facts just Revealed in Court?

The relationship between money laundering and the predicate crime can be seen in Article 2 Paragraph (1) letter a which states that proceeds of crime are assets obtained from a criminal offense committed in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia, and that such offense also belongs to a criminal offense under Indonesian law. Thus, it is appropriate to argue that there will be no money laundering if there is no crime that generates money/assets (no crime no money laundering). Based on Article 1 of the Law on Money Laundering Criminal Offenses which has been described above, all suspected assets derived from the proceeds of crime which are hidden or disguised are money laundering criminal offenses. On the other hand, the money laundering criminal offense is an independent crime because it has been formulated independently in Articles 3 and 6 of the Law on Money Laundering Criminal Offenses. The process of money laundering does not have to wait for a predicate crime to be decided. This is very appropriate because in Articles 3 and 6 of Law on Money Laundering Criminal Offenses, the definition of money laundering is “assets that are known or reasonably suspected to be proceeds of criminal offenses”, but not “assets from the proceeds of criminal offenses”. Thus, with only an allegation that the assets are derived from the proceeds of criminal offenses, the money laundering crime can be charged as long as all the criminal elements and proceedings have been fulfilled.

Determining predicate crimes on money laundering in the process of law enforcement in Indonesia is difficult because the Indonesian criminal law system adheres to the principle that for an act to be declared a crime, it must go through a legal mechanism, which is marked by a judge’s decision with permanent legal force. This means that before the judge’s decision has permanent legal force, an act alleged against the suspect is in the form of a core crime cannot be categorized as a crime. For example, in corruption cases, money laundering allegations accused by the prosecutor shall be transferred to Police investigators. If the proceeds of an act which cannot be categorized as a crime, then the element of the “proceeds of a criminal act” as the condition for money laundering is not fulfilled. The legal consequence of not meeting these prerequisites is no evidence of money laundering.

In the context of no prior evidence on the predicate crime, the Police investigators, in conducting investigations on Money Laundering Criminal Offenses, have violated the principle of presumption of innocence and the principle of non-self-incrimination. The suspect/defendant of money laundering criminal offenses has been deemed guilty of a predicate crime without prior evidence of his/her fault because the judge’s decision already has permanent legal force. Therefore, based on this principle, perpetrators of money laundering can only be charged with the application of the principle of continuous acts (delictum continuatum/voortgezettehandeling). The principle states that acts continue when someone commits acts (either crimes or offenses), and those acts are somehow related should be deemed as continuous acts [8].

When a comparative study on the proof system as one of the repressive actions done by law enforcement officers against the perpetrators of money laundering is conducted in other countries, e.g. the United States, several significant differences are found. The United States, for example, courageously state that supporting evidence or guidance (circumstantial evidence) is sufficient to justify the presence of money laundering elements. Meanwhile, in Indonesia, evidence is always based on its subjective element (mens rea) and its objective element (actus reus). In mens rea, the elements to be proven are knowledge and intent. The two elements are
always closely related in revealing that the suspect, the prosecuted, or the defendant knows the original source of the money and knows the purpose of conducting the transaction. Thus, it can be seen clearly that the proof system plays a very important role and is difficult to prove the predicate offense because money laundering is a follow-up crime.

Thus, the proceeds of criminal offenses, which constitute an element of money laundering, are minimized by adding the words “that are known or reasonably suspected”. The elucidation of Article 3 of the Law on Money Laundering Criminal Offenses can clearly be interpreted that the proceeds of criminal offenses, at a minimum, have indicated initial evidence of the occurrence of a criminal offense. In other words, the elucidation of the article clearly implies that the predicate crime as the core crime of Money Laundering Criminal Offenses does not need to be proven in advance because preliminary evidence has been sufficient. This becomes the basis for the eradication of money laundering criminal offenses used by the Police to investigate indications of money laundering obtained from core crimes through an audit trail.

In the case of a Money Laundering Criminal Offense, the investigators cannot simply start an investigation if there is no report from the INTRAC. Without a report from INTRAC or Bank of Indonesia (BI), the police cannot, for example, access someone’s bank account. In the case of a drug criminal offense, investigators can charge the perpetrators with two counts. The first count is the prime crime and the second count is the Money Laundering Criminal Offense. These counts require INTRAC or BI to submit a report containing documents related to the case. The most important point in giving the authority of an audit trail (tracing the whereabouts of the perpetrator through tracing the trails of money transactions) to Police investigators on the indications of money laundering criminal offense from the initial criminal investigation is “sufficient initial evidence”, as stated in Article 3 of the Law on Money Laundering Criminal Offenses. This article, if linked with Article 2, constructs an understanding that “assets” and “that are obtained directly or indirectly from crimes” are elements of a criminal offense. In the definition of money laundering, the construction is reduced by the presence of the words “that are known or reasonably suspected”.

Until recently, the provisions in Article 75 of Law Number 8 of 2010 states that “if an investigator finds sufficient initial evidence of money laundering and its predicate crime, the investigator will combine the investigation of money laundering with its predicate crime”. Meanwhile, Article 74 states that “criminal investigation on money laundering shall be conducted by the investigator of the predicate crime following the provisions of the prevailing laws and regulations unless otherwise provided for in this Law”. However, the writers believe that an amendment to the provisions of the regulations related to drug crimes is required, such as Law Number 35 of 2009. Moreover, it could be more progressive if there is a specific regulation regarding the handling of money laundering. As a case controller (dominus litis), a public prosecutor in finding the money laundering criminal offense during the prosecution of a drug crime can immediately prosecute the money laundering criminal offense revealed in court. This is certainly more effective than waiting for a new investigation on the predicate crime (drug crime) to be carried out. Coordination of the main investigators (Police, INTRAC, etc.) can be realized through an integrated function to receive, analyze, and submit the financial-related information to law enforcement for swift action. Thus, the eradication of the money laundering practice from drug-related criminal offenses can be carried out effectively and optimally under the principles of a fast, simple, and low-cost trial.
4 Conclusion

A change in provisions should be realized to have more progressive laws and regulations relating to drug crimes. In this case, a special regulation regarding the handling of money laundering criminal offenses allows the general prosecutor, as the *dominus litis* in finding money laundering when carrying out prosecution of a drug crime, can immediately prosecute the money laundering criminal offense revealed in court. This is certainly more effective than waiting for a new investigation on the predicate crime (drug crime) to be carried out. Thus, the eradication of the money laundering practice from drug-related criminal offenses can be carried out effectively and optimally under the principles of a fast, simple, and low-cost trial.

References

Local Working Requirement on Patents Policy for Pharmaceutical Products and Its Relation to Right in Public Health

Kholis Roisah\textsuperscript{1}, Rahayu\textsuperscript{2}, Darminto\textsuperscript{3}, Leony Sondang Suryani\textsuperscript{4}
\{r_kholis@yahoo.com\textsuperscript{1}, rahayu_undip@yahoo.com\textsuperscript{2}, darmintohartono@gmail.com\textsuperscript{3}, leonysondang@gmail.com\textsuperscript{4}\}

Universitas Diponegoro, Indonesia\textsuperscript{1,2,3,4}

Abstract. Local Working Requirements (LWR) regulation in the 2016 Patent Law amended through Article 107 of Job Creation Law by elimination a requirements of technology transfer, absorption of investment, and employment. Besides that, it also adds provisions that are categorized as LWR, namely importing or implementing product or patent process licenses which can give an impact specially in the access of public health rights because it can cause medicine price high. The type of legal research used is non-doctrinal and the approach method used in this research normative juridical method by reviewing legal principles and doctrine of intellectual property rights and the provisions of national and international law regulations in the field of intellectual property rights law and health law that are enforced in Indonesia. This research found that the change of LWR regulation will have an impact on the abuse of patent rights in the form of patent blocking, which the registration of pharmaceutical patents whose purpose is only to prevent others from trading products whose technology is requested for protection and in the end can obstructing public access to cheap drugs and further hampering the independence of the pharmaceutical industry.

Keywords: Patents, Local Working Requirements, Public Health

1 Introduction

National development basically has an important and strategic meaning for Indonesia, which is aimed to improve all aspects of the life and in the same time is also a process of developing the whole state administration system. This national development effort is a manifestation of the goals of the Indonesian state as set out in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states:

"... Pursuant to which, in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice...”.

So that it can be clearly stated that the main goal to be achieved by the Indonesia is to create social justice for all people through the social service state service which is realized through
development and improvement of welfare through giving a more important role to the state in providing social services to its citizens.

Furthermore, the existence of the Indonesian as a welfare state is also regulated in Article 1 paragraph (3) of the UUD NRI 1945 which state “The State of Indonesia shall be a state based on the rule of law”. This means, as a consequence of the existence of Indonesia as a rule of law, everything should be done based on the law which makes the law must also be able to meet human needs [1]. The concept of the Welfare State (welvaartsstaat) adopted by Indonesia is the concept of a welfare state which requires the existence of regulations to be carried out by the government in an effort to realize the welfare itself where the position of the state which was previously limited to maintaining order is then expanded by giving more authority to the country to regulate the economy sector [2]. The consequence of this expansion of authority then makes the public interest as the principle of public law no longer interpreted as the interest of the state as the power that maintains order or the interests of the bourgeoisie as the basis of society of a liberal law state, but is interpreted as the interest of “gedemocratiseerde nationale staat, waarvan het hele volk in al zijn geleden gen deel uitmaakt” which means that all people at all levels are part of the state [3].

This is also supported by Utrecht's opinion that in a modern constitutional state, the government has a very wide field of work, that is to maintain security which means as all field of social security [4]. This means that in Indonesia, the government is expected to role the economic and social life of the community in addition to maintaining order and security (rust en orde) [5]. The role of the state in the concept of a welfare state formulated in the preamble of the UUD NRI 1945 which became the basis of thought for the founding fathers of Indonesia where by Moh. Hatta stated that the UUD NRI 1945 contains the spirit towards the formation of a welfare state model with the objectives to be achieved, namely. First, to control and utilize socio-economic resources for the public interest. Second, to ensure a fair and equitable distribution of wealth. Third, to reduce poverty. Fourth, to provide social insurance (education and health) for the poor. Fifth, to provide subsidies for basic social services for disadvantage people. Sixth, to provide social protection for every citizen [5].

One of the state role in creating the prosperity and welfare of the people is through the economic sector which has been strictly regulated in Article 33 of the UUD NRI 1945 which is a constitutional foundation for regulating the national economy as an economic foundation characterized by economic democracy. The economic system applied in Indonesia is the Pancasila economic system, which contains economic democracy, which means economic activities are carried out from, by, and for the people under the supervision of the government as a result of the popular elections. The economic democratic system gives meaning to the control of the assets of the source of economic strength, business fields that control the lives of the people and are controlled by the state, to keep the people from being under the control of individuals who control the production branches for the main interests and needs of the community.

One of the fields in human life that is regulated by the state is invention as a form of human intellectual creativity. An invention itself can become a patent right if it meets the requirements, including novelty, inventive step and industrial application, which means that the invention can be implemented or produced on an industrial scale. Thus, when the invention is turned into a patent right [6], an exclusive right will emerge for the owner which then creates an obligation that must be carried out by the patent owner to produce the invention in the country of origin of the patent itself and/or in other countries where the invention is registered as a patent right [7].

One of the inventions that can be registered as a patent is medicine. Basically, one of the objectives of patent registration for drugs is to ensure that the costs of research and development
of drugs required by drug manufacturers will be covered for the duration of the patent protection period (minimum twenty years). This is because with the exclusive rights arising from patents, at least during the term of the patent protection, the producers or patent holders of these drugs have the right to produce, distribute, exploit economically and prohibit third parties who are not authorized to produce drugs [8]. Regarding this purpose, developing countries including Indonesia have implemented the Local Working Requirements (LWR) which is a policy aim to improve a further dissemination and development of technology and to create an employment in the country. The LWR policy itself is adopted by Indonesia in its Patent Law, starting from Law number 6 of 1989 regarding Patents to Law number 13 of 2016 concerning Patents (Patent Law). This policy stated in article 20 of the Patent Law which states:

1. Patent holders are required to manufacture products or use processes in Indonesia.
2. Making a product or using a process as intended in paragraph (1) must support technology transfer, absorption of investment and/or provision of job opportunities.

However, the policy regarding LWR in Patents Law then has been changed by Law of the Republic of Indonesia No. 11 of 2020 on Job Creation (Job Creation Law) by adds a provisions that are categorized as LWR, namely importing or implementing product or patent process licenses which can give an impact specially in the access of public health rights because it can causes medicine price high.

2 Research Method

Research method for researchers is a way to find, analyze a particular problem to find a truth. Because the research method is a guide for scientists to study, analyze and understand the problem. This is why research method is an element that absolutely must be present in scientific research and development. The type of legal research used is non-doctrinal. In non-doctrinal legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in their interactions. The approach method used in this research normative juridical method. The juridical aspect lies in the use of legal principles and principles in reviewing, especially legal principles or principles of law and the doctrine of intellectual property rights, especially patent law, to view and analyze patent application requirements. Meanwhile, from a normative perspective, this research is a reference used by researchers to analyze existing problems, namely the provisions of national and international law regulations in the field of intellectual property rights law and health law that are enforced in Indonesia [8].

Method of collecting data is done by collecting laws and regulations, books, literature, and expert writings related to the object of the study. Furthermore, data analysis in this study uses qualitative methods, namely the selection of data obtained from research based on quality or quality so that a relevant description is produced that can answer questions in existing problems clearly and completely based on library research and then arranged systematically in order to obtain conclusion.

2.1 Implementation of LWR in Indonesia

Patents rise an exclusive rights for their owners [6] for a certain period of time to carry out their own inventions or to give their consent to other parties to carry them out. This exclusive right then creates an obligation that must be carried out by the patent owner to produce the invention in the country of origin of the patent itself and/or in other countries where the
invention is registered as a patent right [7]. In this case, especially for developing countries
LWR is useful for the spread and further development of technology, technology transfer, create
employment, increasing industrial capacity, balance of payments and economic independence
[9]. If this obligation is not fulfilled, there is a possibility that the patent will be canceled [10]
or there will be an implementation of a compulsory license [11].

In essence, LWR aims to make a new product inventions economically empower for patent
owners [12], and for users to obtain new, better and more sophisticated products. This also
applies to pharmaceutical product patents, so that with LWR, patent owners can immediately
benefit economically [13] which comes from compensation for research costs that take a long
time and are expensive to produce new drug inventions and for the public can get access to new
nutritious drugs [14].

Basically, in the Indonesia patent law system, the LWR has begun to be regulated in Law
number 6 of 1989 concerning Patents until the latest one is in Law number 13 of 2016
concerning Patents. LWR in the patent law system in Indonesia is a mandatory obligation, which
means that the owner or patent holder has the special right to carry out his patent company
independently or by giving approval to others, to make, sell, rent, submit, use, provide for sale
or rent or delivery of products that are patented and the holder also has the right to use the
patented production process to make goods. Patent holders have the mandatory obligation to
use their patents in the territory of the Republic of Indonesia and imports of products that are
patented or made using a process that are granted a patent do not constitute a patent exercise.

LWR provisions are strictly requiring a technology transfer appear in the Patent Law which
state that Patent Holders are required to make products or use processes in Indonesia. The
implementation of LWR must support technology transfer, absorption of investment and / or
create an employment opportunities. And if there is a failure such as not implementing the LWR
within 36 months or the implementation of the LWR has been detrimental to the interests of the
community, according to the provisions of Article 82 of the Patent Law it is possible to have a
compulsory license. Furthermore, a delay in the implementation of the LWR for more than 36
months can be filed with reasons and accompanied by written evidence and can have the
implication of eliminating part or all of the patent rights through a lawsuit to the Court.

Correlation between LWR and the right to health itself can be seen from what Law Number
36 Year 2009 concerning Health (Health Law) says that the meaning of healthy is conclude
physically, mentally, socially, and spiritually that allows an individual to live socially and
economically. This is then confirmed by what is mandated in Article 2 of the Health Act which
states “Everyone has the right to obtain safe, quality, and affordable health services”. The right
to health must then be seen broadly, not only the healthy condition that is felt by each individual
community and group of people, but also several other stakeholders who participate in
supporting the healthy condition which include the availability of access to proper medicines
for the community.

2.2 The Amendments of LWR Provisions and Its Juridical Impact

LWR regulation in the 2016 Patent Law was later amended through Article 107 of Job
Creation Law by elimination a requirements of technology transfer, absorption of investment,
and employment. Besides that, it also adds provisions that are categorized as LWR, namely
importing or implementing product or patent process licenses.
Table 1. LWR in Patents Law System in Indonesia

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<tbody>
<tr>
<td>Provisions</td>
<td>18,20, 82, 94</td>
<td>18,82</td>
<td>18,82</td>
<td>20,82 (1.a), 90, 132 (1.e)</td>
</tr>
<tr>
<td>Obligations</td>
<td>Mandatory with no exceptions</td>
<td>Mandatory with no exceptions</td>
<td>Mandatory with no exceptions</td>
<td>Mandatory with additional requirements</td>
</tr>
<tr>
<td>Exception</td>
<td>Economic/regional scale implementation</td>
<td>Economic/regional scale implementation</td>
<td>Economic/regional scale implementation</td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>36 months</td>
<td>36 months</td>
<td>36 months</td>
<td>36 months</td>
</tr>
<tr>
<td>Penalty</td>
<td>Null and void if it is not implemented within 46 months</td>
<td>There is no sanctions</td>
<td>There is no sanctions</td>
<td>Removal by lawsuit</td>
</tr>
</tbody>
</table>

The latest amendment to the provisions of LWR through the Job Creation Law which categorizes importing activities as part of LWR has caused a lot of criticism in the community and in academics since the beginning of the discussion of the Job Creation Bill. For the government, the implementation of regulations regarding LWR technically encountered difficulties because there were no implementing regulations. This is showed by the fact that the LWR regulation from 1989 was not implemented. In most countries the regulations on LWR are part of the national patent law system in most WTO members with many variations and various national requirements which have been evolved. LWR is a legal concept that has been fought by developing countries in response to increased patent protection during the TRIPs Agreement negotiation process. The national patent systems of countries differ in providing a definition of adequate LWR and the precise territorial scope of patent creation, the circumstances in which they will tolerate the mandate period for enforcing the patent is to be enforced, and the sanctions that will be imposed on non-functioning patents. These various regulations regarding LWR implementation then did not go as well as it should be. For pharmaceutical product patents, the disruption of LWR implementation will have an implications for the disruption of drugs availability and at the same time will obstruct people's access rights to medicines.

In the same time, actually LWR for the government is deemed contrary to the TRIPs Agreement, especially Article 27 paragraph (1) TRIPs Agreement which states, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced. And it also less in accordance with the regulations in other WTO and WIPO member countries. Besides of that, the existence of this LWR article also resulted in a decline in patent applications.

Table 2. Patent Application Data for the last 3 (three) years

<table>
<thead>
<tr>
<th>Year</th>
<th>Patent</th>
<th>Simple Patent</th>
<th>PCT</th>
</tr>
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<tbody>
<tr>
<td>2017</td>
<td>1,289</td>
<td>197</td>
<td>3,811</td>
</tr>
<tr>
<td>2018</td>
<td>1,457</td>
<td>329</td>
<td>4,919</td>
</tr>
<tr>
<td>2019</td>
<td>642</td>
<td>258</td>
<td>2,324</td>
</tr>
</tbody>
</table>

The government's reluctance to make a policy to implement LWR, especially in the field of pharmaceutical products, is also because of the pressure from America and West Europe.
which are countries of origin for pharmaceutical companies that control the production and distribution of world pharmaceutical production, including in Indonesia. As a result of the regulation of the LWR Article in the Patent Law, it has received objections from other countries, especially by developed countries which routinely register large amounts of patent ownership in Indonesia. Another thing that will have an impact is the imposition of reciprocal actions against patents owned by Indonesian inventors or the imposition of trade sanctions on Indonesian trade products abroad, where will have an adverse impact on the export trade of Indonesian products.

One of the countermeasures that will have an impact on Indonesian exports is the imposition of the GSP (General System of Preference) revocation by the United States. GSP is a program provided by the United States for several products that may be allowed to enter the United States market by being granted duty free by first fulfilling the stipulated requirements by Congress, including to provide reasonable access to the American market.

The objection of the United State of State Representatitive (USTR) when the deliberation of the bill in the DPR said that it is impractical to set up factories in all countries and most companies rely on sophisticated supply and distribution chains to serve their customers across all countries in the world [17]. The removal of the GSP, may possibly cause of potential losing the potential of Indonesia in export products that use the benefits of the GSP facility around $2.13 billion dollars of Indonesia's total exports to the United States of $18.4 billion dollars.

Even though the LWR provisions in Article 20 have not been abolished, the amendment by categorizing imports as a part of the implementation of patents and the elimination of the obligation to transfer technology still raises questions. Importation is basically about trade [18] whereas LWR is about to make an obligation about the product's production. The granting of exclusive rights to pharmaceutical product patents without being balanced with the implementation of pharmaceutical production and only importation will have an impact on the abuse of patent rights [19] in the form of patent blocking, which the registration of pharmaceutical patents whose purpose is only to prevent others from trading products whose technology is requested for protection and in the end can obstructing public access to cheap drugs and further hampering the independence of the pharmaceutical industry.

### 3 Conclusion

LWR aims to make a new product inventions economically empower for patent owners, and for users to obtain new, better and more sophisticated products. This also applies to pharmaceutical product patents, so that with LWR, patent owners can immediately benefit economically which comes from compensation for research costs that take a long time and are expensive to produce new drug inventions and for the public can get access to new nutritious drugs. The LWR regulation in the 2016 Patent Law was later amended through Article 107 of Job Creation Law by elimination a requirements of technology transfer, absorption of investment, and employment. Besides that, it also adds provisions that are categorized as LWR, namely importing or implementing product or patent process licenses. The granting of exclusive rights to pharmaceutical product patents without being balanced with the implementation of pharmaceutical production and only importation will have an impact on the abuse of patent rights in the form of patent blocking, which the registration of pharmaceutical patents whose purpose is only to prevent others from trading products whose technology is requested for
protection and in the end can obstructing public access to cheap drugs and further hampering the independence of the pharmaceutical industry.

References

Formulation of a Certification Agency for Buildings without Land Rights Based on the Principle of Horizontal Separation (Comparison to Japan)

Lilawati Ginting\textsuperscript{1}, Tan Kamello\textsuperscript{2}, Muhammad Yamin\textsuperscript{3}, OK. Saidin\textsuperscript{4} \\
\{lilawati.ginting@gmail.com\}\textsuperscript{1}

Universitas Sumatera Utara, Indonesia\textsuperscript{1,2,3,4}

\textbf{Abstract.} This research discusses the proof of building ownership based on the principle of horizontal separation. Is it possible for the Government of Indonesia to create a special agency for building certification without land rights? The Indonesian agrarian law adheres to the principle of horizontal separation, where a party can construct a building on land owned by another. To be able to protect their rights, the owner of the building requires proof of ownership that is separate from the proof of land ownership on which the building stands. As building is classified as immovable property namely object adhered to the soil, a written proof (certificate) is required as proof of ownership. This is normative descriptive research. The results show that the Indonesian government can establish a special agency for building certification without land rights, such as the National Land Agency (NLA) to ensure that buildings without land rights can possess legal certainty which enables them to be used as collateral.

\textbf{Keywords:} Certification, Building, Horizontal Separation Principle

1 Introduction

Customary law adheres to the principle of horizontal separation that is legally concrete, clear, and cash. This principle enables the legal separation of buildings or plants with the land that it is erected on. This is in accordance with the customary law that does not recognize the existence of objects that are auxiliary (hulpeaak), supplementary (bijzaak), embedded in the ground (aardvast), or planted in the ground (carrotvast). Meanwhile, the Basic Agrarian Law approaches the principle of horizontal separation in a more abstract and consensual way involving matters relating to formality [1].

With the implementation of this principle in the Indonesian land law, it is possible to separate the rights to a plot of land and the objects erected above [2].

The principle of horizontal separation is also adopted by Japan. According to the law of real property registration in Japan, land and building are considered two separate objects so that the registration process is carried out separately [3]. Therefore, their legal status is also separated which enables them to also be used as individual collaterals. The Immovables Registration Law, Law Number 24 February 1899 and Law Relating to Standing Timbers, Law Number 22 1909 states that “the most significant practical result of this distinction between land and structures thereon is that building may be owned separately disposed of. In addition, the land and buildings may separately be used as collateral securing obligations of the owner” [4].
The application of the principle of horizontal separation in Japan differs from that in Indonesia as land and building have separate registration processes and certificates as proof of rights in Japan, enabling them to become separate legal objects (e.g., collaterals) [5].

In Indonesia, although land and buildings are also legally recognized as two separate objects, only certain rights to land and apartment units are issued certificates as proof of rights in practice [6]. Currently, many buildings do not have separate certificates even though the principle of horizontal separation demands this. This causes legal problems for building owners, especially those owning property on land owned by others, in offering their property as collateral [7]. They will always have to depend on the decision of the landowner as the holder of the proof of ownership, as banks will only accept a building as collateral if there is written approval from the owner of the land rights in which the building is erected. These landowners are not obligated in any shape or form to provide their approval.

Another problem can be found in the execution of collaterals. Currently, there are no clear procedures in the transfer of building rights from the guarantor to the buyer [8].

These problems have caused banks to be hesitant in receiving buildings without land rights as collateral, even those with high prices and are backed by a normative legal basis.

The main problem in this paper is formulated as follows: Is it possible for the Government of Indonesia to create a certification agency for buildings without land rights? To answer this problem, this paper utilizes a comparative law approach on laws related to the property system in Japan and Indonesia.

2 Research Method

This paper utilizes a comparative law approach on laws related to the property system in Japan and Indonesia. Secondary data as legal material is obtained through the Building Law, the Mortgage Law, the Fiduciary Security Law, and national and international journals that are used as reference material. Conclusions are drawn with qualitative analysis.

3 Results and Discussion

Prior to the enactment of the Basic Agrarian Law on September 24, 1960, land law dualism was in force, which consisted of the ‘western land law’ derived from the Civil Code and ‘customary land law’ derived from customary law [9]. The ‘western land law’ applied natrekking/aceszie (the principle of accession) as outlined in Article 500, Article 572, and Article 601 of the Civil Code while the customary land law applied horizontale scheiding (the principle of horizontal separation).

3.1 Difference between the Horizontal Separation Principle and the Vertical Accession Principle

The vertical accession and horizontal separation principles address the relationship between land and the objects erected on it differently. In this case, the principle of accession explains that land ownership covers buildings, plants, and objects erected on it. In other words, the landowner is automatically considered the owner of any buildings on it. Meanwhile, the
principle of horizontal separation separates the ownership of land and any objects on it. Therefore, the party responsible for the construction of a building is considered its owner, regardless of land ownership.

The Basic Agrarian Law replaces land law dualism with a national land law system that is registered in the national spirit (volksgeist) of Indonesia. In other words, the articles contained in the Basic Agrarian Law are the realization of customary law as the “main basis” and “supplement” [10]. This is contained in the preamble of the letter a, Article 2 Paragraph (4), Article 3, and the explanation of Article 5 of the Basic Agrarian Law. On this basis, Indonesia applies and is subject to the principle of horizontal separation.

The differences in the vertical accession and horizontal separation principles can be seen in the table below:

<table>
<thead>
<tr>
<th>Difference</th>
<th>Horizontal Separation Principle</th>
<th>Vertical Accession Principle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source</td>
<td>Indonesian Customary Law</td>
<td>Western Laws</td>
</tr>
<tr>
<td>Legal Basis</td>
<td>the preamble of the letter a, Article 2 Paragraph (4), Article 3, and the explanation of Article 5 of the Basic Agrarian Law.</td>
<td>Article 500, Article 572, and Article 601 of the Civil Code.</td>
</tr>
<tr>
<td>Rights Owner</td>
<td>Primary and secondary rights holders (two parties)</td>
<td>Land rights holders are also building rights holders (one party)</td>
</tr>
<tr>
<td>Proof of Rights</td>
<td>Building Ownership Certificate</td>
<td>Land Rights Certificate</td>
</tr>
<tr>
<td>Overseeing Institution (Legal Certainty)</td>
<td>Mortgage rights</td>
<td>Hypoteek</td>
</tr>
<tr>
<td>Execution</td>
<td>Fiduciary</td>
<td>Mortgage rights</td>
</tr>
<tr>
<td>Rights holders may be different parties</td>
<td>Straightforward; the rights holder is one party</td>
<td></td>
</tr>
<tr>
<td>Benefits (Futuristic)</td>
<td>Supports development as it will not be limited by land area</td>
<td>Inhibits development as the population continues to grow, reducing the area of land that can be developed</td>
</tr>
</tbody>
</table>

Source: Processed secondary data, specifically related laws and regulations.

Based on the table, the principle of horizontal separation supports population growth as available land continues to decrease. However, it provides less legal certainty as the building ownership certificate has not been realized.

The principle of vertical accession requires further revisions as it denies building ownership for those not in possession of land rights. This principle does not support rapid population growth and seems to be more catered to capitalists who own large swaths of land.

### 3.2 Land and Building Owners as Different Entities

The national land law gives authority to primary and secondary land rights holders to control and use the land. Primary/original rights are directly granted by the state to the rights holders. It is obtained through an application for rights to the state (e.g., Ownership Rights, Building Rights on Land, Right of Exploitation, Use Rights, and Management Rights). Secondary/derivative rights arise or are imposed on existing land rights. It is obtained through
an agreement between the primary rights holder with the prospective secondary right holder (e.g., Lease Rights on Land, Building Rights on Land, Right of Exploitation, and Use Rights)

Land ownership can be proven with a land certificate which acts as proof of title; this is considered a strong piece of physical and juridical evidence [11]. Meanwhile, building ownership can be proven with a Building Ownership Certificate issued by the local government [12].

More than one Building Ownership Certificate can be issued for a building; it can be owned by multiple parties. In addition, building ownership can be transferred to other parties. Parties wishing to construct a building must do so on land with a clear ownership status. Those who do not own land can do so on land owned by other parties by obtaining the approval and land use permit from the land rights holder in the form of a written agreement.

The written agreement must be made before the relevant authorities and contain at least: the rights and obligations of the parties, area, location, land boundaries, building function, and duration of land use.

3.3 Emulating the Japanese Property System

As there have been no government regulations issued regarding building certificates based on the Building Law to date, the Japanese property system, which adheres to the principle of horizontal separation can be referred to [3].

Japanese land law has seen innovations since the modernization of ‘chiso-kaisei’ (land tax law). Since the feudal Tokugawa Government in 1868 (Meiji Era) was overthrown, the Meiji Era Government rejected and attempted to modernize the feudal land system. The modernization of land ownership and the land tax system was of great importance to the government as ‘chiso’ (land tax) was the only source of government revenue at that time [3].

For these reasons, it was necessary: 1) to recognize the freedom to sell real property, which was officially banned by the Tokugawa Government; 2) to establish a modern regime of real property, and; 3) to provide new landowners with certification. This certification was known as ‘chiken’ (property certificate) [13].

Following preparations made by the Ministry of Finance for the Okubo Government, the freedom to sell land was declared in February 1872. In the same year, ‘chiken’ was issued to all private land. This certification is non-negotiable as it is intended to be a legal guarantee. Following the issuance of the ‘Fudousan-touki-hou’ (Land Registration Act) in 1899, ‘chiken’ was replaced with the Registration system and no longer exists since then. On July 28, 1873, the ‘Chiso-kaisei-hou’ (Dajoukan Proclamation Number 272 of 1873) was announced and a new land tax was imposed. The annual tax rate was set to 3% of the land value and eliminates years of ‘remissio mercedis’ (tax exemption due to poor harvest) that occurred under the Tokugawa system. The tax rate is relatively high as the law aims to maintain a national income stream that is substantially the same as the Tokugawa system [3].

The modern Japanese property regime is a by-product of the modernization of the tax system. There are many irrational points regarding taxation, especially heavy taxation (including infra (2)). In 1877, the tax rate was lowered to 2.5% after massive riots in several districts against the 1876 New Tax Law [3].
a. In most western countries, land and building are considered a single unit.

Land and building share the same interests. In Japan, however, they are treated as separate entities under property law. As buildings are considered independent immovable property, there is a separate registration system for land and buildings. This practice originates from a Japanese
tradition during the enforcement of the Japanese Civil Code. The first Japanese Civil Code also followed this tradition [3].

German BGB §94 (1) states that: “The essential parts of a plot of land include the things firmly attached to the land, in particular buildings, and the produce of the plot of land, as long as it is connected with the land. A seed becomes an essential part of the plot of land when it is sown, and a plant when it is planted”; On the other hand, under German law, buildings and products from land that cannot be separated without one or the other being destroyed or undergoing a change of nature are considered ‘wesentliche Bestandteile’ (essential parts) and cannot be the subject of separate rights [3].

b. Land and buildings do not necessarily have to be owned by different parties, as a building cannot continue to exist without land. In fact, in most cases in Japan, both are owned by the same party.

However, there are cases where a building belongs to another party. This primarily occurs from the mandatory sale of land or buildings erected on it. The Japanese Civil Code contains provisions regarding ‘statutory superficie’ (‘houtei chijouken’), including Article 388 which states that: “If the land and buildings on it belong to one party and either is mortgaged, then the debtor is deemed to have created a superficie for buyers in an official auction. In such a case, the lease will be determined by the Court based on the claim of the parties concerned”.

For example, A obtains ‘chinshakuten’ (the right to lease land) on B’s land and builds a house on it, and B then sells the land to C. In this case, A cannot continue leasing as the right only states B as the leaser. This is known as ‘Kauf bricht Miete’ (lease broken due to sale). C can demand the house to be moved. If A has full ownership of the house and B sells the land to C, then the land will belong to C and A can claim compensation for unfair treatment with a value equal to the house.

Article 605 of the Japanese Civil Code states that: “A lease of immovable property, when registered, shall also be effective against a person who subsequently acquires real rights for the immovable property”. This provision aims to protect A from the sale between B and C. In practice, however, lease registrations are rare. Landowner’s dislike and refuse any form of registration related to Article 605. After the enactment of the Civil Code in Japan, the new law was enacted in 1909. Article 1 of ‘Tatemono-hogo-hou’ of 1909 (Law on Protection of Buildings on Leased Land) states that: “even in non-registered land if the land tenant owns a registered building, the rights are effective towards whoever obtains real ownership rights to the land. In this case, land tenants do not need to register the leased land, only the building itself”. ‘Tatemono-hogo-hou’ allows A to lease the land from the new landlord, C, by registering the house. A cannot register a lease on the land register without the consent of the landowner but can register his ownership on the housing register on their own accord. The following laws allow A to enforce their right under lease towards the new homeowner through a handover of the building [3].

Article 1 Paragraph (1) of the Rented Housing Act states that: “Although not registered, building lease must be carried out if it has been handed over, and is effective towards anyone who obtains real rights to the building. In this case, the tenant does not need to have registered the building being rented out; only a handover is required” [14].

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1 Since traditional Japanese buildings are small and made of wood, it is relatively easy to move them into sections. Sometimes buildings are treated as movable rather than immovable property.

2 Many problems arise from a system that treats land and any buildings on it as an independent interest. Cf. Ono, Hougaku-Kenkyu No. 36, p. 69, note 12.
The statements in this section establish that Japan has a legal institution that issues certificates for buildings without land rights. Japan implements a registration system in handling rights to buildings without land rights.

Registry offices are divided between those that conduct registration affairs using a computer system by preparing a registry on a magnetic disk (computer-based offices) and those that conduct registration affairs by keeping a registry in binder format in which land/building registration forms are organized in files (book-based offices).

a. Computer-based offices: a registry is prepared on a magnetic disk. At computer-based offices, anyone can be issued a certificate of registered matters (document certifying the whole or part of the registered matters) and anyone can be issued a written outline of registered matters (document stating the outline of registered matters) by submitting a prescribed request form. This certificate of registered matters is the same content as a transcript or extract of a registry.

b. Book-based offices: a registry, which organizes registration forms in files, consist of a land registry and a building registry. At book-based offices, anyone can be issued a transcript or extract of a registry and anyone can inspect a registry by submitting a prescribed request form.

3.4 Formulating a Certification Agency for Buildings without Land Rights Based on the Principle of Horizontal Separation in Indonesia

The principle of horizontal separation as reflected in the Basic Agrarian Law has been further developed with the promulgation of the Building Law. However, there are currently no related government regulations that act as implementing regulations. This has caused the Building Ownership Certificate to be unable to be issued. Even though in a ‘legalistic positivist’ manner (legal point of view), fiduciary security institutions will accept collateral of assets bound to the principle of horizontal separation, banking institutions as creditors much less prefer to deal with such assets, even if it fetches an excellent price, as they do not have legal certainty.

The findings show that the establishment of a Certification Agency for buildings without land rights based on the Japanese system can solve these legal problems.

The land is regulated in the fourth part of Law Number 11 of 2020 concerning Job Creation (also known as the Omnibus Law). The first paragraph, as contained in Articles 125 to 135, regulates the “land bank”. The second paragraph regulates the Reinforcement of Management Rights as contained in Articles 136 to 142. The third paragraph regulates Apartment Units for Foreigners as contained in Articles 143 to 145. The fourth paragraph regulates the Granting of Land/Management Rights to Attics and Basements in Articles 146 and 147.

Article 125 of the Omnibus Law states that the central government is to establish a land bank agency, defined as a “special agency that manages land”. Article 126 Paragraph (1) of the Omnibus Law states that the land bank agency guarantees the availability of land for public and social interests, national development, economic equality, land consolidation, and agrarian reform to ensure a just economy. The land bank agency utilizes restricted state assets and functions to carry out planning, acquisition, procurement, management, utilization, and distribution of land. Therefore, the agency is responsible for issuing rights to buildings without land rights. Banks are obliged to accept such buildings as collateral as it has legal certainty.

The government can use the Japanese Building Registration Agency as a basis in forming the Land Bank Agency. Laws or implementing regulations are to be issued from the Building
Law that has been promulgated previously.

The regulations regarding rights to buildings without land rights that can be transplanted from Japan are as follows: First, land and any buildings erected on it are treated as separate entities in property law. As buildings are considered independent immovable property, there is a separate registration system for land and buildings. This practice originates from a Japanese tradition during the enforcement of the Japanese Civil Code. Second, a land tenant erecting a building on land can renew their lease to a new landowner by registering the building; they are not obliged to register the land. Third, the owner of a building without land rights cannot register the lease on the land register without the consent of the landowner. However, they can register the ownership of the building on the register of buildings without land rights with no additional requirements.

Japan has established a legal institution for issuing building certification that is independent of land rights. This system can be transplanted and implemented in Indonesia.

4 Conclusion

The principle of horizontal separation, which is manifested in the form of the right to construct a building on land owned by other parties, greatly supports economic activity. Through this principle, legislators can secure future developments of the country through the Building Law and Omnibus Laws as land availability continues to decrease while the need for land increases. To ensure legal certainty, the Indonesian government should create a certification agency for buildings without land rights based on the property system in Japan. In doing so, buildings without land rights can be used as collateral due to possessing both economic value and legal certainty.

References

[10] Considerant Letter a, Article 2 Paragraph (4), and Explanation of Article 5 of the Basic Agrarian Law.
[12] Pemerintah Republik Indonesia, Article 8 Paragraph (1) Law Number 28 of 2002 concerning Buildings; Article 1 point (19) and point (21) of the Republic of Indonesia Regulation Number 16
of 2021 concerning Regulation Implementation of Buildings Law...


Legal and Moral Relations: Legal Protection for Women as Victims of Sexual Harassment in the Digital Age

Marisa Kurnianingsih, Kelik Wardiono, Khudzaifah Dimyati, M. Zaki Attirmidzi
{mk122@ums.ac.id, kw268@ums.ac.id, kd255@ums.ac.id, zakiattirmidzi@gmail.com}

Universitas Muhammadiyah Surakarta, Indonesia

Abstract. Sexual harassment is a term used to designate certain behaviors in society towards women. Sexual harassment has been around for a long time, and is one of the major crimes that have an impact on and have an impact on the social fabric of the Indonesian nation. However, in its development, sexual harassment in the digital world often occurs and even collides with the absence of laws that regulate it, so that women do not get proper protection. This paper is based on a doctrinal (normative) approach which aims to describe the characteristics of sexual harassment in the digital world and describe how legal and moral relations provide legal protection for women victims of sexual harassment. In this paper, it will be noted that the separation of law and morals does not provide protection for women from sexual harassment in the digital world.

Keywords: Legal, Moral, Women, Sexual Harassment, Digital

1 Introduction

Sexual harassment is a term used to refer to a certain behavior in society towards women, the term sexual harassment is the equivalent of what is in English called “sexual harassment”. Therefore, the word harass or harassment always connotes sexual behavior which is considered negative and violates the standard [1]. The United Nations defines sexual harassment as gender based abuse which means:... Any act of gender based violence that result, in physical sexual, or psychological harm or suffering to women including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public private live.

Sexual harassment has been around for a long time, and is one of the major crimes that have an impact and take effect on the social fabric of the Indonesian nation [2]. Perpetrators of sexual harassment are not dominated by those who come from the middle or low economic class, let alone less or not at all educated, but have penetrated the social strata from the lowest to the highest strata [3]. Today, with the development of technology, sexual harassment does not only exist in the offline world but has entered the online world. This harassment is harassment of a person's body, sexuality and gender identity facilitated by digital technology. The latest data shows that online-based gender harassment is estimated to increase by more than 40% in 2020. There were 281 cases recorded throughout 2019, while there have been 659 cases in the last 10 months alone. This action took the form of distributing photos, videos and screenshots of the conversation between the perpetrator and the victim. The distributed content contains elements of intimacy and victim pornography [4].
Moreover, the Covid-19 pandemic, which has forced many people to live in cyberspace to prevent transmission of the virus, has exposed women to an increasingly high level of sexual harassment in the digital world. Ellen Kusuma from Digital At-Risk, revealed that messaging applications such as WhatsApp, Line, Telegram and others are the most frequently used channels for perpetrators to commit sexual harassment (40%), followed by social media applications (19%), video conferencing applications (16%), internal company applications (10%), email (7%), telephone (5%), and SMS (3%) [5]. They need for legal protection for victims of sexual harassment is a must in a rule of law as a guarantee of protection and discrimination against women.

Indonesia is a constitutional state based on the one and only God, so this conception emphasizes that the laws and regulations in Indonesia must always be in line and in no way contradict the basis of one God and religious values and living law that are in accordance with the development of society. In this case, it strengthens its identity and identity as a godly constitution [6]. Seeing that there are cases of sexual harassment against women, the legal umbrella still has weaknesses [7] one of which is the scope of sexual harassment in the Criminal Code. In short, it can be said that the crime of decency is a crime related to morality. This short and simple definition, when studied further to find out how far the scope is, is not easy, because the understanding and boundaries of morals and laws are quite broad and can vary according to the views and values prevailing in society. Moreover, basically every criminal act (offense) contains violations of certain moral values; it can even be said that the law itself is essentially a minimum of moral values (das Recht ist das ethische Minimum). Thus, actually it is not easy to determine the boundaries or scope of decency crimes [3]. For example, the case of a motorcyclist who squeezes a woman's butt while walking and a motorcyclist masturbates under a pedestrian bridge, Ahmad Yani, West Bekasi, where this has been happening for years [8] and an example of a case of a woman being invited to spend the night in a hotel with a man who is not her mahrom, but the woman refuses.

There are no different from the real world, cases of harassment also occur in the digital world, such as via chatting between a man and a woman where a man uses sex-related words to the woman (the victim) either to have sex with him, or praising the victim's body with porn words. As a result, there is an unclear article regarding the criminal act of decency (sexual harassment) that is carried out online which is contained in the Electronics Information and Transaction Law because it does not provide an explanation of what is meant by violating decency [9]. Van Bemmelen gave a description of “destroying morality”, namely: a violation of the honor of decency in public is a translation of “public outrage a la pudeur” in Article 303 of the Penal Code, this can be interpreted as “no sexual decency”. So polite is an action or behavior that a person does not need to be ashamed of when other people see it or get to know it and also therefore that person generally will not be surprised when he sees or even finds out.

From the introduction above, the issues raised are: 1) What are the characteristics of sexual harassment committed against women in the digital era, seen from the perspective of legal and moral relations? 2) What is the concept of legal protection for women as victims of sexual harassment in the Digital Age, from the perspective of legal and moral relations?

2 Research Methods

This research is based on a doctrinal (normative) approach, because it is intended to describe the characteristics of sexual harassment committed against women and explores the
3 Result and Discussion

3.1 What Are the Characteristics of Sexual Harassment Committed Against Women in the Digital the Perspective of Legal and Moral Relations?

Sexual harassment occurs when the perpetrator makes undesirable sexual advances or seduction, the perpetrator asks the victim to have sexual intercourse or simply asks the victim to send a photo of the victim naked via social media. The terms of sexual harassment include types of cyber harassment, stalking, abuse of images/videos and hate speech that are sexist. In general, several countries in the world divide sexual offenses into two forms, namely non-physical contact and physical contact. Non-physical contact includes displaying sexual objects directly, luring victims online for sexual purposes, inviting victims to touch sexual organs online and/or offline, peeking, pornography, asking or commenting on sexual matters, suggesting or forcing the victim to masturbate, or witnessing other people masturbating, showing off or exhibiting sexual activities/activities, showing the victim's genitals. While physical contact is in the form of touching or fondling the victim's genitals and/or chest, suggesting or forcing the victim to touch or fondle another person's genitals, oral sex, penetration of the penis into the victim's vagina or anus, penetration of fingers or other objects into the victim’s vagina or anus.

However, with the development of technology, sexual harassment crimes have developed and shifted forms, crimes that are not only in the real world related to the victim's physical, but also began to penetrate into sexual harassment that attacks the victim psychologically. This is inseparable from the role of social media which takes over life in society which makes human interaction seamless and freer in expressing itself. Freedom in social media makes people start to act more courageously and abandon moral values even when the behavior is considered normal.

The development of the world of digitization has led to many Cyber Crime crimes, one of which is the crime of sexual harrasement through social media. From 2017 to 2020, sexual harassment through social media has increased significantly.

<table>
<thead>
<tr>
<th>Year</th>
<th>The Amount id Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>17 Cases</td>
</tr>
<tr>
<td>2018</td>
<td>97 Cases</td>
</tr>
<tr>
<td>2019</td>
<td>281 Cases</td>
</tr>
<tr>
<td>2020</td>
<td>786 Cases</td>
</tr>
</tbody>
</table>


Seeing the number of cases that are increasing every year, the need for more attention to women as victims of sexual harassment through the digital world. The problem is why cases of sexual harassment are increasing because of 1) Victim blaming; 2) legal illiteracy; 3) Lack of legal support; 4) The apparatus is less responsive. And if you look at article 27 paragraph (1) of
the Electronics Information and Transaction Law where the article apart from the definition of decency has no clear reference, if you look at the Criminal Code, the digital is not very clear, and also the article only focuses on defending his decency, does not notice the victim and no restrictions [9].

Circumstances that do not support women make cases of sexual harassment to women continue to increase and become increasingly difficult. Because various parties justify the act of sexual harassment or make it look as if the victim is the one responsible for the crime they receive. Plus the law is also limited in scope and does not make women as legal subjects who really need to be protected from crime.

Some forms of sexual harassment that are currently problematic and have been subject to legal provisions are as follows [11]:

a. Sexting (Sex Texting), a form of verbal sexual harassment that often occurs in the digital realm. This is the activity of sending or uploading intimate content such as nude photos, semi-nude photos, as well as text messages with sexual content

b. Non-Consensual Dissemination of Intimate Images, this is the distribution of photos, sound/audio, video, or speech that contains sexual content without the person's consent. One form that is often heard is revenge porn or the spread of someone's intimate content as a form of revenge or threats.

c. Body-Shaming, in this case apart from attacking sexuality, the perpetrator of the harassment often attacks the gender aspect.

d. Scamming, is the activity of deceiving someone through dating applications or social media by creating fake stories that attract sympathy, then build the target's trust, so that the perpetrator asks for money.

If we look at the forms of sexual harassment above, it can be seen that these acts are dominated by acts that attack women non-physically but make women objects of sexual satisfaction. Acts of sexual harassment in the digital world sometimes do not get legal protection because they are considered “reasonable” by society, so that legal protection cannot be comprehensive even though it is clear that the act violates morals in society, we can see this from the table below:

<table>
<thead>
<tr>
<th>The acts of Violation</th>
<th>Violation of Positive Law</th>
<th>Violation of Morals</th>
</tr>
</thead>
<tbody>
<tr>
<td>The news “Affected by Men Seducing on Social Media 14 Young Women Willing to Send Naked Photos and Videos”. Source: Liputan 6.com on August 26th 2020.</td>
<td>Article 37 of Law Number 44/2008 on Pornography, Article 45 paragraph 1 in conjunction with 26 paragraph 1 of Law Number 11/2008 regarding amendments to Law Number 19/2016 concerning amendments to Law 11/2008 concerning Information and Electronic Transactions</td>
<td>There is a moral violation</td>
</tr>
</tbody>
</table>
The News “Perpetrators who spread indecent photos, face 12 years in prison”.  
Source: infojambi on August 28th 2018.

In such cases there is sexual harassment in the form of:

a. Sexting (Sex Testing).
b. Non-Consensual Dissemination of Intimate Images.
c. Scamming.

The victim here was invited to have sexual intercourse, which if it is done then it has fulfilled the act of which the legal subject of the victim is a child where the perpetrator makes threats of violence, commits tricks, commits a series of lies, or persuades the child to commit or allow obscene acts to be committed.

The news “GA, artists, have become suspects for not being careful in storing videos with pornographic content”.  
Source: Kompas.com on December 29th 2020.

In the news, GA was charged with the Pornography Law even though she was not the perpetrator of the distribution of the video.

a. Prohibition of producing, reproducing, duplicating, disseminating, broadcasting, offering, trading, renting, providing pornography that includes grasping, sexual violence, masturbation, nude, genitalia or child pornography.
b. If men and women agree or give mutual consent to make pornographic photos or recordings, then men distribute pornography, but women previously did not give a firm statement to prohibit men from disseminating or disclosing the pornography, then women can...
be ensnared in the crime of pornography, if women previously has made a firm statement that she agrees to make pornography but does not allow men to disclose or distribute it so women have a stronger position not to be blamed for participating in the dissemination of pornography.

c. If a woman is not aware of the creation of pornographic photos or videos from the start, or does not give consent to the production of pornography, in this case the woman is called a victim.

<table>
<thead>
<tr>
<th>The news “Only Knew in Social Media, 16 Years Old Girl Harassed by 4 Men”. Source: Okezone.com on March 11th 2020. Actions that violate the sense of decency, or heinous acts, and are all in the scope of sexual lust, such as kissing, groping genitals, groping breasts, and so on.</th>
<th>Article 76D in conjunction with Article 81 and Article 76 E in conjunction with Article 82 of Law Number 17/2016 regarding amendments to Law Number 23/2002, if done to adults subject to Article 289-296 of the Criminal Code.</th>
<th>There is a moral violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The act of human trafficking for the purpose of exploiting that person in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia.</td>
<td>Articles 2-4 of Law Number 21/2007 on Human Trafficking</td>
<td>There is a moral violation</td>
</tr>
<tr>
<td>The news: “Catcalling Verbal Abuse Can Occur in Social Media”. Source: rdk.fidkom,uinjkt.ac.id on July 20th 2020. Sending messages or comments that sounds of verbal abuse on someone's upload, such as the phrase “Hi beautiful, you are sexy, you are BO, you make me lust....”.</td>
<td>Not Regulated</td>
<td>There is a moral violation</td>
</tr>
</tbody>
</table>

| a. Request and send photos or videos that contain sexual content with the consent of the victim and are not being disseminated. | Not Regulated | There is a moral violation |
| b. Sending voice messages containing sexual content with the consent of | | |
The victim and not being disseminated.

Seeing the table above explains that every violation of positive law is part of a violation of morals, but on the other hand, an act of violation is a moral violation but not a violation of positive law. It can be seen that sexual harassment in the digital world such as sending messages or comments, requesting photos or videos, and sending voice messages which are all covered with sexual content is against the law and morals. However, if the act is carried out with the consent of the victim or in the form of verbal catcalling, it is an act that violates morals but has not been regulated in Indonesian legislation. Because basically the law protects or gives a sense of security to someone from actions that violate decency or morals.

If law and morals are separated, the law will only be like an empty container that has no contents, because the law will not be able to carry out its function. This occurs because of the separation between violations of positive law and violations of morals. Regarding the separation of law and morals according to Hart, rules of recognition will not exist and work if there is a separation between legal and moral principles. Because if between law and morals are separated, for moral violations that are not regulated in violations of positive law, it is clear that there is no legal certainty and even the perpetrator cannot be ensnared by positive legal rules. In the context of a crime of decency, it has been explained that there is a limitation of language to be able to provide a high-precision definition (precision principle). The limitation of the formulation of the offense which is literally never able to provide complete and complete clarity is a situation which is recognized by experts in particular. This can be indicated by the frequent use of laws and regulations that use global generic terms and can never precisely indicate what actions are punishable by the criminal provisions [12].

According to Hart, law can be understood through two types of rules, namely primary rules and secondary rules. Hart claims the combination of these two rules is the key to understanding the law. Hart's point is that through these two types of rules many ideas about legal obligations and validity can be explained. Primary rules are the basis of people's lives. Meanwhile, the secondary rules are the rules that underlie the enforcement of the primary rules. Secondary rules consist of three types, namely rules that determine legal validity or recognition, rules that give power to certain bodies to make changes (rule of change), and rules that give someone the power to give decisions (rule of adjudication). According to Hart, the combination of primary and secondary rules is the essence of law. In other words, law for Hart is a system of rules. This view of the legal model influences Hart's view of the relationship between law and morality. Hart acknowledges that law and morality have an important relationship. However, this relationship is not an absolute relationship. That is, the definition of law does not have to involve morality; legality does not have to be determined by morality [13].

Related to the relationship between law and morality. Hart insisted that the two be separated. Hart argues that the validity of law is not determined by morality but by the rules of recognition that apply in a legal system. This means, rules that are contrary to morality and a sense of justice, as long as these rules have met official procedures or are contained in the book of Law, are considered valid rules. Thus, the law can no longer be criticized based on morality [13].
So in this case if law and morals are separated, the rule of recognition will not work, so the element of decency in question must at least refer to the provisions in court practice or the judge in making decisions must make a reference to non-legal sources (extra legal)/morals to get the most accurate and approachable interpretation and understanding. Even though a country that upholds the value of legal justice, morality takes precedence.

3.2 How the Concept of Legal Protection for Women as Victims of Sexual Harassment in the Digital Age from the Perspective of Legal and Moral Relations?

Law is a rule as a system of rules about human behavior [14]. The presence of law in society is among others to integrate and coordinate interests that can collide with one another, integrated by law so that collisions can be minimized [15]. The importance of legal protection is that there are rights protected by law, these rights provide enjoyment and freedom to individuals in taking action even though there are restrictions [16]. This is also emphasized in Article 28G of the 1945 Constitution where everyone has the right to legal protection and is entitled to a sense of security and protection from any threat.

From the problems above, in this case the writer takes an approach by using the concept of morality of the Medina charter law based on the prophetic paradigm. Whereas norms, along with moral and religious norms, can be seen as a “way back” to nature, or a guide to return to nature. As a public norm (to return to nature), the law must be maintained in such a way so as not to be misleading and not misled. This is a legal morality that must be upheld. In the context of this morality, the law must be a true, good, and fair in order to be materialized so that the longing to return to nature. Because if what you are looking for is the opposite, then the law will only function as a dark way that will keep people away from their nature [17].

So morals must be exist and become the core of the law, not on the contrary to separate law and morals which can make the law empty. Because the vacuum in the law makes justice unenforceable and expands the damage to the fabric of people's lives.
Therefore, in order to maintain the spirit of unity and integrity in the state of Medina (Ukhuwah Islamiyah), the Prophet Muhammad SAW applied the principles of a state based on the concept of “moral Islamic law” in the Medina Charter. Islamic morality is laid as the foundation for every principle in the Medina Charter, where these principles are derived from the Koran and the Sunnah, including [18]:

a. The Principle of Deliberation
   In dealing with every problem, deliberation is required to solve every problem of the state. This obligation is borne by every implementation of state power in implementing its power.

b. The Principle of Justice
   Upholding justice is the duty of believers, every believer when he becomes a witness he is obliged to become a witness because of Allah, honest and fair, including that humans are prohibited from following lust and distorting the truth.

c. The Principle of Equality
   Whereas men and women are basically the same and have the same position.

d. The Principles of Recognition and Protection of Human Rights
   That there is recognition and protection in matters of human equality, human dignity and human freedom. In this case rejects every form of treatment and attitude that might destroy the principle of equality such as discrimination in all spheres of life, feudalism, colonialism, etc.

e. Principles of Free Justice
   This principle is closely related to the principles of justice and equality, that judges have free authority in the sense that every decision taken is free from anyone’s influence. The principle of free trial is not only a rule of law, but also an obligation that must be carried out for every judge. Free trial is a requirement for upholding the principles of justice and equality of law.

f. The Principle of Peace
   That in facing every problem, one must uphold and prioritize peace.

g. The Principle of Welfare
   That the principle of welfare aims at realizing social justice and economic justice for all members of society or the people. This task is assigned to state officials and the public. In this case, it does not only provide material fulfillment but includes the spiritual needs of all the people. The state is obliged to pay attention to these two kinds of needs and provide social security for those who are underprivileged and poor.

h. The Principle of People's Obedience
   In this case the relationship between the government and the people must respect and appreciate each other, mutual help, love the homeland, and create justice and prosperity.
So that in this case, if it is related to the protection of women as victims of sexual harassment in the digital world with the concept of morality of the Medina Charter, it is necessary in this case that law is also a part of morality which becomes an inseparable unity. In terms of reform of criminal law regarding legal protection of women as victims of sexual harassment in the digital world, according to Friedman, divides it into three elements, namely the substance element, structural elements, and elements of legal culture [19].

In the substance element, it is the stage of policy formulation as part of the legislative process of a statutory regulation, so that the formulation of criminal law is interpreted as an attempt to make and formulate a good criminal law [20]. In the stages or elements of substance, the merging of law and morals can be done by imitating the Medina charter which does not separate law and morals so that it can cover various aspects of interest. Protection of women needs the latest breakthrough to realize complete protection, not only relying on existing regulations, because it has been proven unable to provide protection to women. Regarding legal protection for women, namely passing/revising laws and other regulations to prevent sexual harassment that is carried out online, by prohibiting and criminalizing sexual harassment, especially the dissemination of intimate images without consent, online harassment and stalking. The criminalization of sexual harassment online must cover all elements of abuse including re-sharing of content. Then threatening to distribute intimate images/videos without consent must be made illegal so that law enforcement officials can intervene and prevent it before it occurs, and what should be highlighted is that in cases of online sexual harassment, gender perspective must be used in analyzing all forms of sexual harassment.

Then the structural element, namely the stage of the application of criminal law by law enforcement officials starting from the police, prosecutors, courts. This structural stage is the power in terms of implementing criminal law by law enforcement officials or courts [21]. So far, law enforcement officers generally do not have a gender perspective. Law enforcement officials tend to be gender biased and blaming the victim. Sensitivity to gender issues has not become a common discourse for law enforcement officials, so the victimization of victims in the legal process is still common. This is where the importance of knowledge of law enforcement officials to translate legal rules that have a gender perspective into the practice of implementation by law enforcement officials who must have gender insight and sensitivity [22].

The third element is the element of legal culture, this component of legal culture is very decisive in law enforcement efforts. There are times when law enforcement in a community is very good, because it is supported by a good culture through community participation. In a
society like this, even though the substance and structure components are not very good the law will still run well. Likewise, if there is no support from the community, no matter how good the substance and structure is, the result will still not be good in law enforcement [23]. So that the role of legal culture by the community is very vital in its application to support the substance and structural elements in the hope that in the future someone will limit them to commit immoral acts against sexual harassment of women.

4 Conclusion

After discussing it, it is known that several acts of sexual harassment are moral violations but not legal violations, this is because there is a separation made by HLA Hart from morals and laws. This separation between morality and law is detrimental to women, especially because the law is unable to exist to provide complete protection to victims.

Based on the concept of the morality of the Medina Charter, the protection of women as victims of sexual harassment in the digital era needs to make law a part of morals (into an inseparable unit). If the law is separate from morals, then moral violations that are not regulated in violations of positive law are clear there is no legal certainty and even the perpetrator cannot be ensnared by positive legal rules.

So it is necessary to enact/revise laws and other regulations to prevent sexual harassment that is carried out online, by prohibiting and criminalizing sexual harassment, especially the dissemination of intimate images without consent, online harassment and stalking. The criminalization of sexual harassment online must cover all elements of abuse including re-sharing of content. Then threatening to distribute intimate images/videos without consent must be made illegal so that law enforcement officials can intervene and prevent it before it occurs, and what should be highlighted is that in cases of online sexual harassment, gender perspective must be used in analyzing all forms of sexual harassment.

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Integration of Enforcement Large-Scale Social Restriction (PSBB) Policies Based on the Restorative Justice System Approach

Michelle Kristina¹, Hwian Christianto², Amelia Elisabeth Meliangan³, Jovita Bunga Jegiantho⁴

{michellekristina@staff.ubaya.ac.id¹, hw_christianto@staff.ubaya.ac.id², ameliaelisabeth05@gmail.com³, jovitabj27@gmail.com⁴}

Universitas Surabaya, Indonesia¹, 2, 3, 4

Abstract. The coronavirus outbreak (Covid-19 or SARS-CoV-2) which emerged at the end of 2019 had so many impacts on society. Responding to the entry of the outbreak in Indonesia, the government issued various policies to prevent the spread of Covid-19. The Large-Scale Social Restriction Policy (PSBB) is at the forefront of limiting people's mobility in their daily lives. According to this situation, the government issued a health protocol through Government Regulation No. 21 of 2020 concerning PSBB and PSBB Guidelines. The rules stated society to understand and to comply with the health protocols and carry out a physical distancing. This study uses a qualitative methodology with an empirical literature approach. The approach is carried out by collecting data in the form of government policy documents related to research. This research shows that enforcing PSBB policy faced challenges both in term of the regulation themselves and the recovery factor after the violations of the PSBB policy. The implementation of the PSBB policy often collides with different situation of each region. The presence of a restorative justice system approach in enforcing the PSBB policy is expected to be able to overcome these various of obstacles. Especially as an intermediary system among the interests of the government, society, and law enforcement. The objectives of this research to provide a whole picture of the various regulation of PSBB policies in overcoming the spread of Covid-19 in Indonesia.

Keywords: Covid-19, PSBB, Restorative Justice System

1 Introduction

Corona Virus Disease 2019 (Covid-19 or SARS-CoV-2) has been officially declared by the World Health Organization (WHO) on January 30th, 2020, as a very dangerous disease and threatens the international health [1]. On March 11th, 2020, WHO officially declared Covid-19 as a global pandemic, after Covid-19 spread to 118 countries and infected more than one hundred thousand people [2]. Almost every country, including Indonesia, faces the real threat of transmission and spread of the Covid-19 disease. Following up on the pandemic situation, on March 31st, 2020, the Indonesian government issued Presidential Decree No. 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid-19) Public Health Emergency (hereinafter referred to as Presidential Decree No. 11 of 2020). It is stated that the spread of Covid-19 has an extremely deadly nature and has a profound impact on the economy, society, culture, politics, defence and security, and the welfare of the community. Based on data
from the Committee for Handling Covid-19 and National Economic Recovery, Indonesia confirmed 1,775,220 Covid-19 cases with a death toll of 49,328 people [3].

This situation requires the Indonesian government to move quickly in tackling the spread of Covid-19. One of the points that became the basis for the issuance of Presidential Decree 11 of 2020 is the provisions stipulated in Indonesia Law Number 6 of 2018 concerning Health Quarantine [4] (hereinafter referred to as the Health Quarantine Act). The legal provisions in the Health Quarantine Act state that Health Quarantine is an effort to prevent and prevent the entry and exit of diseases and/or public health risks that have the potential to cause public health emergencies. Public Health Emergency itself is a public health incident of an extraordinary nature characterized by the spread of infectious disease and has the potential to spread across regions or countries.

This provision is complemented by regulatory policies related to Large-Scale Social Restrictions (PSBB), namely a limitation of certain activities for residents in a certain area suspected of being infected with a disease and/or contamination. The purpose of these restrictions is to prevent the possible spread of the disease or contamination. Responding to Covid-19 and based on the authority given by the Health Quarantine Act, the government issued Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19) (hereinafter referred to as Government Regulation No. 21 of 2020). It is stated that the implementation of PSBB in a region is based on epidemiological considerations, the magnitude of the threat, effectiveness, resource support, technical operations, political, economic, social, cultural, and defence-security considerations [5].

Based on these provisions, a technical issue is needed to be able to run the PSBB in an area that has been infected or contaminated by an infectious disease, in this case, Covid-19. Moreover, the implementation of the PSBB in an area includes school and work vacations, restrictions on religious activities, and restrictions on activities in public places or public facilities. Thus, it is clear that the readiness of each region to be able to implement the PSBB is very diverse and creates its problems.

Various kinds of regional regulations are then issued by each Regional Government to carry out the PSBB in their region. There are at least 26 district/city level regulations which are derivatives of provincial-level regulations governing the enforcement of PSBB in their regions. Based on these data, it is found that various kinds of differences between local regulations. These differences are quite complex considerations in dealing with the Covid-19 pandemic situation in Indonesia.

The community as the subject who implements the PSBB cannot avoid various kinds of changes in carrying out their daily activities. Changes that have occurred due to the presence of Covid-19 and the implementation of the PSBB have also resulted in the types of violations committed by the community. Violations of these regulations have made efforts by the central and regional governments to stop the spread of Covid-19 facing serious challenges. Various kinds of criminal sanctions are regulated and implemented in the hope that the community will obey the PSBB. However, the application of these criminal sanctions needs to be further analysed if it is based on the continuing rate of the spread of Covid-19 in Indonesia.

The purpose of this research is to integrate various kinds of PSBB policy enforcement efforts by using the restorative justice system approach as a way of restoring changes in situations and conditions experienced by the community, especially in resolving violations that have occurred. Therefore, this research also shows the various types of local regulations that exist as well as several examples of cases and sanctions that can be applied to restore the situation and condition of the community.
2 Research Methods

Legal research is a scientific activity based on methods, systematics, and certain thoughts, which aim to study one or several phenomena of certain laws by analyzing them. This study uses a qualitative methodology with an empirical literature approach, is descriptive in a normative juridical manner. The research uses primary data in the form of related laws and local government regulations. The secondary data in the form of compilation of regional policies concerning PSBB and analyzed using a comparative law approach. The research uses supporting data in the form of legal literature both national and international. Problem-solving in this study uses a statutory approach, a case approach, and a conceptual approach.

3 Results and Discussion

3.1 Integration of Enforcement Formulas of Large-Scale Social Restriction (PSBB) Policy

The presence of Presidential Decree No. 11 of 2020 and PP No. 21 of 2020 is an important sign of the start of the regulation and implementation of PSBB policies in fighting the spread of Covid-19 in Indonesia. Community participation is an important factor in fighting this global pandemic. It is hoped that the presence of this policy regarding PSBB is expected to be able to implement the community as well as possible for the sake of mutual safety [6]. Article 2 of the Health Quarantine Act explicitly regulates that one of the principles for implementing Health Quarantine is for the public interest. Furthermore, article 59 of the Law on Health Quarantine stipulates that the objective of implementing the PSBB as an implementation of Health Quarantine is to prevent the spread of disease that is happening between people in a certain area.

As for the implementation of the PSBB as an effort to prevent a Public Health Emergency [7] at least includes school and work vacations, restrictions on religious activities, and/or restrictions on activities in public places or facilities. Of course, these restrictions are carried out by taking into account basic human needs, educational needs, work productivity, and human rights in performing one's religious duties.

These regulations are then translated into various kinds of regional government regulations of PSBB in their regions. At least, there are 8 kinds of regional regulations at the provincial level, which regulate the PSBB. The regional regulations cover areas in DKI Jakarta, Sumatera, Java, Sulawesi and Kalimantan.

<table>
<thead>
<tr>
<th>No</th>
<th>Regional Government</th>
<th>Regional Legal Regulatory</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>DKI Jakarta</td>
<td>DKI Jakarta Governor Regulation Number 33 of 2020 as amended in the DKI Jakarta Governor Regulation Number 88 of 2020 DKI Jakarta Governor Number 79 of 2020</td>
</tr>
<tr>
<td>2</td>
<td>West Sumatera</td>
<td>West Sumatera Governor Regulation Number 20 of 2020</td>
</tr>
<tr>
<td>3</td>
<td>South Sumatera</td>
<td>South Sumatera Governor Regulation Number 37 of 2020</td>
</tr>
<tr>
<td>4</td>
<td>Gorontalo</td>
<td>Gorontalo Governor Regulation Number 15 of 2020</td>
</tr>
<tr>
<td>5</td>
<td>West Java</td>
<td>West Java Governor Regulation Number 30 of 2020</td>
</tr>
<tr>
<td>6</td>
<td>East Java</td>
<td>East Java Governor Regulation Number 18 of 2020</td>
</tr>
</tbody>
</table>
The various regional regulations at the provincial level are then translated into 26 district/city level regional regulations, namely Tangerang City, Tangerang Regency, South Tangerang City, Pekanbaru City, Makassar City, Tegal City, Banjarmasin City, Tarakan City, Surabaya City, Sidoarjo District, Gresik District, Malang City, Batu City, Malang District, Palangkaraya City, Buol District, Banjar District, Barito Kuala District, Banjar Baru City, Palembang City, Prabumulih City, Kampar District, Pelalawan District, Siak District, Bengkalis District, and Dumai City.

These various regional regulations then regulate what activities need to be limited during the validity period of the PSBB in the region. These restrictions include:

a. Restrictions on the implementation of the teaching and learning process.
b. Restrictions on work processes in the workplace/office.
c. The implementation of religious activities in places of worship.
d. Restrictions on activities in public places/public facilities.
e. Restrictions on social and cultural activities.
f. Restrictions on the use of transportation modes for movement.

The government's strategic (both central and regional) to implement these restrictions is an effective strategy to break the chain of spreading Covid-19. However, these arrangements are not completely harmonious between regions.

Each region that implements the PSBB fully agrees to implement 100% learning from home and be carried out online, carry out work from home or work at home, and completely cease religious activities in houses of worship. However, not fully local governments agree on the limit on the number of people allowed to carry out activities in public places/public facilities.

As many as 90% of the regions that implemented the PSBB prohibited activities with many more than 5 people in public places or public facilities. Meanwhile, the rest, Kota Palembang City and Prabumulih City, chose 4 people as the maximum allowance for activities in public places or public facilities. In addition, 90% of regions prohibit or cease socio-cultural activities that cause crowds, such as politics, sports, entertainment, academics, and culture. However, 3 regions only set restrictions, not prohibitions.

Concerning restrictions on the mode of transportation for movement, as many as 87% of regions have temporarily suspended the movement of people and/or goods, except for movements in vital sectors such as health and basic human needs. The remaining 13% of regions chose to impose a curfew on the use of transportation modes for the movement of people and/or goods, except for vital sectors as already stated.

The problem in the formulation of the PSBB policy is not only limited to the formulation that is regulated in every statutory regulation but is also closely related to the level of compliance and legal awareness of the community. Roscoe Pound in his theory of law as a tool of social engineering puts law as a tool to be able to reform or engineer society. In this case, the PSBB policies exists to shape the society in adjusting their daily lifestyle (new normal) to fight Covid-19.

Breaking the chain of the spread of Covid-19 in Indonesia is a serious challenge for all elements of society, government, and law enforcement officials. Covid-19 has been a shocking effect not only on the health sector but also on the economic, social, political, legal, even technology, and defence-security sectors. The legal rules that must be implemented by the community, the pros and cons of public opinion on government policies, the level of compliance
and legal awareness of the community, as well as sanctions and law enforcement processes, are indicators of the successful implementation of PSBB policies [8].

Differences in regulations between regions are evidence of the variety of community situations faced by the government. The principles of humanity, benefits, protection, justice, non-discrimination, public interest, integration, legal awareness, and state sovereignty serve as guidelines for the government in efforts to prevent the spread of Covid-19. However, the implementation of the PSBB with differences that occur, proves that the government has difficulty in implementing these principles. Moreover, when talking about law enforcement for violators of the PSBB policy and the sanctions that have been applied.

At least, 8 provincial-level regional regulations and 26 district/city level regional regulations regulate 3 types of sanctions, namely criminal sanctions, administrative sanctions, and other sanctions in the form of social sanctions. However, based on the data obtained, as many as 10% of regions that implement the PSBB do not regulate the imposition of criminal sanctions. Meanwhile, all regions regulate the application of administrative sanctions, and only 50% of regions do not regulate other sanctions. This can be seen in the following chart:

Source: Results of Basic Research of “Formulating Models of Criminal Actions For Violation of Health Protocols in time of the Covid-19 Pandemic” [9].

Based on this data, 10% of regions choose not to impose criminal sanctions in their PSBB policy and only regulate administrative and other sanctions. Referring to the provisions of Article 10 of the Criminal Code, the criminal sanctions that can be applied are in the form of principal and additional penalties. The main punishment, in this case, can be in the form of imprisonment, imprisonment, or a fine. Administrative sanctions can be in the form of administrative fines or the closure of business permits. Meanwhile, other sanctions can be in the form of social sanctions and other disciplines by the provisions of laws and regulations.

For example, in the Regulation of the Governor of DKI Jakarta No. 79 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as Efforts to Prevent and Control Corona Virus Disease 19 (hereinafter referred to as the DKI Jakarta Governor Regulation No. In addition to the people who commit violations, the regulation also regulates sanctions for business actors who violate the provisions of the PSBB. These sanctions are in the form of a temporary closure of business premises and administrative fines [10]. Furthermore, article 93 of the Law on Health Quarantine also regulates imprisonment and fines for any person (person or corporation) who does not comply with the administration and/or
obstructs the implementation of Health Quarantine. In contrast to the DKI Jakarta region, which applies administrative fines progressively on violators, the East Java region only applies the same sanctions as in general. These sanctions are in the form of verbal, written warning, forced dissolution of activities, social work, or administrative fines [11].

These two examples are clear evidence of gaps between legal regulations in each region in shaping and enforcing PSBB policies. It should be emphasized that the law enforcement process is not only burdened by law enforcement officers but also needs to be a serious concern of the government. The integration of law enforcement between regions will make it easier for the community to accept and respond to the PSBB policy. The Central Government needs to reconsider various kinds of regional regulations. The policies taken need to consider the effectiveness and compliance and legal awareness of the community. Thus, law enforcement that is harmonious between regions will be created and the community will be able to respond to the PSBB policy for the common interest.

3.2 Implementation of Restorative Justice System in Enforcement of PSBB Policy

The use of various types of sanctions seems to be a solution to various kinds of social and legal phenomena that occur in society. Especially in facing the global Covid-19 pandemic. Policy after policy stipulated in the implementation of PSBB in a region becomes a serious problem when there are so many violations. Imposing criminal sanctions is too excessive considering the situation of prisons in Indonesia which is already overcapacity. This was proven when the Ministry of Law and Human Rights issued an assimilation and integration program related to efforts to prevent and control the spread of Covid-19 in prisons [12].

Considering that the Covid-19 pandemic is a situation that greatly affects every aspect of social life, then breakthroughs need to be considered by the government in enforcing the PSBB policy. Local governments have presented various kinds of creative efforts. For example, in the South Tangerang area, Banten, violators of health protocols were sentenced to pray at a special tomb for the Covid-19 body. Furthermore, East Jakarta applies a coffin penalty in addition to fines and also cleans public facilities [13]. The various kinds of efforts are expected to be able to provide a deterrent effect for violators and become an example for others to think a thousand times before committing an offense.

The existence of creative punitive breakthroughs as part of other sanctions is the initial awareness of the government in enforcing the PSBB policy as well as applying administrative fines. This government awareness is the embryo of understanding that the application of sanctions is a tool used to restore conditions that have been injured by the existence of these violations. Thus, the framework for applying sanctions to violators needs to be based on the philosophy of life of the Indonesian nation, namely balance, harmony, and harmony between social and individual life [14].

The Restorative Justice System has been recognized by Indonesia through Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Restorative Justice System is a system of justice enforcement that is based on restoring situations that have been violated and provides an opportunity for offenders to correct their mistakes [15]. Restorative justice views crime as more than breaking the law, it also causes harm to people, relationships, and the community. So a just response must address those harms as well as the wrongdoing. If the parties are willing, the best way to do this is to help them meet to discuss those harms and how to bring resolution. Other approaches are available if they are unable or unwilling to meet. Sometimes those meetings lead to transformational changes in their lives [16].
At least, Indonesia recognizes 3 kinds of ways to uphold justice, namely retributive justice, rehabilitative juvenile, and restorative justice. Each of these systems can be described as follows:

<table>
<thead>
<tr>
<th><strong>Retributive Justice</strong></th>
<th><strong>Rehabilitative Justice</strong></th>
<th><strong>Restorative Justice</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rooted in punishment</td>
<td>Rooted in the rehabilitation of the offender</td>
<td>Rooted in the reparation of harm</td>
</tr>
<tr>
<td>Focuses on the offense</td>
<td>Focuses on “fixing” the offender</td>
<td>Focuses on the relationship between perpetrators and victims</td>
</tr>
<tr>
<td>Zero tolerance</td>
<td>Uses therapeutic or medical treatment to prevent future criminal acts</td>
<td>Ask offenders to ‘make right’ their offense</td>
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The restorative justice system itself puts forward its theoretical framework in solving these 3 big questions, namely: What is the nature of the harm resulting from the crime? What needs to be done to “make it right” or repair the harm? Who is responsible for this repair? Law enforcement is no longer focused on: Who did it? What laws were broken? What should be done to punish or treat the offender? (retributive justice system). Rather, it focuses on how to fix the situation and how the perpetrator can correct his mistakes. So that concerning violations of the PSBB policy, it can prioritize law enforcement processes based on a restorative justice system.

The application of the restorative justice system in enforcing the PSBB policy will certainly bring more benefits considering that the public also understands the importance of working together to break the chain of the spread of Covid-19. These restorative justice system as an enforcing method towards violation will have a positive impact to the community. The perpetrator can work to restore and increase awareness of the importance of PSBB policies. However, the various factors that have been described are a challenge for the government, society, and law enforcement officials to be able to socialize and increase public awareness and compliance with the PSBB policy. Applying old methods that are retributive to offenders will certainly not have a positive impact and will be even more counter-productive.

4 Conclusion

The coronavirus outbreak (Covid-19 or SARS-CoV-2) which emerged at the end of 2019 had an impact on every aspect of social life, be it economically, socially, culturally, politically, law, technology, and defence security. This situation requires the Indonesian government to move quickly in tackling the spread of Covid-19. Presidential Decree No. 11 of 2020 and PP No. 21 of 2020 is the answer to breaking the chain of the spread of Covid-19. There are at least 8 regions at the provincial level and 26 regions at the district/city level that implement the PSBB. The various regional regulations indicate that there are differences in addressing the maximum allowable crowd size and the absence of understanding in prohibiting mass gathering activities. Furthermore, the types of sanctions imposed on violators of the PSBB policy are still retributive with administrative fines. The factor of restoring the situation and correcting the mistakes of the offenders has not become a priority for the government and law enforcement officials. Although various other kinds of sanctions in the form of creative action sanctions were also presented to provide an example to society. Restorative justice systems can be a solution to the rampant
violations committed by the community. The application of the restorative justice system in enforcing the PSBB policy will bring more benefits considering that the public also understands the importance of working together to break the chain of the spread of Covid-19.

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Policy on Restriction of Ownership of Land Rights to Prevent Land Abandonment

Mira Novana Ardani¹, Gilang Muhammad Mumtaaz²
{miranovana@yahoo.com¹}

Universitas Diponegoro, Indonesia¹, ²

Abstract. The prohibition of ownership and control of land exceeding the limit is intended to avoid the concentration of ownership and control of land in certain groups. The problem of inequality in land ownership can lead to agrarian conflicts natural resource disparities, particularly gaps in tenure, perceptions and conceptions, as well as conflicting laws and policies. The problem is what is the policy to limit the ownership of land rights? and what is the relationship between limiting land rights ownership and preventing land abandonment? There is a policy to limit the ownership of land rights, but there is no concrete policy regarding the number of plots of land and the area of land that can be owned by a person or legal entity accompanied by strict sanctions. It is hoped that the restrictions on ownership of land rights that are more concrete and accompanied by strict sanctions can prevent the existence of abandoned land.

Keywords: Policy, Restriction of Ownership of Land Rights, Land

1 Introduction

Soil has an important role in life. Man from the moment he was born, until he returned to God did not escape the need for land. To support life, humans use land to be used as a place to live, an office, to be able to plant various types of plants, as a source of food production, to raise livestock, and many other benefits of land.

Given the importance of the land, of course it needs to be supported by rules that can regulate both the use of land, its use, who can own the land, how to own the land, and sanctions if there are violations of these rules. Of course, the provisions regarding the land are made with the purpose as stated in Article 33 (3) of the 1945 Constitution, namely that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Land is part of the scope of agrarian law, which when viewed from the meaning of the Basic Agrarian Law, agrarian law is not only a set of legal fields, each of which regulates control rights over certain natural resources. The group consists of [1]:

a. Land law, which regulates tenure rights over land, in the sense of the earth's surface;

b. Water law, which regulates tenure rights over water;

c. Mining law, which regulates control rights over excavated materials as intended by the Basic Mining Law;

d. Fisheries law, which regulates control rights over natural resources contained in water;
e. The law of control over energy and elements in outer space regulates the rights to control over energy and elements in outer space as referred to in Article 48 concerning Basic Agrarian Law.

The definition of agrarian includes earth, water, and the natural resources contained therein, within the limits as stipulated in Article 48 concerning Basic Agrarian Law, even covering outer space, namely the space above the earth and water containing energy and elements. Elements that can be used for efforts to maintain and develop the fertility of the earth, water and natural resources contained therein and other matters related to it [1]. The government's policy in managing agricultural is for justice and people's welfare.

The state, in this case the government as the highest authority organization of all Indonesian people, is given the authority to regulate, manage, utilize, and determine related agricultural. This is in accordance with the contents of Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, namely that the right to control the state is given the authority to:

a. Regulate and administer the designation, use, supply and maintenance of the earth, water and space;
b. Determine and regulate legal relations between people and the earth, water and space;
c. Determine and regulate legal relations between people and legal actions concerning earth, water and space.

Implementation in carrying out its authority is used to achieve the greatest prosperity of the people in the sense of nationality, welfare and independence in an independent, sovereign, just and prosperous Indonesian society and legal state.

In order to carry out its authority, particularly in relation to land, the government must pay attention to the interests of all Indonesian people by upholding the principles for the welfare of all Indonesian people. Of course, the aspect of justice in arrangements related to land law cannot be ruled out.

In its implementation, the aspect of justice is not easy, so there are still problems that occur. Social justice is a universal problem when people feel oppressed. When people lose their land because it is revoked or released for state or private interests in arbitrary ways [2].

This is very closely related to the ownership and control of natural resources, namely land which has been the source of livelihood for most Indonesian people. The contributing factors include [2]:

a. Scarcity of land, namely the limited area of agricultural land which is relatively static, is expected with the need for land due to the increasing population.
b. There is a process of land loss (disland-owning process) that occurs due to the need for land for industry, both for factories and housing to reduce land for agriculture.
c. The process of land fragmentation is either due to the transfer of rights by sale and purchase or inheritance.
d. Swelling unemployment in agriculture has weakened the bargaining position of cultivators against land owners.
e. The concentration of land on a few people with a land area of hundreds of hectares, which in the end was not cultivated according to the purpose of acquisition, caused a lot of land to be abandoned.

These factors can lead to widening the gap between the rich and the poor. The economic crisis added to the suffering for them the peasants [2]. Inequality in land ownership can also occur, both from the subject of individual rights holders and legal entities.

The provisions in Article 7 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles also regulates the prohibition of ownership and control of land exceeding
the limit, which is basically intended to avoid the occurrence of concentration of ownership and control of land in certain groups so as to harm other groups who have financial limitations to access land. The limited and constant nature of land and the value of land that is not limited to social, economic, political, and even religious causes a high potential for disparity in ownership and land tenure between capital owners and the weak economy [3].

Related to the problem of inequality in land ownership, it can lead to agrarian conflicts. natural resource disparities, particularly gaps in tenure, perceptions and conceptions, as well as conflicting laws and policies. Conflicts generally occur between individuals, between groups, communities and other parties, where each conflicting party seeks to be able to show its strength so that its interests can be realized properly, one of which is in the management and control of plantation land [4]. In addition, the policy regarding the limitation of ownership of land rights is closely related to preventing land abandonment.

This encourages the importance of conducting an academic study through a research entitled Policy for Restricting Land Rights Ownership to Prevent Land Abandonment. The problem that becomes the focus of discussion in this paper is how to limit the ownership of land rights? and what is the relationship between limiting land rights ownership and preventing land abandonment?

2 Research Method

In order to conduct legal research, a legal writing arrangement is needed based on a systematic, consistent method that aims to study the existing symptoms. The term method comes from the Greek methodos meaning a way or to, through a path. The method is a way or path that is passed by everyone in conducting research to understand the subject or object of research. Systematic means having a certain order, a structured activity, containing elements which are the points of thought and activity [5].

This legal research seeks to examine the policy of limiting ownership of land rights in order to prevent land abandonment using a normative juridical approach. The normative legal research method uses a normative juridical approach. The normative juridical approach is an approach that refers to the applicable laws and regulations [6].

The data analysis method is carried out by collecting data through the study of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to the policy of limiting ownership of land rights for prevention. land abandonment. To analyze the legal material that has been collected, in this study using qualitative data analysis methods, namely normative juridical which is presented descriptively, namely by describing a policy related to the limitation of ownership of land rights in order to prevent land abandonment and then assessing whether the application is in accordance with the normative provisions.

3 Theoretical Framework

3.1 Land Rights

The scope of the earth according to the Basic Agrarian Law is the surface of the earth, and the body of the earth under it and under water. The surface of the earth as part of the earth is
also called land. Land which is meant here does not regulate land in all its aspects, but only regulates one aspect, namely land in a juridical sense called land tenure rights. Land rights are part of land tenure rights [7]. Land rights are rights that give authority to use the surface of the earth or the land in question as well as the body of the earth and water and the space above it, only needed for purposes directly related to the use of the land, within the limits according to the law these and other higher laws [8].

The right of control over land contains a series of powers, obligations and or prohibitions for the holder of the right to do something about the land being entitled. Something that is allowed, obligated and prohibited to be done, which is the content of the right of control is what is the criteria or benchmark for distinguishing between the rights of control over land regulated in land law. For example, land rights, which are called property rights, in Article 20 of the Basic Agrarian Law, give the authority to use land that has been acquired indefinitely, while the right to cultivate and use the right to build is limited to the period of use of the land [1].

Land rights regulated in the Basic Agrarian Law primarily consist of building use rights, business use rights, property rights, and use rights. Article 9 paragraph 1 of the Basic Agrarian Law states that only Indonesian citizens can have a full relationship with the earth, water and space, within certain limits. Whereas in paragraph 2 it is stated that every Indonesian citizen, both male and female, has the same opportunity to obtain land rights and to obtain benefits and results, both for himself and his family.

3.2 Abandoned Land

The powers, obligations, and prohibitions of land rights holders should be obeyed. This is an effort in terms of maintaining the function of the soil, as well as soil fertility so that the land can still be used according to its function. The use of the land must of course pay attention to the social function of the land. The social function of land as regulated in Article 6 of the Basic Agrarian Law states that all land rights have a social function, which in the general explanation it is stated that any land rights that exist in a person cannot be justified, that the land will be used (or not used) solely for his personal interests, especially if it causes harm to the community.

In order to maintain the quality of the land and improve the welfare of the community, the rights holders, management rights holders, and basic land ownership holders are expected to be able to maintain their land and not neglect. Therefore, it is necessary to regulate the control and utilization of abandoned land. This is explained in Government Regulation Number 20 of 2021 concerning Control of Abandoned Areas and Lands. The state grants land rights to rights holders to be cultivated, used, and utilized and maintained properly. This is not only aimed at the welfare of the rights holders, but also for the welfare of the community, nation and state.

Based on the National Land Law as stated in the Basic Agrarian Law, land is abandoned if it is intentionally not used in accordance with the circumstances or the nature and purpose of the rights. The use of land by individuals or legal entities has the aim of achieving the welfare of the entire Indonesian people [9].

The legal consequences of land rights holders who do not carry out their obligations and do not use the land in accordance with their circumstances and the nature of their rights, all land rights will be erased and fall into the hands of the state, if viewed from the perspective of national land law, it is categorized as abandoned land and the termination of the relationship. law and affirmed as land controlled directly by the state [10].
4 Results and Discussion

4.1 Policy to Restrict Ownership of Land Rights

The concept of policy, epistemologically is defined as a series of concepts and principles that become the outline and basis of the plan for implementing a job, leadership, and way of acting (government, organization, and so on); a statement of ideals, goals, principles or intentions as a guideline for management to strive to achieve goals; guideline [11].

Policies are made by the government, then put into concrete actions, with the aim of serving the public interest, based on applicable procedures and driven by the desire to avoid destructive conflicts. Policy is a means for the government to implement the provisions of higher laws and regulations. Government policies in implementing legislation can be stated in the form of government regulations, presidential regulations, ministerial regulations issued by the central government and in the form of regional regulations and regional head decisions made by regional governments. Policies in general are to implement legal provisions in carrying out the public interest [11].

The owner of a land right has the authority, rights, obligations, and prohibitions that must be obeyed. The general authority for the holder of land rights is to be able to use the land they are entitled to. The authority to use the land, the earth beneath it and the water and space above it. The body of the earth and water as well as the space in question does not belong to the holder of the right to the land concerned. He is only allowed to use it. Its use is only needed for interests that are directly related to the use of the land within the limits according to Law Number 5 of 1960 concerning Basic Agrarian Regulations and other higher regulations. The use of the earth's body must have a direct relationship with the building built on the land in question [1]. While the special authority can use the land according to its designation. For example, property rights can be used for all kinds of purposes for an unlimited time, as long as there is no special prohibition for that.

The land policy related to the limitation of ownership of land rights has been regulated in Law Number 5 of 1960. The policy is about the obligation for land owners to use their land and the obligations are general. This applies to all land rights, both property rights, building rights, business use rights and use rights. Obligations of a general nature contained in Law Number 5 of 1960 include [1]:

a. Article 6 of Law Number 5 of 1960 which states that all land rights have a social function;

b. Article 15 of Law Number 5 of 1960 concerning the obligation to maintain land that is appropriated;

c. Article 10 of Law Number 5 of 1960 specifically regarding agricultural land, namely the obligation for the party who owns it to work on or actively cultivate it themselves.

Based on the policy of limiting the ownership of land rights which is taken from the obligations of the holders of land rights, for the subject of rights holders, both individuals and legal entities, it is very difficult to carry out these obligations if they have an unlimited number of land parcels. The existence of rules regarding obligations for owners of land rights is certainly made so that the benefits of the land are maintained, its fertility is in accordance with its designation so that it can provide benefits not only for the owner, but also for the community. Regarding the regulation of obligations, prohibitions, and rights for holders of land rights, it has been regulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

Other policies related to the limitation of ownership of land rights have been regulated in Article 7 of Law Number 5 of 1960 which regulates the prohibition of ownership and control of
land exceeding the limit. This rule is one of the principles contained in agrarian law. Land ownership is not allowed to exceed the limit because it can harm the public interest. In the general explanation of Law Number 5 of 1960 (II number 7) it is stated that this provision needs to be accompanied by the provision of credit, seeds and other assistance with light conditions so that the owner will not be forced to work in other fields by giving up control of his land. to other people. There are no exceptions to this principle.

Furthermore, the policy of limiting ownership of land rights is contained in Article 17 of Law Number 5 of 1960. Article 17 is the implementation of Article 7 of Law Number 5 of 1960 which aims to ensure that land ownership does not accumulate in the hands of certain groups. It is regulated regarding the maximum and or minimum area of land that may be owned by one family or legal entity with rights. In his explanation, what is meant by a family is a husband, wife and children who are not married and are their dependents and whose number is around seven people.

In order to improve the standard of living of the farmers, they were given a large area of arable land. Law No. 56 Prp of 1960 ordered the government to make efforts so that every farmer and his family own a minimum of two hectares of agricultural land. According to his explanation, the two hectares of agricultural land can be in the form of rice fields, dry land, or rice fields and dry land. Efforts that must be carried out to achieve the minimum target of two hectares are mainly agricultural land expansion (extensification) with massive land clearing outside Java, followed by transmigration and industrialization. The determination of the minimum area does not mean that people who own less than two hectares of land will be required to relinquish their land. Two hectares is a goal that must be gradually achieved [1]. This rule only regulates agricultural land. While regarding the maximum area and amount of land for housing and other developments as well as the subsequent implementation of government regulations. This is explained in its Article 12.

Regarding the rules for limiting ownership of residential houses, it is stated in the Decree of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 6 of 1998 concerning the Granting of Ownership Rights to Land for Residential Houses in Article 2, it is stated that in the application for registration of property rights, it is submitted to the Head of the Regency Land Office. The municipality, by attaching an attachment, is a statement from the applicant that with the acquisition of the property rights for which registration is requested, the person concerned will have ownership rights to land for residential homes of not more than 5 (five) plots which entirely covers an area of not more than 5,000 (five thousand) m2.

The policy to limit the ownership of existing land rights is deemed unable to accommodate the increasing demand for land at this time. To meet the needs of infrastructure development, housing development needs, houses, offices, and others. This can be seen from the still weak regulation of restrictions on housing, which is still in the form of a statement letter as an attachment which of course requires good faith from the person concerned. If these provisions are violated, there are no sanctions that regulate them.

As is the case with China, Since the last century, urbanization, the most significant force influencing land use and cover change, has become a worldwide socioeconomic phenomenon. In different stages of urbanization, due to the mismatch of land and socioeconomic resources, there are different forms of urban and rural land utilization [12].

The policy concepts behind the inequality of land tenure structures and giving birth to disputes over land and other natural resources must be changed towards the concept of people-oriented policies, promoting justice, being integrative, sustainable and sustainable in their management. Such a concept is of course still very abstract and should be followed by a more
practical form, which in real circumstances cannot be separated from interaction with concepts in other fields such as politics, economics and socio-culture which influence each other [2].

The existing regulations only cover the boundaries intended for agricultural land. And even then the rules since 1960 that need to be adapted to current conditions and circumstances. Likewise, the rules and enforcement of sanctions have not been enforced firmly.

Types of primary land rights, including property rights, building rights, use rights, and use rights, of course, really need existing rules regarding the limitation of ownership of each of these rights and also pay attention to who is the subject who needs the land, whether he is an individual. or legal entity. If it is an individual, of course, the name that appears on the proof of ownership of land rights in the form of a certificate directly points to the owner, so that it can be adjusted how many limitations of land rights he can have. Meanwhile, if the need for the land is a legal entity, in which the legal entity has capital, it can be considered in granting restrictions on the ownership of a land right.

Policies to limit the ownership of land rights are needed. taking into account the three basic values that function as a guide and reference in the formation and implementation of law, which include [13]:

a. Legal certainty

Legal certainty is defined as the existence of clear behavioral scenarios that are general in nature and binding on all members of the community, including the legal consequences. Legal certainty in relation to policies to limit ownership of land rights can be seen from certificates as proof of ownership of land rights which already contain physical data and juridical data on the land in question. if there are clear and firm rules regarding land ownership restrictions. The case for a link between aggregate insecurity and the individual’s decision to invest has rested on household-level studies of the security of land tenure. Since land is often central to a poor household’s livelihood, this literature has argued that insecure tenure distorts a wide range of household decisions [14].

b. Basic values of justice

Justice is an abstract concept that is not so easy to concretize in a formula that can provide an overview of the essence. Satjipto identified nine definitions of justice, including: giving to everyone what should be received, giving to everyone who according to the rule of law is his right, virtue to give results that have become his share, giving something that can satisfy people's needs, personal equality, giving independence to individuals to pursue their prosperity, to provide opportunities for everyone to seek the truth, and to give something worthy.

The basic value of justice is very important in formulating and forming policies to limit ownership of land rights. It is hoped that there will be no gaps among the community in the ownership of land rights. In its formulation, it can be noted not only the limit on the number of parcels that can be owned by a person or legal entity, but also the limit on the total area of land owned by a person or legal entity.

c. Benefit value

The value of expediency is optimizing the achievement of social goals from the law. Every legal provision in addition to being intended to realize order and order as the ultimate goal, also has certain social goals, namely the interests that are desired to be realized through law, both those originating from individuals as well as society and the state.

The value of benefit is of course very in line with the principles contained in the principles contained in agrarian law, especially land law. That land has a social function, in which land in its use must be adapted to the nature of its rights. In addition, in its use it must be useful and prevent its damage.
4.2 The Relationship Between Restriction of Ownership of Land Rights and Prevention of Land Abandonment

The occurrence of abandoned land cannot be separated from the granting of land rights by the state to individuals or legal entities, with the aim of being used or cultivated in order to achieve prosperity or achieve people's welfare. The use of the land must be in accordance with the circumstances, nature and purpose of the rights [9].

With the use and ownership of a land right that has not been regulated, there will be the potential for abandoned land to occur. If a person or legal entity owns land which has a very large number of plots and is located in several areas in Indonesia, then the utilization and use may not be in accordance with its function, so that it can cause the land to be damaged.

Policies related to the use of land that are appropriate and not in accordance with the nature and purpose of the rights have been set forth in Article 10 paragraph (1), Article 6, Article 15 of Law Number 5 of 1960. Maintaining land, including increasing its fertility and preventing damage is an obligation. any person, legal entity or agency that has a legal relationship with the land, taking into account the economically weak party. In the provisions of Article 15 there are legal principles or principles of propriety and social justice. As for carrying out obligations must be good and right. The law requires good faith in carrying out obligations between people who have a relationship with the land on the one hand (the relationship of the subject and object of the right) as well as the relationship between the subject of the right (recipient) and the subject (giver). If this is ignored, then the holder of land rights can be given a sanction of revocation of rights because they have violated the requirements or have done actions that make the land neglected [9]. This also underlines the importance of reviewing the area of land owned and its use which is faced with inequality in land tenure in Indonesia.

Inequality of land tenure is one of the strategic issues in the land sector, inequality in ownership, control, use, and utilization of land which is characterized by a small number of people controlling most of the land and conversely most people only controlling a small area of land. On the other hand, the condition of ownership of very large assets is not commensurate with the ability to manage them, because not all land rights that have been granted are managed properly by the right holders, resulting in a lot of land being abandoned. Land has lost its economic and social functions, there have also been prolonged conflicts in areas that have been designated as abandoned lands [10].

The definition of abandoned land according to Government Regulation Number 20 of 2021 concerning Control of Areas and Abandoned Land, namely land rights, land with management rights, and land obtained on the basis of control over land, which is intentionally not cultivated, not used, not utilized, and or not maintained .

The object of controlling abandoned land is contained in article 7 of them, including land ownership rights, building rights rights, business use rights, use rights, management rights, and land obtained on the basis of land tenure. Before a land is determined to be abandoned land, it has been designated as abandoned indicated land, then from the data indicated abandoned land is followed up with the control of abandoned land through evaluation stages of abandoned land, abandoned land warning, and determination of abandoned land. This is the content of Article 22.

In addition, the relationship between restrictions on ownership of land rights and prevention of land abandonment can be found in the explanation of Government Regulation Number 20 of 2021, in order to maintain land quality and improve the welfare of the community, rights holders, management rights holders, and basic land tenure holders, is expected to be able to maintain and maintain the land and not neglect. In today's reality, neglect of land is increasingly
causing social, economic, and people's welfare disparities and reducing environmental quality. Abandonment of land also has an impact on the inhibition of the achievement of various development program objectives, vulnerability to food security, and national economic resilience and the closure of socio-economic access of the community, especially farmers to land.

A person or legal entity has the right to land to be cultivated, used, and utilized and maintained properly. In accordance with the explanation of Government Regulation Number 20 of 2021, in the event that the right holder abandons his land, Law Number 5 of 1960 has regulated the legal consequences, namely the abolition of the rights to the land in question and the termination of legal relations and affirmed as land controlled directly by the state. So that if there is a policy regarding the limitation of ownership of land rights that is more concrete and accompanied by strict sanctions, it is hoped that abandoned land will be prevented.

5 Conclusion

The policy to limit the ownership of existing land rights is deemed unable to accommodate the increasing demand for land at this time. The existing regulations only cover the boundaries intended for agricultural land. And even then the rules since 1960 that need to be adapted to current conditions and circumstances. Likewise, the rules and enforcement of sanctions have not been enforced firmly.

The relationship between restrictions on ownership of land rights and prevention of land abandonment is that if there is a policy regarding restrictions on land rights ownership that is more concrete and accompanied by strict sanctions, it is hoped that abandoned land will be prevented.

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References

Constructing Order in the Use of Land in Coastal Water for Bajo Tribe Residence

Muh. Afif Mahfud¹, Erlyn Indarti², Sukirno³
{afifmahfud4@gmail.com¹}

Universitas Diponegoro, Indonesia¹, ², ³

Abstract. Every community strives to create order, including the use of land on the coast. This study aims to explore (1) the factors that need to be considered in land use management for Bajo Tribe community settlements and; (2) a paradigmatic study of the creation of order by the Bajo tribe in land use for settlements. This research is based on a qualitative research tradition, using primary data and secondary data. The data collected through in-depth interviews were analyzed and presented descriptively. Based on the research, it was found that: (1) In carrying out land use, it is necessary to pay attention to: (a) the relationship between the community and the land; (b) geographical conditions; (c) typical land tenure patterns. (2) A paradigmatic study of order in the traditional community settlements of the Bajo Tribe, namely (a) ontology: the traditional Bajo people identify themselves as sea people; (b) epistemology: close relations and promoting solidarity; (c) methodology: discussion creates consensus and land-use boundaries; (d) method: 1.5 m² distance between houses and neighbor’s permission.

Keywords: Order, Rule, Land Use, Coastal Sea, Bajo Tribe

1 Introduction

The existence of a very close relationship between the Bajo tribe and coastal waters has led this community to establish settlements in various countries’ coastal waters, including Malaysia, the Philippines, and Indonesia [1]. In Indonesia, the population of the Bajo tribe reaches 467,000 people. These people inhabit the islands of Sulawesi, Kalimantan, Nusa Tenggara and Maluku [2]. Mead and Lee [3] noted that the number of Bajo people living in Sulawesi Island reached 92,000 people spread across the Provinces of North Sulawesi and Gorontalo, Central Sulawesi, Southeast Sulawesi, and also South Sulawesi.

The existence of Bajo tribe community settlements in coastal waters requires land stewardship. It cannot be separated from the definition of land in Indonesia, including land in coastal waters. Land use management as an orderly land law is crucial to create balance, order, harmony, and harmony in land use in coastal waters. Order in land stewardship is achieved by balancing individual interests and public interests [4].

This land-use management is based on Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia and Article 2 of Law No. 5 of 1960 concerning Basic Agrarian Principles (starting now referred to as UUPA/Basic Agrarian Law) to the state in regulating natural resource management. It is then spelled out in Article 14 of the UUPA, which gives the government authority to make a general plan for the supply, allocation, and use of land and water. This article then underlies the making of Law No. 26 of 2007 concerning Spatial Planning and Government Regulation No. 16 of 2004 concerning Land Stewardship.
This land stewardship also includes coastal waters as a place used by the Bajo people to establish settlements. However, there have been no specific regulations governing land use in coastal waters until now. Moreover, the area is inhabited by people who have ties to the ocean's economic, social, and cultural aspects. Through this social and cultural, and even spiritual attachment, the Bajo people create their order outside of state law or written regulations made by the Government. It shows that the state, through statutory regulations, is not the only institution that creates order. Still, society will try to create its order in the absence of written regulations.

The overall description above brings the author to the main questions: (1) What factors need to be considered by the Government in conducting land use for community settlements in coastal waters? And (2) How to analyze the paradigmatic philosophy of the order created by the Bajo tribe in land use for settlements without the state's regulations?

2 Research Methods

This research is based on the constructivism paradigm using a qualitative research tradition that prioritizes appreciation and experience as well as intensive interaction between researchers and the Bajo people. This study uses primary data and secondary data. Preliminary data was collected through in-depth interviews with the Bajo people, while secondary data was collected through a literature study. The data obtained were then analyzed and presented descriptively.

3 Discussion

3.1 Factors that the Government Needs to Pay attention to in Conducting Land Use Management for Bajo Tribe Community Settlements

To analyze the land use management in Indonesia, the author will first state the meaning of land, namely the surface of the earth. In this case, the earth's surface is a space with two dimensions: length and width. This definition still emphasizes land space and has not touched coastal areas or coastal waters. The statement that land covers the earth's surface under the sea (including coastal waters) is only limited to the doctrine put forward by Boedi Harsono. Implicitly, the recognition that the earth's surface in coastal waters is also interpreted as land is also stated in the Regulation of the Minister of Agrarian Spatial Planning/National Land Agency No. 17 of 2016 concerning Land Arrangement in Coastal Areas.

Based on Article 1 point 1 Government Regulation No. 16 of 2004 concerning Land Use, land management is equated with a pattern of land use management that includes control, use, and land utilization in consolidated land use through institutional arrangements. In connection with the construction of houses in coastal waters by traditional communities as a social act, it is essential to put forward the symbolic interactionism by Herbert Blumer that every individual gets external influence (information) in his life, and then the individual interprets the information. The results of this interpretation can be in the form of approving, suspending, or rejecting. In this case, the individual in the traditional society agrees with the information. Because many people agree with the story, it is transformed into a collective action called social action.
Second, geographically, land in the coastal area used by traditional communities to establish settlements has different conditions from land conditions. Therefore, the use of land underwater requires different arrangements in terms of determining land boundaries, determining criteria for activities that can be carried out in the area, and paying attention to environmental aspects. So that land use in the area remains in line with the principle of sustainability in land stewardship. In the explanation section of Government Regulation No. 16 of 2004 concerning Land Use, the principle of sustainability means that land stewardship guarantees the sustainability of the land's function for the sake of taking into account the interests of generations.

Third, there is a unique land tenure pattern in the community. It is important to note because the law is not autonomous, does not exist in a vacuum (void), and cannot be separated from the social aspects in which the law is made and applies. In the traditional community of the Bajo tribe, which was studied, it appears that between the houses. There is always a boat channel and a part of the house, which is also unique with the existence of a place to dry the fish. This condition is, of course, important for the Government to pay attention to and accommodate. It's just that until now, the Government has not provided regulations regarding land use for traditional community settlements in coastal waters.

The previous explanation has shown that the problem is a vacuum of regulation on community settlement but this problem can be solved by society through consensus to create order. This is constructivism-based research in which law is not understood as a series of regulations created by the government but consensus which is achieved by society. In this case, Bajo tribe has made a consensus without state intervention to create order in their tribe and this consensus is obeyed by every member of that community. It means that a vacuum in regulation is not identical to a vacuum of order because every community will create its order based on consensus.

The state's absence of regulation regarding land use in general, including traditional community settlements in coastal waters, raises questions about creating order in land use in these communities. In a more specific context, the question that arises is how then the realization of the principles of land use, namely the principles of integration, efficiency and effectiveness, harmony, balance, sustainability, openness, equality, justice, and legal protection in the use of land for traditional community settlements [5].

The attainment towards orderliness is a complex endeavor and cannot be achieved only through statutory or monolithic regulations [6]. This empirical research-based article shows that the two are not identical because the traditional Bajo people as a social system will always strive to create their order, which is rooted in cosmology, communal feelings, group identity, and their need for peace and security in building houses in coastal waters. It is through this order that people can establish relationships with each other.

3.2 Bajo Tribe Traditional Communities Create Order in the Use of Land for Settlements Without Regulations (State Law) Paradigmatic Study

The abstract nature of the law shows that understanding the law for traditional societies has gone beyond a series of paradigms that are still in the realm of realism or are in the paradigm of constructivism. To provide a clear, comprehensive, and sharp understanding, the following authors point out the emergence of order in the traditional Bajo tribe in the absence of written regulations from the state. The study starts from the ontology, epistemology, methodology, and methods as in the following table:
### Table 1. Constructivism Paradigm

<table>
<thead>
<tr>
<th>Ontology</th>
<th>Members of the traditional Bajo tribe have their own understanding of the ocean and identify themselves as sea people. This understanding is related and formed through experiences and from the people and society from generation to generation. It also affects land use patterns for establishing settlements in coastal waters. That is, the understanding of the traditional Bajo tribe about the ocean affects the establishment of these community settlements in coastal waters.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Epistemology</td>
<td>The traditional community of the Bajo tribe as a communalistic society is a collection of individuals who interact intensively with their respective subjectivities. The interaction of these societies is based on maintaining solidarity and order. In this case, the interaction seeks to create harmony in society. The desire to create peace in the interactions among the community, including concerning the construction of houses in coastal areas.</td>
</tr>
<tr>
<td>Methodology</td>
<td>In this interaction, people express their respective understandings. This understanding will then be compared or even challenged to create a consensus (agreement/results) regarding the traditional Bajo people’s settlement patterns. In this case, the law is interpreted as an agreement. Based on this meaning, the law/agreement is dynamic or open. Thus, law-creating activities continue to occur in line with society’s changes, including the flow of information, so that construction becomes more well informed and sophisticated. At this point, it is necessary to provide limitations in land use and determine the established mechanism to maintain harmony in the traditional Bajo community.</td>
</tr>
<tr>
<td>Method (Practice)</td>
<td>There is a distance of 1.5 m² between houses as a boat channel and permission requests from neighbors before building a house. The construction of houses is carried out jointly by the community due to close social ties.</td>
</tr>
</tbody>
</table>

In the realm of ontology, the traditional Bajo people identify themselves as sea people called sama. In this society, there is a saying that the sea is where the Bajo (sama) live, while the land people (Bagai) choose land as their place to live their lives. This community has long lived on a boat called the dakampungan. This pattern is now changing by building houses on the coast. Even though traditional communities established settlements on the coast, the orientation of these traditional communities as coastal people did not change. Based on this understanding, in essence, the Bajo people's settlement symbolizes the connection between the Bajo tribe community and the ocean, which has been passed down from generation to generation through various media. Moreover, historically the traditional community settlements of the Bajo tribe have existed since the XVII century AD. In this regard, it is essential to cite [7], that every society has its understanding and legal culture regarding justice, peace, and various other matters. Culture, beliefs, and social factors play an essential role in shaping a person's attitude and understanding of order.

In the basic belief methodology, each individual of the traditional Bajo tribe with different views is then discussed in an equal position among the parties. In this discussion, there is a development of information that becomes the basis for creating an agreement or resultant. This agreement later became a guide in the use of land in the traditional Bajo tribe. The agreement
relates to restrictions on the use of land for the traditional Bajo community. These restrictions are the basis for creating harmony in society. These boundaries are in the form of maximum land ownership limits, boundaries between land parcels, and boundaries between lands.

In the practical sphere, the distance between homes is 1.5 m² based on a consensus of that tribe. The distance between the houses is used as a boat channel or boat path. In this case, the Bajo tribe puts the boat beside their house so that access or roads are needed for each member of the traditional community. The traditional society places the boat next to the house for safety from the boat in the event of a big wave that has the potential to damage the boat, and it is more practical because there is no need to lift fishing gear and catches from land to sea. The existence of a distance of 1.5 m² is also essential because the transportation used daily by the traditional Bajo tribe is a canoe. This distance is also essential in supporting the community's daily transportation, not only in the context of supporting fisheries activities they carry out.

Also, in practice, the traditional Bajo people also ask their neighbors for permission before building a house. They were done to prevent conflict in the community and as a form of communalism in the society. In its communalistic nature, society emphasizes solidarity so that each individual strives to create harmony. At this point, individuals are part of society and the emphasis is on the group's interests. So that solidarity needs to be maintained by each individual. Friedman [8] stated that humans are cultural and social beings who live in an interconnected community.

The settlement of disputes in the traditional Bajo tribe also emphasizes deliberation because it is considered in line with the community's solidarity values. Moreover, this society is a small society where the pattern of relationships between individuals in this group is still closely intertwined based on kinship and also the same culture so that solidarity takes precedence [9][10]. The description above shows that the traditional Bajo tribe community has established its order by relying on its cosmology and communalistic nature. This order is achieved through a consensus that is dynamic and open but at the same time complex. Olivecroft and Lund lent call it a re-examination process and re-definition [11].

This consensus is the law for the community. At the same time, this condition proves that state law is not the only instrument in creating an order. Rahardjo [12] even stated that state law (rules) only occupies a small part of the universe of order. If state law is to place itself as the only source of order, the state law will fail. The Bajo tribe is a participant community because it relies on consensus and cooperation between all society components; there are no institutions with special obligations, decision-making is carried out by the majority of the population who are adults and goal-oriented.

The existence of order in the traditional Bajo tribe community is a combination of three orders: habits, laws (agreements), and morals. In terms of habits, traditional societies are accustomed to living in the sea and establishing settlements in coastal waters. This habit is related to the law because the law itself is institutionalizing habits that the community owns through an agreement. As for decency, it is in the ideal realm, namely, a solid society [13].

Based on the mirror thesis, the law should pay attention to aspects of morality, rationality, habits, and consent or what society agrees. If the level of reflection on these four things is high, then the law will be accepted by society and will be effective. In the view of anthropology, the law is a socio-cultural manifesto [14]. On the other hand, if the law does not reflect this, society will reject it. In facing this condition, the state should be present to recognize the law, which is understood as a consensus in traditional communities such as the Bajo tribe. Through this, the law becomes contextual. The state should not be present by identifying itself with an order but by providing space to create order following the community's understanding and culture [15][16]. In the development of national law, it is necessary to make a paradigmatic change
from the positivism paradigm, which emphasizes statutory regulations to become law based on
the constructivism paradigm, emphasizing diversity and freedom. This diversity and freedom
are tied to values and contexts. It is because the constructivism paradigm is value-laden or full
of values.

Referring to Rahardjo [17], values are in the realm of epistemology and are further elaborated in a table of practical issues. It means that every policy (in the realm of methodology)
in the constructivism paradigm is always tied to values (in the realm of epistemology) because
there are connective, sequential, and strategic relationships between the three. The ontology
underlies epistemology, and epistemology underlies the methodology and methodology
underlies the method.

At this point, it can be understood that the law for the traditional Bajo tribe is a different
agreement from the meaning of law in the positivism paradigm, namely the laws and
regulations. This positivism view cannot be used in assessing the existence of law in the
traditional Bajo community. It is not correct to state that in the conventional Bajo community,
there are no laws because there are no regulations.

4 Conclusion

Currently, there are no specific regulations governing land use in the community because
the orientation of land use is still focused on land. In this case, if the Government wants to
regulate land use in coastal waters, there are three essential factors to consider, namely:
a) Strong economic, social and cultural linkages between the community and the land; b) There
are different geographical conditions between traditional community settlement lands that are
underwater and closely related to the ocean with land conditions on land that have their own
characteristics; c) There is a land tenure pattern that is unique to the community.

The traditional Bajo community in making order in land use for settlements can be studied
paradigmatically, namely: ontology, and the Bajo people identify themselves as sea people to
build houses on the beach. Epistemology: there is intensive interaction between the community
and emphasizes solidarity, methodology: the organization conducts deliberations in formulating
an agreement in the form of boundaries of land use and distances between houses. In the method
(practical) realm, there is a distance of 1.5 m² and requests for neighbors’ permission before
building a building.

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The Legal Standing of Appearers in Authentic Deeds Made or Witnessed by a Notary Utilizing Signatures and Fingerprints of the Appearer as Evidence

Mujib Medio Annas¹, Tan Kamello², Hasim Purba³, Saidin⁴

{mujibmedio@gmail.com¹, tankamello@usu.ac.id², hasim.purba@usu.ac.id³, saidin@usu.ac.id⁴}

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. In an authentic deed made or witnessed by a notary, appearers must possess legal standing and have the capacity and legality to take legal actions. The power and lawfulness of the appearer must be supported by a correct identity. The signature and fingerprint of the appearer are used to confirm the legitimacy of the deed. This paper aims to analyze the legal standing of appearers in authentic deeds made or witnessed by a notary utilizing signatures and fingerprints of the appearer as evidence and the legal consequences of not fulfilling such a legal standing. This is normative legal research using data collected through the literature study. The results indicate that signatures and fingerprints of the appearer are the main requirements that make authentic deeds the perfect evidence, in addition to other requirements regarding objects in the deeds. Meanwhile, failure to fulfill legal standing in authentic deeds can result in a defective legal action stated in the deed. The injured party has the right to terminate the deed and sue the notary for interest and fines.

Keywords: Appearer, Notarial Deed, Signature, Fingerprint

1 Introduction

Positive laws arise from human activity and have been posited or outlined. Legal positivism has several meanings; most of its followers hold to two fundamental propositions. First, the definition of law should not depend on matters of moral validity. Second, the law should only be identified according to concrete formal provisions, such as legislation, case law, and customary traditions [1]. The varying attitudes of various legal practices towards legality status were caused mainly by a particular event in the history of jurisdiction [2].

One of the main requirements to realize the validity of a legal act is the legal standing of the appearer in an authentic deed made or witnessed by a notary. Legal standing is the authority to take legal action. Legal actions can create legal consequences or, in other words, create rights and obligations [3].

According to Article 1866 of the Civil Code, evidence is classified into written evidence, witness evidence, allegations, and confessions. Article 1867 of the Civil Code explains that written evidence can be both notarial and private deeds. Article 1868 of the Civil Code states that authentic deeds are deeds made according to the law or before the relevant public official at the place of its creation. Article 1870 of the Civil Code states that for interested parties and their heirs or those receiving rights from these parties, an authentic deed serves as perfect proof of what is contained therein. The conception of authentic deeds no longer refers to the provisions
of Article 1868 of the Civil Code but rather to Article 1 point 7 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notarial Occupation (hereinafter referred to as Notarial Law) which states that notarial deeds, hereinafter referred to as deeds, are authentic deeds made by or before a notary according to the format and procedures stipulated in this Law.

Article 39 of the Notarial Law defines the requirements for appearers to be able to take legal actions in an authentic deed made by a notary, namely:

a. Appearers must meet the following criteria: 1) At least 18 (eighteen) years of age or already married, and 2) Capable of doing legal actions.

b. The notary must be acquainted with or be introduced to the appearer by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or married and capable of taking legal actions or by 2 (two) other appearers.

Appearers are obliged to include their signatures in the original deed. Article 1 point 8 of the Notarial Law states that an original deed contains the signatures of the appearers, witnesses, and notaries, which are kept as part of the Notary Protocol. Article 44 Paragraph (1) further explains that as soon as the deed is read, it must be signed by every party, witness, and notary, except for one or more appearers being unable to sign with the reason being provided. Appearers must also provide fingerprints in the original deed as stipulated in Article 16 Paragraph (1) letter c of the Notarial Law, whose function is to strengthen, guarantee, and ensure that the appearers present and mentioned in the original deed are among the parties concerned.

Appearers must possess capacity and legality in an authentic deed. An identity must support capacity and legitimacy. Appearers are legal subjects that can represent themselves, others through a power of attorney or acting on behalf of their authority. Therefore, appearers must have the authority to take legal action. In an authentic deed, the legal standing of the appearers greatly determines the legality of their legal actions. Failure to show legal status can invalidate legal actions, leading to the parties concerned filing a lawsuit to terminate the deed in question.

2 Research Questions

This research aims to:

a. First, review and analyze the legal standing of appearers in authentic deeds made or witnessed by a notary utilizing signatures and fingerprints of the appearer as evidence.

b. Second, to find out and analyze the legal consequences of the appearer not fulfilling legal standing in authentic deeds made or witnessed by a notary utilizing signatures and fingerprints of the appearer as evidence.

3 Research Method

This is normative juridical research. Normative legal or literary law research methods are used in the legal study that examines existing library materials [4]. This type of research conceptualizes law as what is written in laws and regulations (law in books) or rules or norms that are benchmarks for human behavior that are deemed appropriate [5].
4 Results and Discussion

4.1 The Legal Standing of Appearers in Authentic Deeds Made or Witnessed by a Notary Utilizing Signatures and Fingerprints of the Appearer as Evidence

In authentic deeds, appearers are legal subjects, namely humans and legal entities. To act on an authentic deed, the appearer must possess legality and capacity. The identity of the appearer is a form of guarantee on the validity of the data provided. This can be in the form of an identity card, family card, marriage book, marriage certificate, passport, birth certificate, or other proof of identity such as a certificate issued by the authorities. The original identification must be shown to the notary and a copy must be attached to the original deed in an authentic deed.

The anatomy of an authentic deed is stipulated in Article 38 of the Notarial Law, namely the head, body, and closing of the deed. The most important part of an authentic deed is the body, as it contains the name of the appearers, complete with their capacity and legality. This is called the identity section.

Appearers can represent themselves, other parties through a power of attorney, or based on capacities such as on behalf of a legal entity or a non-legal business entity, or acting based on authority, for example, a parent representing an underaged child.

The capacity of the appearers in an authentic deed, whether or not they possess authority or legal standing, must be proven by their legality. For example, for a father to represent his underaged child, legal proof that the child is his and the identity of both the father and child is required. In this case, it can be proven by showing the father’s identification and the child’s birth certificate.

The appearers must be able to follow the law when representing themselves or other parties properly. Article 1330 of the Civil Code considers minors to be unable to carry out legal actions. According to Article 330 of the Civil Code, a minor is one who is not yet 21 years old and is not married. In addition, Article 1320 of the Civil Code also considers those under guardianship/custodianship, even adults, in the same category. Article 433 of the Civil Code considers a mentally challenged person in the same category as those under guardianship/custodianship. In Indonesia, a person is viewed as an adult if they are 18 years of age or is/has been married. This is shown in norms that regulate age, for example, Article 39 of the Notarial Law, Article 47 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), as well as the Circular Letter of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 4/SE/I/2015 of January 26, 2015, which states that a person must be 18 years old to carry out a legal action in the land sector.

Legal standing is essential in determining the legality, capacity, and identity in carrying out legal actions in an authentic deed to guarantee that an authentic deed can be considered perfect evidence. The identity section elaborates the appearers’ capacity, legality, and identity, which is an absolute requirement for their legal actions. The following are examples regarding legal standing:

a. Regarding parents or guardians representing minors, they must refer to Article 33 Paragraph (1) and (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that in the case of parents and family members of the minor cannot carry out the obligations and responsibilities as referred to in Article 26, a person or legal entity that meets the requirements can be appointed as guardian based on a court order.
b. In carrying out legal actions on behalf of their children regarding the transfer of rights or guarantee of assets, parents must comply with Article 393 of the Civil Code, which states that they must request a court ruling.

c. The legal standing of the appearers regarding joint assets must comply with the provisions of Article 36 of the Marriage Law regarding joint assets, which states that the husband or wife can only act with the consent of both parties.

d. The director in a limited liability company has the authority to act for and on behalf of the board of directors based on Article 92 Paragraphs (1) and (2) of Law Number 40 concerning Limited Liability Companies (hereinafter referred to as LLC Law). This article states that the board of directors carries out the management of the company for the benefit of the company and following the aims and objectives of the company and is authorized to carry out management as referred to in Paragraph (1) under the policies deemed appropriate within the limits stipulated in this Law and/or the articles of association. The articles of association can determine whether or not the commissioner's approval is required in carrying out specific actions. For example, approval is needed in borrowing or lending money for and on behalf of the company in addition to fulfilling the provisions of Article 108 of the LLC Law, which states that if there is more than one commissioner, an assembly is required. Likewise, in taking legal action to guarantee or acquire assets, the board must comply with the provisions of Article 102 of the LLC Law, namely obtaining approval in a GMS.

e. In carrying out legal actions, the management of a foundation must obtain approval from the founder, especially in transferring rights to foundation assets as stipulated in Article 37 Paragraph (1) of Law Number 16 of 2001 concerning Foundations.

Based on the examples above, the appearers must possess the legal capacity to create a notarial deed that can be proven with original documents and identification. The appearers must sign the authentic deed and provide fingerprints for the original deed. If unable to do so, the appearers must provide reasoning at closing the deed and a thumbprint of their right hand on the original deed. The signature or fingerprint is evidence that the appearers approve of the contents of the deed and, in turn, making the authentic deed a piece of perfect evidence.

In Indonesia, proof of a person's identity is more popular in an Identity Card (ID Card). ID Card has a Single Identity Number or often abbreviated as NIK (Nomor Induk Kependudukan). The Single Identity Number printed on the ID Card to prove whether or not an appearer has legal standing and capacity to do a deed. Under the system in Indonesia, a notary can confirm the legal status by checking the data of an appearer through its Single Identity Number on the website https://htel.atrbpn.go.id. With the current e-ID Card system, the Single Identity Number is a quick way to find out the credentials of a citizen.

4.2 The Legal Consequences of the Appearer Not Fulfilling Legal Standing in Authentic Deeds Made or Witnessed by a Notary

As public officials, notaries have the authority to do authentic deeds following the prevailing laws and regulations [6] based on the request of the appearers. The notary should listen to the explanations or statements of the appearers without bias, which will then be written into a notarial deed after an agreement. After the deed is read out by the notary and approved by the appearers, it will then be signed. In addition, the deed must be in accordance with Article 38 of the Notarial Law [7].

Article 1869 of the Civil Code confirms that deeds that cannot be considered authentic, either because of the lack of authority or incompetence of the public official concerned or defects, can be regarded as a private deed when signed by the relevant parties. For an authentic
Deed to be considered perfect evidence, it must meet the legal requirements as stated in Article 1320 of the Civil Code. These requirements cover self-binding agreements, the ability to make an agreement, specific subjects, and specific causes that are not prohibited. Article 1321 of the Civil Code reaffirms that the signing and fingerprinting of an authentic deed made or witnessed by a notary can become defective due to errors or if obtained through coercion or fraud. If the defect is proven, the notarial deed will be degraded into a private deed.

Agreement and proficiency are personal requirements in an authentic deed. These are the main requirements to guarantee the legal certainty of appearers who wish to do authentic deeds before a notary. The agreement will be written in the deed and bind the appearers. The provisions of Article 1338 of the Civil Code explain that a legal agreement will act as law for the relevant parties. The agreement cannot be terminated without the agreement of all parties or for reasons determined by the law and it must be carried out with good intention. Article 1338 of the Civil Code states that to enforce an agreement made by several parties, they must possess legal standing.

Before an authentic deed is signed and fingerprinted, it is read out. Article 44 Paragraph (1) explains that as soon as the deed is read, it must be signed by every party, witness, and notary, except for one or more appearers unable to sign with the reason being provided. Following this, the appearers are considered to have agreed upon the contents contained in the deed.

An appearer who does not have the authority to act cannot carry out legal actions in an authentic deed. According to the provisions of Article 41 of the Notarial Law, if an appearer is proven to be incompetent, the authentic deed will be considered a private deed.

As authentic deeds, notarial deeds are considered physical proof (uitwendige bewijskracht), which is the ability of the deed to prove its validity as an authentic deed (acta public probant sese ipsa). If an authentic deed has the correct physical format and meets all the legal requirements of an authentic deed, then the deed is valid until proven otherwise. In disproving the validity of an authentic deed, the burden of proof rests on the party denying its authenticity. A notarial deed can be considered authentic if the notary's signature is found on both the original deed and the copy, from the beginning (title) to the end of the deed [8].

In determining the physical evidentiary value of a notarial deed, it must be seen as is, not from its contents. Physically, there is no need to compare it with other evidence. If a party considers a notarial deed to be invalid, then, through court action, they are obliged to prove that the deed is not physically authentic based on the requirements of an authentic deed [8]. Failure to fulfill legal standing regarding capacity, legality, and identity in authentic deeds can result in an authentic deed being degraded into a private deed. The injured party has the right to terminate the deed and sue the notary for compensation, interest, and fines.

5 Conclusions

Finally, it can be concluded that:

a. Signatures and fingerprints of the appearers are the main requirements that make authentic deeds the perfect evidence, in addition to other requirements regarding objects in the deeds. The legal standing of the appearers in an authentic deed is highly dependent on their capacity, legality, and identity. The appearers are considered to approve the contents of the authentic deed if their signatures and fingerprints are attached to the original deed.
b. Failure to fulfill legal standing in authentic deeds can result in a defective legal action stated in the deed. The injured party has the right to terminate the deed and sue the notary for compensation, interest, and fines.

References

Regulating the Management of State-Owned Plantations to Improve Public Welfare

Nurpanca Sitorus¹, Budiman Ginting², Sunarmi³, Mahmul Siregar⁴
{pancastr@gmail.com¹, budiman_ginting59@yahoo.com², sunarmi@usu.ac.id³, mahmuls@yahoo.co.id⁴}

Universitas Sumatera Utara, Indonesia¹,²,³,⁴

Abstract. The plantation industry cluster plays an important and strategic role in national development, especially in improving the prosperity and welfare of the people, increasing foreign exchange reserves, providing employment, maintaining value and competitiveness, meeting domestic consumption and industrial raw material needs, and managing natural resources sustainably. The government manages natural resources through state-owned enterprises as regulated in Law 19 of 2003 concerning State-Owned Enterprises. Since the issuance of Government Regulation Number 72 of 2014, PT Perkebunan Nusantara III has become the holding company of PTPN I, II, IV, to XIV. This is normative juridical research that is prescriptive and uses the statute and conceptual approaches. Data is sourced from primary, secondary, and tertiary legal materials, which are analyzed qualitatively. This study indicates that state-owned plantations conduct activities on a substantial amount of land to provide the most significant benefit for the people. As stated in both the preamble and Article 33 of the 1945 Constitution, the State's goals align with this indication. The objective to improve public welfare is on equal priority with obtaining profits. The management of state-owned plantations is regulated in several laws and regulations with the same goal, namely realizing the State's responsibility to improve public welfare.

Keywords: Management, Public, State-Owned Plantations, Welfare

1 Introduction

State-owned enterprises (SOEs) are closely related to public welfare; the State utilizes them to realize this goal. Therefore, the objectives of SOEs are determined by taking into account their nature as business entities, namely to generate profits and provide public benefits. Therefore, SOEs are classified into limited liability companies (Persero), which aim to generate profits and fully comply with the Limited Liability Company Law provisions, and public companies (Perum), which aim to provide specific goods and services to meet the needs of society.

The State was formed to ensure the physical and mental well-being of all its citizens [1]. The Republic of Indonesia 1945 Constitution states that Indonesia was formed to improve public welfare, educate the people, and establish a world order based on freedom, perpetual peace, and social justice. The preamble to the 1945 Constitution, which is manifested in the articles of the state constitution, contains the objectives of the Indonesian State, namely the realization of economic and social welfare. Based on this provision, the management and control of the land, waters, and natural resources contained therein must be aimed to maximize public welfare.
Natural resources are managed by SOEs as regulated in Law Number 19 of 2003 concerning State-Owned Enterprises. Paradigmatically, SOEs are an extension of the State's hand in managing the lives of its citizens. The land, the waters, and the natural resources within should be used to the most significant benefit of the people. Therefore, the goal of SOEs is to become economic actors that embody Article 33 Paragraph (3) of the 1945 Constitution [2]. The role of SOEs varies widely among countries, as they are closely related to the country's economic system. In addition, SOEs are political and economic entities. As the government owns them, SOEs are subject to the policies that apply, even if they conflict with one another [3].

Currently, SOEs are categorized into several industrial clusters: energy, oil, and gas; mineral and coal; insurance and pension funds; plantation and forestry; telecommunications and media; food and fertilizer; tourism and support; health; manufacturing; infrastructure; logistics; and financial. The plantation and forestry industry cluster consists of PT Perkebunan Nusantara (PTPN) III as the holding company of PTPN I, II, IV to XIV and Perum Perhutani. This paper will focus on the plantation industry cluster. The plantation industry cluster plays an important and strategic role in national development, especially in improving the prosperity and welfare of the people, increasing foreign exchange reserves, providing employment, maintaining value and competitiveness, meeting domestic consumption and industrial raw material needs, and managing natural resources sustainably.

Plantations are constantly faced with various challenges, issues, changes, and developments in a very dynamic environment as well as various fundamental problems such as globalization and market liberalization; rapid advances in technology and information; increasingly limited land; water and energy resources; climate change; land ownership; the limited capacity of the national seed system; limited capital of smallholders; limited institutional capacity of farmers and trainers; the decline in smallholder productivity; and the lack of coordination between sectors related to plantation development [4].

Referring to the various problems described above, it can be said that state-owned plantations have not been successful in providing the most significant benefit for the people. In theory, the vast natural resources of Indonesia, especially its commodity crops, have a sizeable strategic potential and should be able to be utilized to fulfill this goal. This research aims to answer the following problems based on the description: First, how are state-owned plantations managed? Second, what is the State of public welfare concerning the goal of state-owned plantations?

2 Research Method

This is normative juridical research analyzing the management of state-owned plantations for the most significant benefit of the people. Normative research is also called doctrinal legal research. This research conceptualizes law as written-in-laws and regulations (law in books) or as rules or norms as benchmarks for appropriate human conduct. This research is prescriptive; it studies the objectives of the law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. This research utilizes statute and conceptual approaches, which examine all laws and regulations related to the research problems and depart from the views and doctrines in law science and analyze them qualitatively.
3 Results and Discussion

3.1 Management of State-Owned Plantations

Article 33 Paragraphs (2) and (3) of the 1945 Constitution contain the philosophy and reasoning of why SOEs are formed. Paragraph (2) states that sectors of production that are important for the country and affect the life of the people shall be under the powers of the State. In contrast, Paragraph (3) claims the land, the waters, and the natural resources within shall be under the powers of the State and shall be used to the most significant benefit of the people. These paragraphs infer that the State forms business entities to meet all the needs of society in sectors that the private sector has not handled. This is realized in the creation of SOEs as agents of development. SOEs are classified into public companies (Perum) and LLCs (Persero). Both public and limited liability SOEs are structured as LLCs, with the critical difference being the capital divided into shares, in which 51% belong to the State. Therefore, limited liability SOEs are not legal entities; the State owns them through shares [5].

As independent legal entities, limited liability SOEs explicitly separate the management of the company and the power of its owners, which is also reflected in the LLC Law in Indonesia. Indonesia adopts a civil law legal system. Attractive trade deals and development programs force a country to meet international standards. A separate legal entity is one example of legal transplantation from the Netherlands to Indonesia, which once colonized Indonesia. However, colonialism was not primarily concerned with legal transplants but rather with conquest [6].

Plantation SOEs are managed as LLCs. Article 11 of Law Number 19 of 2003 concerning State-Owned Enterprises states that all provisions and principles of LLCs apply to limited liability SOEs as stipulated in Law Number 40 of 2007 concerning LLCs. In Bahasa Indonesia, limited liability company is translated to 'perseroan terbatas', consisting of two words: perseroan and terbatas. Perseroan refers to the capital of an LLC, which consists of 'serosero' or shares. Meanwhile, terbatas refers to the responsibility of shareholders whose extent is limited to the nominal value of the shares they own. One of the principles in Law Number 40 of 2007 concerning LLCs is the separation of company assets from their owners. SOEs are business entities whose capital is wholly or principally owned by the State through restricted state assets. In this case, restricted state assets originate from the state budget used as capital for limited liability, public SOEs, and other LLCs. Further financial development and management will be based on sound corporate principles [7].

PTPN III manages all state-owned plantations in Indonesia. The Government has issued Regulation Number 72 of 2014 concerning the Addition of State Equity Participation of the Republic of Indonesia to the Capital Stock of PT Perkebunan Nusantara III. The regulation states the reduction of shares from 90% to 10%. As a result, PTPN III has become the holding company for PTPN I, II, IV, to XIV. As the holding company, PTPN III owns 90% of PTPN I, II, IV to XIV shares, while the State owns the remaining 10%. The current legal framework for establishing a state-owned holding company refers to Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Equity in State-Owned Enterprises and Limited Liability Companies. The preamble to Government Regulation Number 72 of 2016 explains that establishing a plantation holding company increases the value and optimizes SOEs' role as national development agents in supporting and accelerating government programs.

The essential obligation of corporate management is to maximize profits and ensure longevity by balancing the competing demands of various stakeholders. The provisions of Article 5 Paragraph (3) and Article 6 Paragraph (3) of Law Number 19 of 2003 concerning
State-Owned Enterprises have adopted several principles of good corporate governance regarding the management of SOEs [8]. Of the various regulations and arrangements related to the administration of plantations above, starting from the SOE Law, the Plantation Law, and the Agrarian Law, it can be concluded that the main objective of the State in managing national wealth is to provide the most significant benefit to the people. Meanwhile, LLCs' objectives can be seen in its articles of association that are based on the will of the company founder. As state-owned plantations are classified as limited liability SOEs, the objective to improve public welfare is on equal priority, intending to obtain profits.

3.2 Public Welfare as a Goal for State-Owned Plantations

The fundamental goal of national development is to improve public welfare. This is the constitutional duty of all government and private nation components, as mandated and regulated in the Preamble and Article 33 of the 1945 Constitution. To achieve this goal, overall national economic forces are tightened through sectoral regulations or state ownership of specific business units to benefit the people. SOEs are the pillar of the nation's economy; they are involved in various sectors that play a significant role in realizing the State's goals. The plantation sector is one of the most crucial and strategic sectors that SOEs are involved in, considering the scope of its work which utilizes a tremendous amount of land spread throughout Indonesia. State-owned plantations utilize enormous land and labor force among all SOEs today, which explains the number of people living near plantations [9]. However, there are still many conflicts in both state and private plantation operations. This is mainly due to the unsuccessful attempts to improve public welfare.

The use of land, waters, and skies (as well as the wealth contained therein) for the greatest prosperity of the people is a statement that needs to be more concrete. This means that (1) every designation, use, supply, and maintenance of land, waters, and skies, and (2) every designation and regulation of the relationship between people and the land, waters, and skies (as well as the wealth contained therein) must be used to the most significant benefit of the people [10].

Plantations are established to improve the welfare and prosperity of the people; increase foreign exchange reserves; provide employment and business opportunities; increase production, productivity, quality, value, competitiveness, and market share; increase and fulfill national consumption and industrial raw materials needs; protect plantation owners and the community; manage and develop plantation resources optimally, responsibly, and sustainably; and increase the utilization of plantation services.

The State must improve public welfare. For this reason, the government is required to resolve all problems relating to the lives of its citizens. The Welfare State concept aims to create general welfare. A state is a tool formed by its people to achieve common goals, namely prosperity and social justice. Kranenburg considers the Welfare State theory to strive to maintain legal order and the welfare of its citizens. As welfare covers a wide range of fields, the State's goals are also broad in scope [11].

Public welfare is traditionally understood as the responsibility of society that is fulfilled through the government. This is realized in state administration or government, commonly known as a welfare state [2]. The relationship between the state and natural resources is regulated in Article 33 Paragraph (3) of the 1945 Constitution, which states that the land, the waters, and the natural resources within shall be under the powers of the State and shall be used to the most significant benefit of the people. In this case, state functions are carried out by SOEs. State-owned plantations are an extension of the State's hand in realizing its goal, namely the prosperity of its people.
According to the constitutional court, the phrase 'under the power of' must be interpreted broadly derived from the conception of the sovereignty of the Indonesian people's overall sources of wealth: the land, the waters, and the natural resources within. This includes public ownership over the wealth sources, as mentioned above. Therefore, the concept of 'under the power of' cannot be interpreted as ownership solely within the framework of civil law [8].

In addition, the land utilized by state-owned plantations is subject to Article 2 of Law Number 5 of 1960 concerning Basic Agrarian Principles. It explicitly states that their authority is derived from the State's right to manage land, waters, and skies, including the natural resources contained therein. All resources shall be used to the most significant benefit of the people, specifically to ensure happiness, prosperity, independence in society, and the Indonesian constitutional State, which is independent, sovereign, and prosperous.

The goals of SOEs are regulated in the SOE Law, which is stated in the preamble of letters a and b of the SOE Law. It requires SOEs to (1) be actors of economic activity in the national economy based on economic democracy and (2) play an essential role in the national economy to realize public welfare. From these two points, it can be concluded that SOEs have two objectives. First, as an extension of the State to achieve the State's goals, SOEs must improve general welfare, which is further elaborated in Article 33 Paragraph (2) and Paragraph (3) of the 1945 Constitution by controlling production branches which are crucial to the State and the livelihood of its people as well as utilizing the land, the waters, and the natural resources. Second, as a business entity, SOEs must obtain profits based on the principles of economic democracy alongside private companies and cooperatives.

The elucidation of SOE Law requires SOEs to contribute to the development of the national economy in general and state revenues in particular. This means that SOEs are expected to improve the quality of service to the community while at the same time contributing to national economic growth and state financial revenues. Furthermore, regarding the objective to obtain profit, the company considers the principles of a healthy company. Therefore, government assignments must be accompanied through financing (compensation) based on business or commercial calculations.

In line with the Constitutional Court Decision Number 12/PUU-XIV/2008, the aims and objectives of SOEs are in line with one of the State's objectives as mandated in the fourth paragraph of the 1945 Constitution's Preamble, namely improving public welfare. This is also in line with the mandate of Article 33 Paragraph (4) of the 1945 Constitution, which states that the organization of the national economy shall be conducted based on economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy without putting aside the essence of the economy as a common endeavor based upon the principles of the family system as emphasized in Article 33 Paragraph (1) of the 1945 Constitution. Therefore, according to the Constitutional Court, the SOEs aims and objectives as stipulated in Article 2 Paragraphs (1) and (2) of the SOE Law are part of an effort to realize the State's goals as emphasized in the preamble and Article 33 of the 1945 Constitution. Therefore, the objectives of SOEs to develop the national economy while seeking profit are constitutional and on equal priority.
4 Conclusion

SOEs are business entities whose capital is wholly or predominantly sourced from the State through restricted State assets. These assets are derived from the State budget to finance state-owned LLCs and public companies, and other LLCs. For example, state-owned plantations are managed as LLCs. Article 11 of Law Number 19 of 2003 concerning State-Owned Enterprises states that all provisions and principles of LLCs apply to limited liability SOEs as stipulated in Law Number 40 of 2007 concerning LLCs. Since the issuance of Government Regulation Number 72 of 2014, PTPN III has become the holding company of PTPN I, II, IV, to XIV. PTPN III holds 90% of the shares as the holding company, while the State owns the rest.

State-owned plantations are an extension of the State's hand in improving public welfare. State-owned plantations conduct activities on a substantial amount of land to provide the most significant benefit to the people. The objectives of state-owned plantations are regulated in the SOE Law, Plantation Law, Basic Agrarian Law, and LLC Law which can be seen in its Articles of Association, namely realizing the State's responsibility to improve public welfare.

References
Model for the Formulation of Corporate Criminal Liability System in Omnibus Law (Law Number 11 of 2020 Concerning Job Creation)

Rahmi Dwi Sutanti¹, Claverina Moraosky Pangaribuan²
{rahmidwisutanti@live.undip.ac.id}¹

Universitas Diponegoro, Indonesia¹, ²

Abstract. The development of criminal legislation outside the Criminal Code has led to corporations as subjects of criminal law, including in the Omnibus Law, Law Number 11 of 2020 concerning Job Creation. It is of course also a deviation from the Criminal Code. This is what encourages the importance of conducting this study, using the normative methods, to analyze the model for formulating a corporate criminal liability in this Law.

The issue that is the focus of discussion in this paper is how the formulation of corporate criminal liability in Law Number 11 of 2020 concerning Job Creation and, what is the ideal corporate criminal liability formulation model in an Omnibus Law. The results showed that the structure of the Job Creation Law is different from other ordinary laws, and each cluster mentions corporate criminal liability in a diverse and unsynchronized manner. So, there are no uniformity of corporate criminal liability formulation, and it can lead to juridical problems in its application. From the second problem it can be concluded that the ideal formulation model for corporate criminal liability in an Omnibus Law is to accommodate it in the chapter on general provisions. By entering into general provisions, the regulation will be uniform and applicable to the entire content of the law.

Keywords: Corporate Liability, Criminal Liability, Omnibus Law, Indonesia

1 Introduction

The formulation of criminal law subjects or targets of criminal law norms in the Criminal Code is based on the University/Societas Delinquere non-Potest principle, which means that legal entities or corporations cannot commit criminal acts. It can be concluded from the formulation of Article 59 of the Criminal Code, which reads: “In cases where the offense is determined to be criminalized against the management of the board members of the commissioners, the management, board members or commissioners who did not interfere committed the violation, not sentenced” [1][2]. This provision shows that the organs of a corporation can be held accountable for committing a criminal act, but it is limited to personal liability, not corporate liability. The legal subjects adopted in the Criminal Code are only humans as individuals (natuurlijke personen). Apart from the existence of the provisions in Article 59, it can also be concluded that the formulation of offenses in the law usually starts with the word “whoever” refers to the subject and refers to “person”, the types of criminal sanctions in Article 10 of the Criminal Code are types of crimes that can only be imposed on humans; and, in the examination of the case and the nature of the criminal law where the
defendant has seen or not, gives an indication that those who can be accounted for are humans [3][4].

The application of the university principle in the Criminal Code, which underlies the only human subject of criminal law, is slowly starting to be abandoned with the development of legal subjects in criminal law outside the Criminal Code, which allows corporations or legal entities to be held accountable in criminal law. The regulation of corporations as a subject of criminal law in-laws outside the Criminal Code has become common. In purely criminal laws and in various administrative laws that contain criminal sanctions or better known as Administrative Penal Law. The development of corporate law is increasingly showing good effect with the start of investigating criminal acts committed by corporations. The prospect of regulating corporate criminal liability that commits criminal acts deserves serious scrutiny, considering that the regulations exist only in special provisions and not in the general provisions of Book I of the Criminal Code. It indicates no general principles that can be used as a reference in criminalizing corporations, but all the rules come from the special law itself. Such conditions can cause various juridical problems due to the inconsistencies and inconsistencies between specific criminal laws containing criminal provisions for corporate criminals [5]. There have been at least 2 decisions in kracht related to corporations, namely the corruption case committed by PT Giri Jaladhi Wana and the corruption case committed by PT Nusa Konstruksi Enjiniring. The PT Giri Jaladhi Wana (PT GJW) case was examined and decided through the Banjarmasin District Court decision Number 812/Pid.Sus/2010/PN.BJM and the Banjarmasin High Court decision Number 04/Pid.Sus/2011/PT.BJM. PT GJW was accused of committing several corruption-related acts, so that it was seen as a continuing act. PT Nusa Konstruksi Enjiniring (PT NKE) that previously known as PT Duta Graha Indonesia (PT DGI) is the first corporation that was convicted in a corruption case in 2019 after the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases Criminal by Corporations [6].

This condition is increasingly becoming interesting to analyze after the issuance of the Omnibus Law, namely Law Number 11 of 2020 concerning Job Creation. In Indonesia, the first Omnibus Law was promulgated on November 2, 2020, containing 15 Chapters, 186 Articles, and reaching 1,187 pages. As usual, the development of legal subjects in various laws outside the Criminal Code, the Job Creation Law also includes corporations as legal subjects. The fundamental problem is that the structure of the Job Creation Law is different from other ordinary laws, and each cluster mentions corporate criminal liability in a diverse and unsynchronized manner [7]. It encourages the importance of conducting an academic study through research entitled “Model for the Formulation of Corporate Criminal Liability System in Omnibus Law Number 11 of 2020 Concerning Job Creation”. The issue that is the focus of discussion in this paper is how the formulation of corporate criminal liability in Law Number 11 of 2020 concerning Job Creation?, and what is the ideal corporate criminal responsibility formulation model in an Omnibus Law?

2 Research Method

This research uses a normative juridical research method, which aims to reveal the reality, to what extent certain legislations are vertically compatible, or have horizontal compatibility when it comes to equal legislation in the same field. This study uses secondary data, which among other things refers to primary legal materials in the form of Law Number 11 of 2020
concerning Job Creation. The collected data were analyzed using normative qualitative data analysis methods.

3 Results and Discussion

3.1 The Formulation of Corporate Criminal Liability in Law Number 11 of 2020 concerning Job Creation

The determination of a corporation as a legal subject in criminal law deviates from the criminal law regulation, namely the Criminal Code. Normatively, this is not a problem, considering that in the Criminal Code, there is a provision on the Bridge Article (Article 103 KUHP) that allows the development of provisions outside the Criminal Code to deviate from the Criminal Code. However, the formulation of criminal liability against corporations that commit criminal acts always creates conflict in conceptual and pragmatic matters. At the conceptual level, there is a principle of error in criminal law which reads “nulla poena sine culpa” or “keine strafe ohne schuld” or “actus non facit reum nisi mens sit rea”. Which means there is no crime without error. Of course, it will create difficulty in being responsible and punishing the corporation in connection with the absence of mental attitude or mens rea elements [8].

Apart from that, the difficulty is also determining which criminal sanctions to choose for corporations. The criminal sanctions in the primary criminal law in Indonesia, namely the Criminal Code, still design criminal sanctions that can be imposed on natural persons or humans. Whereas at the practical level, there is a skeptical view of the effectiveness of corporate criminal liability in relation to the issue of whether the corporation is an appropriate target for liability in criminal law and also whether corporate liability in criminal law diverts attention from criminal liability to criminal offenders [1][2]. To answer the debate related to these two matters, theories that examine the criminal responsibility of the criminal offender have emerged. Identification theory, Vicarious Liability theory, and Strict Liability theory are among them.

Identification Theory or Alter Ego Theory states that the will power of a corporation’s managers represented the will power of corporations. The managers and directors represent the brain, intelligence, and will of the corporations. A sufficiently high-ranking corporate member acts not as an agent of the corporation but as the corporation itself and represents the nervous system that controls what the corporations do. It means that the corporation can only be held accountable for individual actions acting on behalf of the corporation, and that person has a high position or plays a crucial function in the corporate decision-making structure. Meanwhile, according to the theory of Vicarious Liability, a corporation can be held accountable if an employee commits a crime in carrying out their work within the scope of work on behalf of the corporation. In this case, it is not limited to the actions of managers and directors.

Meanwhile, according to the theory of Strict Liability (strict criminal responsibility), corporations can be held accountable based on law if the corporation violates or does not fulfill certain obligations/conditions/situations determined by law. For example, in the case of the law stipulating as an offense for Corporations that run their business without a permit, corporations holding a license that violates the conditions (situations) specified in the license, and Corporations operating uninsured vehicles on public roads.

Although theoretically there have been theories of corporate criminal responsibility, the main point is how it is regulated in law. The more complete the regulation of corporate criminal
liability in law, the more potential it will be to minimize the potential for juridical problems in its enforcement.

It is also included in the Omnibus Law Number 11 of 2020 concerning Job Creation (starting now referred to as the Job Creation Law) which contains provisions on corporate criminal liability. The Job Creation Law comprises 186 articles, which are divided into 9 clusters, which include: Increasing the Investment Ecosystem and Business Activities Investment Requirements; Employment; Convenience, Protection, and Empowerment of MSMEs and Cooperatives; Ease of Doing Business; Research and Innovation Support; The land acquisition; Economic Zone; Central Government Investment and Ease of Government Projects; and, Implementation of Government Administration to Support Job Creation. Within these 9 clusters, there are regulations related to corporate criminal liability spread across several articles.

Chapter III Improvement of Investment Ecosystems and Business Activities Investment Requirements, Part Three: Simplification of Basic Requirements for Business Licensing, Land Acquisition, and Land Use:

Law Number 26 of 2007 concerning Spatial Planning

Article 74

(1) In the event that the criminal act as intended in Article 69, Article 70, or Article 71 is committed by a corporation, in addition to imprisonment and fines against its management, the punishment that can be imposed on the corporation is in the form of a penalty with a weight of 1/3 of the criminal penalties as referred to in Article 69, Article 70, or Article 71.

(2) In addition to the fine as referred to in paragraph (1), the corporation may be subject to additional penalties in the form of:

a) Revocation of Undertaking Licensing; and/or

b) Revocation of legal entity status.

Part Four Simplification of Sector Business Licenses and Convenience: Law Number 31 of 2004 concerning Fisheries as lastly amended by Law Number 45 of 2009 regarding Amendments to Law Number 31 2004 concerning Fisheries

Article 101 stated that in the case of a criminal act as referred to in Article 84 paragraph (1), Article 85, Article 86, Article 87, Article 88, Article 90, Article 91, Article 93, or Article 94 is committed by the corporation, the charges and criminal sanctions shall be imposed on its management and against the corporation will be subject to a fine with an additional 1/3 of the penalty charged.

Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, Article 78 Paragraph (11) stated that the criminal offense as referred to in Article 50 paragraph (1) and paragraph (2) if it is committed by a corporation and/or on behalf of the corporation, the corporation and its management are subject to criminal fine with a weighting of 1/3 of the main criminal fine.

Article 85 Paragraph (2) stated that corporations carrying heavy equipment and/or other tools commonly or reasonably suspected to be used to transport forest products in the forest area without a Business Permit as referred to in Article 12 letter g should be penalized for:

a. The imprisonment is imprisonment for a minimum of 5 years and a maximum of 15 years and a fine of at least IDR 5,000,000,000.00 and a maximum of IDR 15,000,000,000; and/or

b. Corporations are subject to a weighting of 1/3 of the criminal fine imposed.
Article 92 Paragraph (2)
Corporations that:
   a. Carry out plantation activities without a Business License in the forest area as referred to in Article 17 paragraph (2) letter b; and/or
   b. Carrying heavy equipment and/or other tools commonly or reasonably suspected to be used for carrying out plantation activities and/or transporting garden products in forest areas without Business Licensing as referred to in Article 17 paragraph (2) letter a;

Shall be sentenced to imprisonment for the management of a minimum of 8 years and a maximum of 20 years and a fine of at least IDR 20,000,000,000.00 and a maximum of IDR 50,000,000,000.00 and/or corporations are subject to a weighting of 1/3 of the principal fine.

Article 93 Paragraph (3) stated that corporations that:
   a. Transport and or receive custody of plantation products originating from plantation activities in the forest area without a Business Permit as referred to in Article 17 paragraph (2) letter c;
   b. Sell, control, own, and/or store plantation products originating from plantation activities in forest areas without a Business License as referred to in Article 17 paragraph (2) letter d; and/or
   c. Buying, marketing, and/or processing garden products from plantations originating from plantation activities in forest areas without a Business Permit as referred to in Article 17 paragraph (2) letter e,

Shall be sentenced to imprisonment for the management of a minimum of 5 years and a maximum of 15 years and/or a fine of at least IDR 5,000,000,000.00 and a maximum of IDR 15,000,000,000.00 and/or corporations are subject to a weighting of 1/3 of the criminal fine imposed.

Based on the formulation of these articles, it can be analyzed that the regulations regarding criminal liability for corporations in the Job Creation Law are regulated separately with no similarity in formulating methods. Some have formulated the types of main and additional crimes, and some have not. Likewise, who can be held accountable for corporate mistakes, those who say that the management can be accounted for, but there are also those who do not specifically call it.

3.2 The Ideal Corporate Criminal Liability Formulation Model in an Omnibus Law

The Omnibus Bill is a technique of forming laws to change and combine regulations regarding interrelated matters originating from several laws at once in one law [9][10]. In Indonesia, the Codification form has already been recognized, which is almost similar to the Omnibus, as a mechanism for preparing a specific legal material arranged systematically, completely, and thoroughly [1][2]. Systematic because the sub-systems or parts in the codification should not conflict. Meanwhile, complete and finished is to guarantee that there are no more provisions outside codification that become legal rules so that codification alone can be enforced as a source of law. The codification system prioritizes and idealizes the writing and drafting of laws in one integrated unit regarding the subject and object regulated in each statute text.
Codification systems can be distinguished between legislative codification and executive codification. Legislative Codification, namely the drafting of laws by branches of legislative power or people's representative institutions intended as one unified text, such as the Law on Election Implementation, which comes from various statutory texts interrelated with regulating material on general elections. Meanwhile, the second, the Executive Codification, namely that the compilation of an integrated text which is in harmony with various other laws, is carried out by the Government with reference to all relevant laws and regulations to facilitate the regulated legal subjects and all the people to seek justice, and find legal truth [9][10].

Slightly different from Codification, the Omnibus Law system prioritizes and idealizes writing and compilation. In addition to being integrated, it is also harmonious with various statutory materials that regulate subjects and objects different from other laws in a single constitutional state-based system of law as the highest source of law [11]. The Omnibus Law system can be carried out with laws that are not too thick, sectoral, but can also be made thick, comprehensive, and integrated depending on the needs. With a short or thicker and integrated law, the Omnibus Law system can be combined with an executive codification system, in which laws as legislative acts can be formed in a more productive, more numerous, and qualified manner, but afterward are codified by the Government based on and with reference to the related laws that have been got the approval of the people's representative institutions.

So that to integrate the provisions between the various laws included in the Job Creation Law, of course, a general provision is needed which generally regulates all the provisions in the omnibus law. Including corporate criminal liability. Regulations regarding corporate criminal responsibility scattered in several articles in the Job Creation Law can cause juridical problems in its enforcement. And when viewed as a system as a whole, of course, this will seem unsystematic. The position of the Job Creation Law as a law outside the Criminal Code has a consequence that regulations regarding matters that deviate from the Criminal Code must be carried out very carefully, completely, and in detail so as not to cause juridical problems.

Concerning corporate criminal liability, there are several things that legislators must pay attention to in formulating this provision, namely as follows:

a. General criteria in terms of what the corporation can be held accountable for;
b. Who can be held accountable in the event of a mistake committed by the Corporation; and,
c. Types of punishment can be imposed, both the main and additional crimes.

4 Conclusion

The formulation of corporate criminal responsibility in Law Number 11 of 2020 concerning Job Creation is spread over several articles and is not formulated in the general provisions chapter. There is a lack of uniformity in the formulation of provisions between articles that accommodate them, such as those related to who can be accounted for and criminal sanctions that can be imposed.

The ideal formulation model for corporate criminal liability in an Omnibus Law is to accommodate it in the chapter on general provisions so that the regulation will be uniform and applicable to the entire content of the law.
References


The Discourse on Sugar-Sweetened Beverages Tax Implementation in Indonesia: What Should Be Concerned?

Rani Tiyas Budiyanti¹, Murni²
{ranitiyasbudiyanti@gmail.com¹}

Universitas Diponegoro, Indonesia¹
Healthcare Practitioner, Indonesia²

Abstract. The discourse of Sugar-Sweetened Beverages (SSB) tax implementation has been discussed in Indonesia in recent years. But it was debatable. The industrial sector said this policy can decrease the community consumption that can affect the economy, especially during the Covid-19 pandemic. But on the other hand, the health sector agrees with this policy because it can decrease obesity and metabolic syndrome risk. If the SSB tax policy is to be implemented, it is necessary to pay attention to several things so that the goal of reducing sugar consumption can be achieved. This article aims to analyze the benefit, challenges of SSB implementation in Indonesia, and the recommended strategies to achieve policy goals. This article was literature review research from many journals in ProQuest, Google Scholar, Scopus databases and articles related to SSB tax implementation. Based on the research in many countries, sugar tax can reduce sugar consumption, but the effectiveness of SSB tax implementation should be considered in Indonesia. If this policy will be implemented it must consider the policy goals and achievement indicator, resources, implementers commitment, food culture in Indonesia, health literacy, maximum doses of sugar regulation, and collaboration between many stakeholders. Education about the health benefit of reduction in sugar consumption also must be done. So that, the goals of sugar tax implementation can be achieved.

Keywords: Sugar Tax, SSB Tax, Sugar Consumption

1 Introduction

In the Coronavirus Disease 2019 (Covid-19) era, Indonesia faced double pressure in the health area, not only Covid-19 infection but also non-communicable diseases (NCD) such as hypertension and diabetes mellitus. Based on the International Diabetes Federation’s report in 2019, over 10 million Indonesians were diagnosed with diabetes. It makes the top ten countries worldwide with diabetes sufferers [1].

This condition also makes a double burden on the Indonesian economy. Besides the economic pressure caused by Covid-19, the cost of treatment also increase because of diabetes. Based on BPJS Kesehatan (Social Security Organising Agency for Health) data, the cost related to diabetes from 2014 until 2019 reaches IDR 6,1 trillion [2].

Facing this condition, the Indonesian government plans to control sugar consumption through sugar tax implementation especially in SSB [3]. In February 2020, The Indonesian Minister of Finance has tried to calculate the applied tax of around IDR 1,500 per liter of SSB
and IDR 2,500 per liter in carbonated drinks. She also proposes this calculation to the People’s Representative Council, but it still discusses and debatable [4].

The industrial sector expressed an opinion contrary to this policy. According to them, the excise of SSB tax will increase sales prices by 30-40 percent. This condition can reduce people's purchasing ability which has an impact on the economy, especially during the Covid-19 pandemic [5]. Another opinion states that this policy is not effective because people tend to be accustomed to consuming sweet foods and drinks so that public responses and opinions need to be explored before this policy is implemented [6].

Even so, the health sector fully supports this policy which is considered to sugar consumption reduction has an impact on morbidity and mortality due to diabetes and obesity [7]. This paper will analyze the benefit, challenges of SSB implementation in Indonesia, and the recommended strategies to achieve policy goals.

2 Methods

This research is a literature review with traditional approach. The selection of literature review methods aims to be able to provide an overview of integrated and synthesized knowledge related to benefit, challenges, and strategies of SSB tax implementation [8] from journal in Scopus, Science Direct, and Google Scholar database. There are four steps taken in this literature review study, namely: 1) search the articles with keywords “sugar tax implementation”, “sugar tax benefit”, and “sugar tax challenge”, 2) conducting a review, 3) analyzing, and 4) writing a review [9].

3 Results and Discussion

3.1 Discourse on SSB Tax Implementation in Indonesia

SSB tax will be implemented based on article 2 of Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 Concerning Excise [10]. This regulation discusses goods subject to excise i.e. goods that have a consumption characteristic that needs to be controlled, their circulation needs to be monitored and its use can harm the community or the environment or its use needs to be imposed by the state for the sake of justice and balance [10]. It's appropriate because SSB consumption must be controlled because it can lead to obesity, and diabetes mellitus. This policy will supports public awareness about the diseases because one of the functions of regulation is social engineering.

The Indonesian Minister of Finance has tried to calculate the applied tax of around IDR 1,500 per liter of SSB, IDR 2,500 per liter in carbonated drinks, and also IDR 2,500 per liter of sachet drinks [3]. This policy has proposed to the People’s Representative Council, but it still discusses and debatable.

3.2 Benefits and Challenges of SSB Tax Implementation

SSB tax has been applied in many countries. To date, more than 40 countries in Europe, the Middle East, and the Pacific have imposed taxes on SSB products and have many positive impacts [11]. A sweetened drink tax's implementation in Hungaria is considered to have reduced
consumption of sweetened drinks although there was only a short-term which disappeared after 2 years and leading to an overall increase in SSB sales [12]. In Mexico, the consumption of sweetened drinks has also decreased especially among consumers from low economic circles [13]. Malaysia imposed a sugar tax of RM 0.4 per liter in 2019 [14], and Thailand imposed a tax of 14 percent on the retail price plus an additional tax depending on the sugar content [15].

Although this policy has been successfully implemented in various countries, but the effectiveness of SSB tax implementation should be considered the condition in Indonesia. Based on Metter and Horn [16], there are many factors related to policy successful implementation namely policy goals, communication between implementers, resources, characteristics of implementers, economic, social, and political environment, and disposition of implementers.

Before the SSB tax will be implemented in Indonesia, the policy goals and achievement indicator must be clear. It will be used to make a strategic plan to achieve the goals. What are the target for reducing sugar consumption and the estimated tax price should be calculated properly.

The resources and policy target should be identified. Financial, human resources, and operational standard procedures must be ready. Communication between stakeholders also should be improved. It’s important because this policy will impact the industrial sector and disturb the economic condition, especially during the Covid-19 pandemic condition. The government readiness to support the industrial sector especially in Covid-19 pandemic should be evaluated before the SSB tax implement in Indonesia.

The SSB tax policy implementation in Indonesia also needs to pay attention to several aspects such as consumption patterns or habits, public knowledge and beliefs, and resistance from various parties.

Sweet foods and drinks consumption is often done by Indonesian. Some regional have traditional foods with sweet and sweet-spicy taste [17]. In 2014, the Total Diet Study estimated that 11.8% of the population consumed > 50 grams of sugar per day. The food sources obtained sugar, wheat products, dairy products, sweet drinks, seasonings, candy, and chocolate products [18]. Beside that, according to data presented by YouGov in April 2016, Indonesia is one of the top two countries in the Asia Pacific region with the largest snacking habits. So, this condition will be the challenge of reduction sugar consumption.

Another challenge of SSB tax implementation was public knowledge and beliefs especially related to health literacy about food consumption, sugar consumption, and the impact on health [19]. It was important because health literacy will affect food consumption. Someone who has good health literacy will choose healthy food and beverages.

The implementation challenges also come from the industrial sector that opinion this policy can reduce people's purchasing ability and impact the economy, especially during the Covid-19 pandemic [5]. It was because the SSB implementation will increase the beverage price 3 to 5 times. Many communities say that they don't want to buy the beverage if the price has increased. It will impact community purchasing power and will impact economic conditions.

3.3 Recommendations Strategies to Optimize the Sugar Consumption Reduction

The implementation of a SSB tax aims to control sugar consumption in the community. In addition, the implementation of the policy can increase state revenue from the excise side. Nevertheless, several strategies need to be carried out to achieve the policy goals.

First, the government should be set the policy goals and achievement indicators. It’s important to make a strategic plan, calculate the resources that were needed, and do policy evaluation. Without achievement indicators, we never know the effectiveness of the policy. In
this condition, the leader party that is responsible and overseeing the policy implementation should be clear. Is the responsibility under the economic sector or the health sector?

Second, the government should identify the strength, weaknesses, opportunities, and threats in SSB tax policy implementation. It’s useful to get the suitable strategies to face many problems in policy implementation.

Third, the government also should consider other factors such as consumption habits, health literacy, and sectors related to SSB tax implementation. We know that sugar consumption is not only obtained from sweet beverages but also be obtained from food, cakes, candies, and carbohydrate sources. To achieve the goal of reducing sugar consumption, it also needs to be followed by limiting the maximum dose of sugar that can be added to food/beverages.

Based on the American Heart Association (AHA), maximum doses that can be consumed no more than 100 calories per day (about 6 teaspoons or 24 grams of sugar) for women and no more than 150 calories per day (about 9 teaspoons or 36 grams of sugar) for men [20]. These maximum doses can socialize to the community or can be listed on food labels.

It is necessary to educate the public on how to choose healthy and nutritious food, limit sugar consumption, and its impact on health. This education is not only given to the elderly who have a higher risk but also given from an early age such as from teenagers [21]. So that people can reduce and changes the habit of sugar consumption not only in sweetened beverages but also in other sweet foods.

Collaboration and coordination with multi-stakeholders, as well as the determination of other alternatives also need to be carried out so that an agreement can be obtained with the industrial sector. Government support to industrial sector was needed in this policy implementation such as providing subsidies or giving rewards to an industry that is able to provide healthy food and drinks.

4 Conclusion

The implementation of SSB tax has many benefits and challenges. But, to optimize the goal’s policy achievement, it needs to set the policy goals, consider the economic and environment condition, health literacy, and the culture in Indonesia. It also to improve public education on health literacy, limited maximum doses of sugar consumption each day, and coordinate with multi-stakeholders.

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References


Reformulation of Indonesian Criminal Justice System Based on Principles of Humanity, Justice, and Morality

Reynaldi Putra Rosihan¹, Ediwarman², Runtung³, Suwarto⁴
{reynaldi295@gmail.com¹, prof.ediwarman@yahoo.com², runtung_s@yahoo.com³, suwartodr99@gmail.com⁴}
Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. Principles in the legal system consist of norms, institutions, and processes. Norms include the rule of law, both primary regulations (which directly define the behavior) and secondary regulations (which govern the application of primary regulations and the functioning of institutions and system processes, including the process of extending or modifying regulations). Legal institutions include facilities for the operation of processes and the application of norms. The status and relations identified and controlled by norms, the relationships on which norms operate are dilemmas in Indonesian law enforcement. Besides, a reformulation in the Indonesian criminal justice system is needed to enforce laws based on the principles of humanity, justice, and morality. Reformulation of the Indonesian criminal justice system based on the principles of humanity, justice, and morality is very much needed in law enforcement. As a result, it really becomes a means of development and renewal of law enforcement agencies as expected and they can enforce the law as implied in the whole content of Pancasila.

Keywords: Reformulation, Criminal, Humanity, Justice, Morality

1 Introduction

Criminal law enforcement is one of the important agendas that must be realized during this reform period. However, an effort to enforce criminal law is not an easy and simple task.

Criminal law enforcement through a system approach is known as a criminal justice system. In general, a criminal justice system can be interpreted as a process for the operation of several law enforcement agencies through a mechanism implemented in sequential activities including investigations, prosecutions, examinations in court proceedings, and implementation of judges' decisions by correctional institutions [1].

The principles in the legal system consist of norms, institutions, and processes. Norms include the rule of law, both primary regulations (which directly define the behavior) and secondary regulations (which govern the application of primary regulations and the functioning of institutions and system processes, including the process of extending or modifying regulations). Legal institutions include facilities for the operation of processes and the application of norms. The status and relations identified and controlled by norms are the relationships on which the norms operate [2].

Soerjono Soekanto argues that law is a concretization of the value system prevailing in society. The desired condition is a conformity between the law and such a value system. Consequently, changes in values will be followed by changes in the law underneath, while
changes that occur at the bottom are not necessarily followed by changes in the underlying values.

The effort to enforce the law to humanize humans, to enforce justice, and to uphold morality is how to make a harmony between the ideals of the law and the reality of the daily implementation of the law. One of the factors causing the gap between them is the attitude of law enforcers. Thus, the implementation of law and justice in a legal system is influenced by the thoughts of law enforcers, i.e., their views on justice formulated in legal theory they adhere to are inserted into the decision-making process of the criminal justice system which is reflected in the content or substance of the results or legal decisions they make [3].

In fact, the legal culture of implementing criminal action enforcement in Indonesia shows a very bad image. Institutional arrogance that is agency-centric, inconsistent, and contradictory actions in law enforcement, tends to think fragmentary (which prioritizes the interests of power over the interests of society) and sectorally, but not systemically. In addition, there is a phenomenon that tends to occur in law enforcement in Indonesia, that the community’s weak legal awareness is influenced by the weak legal awareness or integrity of law enforcement officers [4].

Based on the facts elaborated above, several factors leading to the bad image of criminal enforcement in Indonesia are: (i) the crisis of law enforcement officers’ behavior that causes distrust and unrest in the Indonesian people over all the instruments of the criminal justice system; (ii) the intimidation of suspects to admit their actions in the investigation process; (iii) a bargain in deciding the level of punishment in the prosecution process; (iv) no justice given to the defendants under the portion of their criminal actions during the trial examination process; and (v) the failure of correctional institutions in restoring the prisoners to the good condition due to improper treatment. Thus, the judicial officers in Indonesia are obviously unable to carry out their duties as law enforcers based on the values of humanity, justice, and morality.

This incident is a dilemma in Indonesian law enforcement; therefore, a reformulation in the Indonesian criminal justice system is obviously needed to enforce laws based on the principles of humanity, justice, and morality.

2 Research Method

This is a descriptive-analytical study using an observational method to provide an overview of the study by direct observation supported by the data from literature studies.

This study uses a normative legal research method. A statutory approach is used by referring to legal norms contained in statutory regulations and doctrines as well as theories that are relevant to the problems identified and the discussion.
3 Results and Discussion

3.1 Reformulation of the Criminal Justice System Based on the Principles of Humanity, Justice, and Morality

The Criminal Justice System is an effort to overcome and control crimes occurring in society. Mardjono Reksodiputro comprehensively explains the objectives of the Criminal Justice System as follows [5]:

a. Preventing people from becoming victims of crime;

b. Resolving crimes occurring in society, so the people feel satisfied because justice has been served and the guilty is sentenced;

c. Making sure that those who have committed crimes do not repeat their crimes.

Humanity Values are universal values that can be developed to shape the character of law enforcers. The Humanity Values consist of truth, virtue, peace, compassion, love, and non-violence.

Humans, as creatures of God Almighty, are naturally granted basic rights called human rights, without differences from one another. With such rights, they can develop their personality traits, roles, and contributions to the welfare of human life. Humans, both as individuals and as citizens, in developing their personality, take part in and contribute to the welfare of human life which is determined by the nation’s worldview and personality. The Indonesian national worldview and personality as a crystallization of the noble values of the Indonesian nation place humans in the nobility and dignity of the Almighty God’s creature, with the awareness to develop their nature as a personal being as well as a social being as stated in the Preamble of the 1945 Constitution [6].

Romli Atmasasmita argues that the Criminal Justice System can be seen from various approaches [7]:

a. Normative approach. This approach views the four law enforcement officers (police, attorney, courts, and correctional institutions) as the implementing institutions for the prevailing laws and regulations; therefore, these four officers are an inseparable part of the law enforcement system.

b. Management or administrative approach. This approach views the four law enforcement officers (police, attorney, courts, and correctional institutions) as a management organization with its respective working mechanism, both horizontal and vertical relationships following the organizational structure prevailing in the organization. The system used is an administrative system.

c. Social approach. This approach views the four law enforcement officers (police, attorney, courts, and correctional institutions) as an inseparable part of a social system; therefore, society as a whole takes responsibility for the success or failure of the four law enforcement officers in carrying out their duties. The system used is a social system.

Comprehensive enforcement of criminal law can be said to be a process of upholding material criminal law that seeks the truth of the prohibited acts alleged to perpetrators, both in the Criminal Code and regulations outside the Criminal Code. Every action that fulfills the formulation of the law can be accounted for regardless of the objective factor of why the act was committed. By only looking at the elements of the law, it can be interpreted that criminal law is rigid because it only tends to the law. Structurally, it relates to law enforcement agencies/institutions/officers that enforce the law. Today's law enforcement officers, e.g., judges, are still constrained by a positivist paradigm which only races on the written elements that can be applied
to the perpetrators. In passing their decisions, judges cannot apply rule-breaking in their decisions to achieve substantial justice [8].

A law enforcement system is basically a compilation of combined several sub-systems such as substance system, structural system, and cultural system. If a reforming element is inserted, then it must cover all the three subsystems, i.e. reforms in the substance, structure, and legal culture [9].

Legal reform for a country is absolutely necessary to realize a national criminal law. The internal conditions of Indonesian people which develop rapidly along with the development in other parts of the world and very strong demands for legal certainty and justice make some of the criminal law formulations contained in the Criminal Code no longer capable to be used as a legal basis to overcome crimes.

A comprehensive criminal law reform – which regulates the balance between the interests of the society and the interests of the state with the interests of individuals, between protection of perpetrators and protection of the victims, between elements of action and mental attitudes, between legal certainty and justice, between written law and law living in society, between national values and universal values, and between human rights and human obligations – must be realized as soon as possible. This is the desire to realize the mission of decolonization of the Criminal Code from colonial heritage/legacy, the democratization of criminal law, consolidation of criminal law, and adaptation and harmonization of various legal developments that occur as a result of both the development of criminal law science and the development of values, standards, and norms that live and develop in the life of the Indonesian legal community and the international community. Besides, such a desire is a reflection of responsible national sovereignty [10].

3.2 Reformulation Expectation Based on the Principles of Humanity, Justice, and Morality

In a criminal justice system, there is an input-process-output mechanism. Input is a report or complaint about the occurrence of a criminal act. The process is actions taken by the Police, Attorney, Courts, and Correctional Institutions (as the four law enforcement sub-systems). Meanwhile, the output is the results obtained [11].

According to Sajitpto Raharjo, legal thinking should return to its basic philosophy, i.e., law for humans. With such a philosophy, humans become the determinant and point of legal orientation. A law must serve humans, not the other way around. Therefore, a law is not an intuition that is separated from human interests. The quality of law is determined by its ability to serve human welfare. Based on this paradigm, a law adheres to an ideology of pro-justice and pro-people [12].

Law enforcement mechanisms by law enforcement officers must be oriented towards the purpose of law enforcement as an instrument of social order, and the implementation process of protecting individual interests must be in the framework of a social order system. Thus, the existence of law and its implementation are not autonomous and closed from people's life [13].

Integrity is a basic characteristic that a person must possess completely in the sense that his personality is not compartmentalized but consequent in various dimensions of life. People with integrity are people who are honest, match their attitudes with their actions, do not lie, and can be trusted, cannot be bought, are autonomous, and dare to be independent [14].

This context implies that the protection of human rights must receive attention because human rights are the principal elements in every person. This situation requires a means or a forum to accommodate various interests which aim, not only at legal certainty and justice but
also at the protection of human rights, including the rights of suspects. Such a facility includes pretrial hearing, which so far has been used as a means of upholding and protecting the human rights of suspects from arbitrary actions by law enforcers who are considered to have carried out their duties such as arrests, detention, termination of investigations, and prosecutions of the suspects that is not based on the prevailing legal provisions [15].

Therefore, creating responsive law enforcers and placing law as a means of responding to social provisions and public aspirations are obviously required. Under its open character, a law puts forward accommodation to accept social changes to achieve justice and public emancipation. A law must be functional, pragmatic, purposeful, and rational. Competence becomes a benchmark for evaluation of all law enforcement. Because competence as an objective serves as a critical norm, the responsive legal order should be emphasized on [16]:

a. Substantive justice as the basis for legal legitimacy;
b. Regulations which are subordinated to principles and policies;
c. Legal considerations that must be oriented towards the goals and consequences for the benefit of society;
d. Use of discretion which is highly recommended in making legal decisions while remaining goal-oriented;
e. Fostering a system of obligations instead of a system of coercion;
f. The morality of cooperation as a moral principle in implementing the law;
g. Power of law in serving the community;
h. Rejection of the law must be seen as a challenge to the legitimacy of the law; and
i. Access to legal and social advocacy integration.

The legal method that relies on and prioritizes behavior, which starts from the interaction between members of a certain community and then creates law so that it is called interactional law, is a substantial legal method. This interaction is a chemical process that will produce an established pattern and ultimately functions as a law. Using a substantial legal method does not require a special body to make a law deliberately (hierarchically of norms), but a law grows spontaneously (spontaneously generated) in the interactions between the members of society. By using a substantial legal method, a law will continue to exist and work even though life is becoming more formally-textually [17].

Legal methods must go beyond conventional methods and the status quo, and encourage the perpetrators or actors to break free and make changes so that problems in a dynamically moving society can be answered and resolved by a static legal “container”.

The task of the judicial body is to administer the judiciary to uphold law and justice. Considering justice seekers in obtaining justice is imperative for every judicial body to improve public services and guarantee a judicial process based on humanity, justice, and morality [18].

The essence of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid principles and embodying attitudes as a series of final value descriptions to create, preserve, and maintain peace and order in society [19].

4 Conclusion

Reformulation of the Indonesian criminal justice system based on the principles of humanity, justice, and morality is extremely needed in its role to enforce the law so that it really becomes a means of development and reform of law enforcement agencies as implied in the
whole content of Pancasila. The condition of the Indonesian criminal justice system that has not yet achieved the principles of humanity, justice, and morality, has made the law enforcement system seen by the public no longer as a place for seeking justice as a whole. The criminal justice system has not yet achieved a sense of humanity, justice, and morality for the community and is considered unable to implement the values embodied in Pancasila, especially humanitarian values. In terms of future reformulation of the Indonesian criminal justice system, changes are obviously required by referring to the 1945 Constitution of the Republic of Indonesia and the values of Pancasila in all its sub-systems: structural, substantial, and cultural sub-systems. Such reformulation is intended to achieve a sense of humanity, justice, and morality in upholding the law.

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References

A Study of Legal Protection of Consumers in e-Commerce Transactions

Rinitami Njatrijani¹, Bagus Rahmanda²
{rinitaminjatrijani@gmail.com¹, bagus.rahmanda@live.undip.ac.id²}
Universitas Diponegoro, Indonesia¹, ²

Abstract. Purpose: The study aims to review and revise the legal protection for consumers in e-commerce protection in Indonesia. Design/methodology/approach: The study was conducted by using normative researches to examine the provisions of Law Number 8 of 1999 concerning Consumer Protection Act, Law Number 11 of 2008 as amended by Law 19 of 2016 concerning Information and Electronic Transaction Law, Law Number 7 of 2014 concerning Trade regulates electronic system trading and disputes resolution through Online Dispute Resolution (ODR). Finding: The result showed that inadequate consumer protection, government regulations legal protection and disputes resolution arrangement. Implication: Practically to reviewing legal protection for consumers in e-commerce transaction requires an integrated collaboration between the government, business associations and consumer in Indonesia to realize protection among the parties.

Keywords: e-Commerce, Transactions, Legal Protection, Consumers

1 Introduction

Indonesia is entering the 4.0 generation; e-commerce trading activities have made trade transactions easier. E-commerce or electronic commerce is the distribution, purchase, sale, marketing of goods and/or services through electronic systems such as the internet or television or other computer networks. The internet has contributed significantly to society, companies, industry, and government. The presence of the internet has challenged a company operation's effectiveness and efficiency, especially its role as a means of communication, publication, and a means of obtaining various information needed by a business entity and other forms of business entity or institution [1]. Whereas e-Business, namely the use of information and communication technology by individuals, organizations, or related parties to run and manage main business processes to provide benefits in the form of security, flexibility, integration, optimization, efficiency or improvement, and profit. E-commerce can involve electronic funds transfer, electronic data exchange, automated inventory management systems, and automated data collection systems [2][3].

Based on Bank Indonesia data in September 2020, e-commerce transactions reached IDR 180.74 trillion. The development of e-commerce is very significant, but there has been a substantial increase in consumer complaints. During the 2017-2021 period, there were 595 complaints in the e-commerce sector to BPKN of the Republic of Indonesia [4].

Some of the problems that arise regarding consumer rights in e-commerce transactions include [5]:

...
a. Consumers cannot see the goods directly Less clear information about the goods to be purchased.
b. Unclear status of the legal subject of the business actor;
c. There is no guarantee of the security and privacy of transactions and explanation of the risks associated with the system used;
d. especially in the case of electronic payments using credit cards or electronic money
e. There is still dependence on cash payments
f. Low consumer confidence and security in conducting online transactions
g. Not to the maximum support of government regulations
h. Transactions that are cross-borderless, raise questions about which country’s legal jurisdiction should be applied.

1.1 Problem

Based on the above background, it is necessary to ask how legal protection for consumers in e-commerce transactions and dispute settlement?

2 Research Methods

This research method is normative juridical using a statutory approach, conceptual approach, principles, and related theories. This study uses secondary data consisting of primary legal materials using: Civil Code (from now on abbreviated as KUHPerdta) Law Number 8 of 1999 concerning Consumer Protection, (from now on abbreviated as UUPK/Consumer Protection Act), UU ITE (Information and Electronic Transaction Law) Law Number 11 of 2008 as amended by Law No. 19 of 2016 (from now on abbreviated as UU ITE), Law Number. 7 of 2014 concerning Trade also regulates electronic system trading. Meanwhile, secondary legal materials are carried out by searching libraries through documentary techniques, including archival studies or literature studies such as books, articles, papers, journals, or expert works related to e-commerce. Tertiary legal materials can be found in dictionaries, encyclopedias, materials available on the internet. The data obtained from the literature study is one of the legal material collection techniques that supports the documentary technique. The literature study's function is to obtain legal material and then be analyzed descriptively analytically.

3 Discussion

3.1 Legal Protection for Consumers in e-Commerce Transactions

So far, various studies have been carried out stating that in terms of business law, the problems in e-commerce in Indonesia are inadequate consumer protection, government regulations. Especially the determination of e-commerce taxes, the high cost of using data centers, country code domains or IDs, transactions, internet speed, cybersecurity, and personal data protection. To overcome this problem, the government issued Presidential Regulation Number 74/2017 concerning the Road Map for the Electronic-Based National Trade System (e-Commerce Road Map) for 2017-2019. The contents of this Perpres are based on the consideration of an electronic-based economy that has high economic potential for Indonesia.
It is one of the national economy's backbones and optimizes an electronic-based economy. The Road Map contents include the government seeing the need to accelerate and develop an electronic-based national trading system (e-commerce), start-up businesses, business development, and accelerated logistics. This roadmap includes funding programs, taxation, consumer protection, education, human resources, communication infrastructure, logistics, cybersecurity, and the 2017-2019 SPNBE Roadmap Implementing Management.

Based on the results of a study conducted by APJII (Association of Indonesian Internet Service Providers) with figures from the Central Statistics Agency's (BPS) projection, the Indonesian population in 2019 was 266,911,900 million. From March to 2019, the number of internet users in Indonesia was 196.7 million users or increased to 10.12%. Many internet users in Indonesia have made the e-commerce business or online buying and selling growing. The increasing number of buying and selling online also indirectly affects legal regulation development. The term online contract, which means the same as an electronic contract according to Makarim [6], is a legal bond or relationship that is carried out electronically that combines a network of computer-based information systems with systems. Buying and selling online was born from a sale and purchase contract that occurred electronically between the seller and the buyer. However, until now, electronic buying and selling rules are still not clearly written in Indonesia's applicable law. It is because the terms of the validity of the agreement electronically have not explicitly been regulated. But in principle, the terms of the truth of the deal have been regulated in Article 1320 of the Civil Code, which is a reference in making online contracts that online contract is considered valid and binding on parties. As long as the online contract that is made has fulfilled the 4 valid conditions of the agreement according to Article 1320 of the Civil Code and articles that protect Article 1320 of the Civil Code, namely that in making an agreement, there should be no elements of error, coercion, fraud (Article 1321, Article 1323 and 1328 of the Civil Code), then the online contract is said to be valid. Therefore, in conducting an online sale and purchase agreement, it still refers to the rules regarding buying and selling as stipulated in Article 1457 and Article 1458 of the Civil Code, where one party binds himself to deliver an object, while the other party pays the agreed price. Meanwhile, the seller's obligations in online transactions, according to Gunawan dan Waluyo [7] are:

a. Submit ownership rights to the goods being traded.

b. Bear enjoyment and bear hidden disabilities.

c. Provide information about goods and/or services being sold correctly, honestly, clearly, etc.

Article 7 UUPK also regulates that a seller as a business actor is obliged to provide compensation to the buyer or consumer if the goods received are not following what was agreed. It is done so that the buyer can claim his rights in the event of fraud on the seller's product. The UUPK has regulated the rights and obligations of entrepreneurs to protect consumers. Still, in reality, it has not fully protected consumers in e-commerce transactions because advances have not followed advances in science and technology in the process of producing goods and/or services in existing legal/regulatory instruments. Legal protection arrangements for consumers in e-commerce transactions need to include the following [8]:

a. Legal protection from business actors' perspective, business actors are obliged to include their identity on the website. With the existence of an online shop validity guarantee agency, there is no guarantee agency for the legality of the shop in Indonesia so that consumers can transact with fictitious online stores. For this reason, the government, through the Ministry of Communication and Information Technology, is preparing a Certification Authority (CA) to guarantee the legality of an online shop in operating by issuing digital certificates.
b. Consumer protection from the consumer side guarantees the protection of consumer personal data confidentiality because if such data is not kept confidential by business actors, it can be traded by other parties for promotional purposes.

c. Legal protection for consumers from the product side, where business actors are required to provide clear and complete information about the products offered, product information regarding products must be provided in the language that is easy to understand and does not lead to other interpretations, giving assurance that the products offered are safe or comfortable for consumption or use, as well as providing proof that the products offered are in accordance with what is being promoted by the business actor.

d. Legal protection for consumers from the transaction side, not all consumers understand how to transact via internet media. In this case, business actors need to clearly and completely include the transaction mechanism and other matters relating to transactions (regulated in the Terms and Conditions). If a dispute occurs between the transacting parties, the paper documents will be submitted as evidence by each party to strengthen their respective positions.

In addition to the UUPK, e-commerce that uses electronic transactions is regulated by the ITE Law Number 11 of 2008 as amended by Law Number 19 of 2016. The Republic of Indonesia Law, Number 7 of 2014 concerning Trade, also regulates electronic system trading. Everyone or business entities that trade goods and/or services must provide complete and correct data and information. E-commerce in this law is regulated in Chapter VII Trading through Electronic Systems in Articles 65 and 66. Every business actor who trades goods and/or services using an electronic system must provide complete and correct data or information. Data or information contains at least: (a) Identity and legality of businessman as an electronic system producer, person or business entity or distribution business actor; (b) Technical requirements of the goods being offered; (c) Technical requirements or qualification of services offered; (d) Prices and payment methods for goods and/or services; (e) Way of delivery of goods. In dispute related to trade transactions through an electronic system, the person/or business entity can resolve the dispute through the court or other dispute resolution.

But in reality, based on the results of the Consumer Empowerment Index (IKK) survey as a measure for the level of consumer courage in 2020, it was 42 points; in 2019, the Indonesian IKK was recorded at 41.7 [9][10]. The Consumer Empowerment Index is the basis for establishing consumer protection policies and measuring consumer awareness and understanding of their rights and obligations and interacting with the market. It means that Indonesian consumers have reached capable levels which previously were only at the level of knowledge about rights and obligations but not entirely willing to fight for them.

Legal protection in agreements to avoid misuse of online transactions, online contracts can also be electronic documents that can be used as evidence to prevent misuse by irresponsible people and cause losses. Electronic documents prepared by the parties contain rules and conditions that must be obeyed, including payment terms, period, and delivery method. Often in practice, the seller and buyer do not sign an agreement. Still, the buyer has entered an order for the desired item, and the seller is willing to deliver the goods, so an agreement has been made between the parties to carry out a sale and purchase transaction. These rules and conditions serve as legal protection for both consumers and business actors. This electronic evidence is expressly stated in Article 5 paragraph (1) of Law Number 11 of 2008 as amended by Law No. 19 of 2016 concerning Electronic Transaction Information which states that information, electronic documents, or printouts are valid evidence in accordance with the applicable
procedural law in Indonesia. This provision provides legal certainty for the settlement of electronic transactions in Indonesia.

### 3.2 Consumer Dispute Resolution in Indonesia

Consumer protection law exists to answer problems between producer and consumer relationships both in a narrow, broad, and comprehensive sense, as well as regulating the parties' rights and obligations, outlining consumer protection principles, the scope of responsibility of producers, and so on. Providing space for dispute resolution in the consumer sector is a good policy in empowering consumers. Efforts to enable consumers are a form of awareness regarding the consumer world's unique characteristics, namely sharp differences in interests between parties with different bargaining positions [11]. Consumers are very vulnerable, so that the state must take its role and protect consumers. As implied in Article 33 of the 1945 Constitution of the Republic of Indonesia Chapter XIV concerning the National Economy and National Welfare that the legal politics of consumer protection in Indonesia is the shared role of consumers and actors. Business, balancing the progress of consumers and business actors, fair efficiency in transactional relationships between consumers and business actors, sustainable development of consumers and business actors, environmental insight in the development of consumers and business actors, as well as the independence of consumers and business actors [7].

### 3.3 Dispute Resolution Arrangements

In today's perspective, the construction of consumer dispute resolution is known as non-litigation and litigation. The regulation of consumer dispute resolution is regulated in Article 45 (1) UUPK; there are two options that consumers can make, namely through institutions tasked with resolving disputes between consumers and business actors or through courts within the general court. Consumer dispute resolution can be pursued through the court or outside the court based on the disputing parties' voluntary choice (Article 45 paragraph 2). This consumer dispute resolution does not rule out the possibility of peaceful settlement by the disputing parties without going through a court. Out-of-court dispute resolution as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution can be pursued with various alternatives, namely mediation, conciliation, and arbitration, where the UUPK method for resolving this dispute is borne by BPSK (Consumer Dispute Settlement Body). Meanwhile, settlement of disputes outside the court, as referred to in Article 45 paragraph 2 does not eliminate criminal responsibility as regulated in this law (Article 45 paragraph 3). Meanwhile, suppose an effort to settle consumer disputes outside the court has been selected. In that case, the lawsuit through the court can only be pursued if the action is declared unsuccessful by one of the parties or by the disputing parties. (Article 45 paragraph 4) UUPK.

According to Article 46 of the Company Law, parties that file a lawsuit for violations of business actors can be carried out by:

- A consumer who is injured or the heir concerned.
- Groups of consumers who have the same interests.
- Non-Governmental Organization for Consumer Protection (LPKSM) that meets the requirements, namely in the form of a legal entity or foundation.
3.4 Litigation Dispute Resolution

Article 48 of the UUPK states that the settlement of consumer disputes through the judiciary refers to the provisions concerning general courts that apply with due observance of the provisions in Article 45 above. Article 45 (4) states that the settlement of consumer disputes through the courts is only possible if: (a) The parties have not chosen efforts to settle consumer disputes outside the court; (b) Efforts to resolve consumer disputes outside the court are declared unsuccessful by one of the parties or by the disputing parties.

Settlement of disputes that arise in the business world is a challenge for business actors, especially if the process being pursued is in the form of settlement in court. Because the judicial process is usually very long and costly, it will end in the defeat of one party and the victory of the other [12].

Evidence in resolving consumer disputes in the form of goods and/or services, statements from the disputing parties, testimony from witnesses and/or expert statements, letters and/or documents as well as other supporting evidence. Proof, in this case, is the burden and responsibility of the business actor.

3.5 Dispute Resolution through Online Dispute Resolution (ODR)

ODR (Online Dispute Resolution) is a dispute resolution that combines information processing computer technology with internet communication network facilities [13][14]. ODR (Online Dispute Resolution) provides convenience in resolving disputes that occur. ODR was born from the synergy between ADR (Alternative Dispute Resolution) and Information and Communication Technology (ICT) as a method or step to resolve disputes that arise in online processes where traditional settlement is very ineffective and impossible [14].

The disputing parties' framework in the ODR includes: (1) They were disputing parties (2) Facilitator and ICT (Information and Communication Technology) Assistance. Judging from the type of dispute settlement, it only focuses on the peaceful settlement of commercial law (Trade), with jurisdiction covering the authority to handle commercial law cases whose results can be in the form of a win-win solution or win-lose solution from the e-adjudication process (Online Arbitration). E-commerce transactions drive the emergence of ODR and can be used as an online transaction dispute resolution mechanism. In general, the ODR (Online Dispute Resolution) has four components, namely:

a. Like ADR, both parties to a dispute must agree to resolve their case out of court; the difference is using the internet in the settlement process.
b. Professional guides direct parties to carry out the ADR process using the internet.
c. The arrangements regarding ADR apply to the implementation of settlement via the internet.
d. The software can be used to exchange information on the internet (Meet Online, Access Database, Send-Documents, and Hold Meetings with Voice and Video Conference).

4 Conclusion

Reviewing legal protection for consumers in e-commerce transactions requires an integrated collaboration between the government, business associations, and consumers in Indonesia to realize protection among the parties to achieve a win-win solution. It is necessary to immediately revise the Consumer Protection Law Number 8 of 1999 so that consumer
disputes through the Online Dispute Resolution are presently regulated in a regulation that is also part of efforts to resolve consumer disputes to protect their rights.

References

Manufacturer’s Responsibility for Inclusion of Halal Labels on Processed Food Products that are not through Certification in Indonesia

Siti Malikhatun Badriyah¹, Budi Ispriyarso², R. Suharto³, Marjo⁴, Muhammad Haidar Fakhri Allam⁵
{sitimalikhatun@live.undip.ac.id}¹
Universitas Diponegoro, Indonesia¹, ², ³, ⁴, ⁵

Abstract. The problem of this research is how the producer is responsible for including halal labels on processed food products. This study aims to find evidence regarding the responsibility of producers for halal labeling on processed food and the legal consequences if the inclusion of the halal label does not comply with the standard. The research method used is a normative juridical approach to identify and analyze the responsibility of producers in the inclusion of halal food products that do not go through the certification process. The theory used to analyze is the concept of producer responsibility, the concept of unlawful acts, the theory of the work of law in society to analyze the responsibility of producers in the inclusion of halal labels on processed food products. The results showed that producers are obliged to carry out halal certification for their products as business actors.

Keywords: Processed Food, Halal Certification, Responsibility, Acts Against the Law

1 Introduction

Halal food products are very important for the life of the Muslim community. Therefore, every Muslim must take care of himself to consume halal food. Producers should act honestly and be careful in producing food to maintain its halalness. For this reason, it is necessary to have supervision, both through statutory regulations and a food auditing institution, before food is distributed [1].

In various countries globally, halal is an important concern among consumers [2]. Currently, the halalness of food products, one of which is processed food, is vital for the Muslim community and all human beings in the world. In various countries globally, the halalness of this food product is also a serious concern. It is because food is related to primary human needs and more broadly. Food has a relationship with various aspects of community life. Halal food products are very important in the economic sector, especially with food as a culinary tourism destination. The inclusion of a halal label is a unique attraction for tourists.

The broad connection between food and various fields of life was also raised by those who discussed food security theory and policy. It is an important topic in the broader field of economic development and development studies [3]. A halal certificate is required to ensure the halalness of the product produced by the producer. Halal Product Guarantee is legal certainty of the halalness of a Product as evidenced by a Halal Certificate (Article 1 Paragraph 5 Law of the Republic of Indonesia No. 33 of 2014 concerning Halal Product Guarantee/Halal Product...
Guarantee Law). Halal Certificate is legal evidence stating the halalness of a production confirmed by the Minister of Religion. Labeling of halal food products must be carried out through a certification process first to become a guideline to ensure the halalness of a food product. Products with an official halal mark can guarantee consumers the halalness of the product in question [1][4].

In practice, there is often the inclusion of halal labels on processed food packaging but not through a certification process. Therefore, it can be detrimental to consumers who believe that packaging with the inclusion of a halal label shows the halalness of the food product. It is not confident that the product is halal because there is no test regarding the halalness of the product. The problem that arises is how the responsibility of the product towards the inclusion of halal labels on processed food products. Therefore, research on the problem of the responsibility of producers in the inclusion of halal labels on processed food products is very urgent.

The theory used to analyze is producer responsibility, the concept of illegal actions, the theory of the operation of law in society to analyze the responsibility of producers in the inclusion of halal labels on processed food products.

This study uses a normative juridical method to study various laws and regulations, legal principles, legal norms that are the basis for implementing halal certification on processed food products. In addition, this study aims to obtain an overview and analyze the responsibility of producers in the inclusion of halal labels on processed food products that are not going through the certification process.

2 Results and Discussion

2.1 Labeling of Processed Food Products and Responsibilities of Producers

The implementation of the Halal Product Guarantee (JPH), according to Article 2 of Halal Product Guarantee Law is based on protection, justice, legal certainty, accountability and transparency, effectiveness and efficiency, and professionalism. What is meant by the principle of “protection” is that in organizing JPH, the objective is to protect the Muslim community. What is meant by the principle of “justice” is that the implementation of JPH must reflect justice proportionally to every citizen. What is meant by the principle of “legal certainty” is that the implementation of JPH aims to provide legal certainty regarding the halalness of a Product proven by a Halal Certificate. What is meant by the principle of “accountability and transparency” is that every activity and the final results of the JPH activities must be accountable to the public as the holder of the highest state sovereignty by the provisions of laws and regulations. What is meant by the principle of “effectiveness and efficiency” is that the implementation of JPH is carried out with an objective orientation that is efficient and efficient and minimizes the use of resources using a fast, simple, and low cost or affordable way. Finally, what is meant by the principle of “professionalism” is that the implementation of JPH is carried out by prioritizing expertise based on competence and a code of ethics.

The implementation of JPH aims to: a) provide comfort, security, safety, and certainty of the availability of Halal Products for the public in consuming and using the Products; and b) increasing added value for Business Actors to produce and sell Halal Products (Article 3 of the Halal Product Guarantee Law).

Article 4 of Law of the Republic of Indonesia No. 33 of 2014 and Article 2 of Government Regulation of the Republic of Indonesia No. 31 of 2019 Concerning Implementation
Regulations of Law Concerning Halal Product Guarantee Regarding Halal Product Guarantee states that products that enter, circulate and are traded in Indonesian territory are required halal certified. It shows that all business actors who import, distribute, and trade products in Indonesia’s territory must carry out halal certification. Products originating from prohibited materials are exempted from the obligation to be halal certified. The product must be declared non-halal. Business Actors are required to include non-halal information on the Products. Article 3 PP Halal Product Guarantee states that halal certificates are given to Products originating from halal materials and fulfill the Halal Product Guarantee.

This halal product guarantee can guarantee legal protection for consumers. Article 4 letter c of Law No. 8 of 1999 concerning Consumer Protection states that consumer rights are the right to obtain true, clear, and honest information regarding the condition and guarantee of goods and/or services. It means that producers must provide true and honest information about their products, including a halal sign on the food product [1]. In addition to having rights, consumers also have obligations as stated in Article 5 letter an of the Consumer Protection Law, namely reading and following information instructions and procedures for using or utilizing goods and/or services for security and safety.

Article 1 paragraph (1) Law No. 8 of 1999 concerning Consumer Protection Labelization of halal food can guarantee that the food product is genuinely halal if labeling is carried out based on an MUI fatwa halal food product certification process. Therefore, producers that include halal labels on the food they produce are fully responsible for the statement they make [1].

Regulations on halal products already exist, but it is undeniable that they are still not widely popular, so people are still confused about getting truly guaranteed halal products. Because many products bear the sign of halal illegally, food and non-food processing, the halal status of products on the market is very vulnerable because the processing process is complex and involves many parties and other business actors [5].

Food Safety is a condition and effort needed to prevent Food from the possibility of contamination of biological, chemical, and other objects that can disturb, harm, and endanger human health and does not conflict with religion, belief, and culture of the community so that it is safe for consumption (Article 1 Paragraph 5 Food Law).

Food Safety is implemented to keep Food safe, hygienic, quality, nutritious, and does not conflict with the community’s religion, belief, and culture. Food Safety is intended to prevent possible contamination of biological, chemical, and other objects that can harm and endanger human health. Food Sanitation is an effort to create and maintain a healthy and hygienic food condition free from the dangers of biological, chemical, and other contamination. Sanitation requirements are hygiene and health standards that must be met to ensure Food Sanitation. Quality food is food that meets safety criteria and has good nutritional content. The breadth of the relationship between food and various fields of life was also raised by those who discussed the debate on food security theory and policy, an important topic in a broader field [3][6].

Implementation of Halal Product Guarantee (JPH) according to Law No. 33 of 2014 based on; protection, justice, legal certainty, accountability and transparency, effectiveness and efficiency, and professionalism (Article 2 of the Halal Assurance Law). Article 4 of the Halal Guarantee Law stipulates that Products that enter circulate, and are traded in Indonesia’s territory must be halal certified. The provisions of Article 4 are valid for 5 (five) years from the time the law was promulgated (Article 67 Paragraph 1 of the Halal Guarantee Law). Before this regulation came into effect, the types of certified halal products were regulated in stages (Article 67 Paragraph 2 of the Halal Guarantee Law).
The purpose of the Halal Product Guarantee is to provide comfort, security, safety, and assurance of the availability of Halal Products for the public in consuming and using the Products; and increase added value for Business Actors to produce and sell Halal Products (Article 3 Letter a and b of the Halal Product Guarantee Law).

The implementation of Halal Product Guarantee is the Government’s responsibility (Article 5 Paragraph (1) of the Halal Guarantee Law). The minister's implementation of the Halal Product Guarantee is carried out (Article 5 Paragraph (2) of the Halal Guarantee Law. What is meant by the minister here is the minister who manages government affairs in the religious sector (Article 1 Paragraph 15 of the Halal Guarantee Law). A Halal Product Guarantee Agency (BPJPH) is established, which is domiciled under and responsible to the Minister to implement Halal Product Guarantee. (Article 5 Paragraph 3 of the Halal Guarantee Law). If needed, BPJPH can form representatives in the regions. (Article 5 Paragraph 4 of the Halal Guarantee Law). Provisions regarding the duties, functions and organizational structure of BPJPH are regulated in a Presidential Regulation (Article 5 Paragraph (5) of the Halal Guarantee Law.

Based on this authority, it is known that BPJPH, which is authorized to issue halal certificates, is no longer MUI. MUI is one of the parties required by BPJPH to carry out its authority (Article 7 of the Halal Guarantee Law). The form of cooperation between BPJPH and MUI is Halal Auditor certification, product halalness, and LPH accreditation. MUI issues the determination of the halalness of a product in the form of a decision to determine the halal product (Article 10 of the Halal Guarantee Law).

2.2 Discussion

Research on existing data in BPOM shows that there are industrial facilities used by food business actors that do not meet standards. For example, it can be seen from table 1.

<table>
<thead>
<tr>
<th>No.</th>
<th>Types of TMK Findings</th>
<th>Total Amount (ITEM)</th>
<th>Economic Value (IDR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The product is damaged</td>
<td>71.764</td>
<td>327.049.004</td>
</tr>
<tr>
<td>2</td>
<td>Expired</td>
<td>281.684</td>
<td>691.546.315</td>
</tr>
<tr>
<td>3</td>
<td>TMK (Tidak Memenuhi Ketentuan/does not meet the conditions) label</td>
<td>472.399</td>
<td>1.187.194.272</td>
</tr>
<tr>
<td>4</td>
<td>Food without distribution authorization</td>
<td>3.707.002</td>
<td>3.411.540.903</td>
</tr>
<tr>
<td>5</td>
<td>Others (contains hazardous materials)</td>
<td>471</td>
<td>3.656.500</td>
</tr>
</tbody>
</table>

Source: BPOM data for 2018.

The data above shows that business actors who do not meet the label requirements are 472,399 with an economic value of 1,187,194,272 rupiahs. The data shows that food labels that do not meet standards are still widely practiced in society. This case also includes the inclusion of a halal label without going through a certification process. It can be misleading, harmful, and detrimental to consumers. Food production that does not comply with standards can also harm the national economy. According to Lyons [7], the global food trade has an enormous impact on populations’ health and nations’ economies. According to WHO, around 600 million people become ill and 420,000 die each year from food-borne diseases. Losses in productivity and trade and treatment costs amount to US$ 110 billion annually, mainly in low and middle-income countries.
In this case, the producer is responsible for the consequences of the food it produces. Legal protection for food producers and consumers must be balanced. Thus, it will create business development in the processed food sector by paying more attention to food quality standards. If including a halal label that has not gone through the certification process, the producer can be sued based on illegal acts. The basis for the lawsuit is Article 1365 of the Civil Code. Acts against the law, in this case, are meant as acts against the law in the civil sector. The term “Acts against the Law (onrechmatige daad/tort)”. Tort means a civil error that does not come from default.

The elements contained in Actions against the Law are an act; the act is against the law; there is an error on the perpetrator’s part; there is a loss for the victim, and there is a causal relationship between actions and losses. So far, the assessment and the relative legal framework have only seen signs of difference in the way in which courts view the critical elements of tort legal action, namely the concept of damage, the existence of a causal relationship, and the burden of proof [8][9].

The regulatory model for the Indonesian Civil Code regarding illegal acts, as in other countries in the Continental European legal system. The model of liability in Continental European countries includes:

1) Responsibility with error elements (intentional and negligent), as contained in Article 1365 of the Civil Code.
2) Responsibility with an element of error, especially an element of negligence, as contained in Article 1366 of the Civil Code.
3) In a very limited sense, absolute liability (without error) is found in Article 1367 of the Civil Code.

Today tort law states that separate prosecution of offenses against the person is no longer necessary, given the growth and development of negligence laws. Nevertheless, there is a role for perpetual infringement for the person, and that the interests protected by the suit of infringement are not adequately included in negligence. Whatever convergence occurs between claims for infringement and negligence, there will continue to be different elements of the offense that are not known for negligence [10].

To create a balance between consumers and producers in the provision of healthy food, the government has obligations as regulated in Article 68 of the Food Law:

1) Guarantee the realization of the implementation of Food Safety in each Food chain in an integrated manner.
2) Establish Food Safety norms, standards, procedures, and criteria.
3) The Food Safety norms, standards, procedures, and criteria are carried out in stages based on the Food and Food business scale.
4) Obliged to develop and supervise the implementation of Food Safety norms, standards, procedures, and criteria

Food Safety has carried out through: a) Food Sanitation; b) Regulation of Food additives; c) Regulation of Genetically Engineered Food Products; d) Regulation of Food Irradiation; e) Stipulation of Food Packaging standards; f) Providing Food Safety and Quality assurance; and g) Guarantee of halal products for those who are required.

Guarantee of halal products is one of the efforts to implement food safety. Based on Article 4 of the Halal Product Guarantee Law and Article 2 of the Government Regulation on Implementing Regulations on the Law on Halal Product Guarantee, it is stated that products that enter, circulate, and are traded in the territory of Indonesia must be halal certified. Products originating from prohibited materials are exempted from the obligation to be halal certified. The product must be declared non-halal. Business Actors are required to include non-halal
information on the Products. It shows that all business actors who import, distribute and trade products in Indonesia’s territory must carry out halal certification. Business actors who violate the halal production guarantee will be subject to administrative sanctions. Food safety is also an obligation for everyone involved in the food chain to control the risk of harm to food, whether it comes from materials, equipment, production facilities, or individuals. Food safety efforts for all people, which lead to efforts to improve the nutritional status of the community, must continuously be improved. Health is a human right and one of the elements of welfare that must be realized by the ideals of the Indonesian people as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, every activity and effort to improve public health to the highest degree is carried out based on non-discriminatory, participatory, protective, and sustainable principles that are very important for forming Indonesia’s human resources, the nation’s resilience and competitiveness, and national development.

3 Conclusion

Businesses that import, distribute, and trade products in Indonesia’s territory must carry out halal certification. Business actors who violate the halal production guarantee will be subject to administrative sanctions. In addition, producers are obliged to carry out halal certification for their products as one of the business actors. If a business actor includes a label of things but does not go through the halal certification process, it can lead to error and loss to the consumer. Thus, they can be sued based on an illegal act.

References

Regulation of the Welfare of Outsourcing Workers in Banking Companies After the Enactment of the Job Creation Law in Indonesia

Sonhaji¹, Kadek Cahya Susila Wibawa², Henny Juliari³
{sonhajimuh19@gmail.com¹, kadekwibawa@lecturer.undip.ac.id², hennyjuliani.fhundip@gmail.com³}

Universitas Diponegoro, Indonesia¹, ², ³

Abstract. The enactment of the Job Creation Law has brought significant changes in various fields of law in Indonesia, including changes in labor law, particularly in regulations related to outsourced workers. Several changes related to outsourced workers in the Job Creation Law, among others: related to the absence of restrictions on work that outsourced workers are prohibited from doing; elimination of obligation to appoint employees, and others. This paper aims to examine and describe the crucial arrangements for outsourcing workers in banking companies after enacting the Job Creation Law. Furthermore, this paper will also examine the welfare of outsourcing workers in the banking sector after enacting the Job Creation Law. This research uses doctrinal and non-doctrinal legal research, which is part of qualitative research with descriptive-analytical research specifications. The results show that the fundamental changes in the Job Creation Law have significant implications regarding the existence of agency workers. The Job Creation Law and Gov. Reg. 36/2021 provide directions for changes in the wage system, which are aimed at realizing the welfare of workers, including outsourcing workers in the banking sector.

Keywords: Well-being, Workers, Outsourcing, Banking, Job Creation Law

1 Introduction

After the legalization of the outsourcing system in Articles 59, 64-66 of Law No. 13 of 2003 concerning Manpower (Labor Law 2003), there have been many responses regarding this policy. This policy has also been submitted for a judicial review to the Constitutional Court because it contradicts Article 27 paragraph (2), Article 28D paragraph (2), and Article 33 paragraph (1) of the 1945 Constitution due to the outsourcing work system in labor policies. Many work agreements did cause injustice, where one party gets an advantage, and the other feels disadvantaged [1]. Some irregularities that occur in the practice of outsourcing, among others: (a) Employer companies do not comply with the conditions set for the types of work that can be outsourced as stipulated in Article 65 paragraph (2) Labor Law 2003 [2], This is due to different interpretations of what types of work may be outsourced [3]; (b) A work agreement that is made not based on an agreement between workers and employers, but is made unilaterally by the employer; (c) Violation of the provisions concerning the time limit for work (vide Article 59 paragraph (1) Labor Law 2003) [4]; and (d) Some employers quote money from outsourced workers for various reasons [5]. This problem occurs in almost all sectors, including banking, with outsourcing workers in banking such as contract implementation, wage provision, social
security provision, welfare facilities provision, etc. In a climate of increasingly fierce business competition, companies are trying to make the cost of production efficiency, and the outsourcing system is one of the solutions to achieve production cost efficiency [6].

Changes in regulations related to the outsourcing system after enacting Law No. 11 of 2020 concerning Job Creation Law/Omnibus Law led to different interpretations. The labor clusters regulated in Chapter IV of the Job Creation Law amend four laws, namely Labor Law 2003, Law No. 40 of 2004 concerning the National Social Security System (SJSN Law), Law No. 24 of 2011 concerning Social Security Administering Bodies (BPJS Law), and Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers (UU PPMI) [7]. Several labor clusters in the Omnibus Law have received sharp attention from the public, especially regarding the outsourcing system.

Several things related to the public’s spotlight on the outsourcing system after the enactment of the Job Creation Law: there is no limit to outsourcing work, thus removing one’s hope of becoming a permanent worker in the company [8]. It means that the Job Creation Law provides opportunities for outsourcing companies to hire workers for various tasks, including freelancers and full-time workers [7]. Another problem relates that the Job Creation Law does not answer the issue of protecting workers from violations of outsourcing practices that have occurred so far, such as violations of wages, working hours, and types of work being outsourced [7].

Several previous studies have been recorded discussing the Job Creation Law, outsourcing workers, and worker welfare (wages). Putra [9] conducted research related to applying the Job Creation Law in regulatory reform efforts. Prabowo et al. [10] showed to solve complicated licensing and overlapping regulations that could hinder investment.

Another research was also conducted by Prabhaputra et al. [11] to focus on the study of the arrangement of the outsourcing system according to Indonesian laws and regulations and the industrial relation to workers in the outsourcing system. Parinduri [6], conducted research related to legal protection for workers in outsourcing work agreements. Catur et al. [8] also conducted research that focused on the relationship between the Job Creation Law as a strategic policy to protect worker welfare. Safitri [12] researched the Omnibus Law of the Job Creation Bill from the perspective of participatory development communication. The results show that the government has not yet conducted participatory communication to the workers and students in drafting the Omnibus Law on the Employment bill. This administration is more inclined to instrumental perspectives where state officials are dominant actors of policy-making processes, which emphasizes the legality aspect of the bills. Based on previous research, this research study focuses on examining and describing crucial arrangements for outsourcing workers in banking companies after the enactment of the Job Creation Law. Furthermore, this paper will also examine the relationship between workers’ welfare, especially for outsourcing workers in banking companies, after the enactment of the Job Creation Law.

2 Research Method

This research uses a combination of doctrinal legal research and non-doctrinal legal research. This research uses a regulatory approach using secondary data related to doctrinal legal research [13]. In the regulatory (statutory) approach, an analysis is carried out on the 1945 Constitution of the Republic of Indonesia; Labor Law 2003; Government Regulation No. 78 of 2015 concerning Wages (Gov. Reg. 782015); Job Creation Law, Government Regulation No.
Regarding non-doctrinal legal research using a qualitative approach, analysis of the results of studies to answer the issues was conducted using a qualitative approach. Qualitative research is used to investigate, describe, explain, discover the quality or features of social influence that cannot be explained, measured, or illustrated through a quantitative approach [14]. This research begins by determining the research locations: BNI Pleburan, BNI Tembalang, and BTN Tembalang. Respondents were selected by purposive sampling, with a total of 8 workers in the banking sector. The data was obtained by conducting interviews with the respondents.

3 Results and Discussion

3.1 Regulations Related to Outsourcing Workers after the Establishment of the Job Creation Law

Outsourcing has long been developing in Indonesia, especially in contracting jobs and carried out for the mining sector. Then outsourcing developed in other sectors can be seen from the Decree of the Minister of Trade of the Republic of Indonesia No. 264/KP/1989 regarding Sub-Contract Management in Archipelago Bonded Zones [2]. Article 64 of the 2003 Labor Law states that the working relationship with the outsourcing system can only be carried out through two forms of work agreements made in writing: charter jobs and worker service providers. In this regard, outsourcing for worker service providers was new when the Labor Law was enacted in 2003. Yasar [15] stated that companies that provide worker services could only provide labor services and take care of human resources and administration, while facilities such as premises, supervisors, and all means of production are in the user’s company. Legally and formally, the legitimacy of the implementation of the outsourcing system work relationship is also strengthened by the decision of the Constitutional Court (MK) of the Republic of Indonesia No. 012/PUU-112003 dated October 28, 2004, which basically states that the implementation of the outsourcing system work relationship does not violate the constitutional rights of citizens [2].

In its implementation, the outsourcing system is still problematic when viewed from enacting laws based on legal effectiveness because the law’s enactment is based on legal acceptance or recognition of whomever the law addresses [16]. The enactment of the Job Creation Law is expected to bring about changes in regulating agency workers in Indonesia. Some of the fundamental changes related to agency workers in the Job Creation Law include:

1) Article 66 of the Job Creation Law does not regulate the restrictions on the types of work that are prohibited from being carried out by outsourced workers. It means that the Law provides opportunities for outsourcing companies to employ workers in various functions and tasks, including freelancers and full-time workers [7].

2) Articles 64 and 65 of the 2003 Labor Law, which the Job Creation Law deleted, govern work contracting agreements. The government thinks that it does not want to interfere in the realm of business or civil agreements. The government only regulates protecting workers from work agreements that place workers in a vulnerable position when confronted by an employer [7].
Further regulations related to outsourcing workers after the stipulation of the Job Creation Law are regulated in Government Regulation No. 35 of 2021. President Jokowi signed this regulation on February 2, 2021, automatically revises the articles governing outsourcing in the 2003 Labor Law.

Article 18 paragraph (1) and (2) Gov. Reg. No. 35/2021 stipulates that: the working relationship between the outsourcing company and the employed workers/laborers is based on a specific time work agreement (PKWT) or an unspecified time work agreement (PKWTT) in written form. This provision is different in the 2003 Labor Law. It is different from the labor law, where the work contract of workers only uses PKWT.

Furthermore, Article 18 paragraph (3) Gov. Reg. No. 35/2021 states that: protection of workers/labor, wages, welfare, working conditions, and disputes that arise are carried out in accordance with the provisions of laws and regulations and are the responsibility of the outsourcing company. Article 18 paragraph (4) Gov. Reg. No. 35/2021 also regulates that worker/labor protection, wages, welfare, working conditions, and disputes that arise are regulated in work agreements, company regulations, or collective working agreements.

Then, Gov. Reg. No. 35/2021 is in line with the Job Creation Law which does not state whether agency workers are still limited to certain types of work or are otherwise expanded. The 2003 Labor Law explicitly states that outsourcing work is limited to jobs outside the main activities or those not related to the production process except for supporting activities. With this revision, labor unions are concerned that the Job Creation Law opens the possibility for outsourcing companies to hire outsourced employees for various tasks, including freelancers and full-time workers. It will make outsourced personnel more accessible if it is not regulated in government regulations, both in the Job Creation Law and its derivatives regulations [17].

Article 19 paragraph (1) Gov. Reg. No. 35/2021 requires that: if an outsourcing company employs workers/laborers on a non-permanent basis, the work agreement must require the transfer of rights protection for the worker/laborer in the event of a change in the outsourcing company and as long as the object of work remains. It means that the transfer requirements for the protection of workers/laborers’ rights guarantee the continuity of work for workers/laborers whose working relationship is based on non-permanent contracts in the outsourcing company. The outsourcing company is responsible for fulfilling workers/laborers’ rights if the worker/laborer is not guaranteed continuity of work. Based on this, there are still unresolved legal issues related to outsourcing work after enacting the Job Creation Law and Gov. Reg. 35/2021.

3.2 Implications of the Establishment of the Job Creation Law on the Welfare of Outsourcing Workers in Banking Companies in Indonesia

The wage system in the 2003 Labor Law only recognizes the type of minimum wage. It is different in Article 88B of the Job Creation Law, where the new wage system contains wages based on time units and results based on hours. The Minister of Manpower, Ida Fauziyah, explained that the new regulation aims to accommodate the needs of the business sector which require flexibility in the workforce wage payment scheme which has no legal basis in Indonesia [18].

The Job Creation Law removes Provincial Sectoral Minimum Wages (UMSP) and District/City Sectoral Minimum Wages (UMSK). The stipulation of the provincial minimum wage is regulated and stipulated by the Governor based on economic and employment conditions with certain conditions [7]. It is different from the provisions in Article 89 of the 2003 Labor Law, which stipulates that the minimum wage is determined based on sectoral
wages and wages at the provincial level and wages at the district/city level, which are directed at the district/city level achieving life worthiness [7]. Furthermore, this provision regulates that the Governor determines the provincial minimum wage by considering the recommendations from the Provincial Wage Council and/or the Regent/Mayor. Meanwhile, the calculation of components and implementing the stages of achieving the need for a decent life shall be regulated by a Ministerial Decree [7].

The implication of eliminating the sectoral minimum wage results in no difference in wages based on expertise specifications per field or sector to illustrate: the minimum wage for workers in the clothing or food sector is equated with the value of the minimum wage for workers in the banking sector. Workers in the convection or food sector have different specifications from workers in the banking sector. As practiced in various countries, the sectoral minimum wage applies according to the value-added contribution of each industry to Gross Domestic Product [19]. Furthermore, Job Creation Law also stipulates that the minimum wage provision is exempted for SME entrepreneurs and is determined based on an agreement between employers and workers in the company and changed the components of the structure and scale of wages in companies by taking into account class, position, years of service, education, and competence.

The birth of Gov. Reg. No. 36/2021 is the beginning of a new wage system based on the Job Creation Law. Article 4 and Article 5 of Gov. Reg. 36/2021 emphasize that the wage policy is established to realize workers’ rights to a decent life for humanity. There are five crucial points in wage arrangements regulated in Gov. Reg. No. 36/2021, including [20]:

1) Employers are prohibited from paying wages below the stipulated minimum wage, and the minimum wages are determined based on economic and employment conditions.
2) Entrepreneurs are required to prepare and implement a structure and scale of wages in the company by considering the company’s capabilities and productivity.
3) Wages for micro and small enterprises are determined based on an agreement between the entrepreneur and the workers/laborers in the company with the provision that they are at least 50% of the average consumption of the people at the provincial level; and an agreed wage rate of at least 25% above the poverty line at the provincial level.
4) Overtime wages must be paid by employers who employ workers over working hours or on weekly breaks or are employed on official holidays as compensation to the workers concerned in accordance with the provisions of laws and regulations.
5) Wages are not paid if the worker does not come to work and/or does not work unless the worker is absent, do other activities outside of his job, exercises his right to rest or leave; or willing to do the work that has been promised but the entrepreneur does not employ it because of the entrepreneur’s own fault or an obstacle that the entrepreneur could have avoided.

Regarding outsourcing workers in banking companies with working relationships with service providers, the latest wage provisions also apply in industrial relations between banking outsourcing workers and service providers. Outsourcing companies must comply with the provisions stipulated in the wage policy in the Job Creation Law and Gov. Reg. No. 36/2021.

Companies are obliged not to pay workers’ wages in the banking sector below the minimum wage, let alone pay attention to companies’ ability to use outsourcing workers (banking) that have good financial capabilities, so in preparing and structuring and scale wages must be fair for agency workers. Employers are still required to pay overtime wages for outsourcing workers, including in the banking sector, based on the provisions of Gov. Reg. No. 36/2021. Based on these regulations, BNI Pleburan, BNI Tembalang, and BTN Tembalang have a strong commitment to pay overtime wages for their outsourced workers.
4 Conclusion

Based on this description, the conclusions that can be drawn are: there are several differences in principles related to the regulation of outsourcing workers in the 2003 Labor Law and the Job Creation Law. The fundamental thing related to outsourcing workers relates to the types of agreements that underlie the working relationship in the outsourcing system, namely: a specific time work agreement (PKWT) or an indefinite time work agreement (PKWTT) in written form. Concerning wages, the wage system after the Job Creation Law and Gov. Reg. No. 36/2021 states that the minimum wage is determined based on economic and employment conditions; employers are obliged to prepare and implement the structure and scale of wages in the company by taking into account the company’s capabilities and productivity. This provision provides certainty for outsourcing workers in the banking sector that the welfare of workers is guaranteed in-laws and regulations.

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References


The Utilization of Information Technology through Teleconference Examination for Child Victims of Crime in the Perspective Participation Rights

Irma Cahyaningtyas¹, Adya Paramita Prabandari², Kadek Cahya Susila Wibawa³
{irmafjr83@gmail.com¹, apprabandari@gmail.com², kadewibawa@lecturer.undip.ac.id³}

Universitas Diponegoro, Indonesia¹. ². ³

Abstract. Technological developments can have an impact on legal progress, one of which is the use of teleconferences in court examinations. This can also be done when examining the witness's child. This paper is based on the issue regarding the basis of Law Number 11 of 2012 accommodating the use of information technology for examining child victims; second, regarding the examination process for child victims by using a teleconference. This paper uses a normative juridical research method, with a statute approach and a case approach. The results of the research in this paper state that the examination of the child victims can be carried out by teleconference by still paying attention to participation rights. This does not conflict with the principle of *contante justitie*. Examination of the child victim can be realized properly if there are facilities and infrastructure, one of which is the availability of teleconference rooms.

Keywords: An Examination of Child Victims of Crime, Teleconference, Participation Rights

1 Introduction

Indonesia is a democratic country based on the 1945 Constitution of the Republic of Indonesia and Pancasila. The 1945 Constitution of the Republic of Indonesia explains that Indonesia is a state based on law. Laws in Indonesia must be enforced with an equality system for the Indonesian people.

The development of science and technology at this time has developed very rapidly and can be felt by all circles of society. The era of the Industrial Revolution 4.0 at this time is a phenomenon that collaborates cyber technology and automation technology. The Industrial Revolution 4.0 is also known as the cyber-physical system. Its application concept is centered on automation. Assisted by information technology in the application process, the involvement of human workers in the process can be reduced. Thus, the effectiveness and efficiency of a work environment automatically increase. In the industrialized world, this has a significant impact on the quality of work and costs of production. But in fact, not only industry, but all levels of society can also get general benefits from this system.

The impact of the development of information technology also affects developments in the legal world. One of them is the trial process in court. The provisions for electronic criminal case examination are well known in cases conducted by children. The definition of a child according to Article 1 number 2 to 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that:
2) Children in conflict with the law are children who conflict with the law, children who are victims of crime, and children who are witnesses of criminal acts;
3) A child in conflict with the law hereinafter referred to as a child is a child who has reached the age of 12 (twelve) but has not reached the age of 18 (eighteen) who is suspected of committing a criminal act;
4) Children who are victims of criminal acts hereinafter referred to as child victims are children under the age of 18 (eighteen) who have suffered physical, mental, and/or economic losses due to criminal acts;
5) A child who is a witness to a criminal act hereinafter referred to as a child witness is a child under the age of 18 (eighteen) who can provide information for the investigation, prosecution, and examination in court regarding a criminal case heard, seen, and/or experience it yourself.

Based on this definition, it can be said that what is meant by children in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is not only children as perpetrators but also children of victims and children of witnesses. In a case where a child is a victim, the process of examining a child criminal case trial can be carried out without directly meeting the offender's child, namely through electronic media or teleconference.

The process of examining children’s cases is possible to be carried out without meeting face-to-face to accommodate the basic rights of the child, particularly participation rights. Participation rights are one of the basic principles of children’s rights contained in the Convention on The Rights of The Child in addition to the non-discrimination principle, the best interest of the child principle, the rights to life, survival, and development. Participation rights mean the rights of a child to express her/his views in all matters affecting that child.

In its development in 2019, the Supreme Court issued Supreme Court Regulation Number 1 of 2019 concerning the Administration of Cases and Trials at Courts electronically and in 2020, the Supreme Court also issued Supreme Court Regulation Number 4 of 2020 concerning Administration and Trial of Criminal Cases in Electronic Courts. The background to the issuance of this regulation is considered to be one of the steps to carry out a more modern trial examination.

The presence of an electronic judiciary greatly accommodates the interests of justice seekers, especially at this time where the Covid-19 virus has spread, which is a pandemic that has spread globally, including in Indonesia. With the outbreak of the Covid-19 pandemic, various negative impacts have been felt, one of which is the limitation of physical contact. Based on these conditions, the Supreme Court issued regulations related to the trial system conducted electronically or remotely by teleconference to prevent crowds from occurring. The Supreme Court stated that the issuance of the Supreme Court regulation regarding the provisions of this electronic trial was a tool for people who were hampered from seeking justice. This means that the implementation of judicial principles that is fast, simple, and low cost can be realized.

This paper takes issues, including first, what is the basis for Law Number 11 of 2012 to accommodate the use of information technology for examining child victims; second, how is the examination process for child victims of crime using teleconference.

Some of the previous studies that discussed the use of information technology in the legal field include articles that explain the effectiveness of the implementation of E-court to eradicate the activities of judicial corruption [1]; the next article explains the implementation of E-court in general criminal cases [2]; the next article discusses the use of video teleconferencing in asylum removal hearings as codified in 28 USC [3]. In addition, there are also articles that research how juvenile court judges take the psycho-social immaturity and development of
adolescents into consideration when making attributions of adjudicative competency of offenders in juvenile court [4].

This paper aims to examine the use of information technology through teleconferences, especially those used for examining child victims of crime in the trial examination process while still accommodating participation rights.

2 Research Methods

This paper uses a normative juridical research method, which is research that is focused on examining the application of the rules or norms in positive law [5]. The approach used in this paper is a statutory approach and a case approach [6]. The statutory approach is used to analyze the rules related to the process of examining child cases, especially child victims, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Supreme Court Regulation Number 4 of 2020 concerning the Administration and Trial of Criminal Cases at Courts Electronically. The case approach is used to examine the application of legal norms that exist in legal practice, especially regarding the examination of child victims of crime in the trial examination process and the adjustment of infrastructure related to the use of teleconferences.

3 Result and Discussion

3.1 The Basis of Law Number 11 of 2012 concerning The Juvenile Criminal Justice System to Accommodate the Use of Information Technology for Examination of Child Victims

Children who commit acts that violate the rules, especially causing victims to be held responsible. The state must continue to guarantee and protect children and their rights so that children can live, grow and develop, participate like children in general and avoid violence and discrimination. Therefore, the process of handling cases involving children is different from adults.

The process of examining criminal cases involving children can be carried out through non-penal policies and penal policies. The non-penal policy is known as a diversion as regulated in Article 1 point 7 of Law Number 11 of 2012 which is a transfer of settlement of juvenile cases from the criminal justice process to the process outside the criminal court. To provide a sense of justice and prioritize children's rights, diversion must take precedence if it meets the requirements for the implementation of diversion by Article 7 paragraph (2) which states that:

2) Diversion as referred to in paragraph (1) shall be implemented in the event of a criminal act that is committed:
   a. threatened with imprisonment of less than 7 (seven) years; and
   b. does not constitute a repetition of a criminal act.

If an agreement is not reached, the settlement of the case is pursued by a penal process, which is the process of resolving a juvenile case that is carried out starting from the stage of the investigation, prosecution, and trial examination in court. Children's cases at the stage of
examination in court are carried out at the Juvenile Court and children's cases are heard by a single judge, namely the Juvenile Judge.

One form of protection for the victim's child during the examination of a case by a judge, namely the trial process of children which can include an examination that adheres to the In Absentia system, namely striving to ensure that children who conflict are not attending and punishing [7].

If a child as a victim can attend the examination in court to give information, then the provisions of Article 58 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System require that the child victim be able to leave the courtroom, to avoid a meeting between the child of the perpetrator to avoid the possibility of traumatizing or threatening physical or psychological harm.

On the other hand, if the victim's child is unable to attend to testify in front of the court for any reason, the judge has no right to refuse and force the child to attend. This is as stated in Article 58 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that:

1) If the Child Victim and/or Child Witness is unable to attend to testify before a court session, the Judge may order the Child Victim and/or Child Witness to be heard:
   a. outside court proceedings through electronic recording conducted by Community Guides in the local jurisdiction in the presence of Investigators or Public Prosecutors and Advocates or other legal aid providers; or
   b. through direct remote examination using audiovisual communication accompanied by a parent/guardian, social adviser or another companion.
   c. According to this paper, these provisions mean that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System accommodates the use of information technology through audiovisuals.

The process of investigating criminal acts is generally guided by Law Number 8 of 1981 concerning Criminal Procedure Law or the so-called KUHAP. In its implementation, the Criminal Procedure Code does not regulate the use of teleconferences. This paper argues that because the use of teleconferences when the Criminal Procedure Code was drafted and enacted was not known at that time and legislators were also unaware of the rapid development of information technology.

The trial examination process will end upon the issuance of the judge's decision. In a criminal case, a criminal judge's decision is based on material truth. Material truth is the truth that is not just based on formal truth, but the role of the judge's conviction which is based on conscience plays a very important role [8].

So that even though the examination for the child victim is carried out using a teleconference, it will not limit the judge in assessing the testimony giving through conviction based on conscience in terms of distributing material truths that lead to substantial justice.

3.2 Examination of Child Victims of Crime by Using a Teleconference

Juridically, trial examinations in court using information technology have not been regulated in general in Law Number 8 of 1981 concerning the Criminal Procedure Code or what is known as the Indonesian Criminal Procedure Code. There is no regulated trial examination through teleconference in the Indonesian Criminal Procedure Code, so the use of teleconference
in the trial examination only depends on the awareness of the judge based on Article 10 paragraph (1) and Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

The judge must examine and make a decision, which means he is obliged to find out the law. Judges can base the idea that in a society that still knows the unwritten law and there are upheavals and transitions, the judge is the formulator and explorer of values that live among the people, for that he must plunge into the community to know, feel and be able to explore the feelings of law and justice in society. Thus the judge can give a decision that is following the law and the sense of justice of the community.

One type of information technology that can be used when examining a child victim in a child trial examination is through a teleconference. Teleconferences can be carried out by two or more people through communication media, telephone, and television or computer layers that have been connected to a network connection [9].

Teleconferences can be done using only voice or known as audio conferencing or it can also allow two or more people to meet face to face in person or what is called a video conference. The use of information technology in handling cases in court can aim to assist judges and other law enforcement officers in court and create good interactions between courts and other parties, including in this case child victims.

In line with this, there is a conception of the categories of use of information technology in court, which are as follows [10]:

a. Information technology is used independently (stand-alone, function information technologies)

Courts utilize the standard functions of information technology to assist with administrative tasks (back office). In utilizing this function, there is no need for a network between computers. There are two applications commonly used by courts for this category, namely: word processing applications and databases. This word processing application is used by judges and court staff to generate case file documents. Also included in this category is the use of trial calendars and simple spreadsheets. The database application is used for registration and case management. This system replaces the manual file recording process.

b. Information technology based on network systems

Historically, network technology was introduced after the stand-alone function of the technology was used by the courts for some time. Network technology facilitates interaction between users but without any specific parameters. Users allow other users to interact but are not specified how they should interact. Utilization of network-based information technology in courts includes electronic mail, internet connection, jurisprudence database, document sharing, and electronic files. Included in this category, are network systems that combine databases and word processing applications to create standard court decision templates.

c. Enterprise external information and communication technology

Information technology in this category has implemented workflow management systems, customer relations management systems, and electronic external communications with justice seekers. The ideal model of this third category is all process management. carried out include filing files electronically, case handling is carried out with an electronic workflow system, products from the court are also in the form of electronic files. Although the trial process still maintains the physical trial, the court has left paperless files. Courts that apply enterprise information technology will be able to reorganize business processes, standardize workflows, and efficiently monitor all activities. This means that all processes can be more easily redesigned and standardized, as well as reporting can be presented at any time.
Examination of child victim through teleconference aims to protect children's rights while still being able to provide information for the sake of evidence at court examinations. Examination of the victim's child by teleconference is carried out from where the child is located and must be accompanied by a parent/guardian, social adviser, attended by investigators or public prosecutors, and advocates using telecommunications facilities to connect with court proceedings. The juvenile court will then use a television or projector media supported by a sound system so that visually showing the child, including the child's voice, must be heard by the parties present in the courtroom. Furthermore, if the teleconference has been displayed and is functioning properly, then the examination can be started.

When viewed from the physical, psychological, and social conditions of the victim's child, in giving testimony directly at court, it cannot be forced because there is a worry, fear, trauma due to formal judicial attributes in court proceedings. This condition must be avoided by conducting a teleconference examination so that it can provide space for children who do not want to face the courtroom directly and children as victims in providing information will feel more comfortable and free. In addition, for some parties, especially parents, the presence of children as witnesses and/or as victims are avoided to prevent threats that may come from the aggrieved party.

The relatively rapid development of the law is not sufficiently regulated in legislation. For example, a teleconference that is not regulated in Indonesian Criminal Procedure Code does not mean that the provisions of Indonesian Criminal Procedure Code prohibit the use of teleconference, especially if the party being examined is a child who must receive protection [11].

According to this article, the use of teleconference in the examination of child victims does not violate the general principles applicable to criminal procedural law, in particular the principles of contante justitie, which can be described as follows:

a. The principle of contante justitie is contained in Article 50 of Indonesian Criminal Procedure Code, besides that it is also contained in Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. The principle of fast trial the definition of “quick trial” is the benchmark used based on the size of the time limit for the judicial process. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also explicitly mentions the limitation of the period in the process of examining child cases.

b. The principle of contante justitie is defined as the administration of justice in an integrated manner, the judicial process is not complicated or complicated but orderly, the judicial process is not delayed so that it takes time. This principle does not conflict with the use of teleconference to present witnesses to the trial, does not complicate the trial process because the use of this technology is very easy so that the trial can run as usual, and the procedure remains simple.

c. The principle of contante justitie is defined as the judicial process must be carried out with the minimum possible cost or low cost but material truth is still achieved. The principle of low cost can also mean that the cost of administering justice is reduced in such a way that it is affordable for justice seekers, to avoid wasting costs. By using teleconference, the parties being examined, whether witnesses and/or defendants remain in their respective places. The use of teleconference in the examination of child victims at trial strongly adheres to the principles of contante justitie, especially in the current situation where there are applications that are easy, free, and can be used by anyone, such as Zoom, Skype and Google Plus “Hangout”. Edmon Makarim said [12]:

Teleconferencing does not need to use conventional technology such as “Direct Video” or “uplink” to satellite which is indeed more expensive, but the cost is very economical but the
same, namely with the support of computer technology, one of which is the use of Voice Over Internet Protocol (VOIP) or line Global for voice communication which is familiar in the telematics community, namely with the use of the internet, teleconferences can also be done as long as the basic network conditions are fast, good and the processor used is good through several servers with high frequency speeds as well.

According to this article, it is necessary to make legal reforms related to the regulation of the use of teleconference in the examination of child victims in criminal cases in court. The renewal can be in the form of a Supreme Court Regulation or other regulations.

The use of teleconferencing can run smoothly if it is supported by good facilities and infrastructure. This has been accommodated by the Directorate General of General Courts which issued the Decree of the Director General of General Courts Number 2176/DJU/SK/PS01/12/2017 concerning the Minimum Standard Guidelines for Child-Friendly Court Facilities and Infrastructure, which states that juvenile courts also have friendly perspective children so that one of their needs is obliged to provide a teleconference room with the following conditions:

a. The teleconference room was present as an implementation of the Juvenile Criminal Justice System Law and the Child Protection Law;

b. Tables and chairs should be made as comfortable as possible to maintain the child's psychology;

c. The available means of communication, for example, a microphone as far as possible, do not look like the interview process;

d. The teleconference room can also be used for child victims of crimes committed by adults.

There is an obligation to provide a teleconference room at each juvenile court very accommodating children's basic rights, one of which is participation rights. Participation rights, in this case, are the right to express opinions for children, especially when it comes to matters that can affect their lives. So according to this paper, one of the implementations of participation rights can be found in the examination of the victim's child at the trial level. Therefore participation rights needs to be realized, especially in every decision making.

Participation rights for the victim's child can also be seen even though the victim's child is not directly present at the examination at the court hearing, but the victim's child can still provide their testimony. Providing testimony through teleconference can indirectly protect the child's physical and psychological condition so that the traumatic condition of the victim's child will slowly disappear.

When viewed in the provisions of procedural law in effect in Indonesia, the victim's testimony is equated with the testimony of witnesses, namely witnesses who are also victims, especially those related to evidence, one of which is the power of evidence [13]. The degree of evidence witness testimony to be considered valid as evidence that has a value of the strength of evidence must meet two categories of requirements as follows:

a. Formal Terms
   It is a condition that refers to the subject, namely the person who will testify.

b. Material Terms
   It is a condition that refers to the contents of the statement given by the witness.

Examination of the victim's child does not contradict the power of proof. The use of teleconference, especially in examining child witnesses, the provisions that can be used as a basis for measuring the strength and assessment of evidence are regulated in Article 183 to Article 189 in conjunction with Article 3 of Law Number 8 of 1981 concerning Criminal Procedure Code. According to this paper, the proving power of a child victim as a witness who gives information by teleconference can be equalized in weight to giving testimony directly in
front of a child judge. To use and assess the strength of evidence attached to evidence, one of which is that the testimony of the child victim must be carried out by the limits justified by law. This must be done by the judge so that the court's decision is not based on the subjectivity of the judge. By using the teleconferencing media, there is no need to present the victim's child in front of the trial. The examination process at trial will be simpler without eliminating any procedures, such as the general hearing process in court.

4 Conclusion

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has accommodated the use of information technology for examining child victims. This can be seen in the process of examining the victim's child which can be carried out outside of court through electronic recording carried out by Community Guides in the local legal area attended by Investigators or Public Prosecutors and Advocates. The remote direct examination carried out on the victim's child must be accompanied by a parent/guardian, community advisor, or another companion. The use of information technology in the examination of the victims child can be done via teleconference. The examination of the victim's child must manifest participation rights and also have the same power of proof as to the testimony that was present in the trial examination process. Another thing that needs to be considered is to provide the necessary facilities and infrastructure so that the trial examination process runs smoothly. With the accommodation of the examination of child victims, the fate of the child victims will be clearer and it will not cause protracted uncertainty caused by the course of the evidentiary process at trial in the juvenile court.

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References


Comparison of Legal Systems: Legal Studies on Postponement of Debt Payment Obligations in Indonesia and Reorganization in the United States

Sumurung P. Simaremare¹, Bismar Nasution², Sunarmi³, Edi Yunara⁴
{sumurungpsimaremare@gmail.com¹, bismar.nasution@gmail.com², sunarmi@usu.ac.id³, edi.yunara@gmail.com⁴}
Universitas Sumatera Utara, Indonesia¹,²,³,⁴

Abstract. Postponement of the debt payment obligation is an alternative provided to fulfill debtors’ obligations to creditors. Each country has a different framework in arranging such postponement. Indonesia, which adheres to the civil law system, regulates the problem of postponement in Law Number 37 of 2004 with a deferment scheme that concentrates on a mutual agreement between debtors and creditors in debt settlement. Meanwhile, America, which adheres to the common law system, regulates the scheme through corporate reorganization as regulated in Chapter 11 of the US Bankruptcy Code which focuses more on providing opportunities for debtors to rehabilitate their companies. A comparative study is made to find out more about the debt payment postponement scheme to be used as a reference for legal reform efforts. At this point, the comparison was carried out using a statutory and conceptual approach. In America, Chapter 11 of the US Bankruptcy Code gives debtors flexibility (i.e., time flexibility) in carrying out debt restructuring programs, while in Indonesia, postponement of debt payment obligation applies time constraints in delays and settlement of debt cases.

Keywords: Comparison of Legal Systems, Postponement of Debt Payment Obligations, Reorganization

1 Introduction

The concept of Postponement of Debt Payment Obligations has been recognized in Indonesia since the enforcement of concordance principles. This concept refers to the same source of bankruptcy law in Indonesia, namely Law Number 37 of 2004. The postponement concept is presented in bankruptcy law with the mode of consolidating efforts between debtors and creditors in the context of repaying debtor’s obligations to creditors at a certain time, during which the peace between the two parties can be realized without neglecting the rights and obligations of each party [1].

The option offered in the Postponement is reconciliation. However, if reconciliation cannot be made, then the debtor is declared bankrupt. The reconciliation between debtors and creditors is not always successful, confirming that the concept of Postponement of Debt Payment Obligations only provides a way of delay, while the subsequent process is fully left to the parties in disputes [2]. In such a case, the legal function as a means of social engineering has not been implemented, considering that the Indonesian Bankruptcy Law has not succeeded in directing changes in the behavior of the parties in disputes to consciously achieve peace in the
Postponement of Debt Payment Obligations. This is ineffective because any similar case will inevitably lead to bankruptcy, and not a settlement [3].

The concept of postponement applicable in the United States as stipulated in Chapter 11 of the US Bankruptcy Code and the systems adopted by Indonesia show different applications. In Indonesia, it is based on providing leeway in settling debtor’s obligations to creditors, during which reconciliation between the two parties is the main goal [3]. Meanwhile, the reorganization system adopted by the United States does not consider leeway to solve financial problems. Therefore, the best option to solve such financial problems is to restructure the business organization because the previous management was deemed incompetent in conducting its business and fulfilling the obligations.

Chapter 11 of the US Bankruptcy Code states that a bankruptcy application can be filed without waiting for insolvent status, and the filing can be made when the creditor’s bill against the debtor has exceeded the existing assets [4]. Thus, debt restructuring is one of the alternatives for the settlement. Therefore, reorganization becomes an effort to make a healthier company and improve the financial condition of a business entity or corporation [5].

The comparison of the debt restructuring process applicable in Indonesia and America provides different perspectives on the debt settlement process itself. In Indonesia, debt payment postponement is more focused on the reconciliation process, while in corporate reorganization applicable in the United States, debtors have the flexibility to rehabilitate their business without neglecting the debt. Such differences can be used as the basis for legal changes to be applied in the future.

2 Arrangements for Postponement of Debt Payment Obligations in Indonesia and Reorganization in the United States

The legal comparison in Indonesia and the United States is carried out through a statutory approach, a comparative approach, and a conceptual approach. A legal comparison is a process of studying, understanding, and aligning concepts using a functional and problem-solving approach as a measure of comparison [6]. The general reasons underlying a comparative process are the prospect of forming a world legal system and the diversity of laws which is highly correlated with the history of a country [7]. Also, the fact that the diversity of laws certainly requires the initiative to acknowledge and accept even though there are many debates about the diversity and uniformity of laws. Then, the development of comparative laws inspires an appreciative step in respecting legal diversity. Nevertheless, such development does not always indicate an increasing appreciation of law diversity, it just increases an understanding that global legal unification is continuously defeated by various pluralizing particularities [8]. This is in line with Glenn who believes that harmonious diversity of law at the global level is a natural phenomenon and should, therefore, be prioritized [9].

David and Brierly argue that different political views can lead to different laws and state structures, which in turn nullify the assumption that western laws are viewed as more civilized and superior than other laws [6]. On the other hand, an emphasis and imposition of the view that progressive initiatives related to social influences on law must come from Western countries put aside other legal cultures to develop their legal systems. For example, comparing the law of postponement of debt payment obligations in Indonesia and reorganization in the United States will give birth to a deeper understanding of the debt restructuring process in the two countries.
The process of postponement of debt payment obligations and corporate reorganization are methods that can be taken by debtors who experience payment difficulties in fulfilling their obligations. Both methods can be used to protect ongoing businesses from the threat of liquidation upon filing a bankruptcy application [10]. Taking into account the interests and conditions of the debtors and creditors, the selected debt and credit settlement process should have a positive impact on both parties. Postponement through debt restructuring and corporate reorganization are important elements in the framework of restoring the national economy, through which companies experiencing financial problems can agree with creditors to settle obligations existing among them.

Postponement of Debt Payment Obligations, especially in Indonesia, is a term that is often associated with the problem of “insolvency” or “insolvent condition”, namely the inability of debtors to pay their overdue and collectible debts. Their debts can be collected at any time unless they have the postponement that must be determined by the court judge on their request for their “insolvency” condition [11]. The parties who are entitled to apply are:

a. Debtors who have more than 1 creditor, or debtors who are not able or estimate that they will not be able to continue to pay their overdue and collectible debts, can apply for a postponement of debt payment obligations and reconciliation including an offer of partial or full payment to creditors (Article 222 Paragraph (2) of the Bankruptcy Law).

b. Creditors (in this case both concurrent and preferential creditors) who estimate that debtors are unable to pay their overdue and collectible debts can apply for a postponement to allow the debtors for reconciliation including an offer of partial or full payment to the creditors (Article 222 Paragraph (3) of the Bankruptcy Law).

c. Exceptions are given to Bank Debtors, Securities Companies, Stock Exchanges, Clearing Guarantee Institutions, Depository and Settlement Institutions, Insurance Companies, Reinsurance Companies, Pension Funds, and State-Owned Enterprises engaged in the public interest.

The description obviously shows that applying for a postponement of debt payment obligations is not only for the interests of the debtors but also the creditors. In this case, the integrity of the debtors becomes a test of whether they want to pay off the debt or not. Generally, the postponement is divided into two [12]:

a. Applying for postponement of pure debt payment obligations (voluntary petition)

A voluntary petition is an application submitted by the debtor as the applicant without attracting the other party (the creditor) as the respondent, and the litigation initiative rests with the debtor.

b. Request for postponement of impure debt payment obligations (involuntary petition)

An involuntary petition is an application submitted by the debtor as a deterrent or counter against the bankruptcy application submitted by the creditor against the debtor, and the litigation initiative rests with the creditor.

Meanwhile, based on the time of Court decision against the debtor, postponement is divided into two types, namely:

a. Temporary postponement of debt payment obligations

If the application has been submitted by a debtor, the court within 3 days from the date of application registration must grant a temporary postponement and must appoint a Supervisory Judge from the Court Judge and one or more administrators who, together with the debtor, take care of the debtor’s assets. If the application is submitted by the creditor, the court within 20 days from the date of application registration must grant a temporary postponement and must appoint a Supervisory Judge from the Court Judge and 1 or more administrators who, together with the debtor, take care of the debtor’s assets [13].
b. Permanent postponement of debt payment obligations

During the court session, the Judge must listen to the Debtor, the Supervisory Judge, the Administrators, and the Creditor who attend the trial, or to their representatives or the attorney appointed based on a power of attorney. At the hearing, the creditor must determine whether to grant or refuse the permanent postponement. If granted, the permanent postponement along with its extension must not exceed 270 days after the temporary postponement is disclosed.

The postponement of debt payment obligations determined by the Court results in the "temporary postponement" of overdue debt until a new agreement is reached between the creditor and the debtor regarding the terms and new payment procedures [1]. The postponement does not eliminate the obligations to pay the debt, nor does it reduce the amount of debt; but it only has the character of a "temporary postponement" to achieve a "new scheduling" for the overdue debt. The period of postponement, either temporary or permanent, along with its extension shall not exceed 270 days from the date since the stipulation of the decision for temporary postponement is disclosed [14].

3 Submission Requirements and Legal Effects on the Legal Status of Debtors in Indonesia and the United States

3.1 Submission requirements in Indonesia and the United States

The most important requirement in applying for postponement of debt payment obligations as stated in Article 222 Paragraph (1) of Law Number 37 of 2004 is that the debtor has more than one creditor. The submission of the application can be made by both the debtor and the creditor. This is an amendment to the new bankruptcy law. In the previous law, Law Number 4 of 1998, Article 213 states that the party that can apply for postponement is the debtors. This is amended in Law Number 37 of 2004 by including creditors who can also apply. Article 222 Paragraph (3) of Law Number 37 of 2004 states that the creditors can apply for a postponement if they can determine that the debtors cannot pay their overdue and collectible debts. Meanwhile, the debtors can apply not only after they cannot pay their debts, but also when they estimate that they cannot pay their overdue and collectible debts (Article 222 Paragraph (2) of Law Number 37 of 2004). Thus, when the contents of Article 222 Paragraph (2) and Paragraph (3) are carefully examined, the differences regarding the conditions for postponement by debtors and creditors are visible [15].

Bankruptcy Law in the United States can provide a second chance for debtors to get rid of old debts that are emphasized on a fresh start concept. The evidence can be seen in the US Bankruptcy Code which gives opportunities to debtors to reorganize including corporate restructuring, debt restructuring, and so forth that are compiled in a Reorganization Plan. This regulation tends to prevent the liquidation of the debtor’s company. The expected goal of Chapter 11 of the US Bankruptcy Code is to serve as a means of rehabilitation for debtors [16]. Chapter 11 prevents creditors from collecting payments for a certain time when the debtors are developing a payment plan. In exchange for retaining the debtors’ assets during the Reorganization process, the debtors promise a payment derived from their future income using the retained assets. The promised payment is adjusted to the proportion of their claims to the creditors [17].
A bankruptcy case begins with the submission of an application to the Court that has the authority to examine a bankruptcy case (Section 301 of US Bankruptcy Code). In general, the debtor act as the applicant in the application for examination of a bankruptcy case. An application for examination of bankruptcy cases initiated by debtors is usually referred to as a voluntary petition. Creditors also have the right to apply, which is known as an involuntary petition. However, creditors have limited rights in applying for bankruptcy examinations against debtors under Chapter 7 and Chapter 11. Chapters 7, 11, 12, and 13 of Section 301 of the US Bankruptcy Code regulate the initiation of a voluntary bankruptcy case examination [18].

An application can be submitted by any party that can indeed be qualified as a debtor in the respective Chapters. This becomes the basis for the examination of the application. Therefore, under Chapter 11 of the US Bankruptcy Code, the party that can apply for voluntary bankruptcy is anyone who meets the requirements to be classified as a debtor based on the contents of Chapter 11. Section 109 (a) of the US Bankruptcy Code provides provisions regarding the restrictions on who can be a debtor in the realm of bankruptcy law:

“Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title” [12].

In the case of an application for bankruptcy submitted by a creditor, there are compulsory conditions that must be fulfilled in advance as set out in Section 303 (a) of the US Bankruptcy Code. In this regulation, an application submitted by a creditor can only be made in the case of examination of bankruptcy as listed in Chapter 7 and Chapter 11 of the US Bankruptcy Code [12]. This provision also regulates that the application must be submitted against a debtor who is classified as a debtor according to the chapter that becomes the basis for examining the submitted bankruptcy case. The application shall be submitted to the Bankruptcy Court.

3.2 Legal Effects on the Legal Status of Debtors in Indonesia and the United States

The postponement of debt payment obligations affects the legal status of debtors, in particular concerning the actions they can take. It affects the legal status of debtors regarding their actions against their wealth. Article 240 Paragraph (1) of Law Number 37 of 2004 stipulates that there is a limit for a debtor to postpone debt payment to enable him/her to take any action on his/her assets. Based on the provisions of this article, a debtor requires approval from the Administrator to take care of all or part of his/her assets. If the postponement comes into effect, the debtor’s power is reduced by the provisions contained in the Bankruptcy Law and the law of postponement of debt payment obligations [19].

The postponement of debt payment obligations also has legal consequences for the status of confiscation and execution of the guarantees. It results in the postponement of all execution actions that have been initiated to obtain debt repayment (Article 242 Paragraph (1) of Law Number 37 of 2004). Thus, debtors during the period of postponement cannot be forced to pay their debts because, during this period, the Commercial Court provides an opportunity for debtors to submit a reconciliation plan. This situation lasts during the temporary and permanent postponement. Furthermore, Article 242 of Law Number 37 of 2004 also stipulates that all confiscations that have been imposed are invalidated after the decision of permanent postponement is announced or after the decision on ratification of the reconciliation is legally binding. Then, at the request of the Administrator or the Supervisory Judge, if still needed, the
Court is obliged to remove the confiscation that has been imposed on the object that belongs to the debtor’s assets. This provision is waived if the Court, based on the request of the Administrator, has set a confiscation date earlier [19].

During the period of postponement, debtors cannot be forced to pay their debts as referred to in Article 242 jo. 245 Law Number 37 of 2004. Article 245 states that:

“Payment of all debts, other than those referred to in Article 244, which have already existed before the issuance of the postponement of debt payment obligations shall not be made during the postponement, unless the payment of the debt is applied to all Creditors, according to the balance of their respective receivables, without prejudice to the validity of the provisions as referred to in Article 185 Paragraph (3)”.

In its implementation, corporate reorganization as a form of legal protection for bankrupt debtors will result in juridical or legal consequences. Even since the application for bankruptcy examination under Chapter 11 of the US Bankruptcy Code was submitted, there have been consequences both for the related parties and for the implementation of the subsequent Company Reorganization process [16]. In this regard, submitting a bankruptcy application will initiate a bankruptcy case. Based on the provisions contained in the US Bankruptcy Code, the initiation of a bankruptcy case will result in two legal consequences. The first is the enactment of an automatic stay or a state of silence, and the second is the formation of an estate [20].

Automatic stay or a state of silence is a safe burrow for the bankrupt which goes into effect as soon as the petition is filed. It is a condition or period that immediately takes effect when the bankruptcy case has started which is indicated by the submission of an application for examination. This automatic stay prevents creditors from collecting debts incurred before applying [20]. Besides, creditors cannot sue debtors in court for payment. Even outside the court, creditors cannot force debtors to make payments immediately after the automatic stay has taken place.

Meanwhile, the estate in the United States Bankruptcy Act can be interpreted as:

“The accumulated non-exempt assets in a bankruptcy case, which are distributed for payment of administrative expenses and creditor’s claims. Exempt laws normally apply only in favor of debtors who are natural persons, and typically protect only property used for personal rather than business purposes. They were originally intended to protect the tax base: debtors could not produce taxable wealth if they were left destitute”.

After the initiation of a bankruptcy case, what is called an estate, or what is known in the Indonesian Bankruptcy Law as a bankruptcy asset, is automatically formed. Estate is an accumulation or a total of non-exempt assets in a bankruptcy case, which will later be used to pay the creditors’ claims and the administrative costs incurred during the case. As an estate is a total of non-exempt assets, not all debtor’s assets will automatically become bankruptcy assets or estate. This is because some parts of the debtor’s assets are excluded, or are called exempt property based on the Bankruptcy Act of the United States.

There are different regulations in the Bankruptcy Law applicable in Indonesia and the United States because of two different legal systems. The difference between the two countries is focused on the problem of implementing postponement of debt payment obligations: the postponement in the concept of Bankruptcy Law in Indonesia and postponement as a result of corporate reorganization in the concept of Bankruptcy Law in the United States. The difference
lies in the position of the postponement period. In Indonesia, postponement is the main point, while in the United States where corporate reorganization applies, it is a consequence of the submission of reorganization application. Also, the period of postponement applicable in the two countries is different. The Indonesian Bankruptcy Law regulates the limit or period for the postponement, while the US Bankruptcy Code does not provide a clear limitation on the period of postponement during the corporate reorganization. In general, the comparison of the postponement of debt payment systems between Indonesia and the United States is summarized in Table 1.

<table>
<thead>
<tr>
<th>Comparative Aspects</th>
<th>Indonesia</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Postponement of Debt Payment Obligations</td>
<td>The main point in the process of postponement</td>
<td>A further process for reorganization application and form of protection for debtors against creditors as long as the debtors are trying to rehabilitate their business</td>
</tr>
<tr>
<td>Postponement Term</td>
<td>Determined limitation by the Bankruptcy Law and postponement guarantee legal certainty for payments to be received by creditors</td>
<td>Relatively flexible because debtors have discretion in business rehabilitation as a result of debt restructuring during the corporate reorganization</td>
</tr>
<tr>
<td>Position of Debt Restructuring</td>
<td>Judged from the implementation process of postponement</td>
<td>Part of the reorganization process includes restructuring of assets and portfolios</td>
</tr>
<tr>
<td>The binding force of a reconciliation plan or reorganization plan</td>
<td>Applies to debtors, Administrators, and all creditors, except for separatist creditors who do not approve the Reconciliation Plan. (Article 281 Paragraph (2) of the Bankruptcy Law and law on the postponement of debt payment obligations).</td>
<td>Applies to debtors, creditors, and parties who take legal actions based on the provisions contained in the Reorganization Plan, (Section 1141 (a) of the US Bankruptcy Code)</td>
</tr>
</tbody>
</table>

Based on the description in Table 1, there are different processes in the debt payment postponement system applicable in Indonesia and the United States. The differences are mainly based on the different legal systems adopted by the two countries: Indonesia adopts a civil law system, while the United States adopts a common law system. This leads to a different spirit in implementing the process of debt payment postponement. As displayed in Table 1, the postponement in Indonesia is the core of the postponement of debt payment, while such postponement in America is more focused on debt reconstruction as the manifestation of a corporate reorganization. Thus, at this point, the debtors in the United States have the opportunity to improve their financial profiles without getting excessive burdens from creditors but still not leaving their obligations on the debt. Furthermore, Table 1 also displays that the process of corporate reorganization in the United States provides full discretion for debtors in
rehabilitating their business. This is shown through the flexibility to carry out their debt restructuring which includes asset and portfolio restructuring. In Indonesia, on the other hand, debt restructuring through postponing debt payment obligations depends on the reconciliation process between debtors and creditors. This means that debtors have a smaller chance of rehabilitating their businesses when compared to the pattern shown in the corporate reorganization process in the United States.

4 Conclusion

Simply, it can be concluded that there are fundamental differences in the mechanism for postponing debt payment in Indonesia and the United States. In Indonesia, postponement of debt payment obligations applies, while the United States applies corporate reorganization. This is understandable due to the different legal systems adopted by the two countries. The difference lies in the position of the postponement, it is the essence or main point in the implementation of postponement of debt payment in Indonesia, while the postponement in company reorganization that applies in the United States is the impact of the reorganization process. In other words, the corporate reorganization process provides flexibility to debtors in completing their obligations and conducting rehabilitation of their businesses.

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References

Police Strategies in Tackling Fake News and Hoax in Indonesia

Suparno¹, Sukinta²
{kiparno@yahoo.com¹}

Universitas Diponegoro, Indonesia¹, ²

Abstract. This paper’s main problems are the significant spectrums of hoaxes in Indonesia by examining its definition, actors, and discourse as well as analyzing the role of the Indonesian police in tackling hoaxes and the critical challenges faced by them from the policy context. The socio-legal approach is used in this study to provide a contemporary legal perspective in explaining the contemporary issue, such as social media, the internet, the internet of things, cyberspace, and other social issues related to it, such as social media hoax, social media bullying, hate speech, hack, and cybersecurity breach. This paper has ultimately scrutinized and discussed the discourse of hoax and fake news as part of multifaceted information disorder in Indonesia and the National Police of Indonesia or POLRI’s policy focus on tackling these information disorders, including hoaxes and fake news.

Keywords: Police, Hoax, Indonesia, ITE Law

1 Introduction

The hoax case in Indonesia has been increased in the past few years as social media users are also rising at higher numbers. The correlation is proper to be scrutinized further; however, it must be highlighted that according to public polling last year, most of the hoaxes are spread throughout social media users, and 86% of the internet users have been the victim of hoax [1]. The most concerning issue is when the hoax endangers society and their thoughts. Not only it likely becomes a tool of propaganda, but it becomes a threat for people to access trustworthy information online freely.

Many countries have adopted measures to tackle hoaxes, some remain stagnant, and some indicate hurdles in coping with hoaxes. The case of Indonesia is interesting enough to scrutinize because hoax has been regulated with a national law that becomes the umbrella of internet and electronic transaction (ITE) issues. The regulation in Indonesia to combat hoax is covered under the umbrella of ITE Law No. 19 of 2016. The term ‘hoax’ is explicitly mentioned in the sub-article 45A, a newly created sub-article to the whole article 45. Interestingly, article 45 covers not only related to the hoax and its distribution via the electronic medium but also covers the prohibition of the electronic medium used to distribute any information or document that is or include anything against common decency, gambling, defamation, blackmailing, and threats. The sphere of the regulation is perplexing enough to analyze further.

Considering the existing criminal law to handle hoax in Indonesia and the issue has continued to cause concerns, such enforcement is also established to promote action and preemptive approaches in dealing with hoaxes. The fact is under the same ITE law; such
A preemptive measure is correlated to government or institution under government only. The government institution is represented by the Ministry of Communication and Informatics (Kominfo) and the Indonesian National Police (POLRI) as well as the Attorney General of Indonesia as law enforcers. Once the hoax case is affirmative for instance, then the role of the POLRI is legitimate to prosecute the case and report it to District Attorney. Such a policy to support the legal regulation on combatting hoax is crucial and salient. It must be highlighted that hoax causes loss and carries the possibility to create a larger chain of losses. The main question of this journal is to explain how the law enforcer, in this case, Indonesian National Police apply an appropriate policy to combat hoax as well as the field efforts to eschew hoax in Indonesia. Finally, this journal will also scrutinize whether such a policy approach and efforts to combat and minimize hoax have faced any hurdles at all.

The main problems discussed in this paper are: (1) What are the significant spectrums of hoaxes in Indonesia (definition, actors, and discourse)? (2) From the policy context, how does the police of Indonesia tackle hoaxes? (3) What are the police’s efforts to eradicate or decrease hoaxes’ negative impacts? (4) Besides the efforts, what do police face the key challenges in applying the policy approach?

2 Research Methods

To answer these questions, the authors rely on the primary research method and approach by utilizing a socio-legal approach to understand the law implementation. In this research, the approach is applicable because hoax as an issue in society can be observed in both empirical contexts and review via social theories to achieve the findings based on a legal problem-solving approach. The type of data used in this research is secondary data based on legislation, works of literature, as well as statistical findings. This study’s overall essence and logic are in the form of legal opinion and field findings. The legal opinion as a problem solver has been recently explained immaculately by Poesoko and Dewi [2] in “justifying whether the legal opinion is a valid method to review social issues from legal perspectives”.

Meanwhile, Gijssels and Hoecke [3] explained that “the legal practice position is after the legal dogma, law theory, and law philosophy on the top.” In summary, the law creation and application are interconnected to each other. Hence activities that include observing, scrutinize, and expressing critical thinking toward the end to end the journey of lawmaking and application, whether there have been some mishaps or lacking to the regulation as the problem solver of the social issues, can be considered as a method.

3 Results and Discussion

3.1 Beyond Definition: Hoax, Fake News, and Their Complex Dimension

Hoax is one of the most omnipresent and even flourished issues on the internet today. The hoax is multifaceted and cannot be determined as only fake news but is viewed as a threat. According to UNESCO, what is generally perceived as fake news and hoaxes on social media can be categorized and included within the context of information disorder [4]. Information disorder is a disproportionate form of information due to its subject and objective. The information can be fabricated, misleading, distributed partly, or mean to attack particular actors
with many forms of published information on social media. However, there are two objectives or goals of the information disorder: falsifying or intending harm. What is being perceived widely as a hoax and fake news in social media can have either one of these objectives or, instead, fall in between the intention (Figure 1).

![Fig. 1. Information Disorder [4].](image)

What becomes interesting in Indonesia’s case is how hoaxes and fake news are often perceived very similarly, even within the legal framework, including the actors’ criminalization process behind the false information’s creation and distribution process. For instance, both POLRI and Kominfo, as the national government actors to tackle hoax, have not differentiated between a hoax and fake news. Many articles have classified them into different typologies. The media can adopt some hoaxes if the fact-checking process is not considered. However, some fake news is recognized for its originality that is instead genuine and not even in the news [5].

Adhering to ITE law’s defects is crucial in defining what is considered fake news and often leads to the actors’ disorientation, including governments, national police, court, and even the public comply and uphold the ITE law. Regardless of the urgent need to review and reassess the existing laws, what is more significant is to define what is covered under the ITE Law as the regulation itself has been implemented for years and punishments have taken place at the national level. Failure to define what is considered fake news or hoax, for instance, may lead to difficulty in fighting fake news and hoax. In this paper, the analysis focuses on fake news and hoax as the common negative information disorder found on social media in Indonesia.

### 3.2 Chain of Actors Related to Hoax and Fake News

As earlier mentioned, hoaxes and fake news have not emerged without any intention. Even when its origin is accidental, for instance, the actors who take the role in distributing both hoax and fake news are also part of the vital phase of the hoax or fake news. For instance, in the hoax case, a homemaker living in the suburban area with no intention to cause harm but create viral content by adding comments on top of existing content can lead her content to become a hoax. Nevertheless, under the same hoax umbrella, an actor behind the false information intends on the first hands to create false information ripples of some topics in social media because she or he represents the particular ideology, group, organization, etc. Alternatively, even in the extreme
hoax scenario, an actor might monetize his or her social media account to create viral information with the aim of falsification, or what we usually know as buzzer who spread the hoax.

Indeed, there are a hundred scenarios of how content can be false and misleading. Unfortunately, it would have been circulated in the future anyhow. Because once posted on the internet, the content trace will stay on the internet. Even if the hoax has been confirmed and the actor has been punished for the crime, the content will remain on the net, and other people might redistribute it, creating another loop of hoax circle. Therefore, it is crucial to understand the whole circle of a hoax because there are important actors responsible for creating, circulating, or even recirculating.

Figure 2 of the agent, message, and interpreter provided by UNESCO below can be the adoption of how governmental actors, non-governmental actors, and society, in general, can understand the circle of a hoax.

![Diagram of Agent, Message, and Interpreter](image)

**Agent**
- Actor type (unofficial, official)
- Organization (none, loose, tight, networked)
- Motivation (financial, political, social, physiological)
- Automation level (human, cyborg, bot)
- Targeted audience (members, entire society, social groups)
- Harmful intention (Yes/ No)
- Misleading Intention (Yes/ No)

**Message**
- Duration (long, short, event based)
- Accuracy (misleading, manipulated, fabricated)
- Legality
- Imposter type (No, Brand, Individual)
- Message target (Individual, Organization, Social Groups, Entire Society)

**Interpreter**
- Message reading (hegemonic, oppositional, negotiated)
- Responses (ignored, shared in support, shared in opposition)
- SUPPORT -> redistribute
- OPPOSITION -> clarification or report

**Fig. 2.** Three Elements of Information Disorders (Agent, Message & Interpreter) [4].

Using the same framework, it can be observed how law enforcer deals with the actor or imposter behind the hoax. The housewife case in the earlier scenario might not have sufficient understanding that what she did was wrong. Under the basis of a desire to be viral and no harmful intention, she might not be convicted for her hoax. However, this chain of hoax or false information distribution framework is not explicitly mentioned on the ITE Law and its revision nor mentioned on the hoax handling method of POLRI or Kominfo’s released document and public website. What can be mainly observed from the regulation and government institutions’ roles in implementing it is the applicable law principle related to Indonesia’s hoax.
The acknowledgment of different actors’ acts also leads to a different distribution of hoaxes and fake news in general. The analysis level based on the following can help understand different actors of individuals, newsmakers, and interest groups.

**Fig. 3.** Main Actors in Hoax Creation and Distribution in Indonesia  
(Source: Author’s interpretation based on the various report on hoax in Indonesia).

![Diagram: Hoax/False Information/Fake News]

The meso-level of analysis, there is a novel discovery on how mainstream media or traditional media, such as news outlets or media corporations, can also distribute fake news. The term “fake news” here is relevant to be used due to the facts that journalist is a big part of the media as news producer organization. Various factors cause the existence of fake news in the mainstream media. Four primary and most popular reasons are captured by Tsfati et al. [7], such as “(a) perception of the journalist, (b) traditional news values, (c) psychology of news decision,

**Fig. 4.** National Survey Report on Hoax 2019 [6].

In the meso-level of analysis, there is a novel discovery on how mainstream media or traditional media, such as news outlets or media corporations, can also distribute fake news. The term “fake news” here is relevant to be used due to the facts that journalist is a big part of the media as news producer organization. Various factors cause the existence of fake news in the mainstream media. Four primary and most popular reasons are captured by Tsfati et al. [7], such as “(a) perception of the journalist, (b) traditional news values, (c) psychology of news decision,
(d) infrastructure for covering the cyberspace information”. Four causes are correlated to the idea of mainstream media as it also has the purpose of publicity and marketing.

From the socio-legal perspectives, circulating the hoax is massively prevalent nowadays since many individuals are unaware of the content and find it worthy of sharing without breaking the ITE law and its revision. What makes it more adverse is when individuals do not have the intention to spread false information and yet at the same time do not understand the consequences of what they share. ITE law and its revision have made it law-binding enough to charge someone for their acts in creating, distributing, redistributing, or even modifying the false information. However, the measurement on whether such socialization regarding the ITE law and its revision have been adequately disseminated has not yet been disclosed. An increasing amount of hoax even when there is no political competition momentum.

This similar notion on the multiverse causes of hoax is confirmed with the survey conducted by Mafindo or Anti Hoax Society in Indonesia (Masyarakat Anti Fitnah Indonesia) on their database [8]. In the report, it can be examined that even though hoax related to politics or political candidates were indeed declined sharply in August 2019 (4 months after the General Election in April 2019), hoax related to other topics were still present, such as religion, health, natural disaster [8].

3.3 POLRI and Their Policy Approach to Combat Hoax and Fake News in Indonesia

It has been highlighted in the previous part of this essay that hoaxes and false information are all damaging to various layers in society and must be fought nationally. One of the key actors to combat hoaxes and false information in Indonesia is the police. The general tasks performed by the POLRI are based on their primary responsibility of keeping the citizens of the Republic of Indonesia safe. Meanwhile, this core responsibility has three subsets of approaches: brief explanations below. It will be elaborated to overview the hoax and fake news policy approach by the National Police of Indonesia.
3.3.1 Preemptive Approach

The efforts and activities are made to face the issue by socializing within the public sphere to prevent any unlawful act in society. Another term mentioned by the POLRI is “Community Policing”, yet the term itself is considered bias because it might be obsolete in the smaller region parts of the country. The embodiment of “Community Policing” was vivid back in the day with what society refers to as *Sistem Keamanan Lingkungan* (Siskamling) or Environment Security System that is overviewed by the local representative of the Local Police, namely Bhabinkamtibmas (Bhayangkara Pembina Kamtibnas). Aligned with what is suggested on POLRI’s website, there have been some outdated conditions and disconnection between Community Police and the Bhabinkamtibmas. The connection is rather loose, and there seems no urgency to ensure the overall monitoring process of Community Policing. Besides the presence of Bhabinkamtibmas, the National Army of Indonesia (TNI) also has the same functioning part in the society as the local representative of the Local Army, namely Babinsa.

3.3.2 Preventive Approach

Suppose the preemptive approach showcases the importance of engaging with society as anticipating certain illegal activities. In that case, preventive measures ensure that the police exercise their function to prevent potential threats from occurring. This approach can be considered guarding society with the protection measure to prevent any illegal acts in society. The examples can be seen on the regular patrols, crime investigation, and security approach. In this approach, coordination with society is also crucial. Although similar to the preemptive approach, the preventive approach’s main aim is instead to utilize police resources to prevent the occurrence of illegal acts within society.

3.3.3 Repressive Approach

The last approach specifically mentioned and introduced under the law to highlight the POLRI’s responsibilities and legitimate actions is repressive. We may interpret repressive as the law enforcement approach where POLRI can perform lawful penalty and action to the vigilantes [9]. This approach is usually the last resort taken by POLRI if the preemptive and preventive approach’s failure persists. However, it must be acknowledged that this approach must be taken after careful lawful consideration and legitimate investigation that are valid legally. This validation is important for POLRI as a law enforcer who will have to face vigilantism in society, including digital vigilantism. Therefore, the repressive approach by POLRI must ascertain the character of criminal justice and can be confirmed with the overall criminal justice system in Indonesia. Substantially, the search and investigation process are explained to include the following: a. search, inspect, and investigate a phenomenon that can be considered as a crime, b. decide on the further investigation, c. find the evidence, d. clarify the crime, e. find a criminal based on the overall investigation and evidence. This series of investigation process done by POLRI is salient to the hoax and fake news investigation process. However, the method might be distinct due to its nature from police perspectives to analyze certain cases based on non-hard evidence.
By classifying different policy approaches that POLRI has taken so far, we understand that there must be some significant efforts done by POLRI as well as other actors. Among the three, the preemptive policy regarding hoaxes and fake news is considered trivial. The writer found some sporadic events, but since its initiation is not continuous, the efforts to communicate with the public are meager.

**Fig. 7.** Reported Platforms Based on Patroisiber.id (2017-2020) [12].
### 3.4 Challenges Faced by POLRI to Combat Hoax and Fake News in Indonesia

Throughout this essay, it has been mentioned that efforts to conduct policy to reach specific social impacts by combatting and eschewing concerns are not facile. For instance, in preemptive and preventive approaches, POLRI has to construct, deconstruct, reconstruct, and even consolidate different reports and investigation findings in a variety of hoaxes and fake news with limited resources. Indeed, it is not a task that can be oversimplified, especially in a democratic society with a complex arena, such as Indonesia. Despite their role as law enforcers, POLRI is challenged to connect community ideas and their responsibility to investigate. Such a phenomenon is captured by Howlett [13] to acknowledge the importance of closely integrated communities as well as cohesive process to promote innovative policy in subsystem structure. However, the components of POLRI’s approaches cannot neglect the obstacles that they face in this multicultural societal subsystem.

In the context of hoaxes and fake news, at the moment, POLRI has always relied on reporting sourced from the citizens/people. However, some challenges are faced, such as inadequate data and reporting sources, lack of coordination with other stakeholders, lack of societal understanding of the importance of fact-checking information. There is also an urgency for defining and setting the parameter of success.

### 4 Conclusion

This paper has ultimately scrutinized and discussed hoax and fake news discourse as part of multifaceted information disorder in Indonesia. The National Police of Indonesia or POLRI’s policy focus on tackling these information disorders, hoaxes, and fake news. What continues to lack is the specific proportion to include a clear definition of the information disorders, especially in the scope of the police’s preventive and preemptive policy. POLRI has focused on three key approaches in implementing its efforts to minimize and even combat hoaxes and fake news. However, it must also be highlighted the fundamental understanding of its definition and which actors they should focus on so that their investigation can be seamless in the future. At the moment, their official website focuses on the distribution of disinformation and misinformation rather than the source.

### References


Appendix

Classification of New and Modified Socio-Legal Characters of ITE Law

<table>
<thead>
<tr>
<th>Type of cybercrime</th>
<th>Articles on the ITE Law &amp; The Revisions</th>
<th>Contemporary New Socio-Legal Character (Y/N)</th>
<th>Modified Socio-Legal Affairs (Y/N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hacking (although not specifically mentioned as a term, but the articles describe the hacking/ breach into somebody’s computer electronic system activity, therefore can be considered as hacking)</td>
<td>Article 30, ITE Law</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Infringement, cyber theft, forgery, as well as unauthored data/file sharing</td>
<td>Article 32, ITE Law</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Cyber interference and sabotage over internet connection system or cyberspace (cyber-terrorism)</td>
<td>Article 33, ITE Law</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Those who are involved in the process of cyber-terrorism</td>
<td>Article 34, ITE Law</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Data privacy and identity theft</td>
<td>Article 35, ITE Law</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>

| Article 15, ITE Law | Y |
| Article 27, ITE Law | Y |
| Article 28, ITE Law | Y |
| Article 29, ITE Law | Y |

**Illegal content 1: Pornography including terrorism**

| Article 24, Consumer Protection Law | Y, also covered in the KUHP and ITE Law |

**Illegal content 2: Gambling (not specifically categorized, but everything that includes any content relevant to gambling)**

| Article 25, ITE Law | Y, also covered in the KUHP and ITE Law |

**Illegal content 3: Defamation (online)**

| Article 26, ITE Law | Y, also covered in the KUHP and ITE Law |

**Illegal content 4: Blackmail**

| Article 27, ITE Law | Y, also covered in the KUHP and ITE Law |

**Illegal content 5: Fraud using false information that causes consumer’s loss**

| Article 28, Section 1, ITE Law | Y, also covered in the Law no 8, 1996 on Consumer Protection |

**Illegal content 6: False information that causes hate over individual, politics, ethnic group, race, religion, and particular group**

| Article 29, Section 2, ITE Law | Y, also covered in the KUHP and other laws |

1. Article 39 KUHP also covers similar notion of false information but explicitly mention the distribution of it.
   
2. Article 14 & 15, Law no 1, 1960 about Criminal Law |

**Illegal content 7: Threats of violence**

| Article 30, ITE Law | Y, also covered in the KUHP and other laws |

Source: Author’s interpretation based on related Laws (KUHP, ITE Law and Revision, Consumer Protection Law, and Pornography Law).
Character and Disharmony of Legislation on Oil and Gas Sector in the Perspective of Article 33 of the 1945 Constitution

Suparto¹, Admiral²
{suparto@law.uir.ac.id¹}

Universitas Islam Riau, Indonesia¹, ²

Abstract. Oil and natural gas are one of the most strategic non-renewable natural resources in Indonesia. Therefore, its management and utilization must be in accordance with the constitution of the Country, namely the 1945 Constitution. This research objective is concerned to the character and disharmony of the legislation itself in the perspective of Article 33 of the 1945 Constitution. Based on the research, obtained the results that the character of legislation in the field of oil and gas management starting from Indische Mijnwet Stb 1899 No. 214 Jo. Stb 1906 No. 434, Law No. 44/PRP/1960, Law No. 8 of 1971 and Law No. 22 of 2001 occurred dynamics ranging from those in accordance with the spirit of Article 33 of the 1945 Constitution to those that are not. The reason was the international pressure and the persistence of global interest in the management of oil and gas in Indonesia. Possible efforts in addressing the problem of disharmony between legislation and non-conformity with the 1945 Constitution are: 1) Amend/revoke certain articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them. 2) Apply for a material test to the Judiciary (judicial review). 3) Apply the principle of laws of legislation.

Keywords: Characters, Disharmony, Regulations, Oil and Gas, The 1945 Constitution

1 Introduction

In 1899, the Dutch East Indies Colonial Government issued a statutory regulation in the oil and gas sector known as Indische Mijnwet 1899 No. 214 dated 23 May 1899 Jo. Stb 1906 No. 434 concerning Mining Concessions. In this legislation, the Dutch East Indies Government discriminates between Dutch Companies and Non-Dutch Companies. After the Independence Revolution on August 17, 1945, Indische Mijnwet 1899 remained in force until 1960 although this regulation was very contrary to the spirit and soul contained in Article 33 of the 1945 Constitution. It occurs due to the absence of a law related to oil and gas management in Indonesia and in accordance with the provisions contained in the Transitional Rule I of the 1945 Constitution. The Indonesian government at that time had made various efforts to establish laws and regulations in the Oil and Gas sector which had a nationalist spirit in accordance with the spirit of Article 33 of the 1945 Constitution, one of which was canceling the mining rights granted by the Dutch East Indies Colonial Government to Oil and Gas Companies (Law No. 10 of 1959) and required all oil and gas companies to be incorporated under Indonesian law (Law No. 78 of 1958) [1].
On October 26, 1960, the first legislation in Indonesia related to oil and gas, namely The Replacement Government Regulation Law (Perpu) No. 44 of 1960 was officially enacted. This law has officially restored the sovereignty of oil and gas into the hands of Motherland and in its contingency states this Perpu is a mandate from the Presidential Decree dated July 5, 1959, the provisions of Article 33 of the 1945 Constitution and the Political Manifesto of the Republic of Indonesia as affirmed in President Sukarno's Speech in 1960. This legislation explicitly states *Indische Mijnwet* is no longer valid and then changes the Oil and Gas Concession system to a Contract of Work system [2].

On December 15, 1971, the second legislation was enacted in the oil and gas sector, namely Law No. 8 of 1971 on the establishment of Pertamina (State Oil and Gas Mining Company). This Law, once again refers to the spirit and soul of the provisions of Article 33; the Constitution of 1945. In this law, Pertamina as the full representation of the state acts as a mining power. In this case Pertamina functions as a regulator and operator of oil and gas management in Indonesia [3].

In 1997-1998, there was a Monetary Crisis in Indonesia and then the Government asked the International Monetary Fund (IMF) for assistance, the institution then intervened politically through changes in several regulations to become more liberal, one of which was the Manpower Law (Law No.13 of 2003) and the Oil and Gas Law (Law No. 22 of 2001). In Law No. 22 of 2001, there has been disharmony with the previous Law and also not in accordance with the spirit and soul of Article 33 in the Constitution of 1945 concerning the full control of the state over all Natural Resources in Indonesia [4]. Based on the description, in this article will be discussed about the character of the legislation in the field of oil and gas management according to Article 33 of the 1945 Constitution and efforts that can be made to harmonize the legislation.

2 Discussion

2.1 Character and Disharmony of Legislation in the Sector of Oil and Gas

Disharmony (incompatibility) of legislation occurs due to sectoral selfishness of ministries/institutions in the process of planning and forming laws or the existence of certain socio-political interests, for example are: The amendments of the Manpower Law as well as the Oil and Gas Act due to the insistence of IMF institutions in the past. Previously, L.M. Gandhi had identified the factors that cause the onset of disharmony in legal practice in Indonesia, namely: The difference between various statutes or statutory regulations. In addition, the increasing number of rules makes it difficult to know or to hit all of them. Thus, the provision which states that everyone is considered to be aware of all applicable laws is undoubtedly ineffective [5].

<table>
<thead>
<tr>
<th>Table 1. Benchmarking Assessment of the Legislation Orientation</th>
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<tbody>
<tr>
<td><strong>Orientation</strong></td>
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<tr>
<td>Management and its implementation</td>
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<tr>
<td>Protection of Human Rights</td>
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<tr>
<td>Alignments</td>
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Disharmony of legislation has a huge impact on the survival of the state, because it can lead to the occurrence of several things as follows:

a. There are different interpretations in its implementation.

b. The occurrence of legal uncertainty.

c. Implementation of ineffective and inefficient laws and regulations.

d. The occurrence of legal dysfunction [4].

As previously stated, that in the history of Indonesia, there are three national laws and regulations in the field of oil and gas:

a. Perpu No. 44/PRP/1960 on Oil and Gas Mining.

b. Law No. 8/1971 on the Establishment of Pertamina.

c. Law No. 22 of 2001 on Oil and Gas.

Although both are products of national legislation, there are differences in terms of the politics of law in their formation and the purpose for which the law is formed. Perpu No. 44/PRP/1960 is the mandate of the provisions of Article 33 of the 1945 Constitution which take over all oil and gas sovereignty in Indonesia completely from the hands of foreign oil and gas companies [7]. Foreign Oil and Gas Company that used to be concession holder based on Indische Mijnwet changed its status to Oil and Gas Contractor. It is stated in the explanation of the Law where it is stated that by referring to Article 33 paragraph (3) of the 1945 Constitution, the Indonesian people gives power to the State of the Republic of Indonesia to regulate, maintain and use the national wealth as well as possible in order to achieve a fair and prosperous Indonesian society. It is also stated that the authority of the state to control includes control and exploitation of oil and gas extracted materials. The business is further carried out by the State Company (PN) in this case is the State Oil Mining Company of Indonesia (PN. Pertamin) as the Mining Power that binds the agreement with oil and gas company (Oil and Gas Contractor). As one example is the Agreement/Contract of Oil and Gas (Production Sharing Contract of Oil and Gas). This legislation is also in line with the spirit of Law No. 5 of 1960 on Agrarian Principles [9] and Perpu No. 44/PRP/1960 [10], because all assets (Equipment, Facilities and land areas acquired by Foreign Contractors prior to Perpu No. 44/PRP/1960 and Law No. 8 of 1971 automatically become state-owned (State-Owned Goods) and managed by Pertamina. The authority over the management of oil and gas operations and the domination of foreign contractors is also reduced from before because all control of oil and gas resources is national assets under the control of the state.
gas management is in the hands of Pertamina. These laws and regulations were still in effect until 2001 [11].

In 1997-1998, there was an economic catastrophe in the form of a monetary crisis, at which time the Government asked for assistance from the IMF. In return for this assistance, the IMF has intervened politically on changes to laws and regulations in Indonesia, one of which is the Law No. 22/2001 on Natural Oil and Gas, that is Law No. 22 of 2001 [12]. Unlike the previous Oil and Gas Law, the Law No. 22 of 2001 is more liberal. In this legislation there is a separation of upstream with downstream oil and gas. The full authority and sovereignty of national oil and gas began to diminish with the establishment of a Regulatory Body (Downstream Oil and Gas Regulatory Agency/BPH Migas) and the Oil and Gas Implementing Agency (Upstream Oil and Gas Business Activities/BPH Migas). The authority owned by the Agency is very different from the authority given to Pertamina in the past, the authority owned by the Oil and Gas Implementing Agency is only partial. Therefore, some oil and gas activists conduct Judicial Review to the Constitutional Court related to the Oil and Gas Implementing Agency. On November 13, 2012, the Constitutional Court issued a ruling No. 36/PUU-X/2012 on The Testing of Law No. 22 of 2001 which states that it removes the Oil and Gas Implementing Agency because it is contrary to the Constitution of 1945 and has no binding legal force [13].

The Oil and Gas Implementing Agency as a representation of the State has degraded the meaning of the right to control of the State. The initial concept of the Oil and Gas Implementing Agency was to separate the regulatory bodies from the entities conducting business, the two functions were previously carried out by Pertamina based on Law No. 8 of 1971. The existence of oil and gas implementing agency for the government is intended so that the Government is not directly faced with oil and gas business actors.

The construction of this relationship is not in accordance with the provisions of Article 33 of the 1945 Constitution which specifies that the state has the right to control the branches of production that are important to the state and that control the lives of the people and the earth, water, and natural wealth contained therein, and used for the greater prosperity of the people. The right to control the country gave birth to the authority of the state as a mandate of the Constitution to make policies (beleid), management (bestuursdaad), arrangements (regelendaad), management (beheersdaad), and supervision (toezichthoudendaad) for the purpose of the greater prosperity of the people. The authority of the state is constitutional if used for the greater prosperity of the people [14].

Based on the Constitution, the form of state control is classified into several levels as follows:

a. The first and foremost level lies with the state by directly managing oil and gas.
b. The second level is the state making policies and managing state control.
c. The third level is the state carrying out the function of regulation and supervision [15].

However, Law No. 22 of 2001 constructs the Oil and Gas Implementing Agency as a government organ only performs the function of controlling and supervising oil and gas management while oil and gas management directly in the upstream sector is carried out by state-owned enterprises and non-state-owned/private enterprises based on the principle of fair, efficient, and transparent business competition. The government then issued Presidential Regulation No. 95 of 2012 concerning the Transfer and Implementation of Duties and Functions of Upstream Oil and Gas Business Activities, to prevent the vacuum of the rules and provide regulation of upstream oil and gas business after the Oil and Gas Implementing Agency is dissolved by the Constitutional Court and returns all functions of the Oil and Gas Implementing Agency to the Ministry of Mineral Resources Energy (ESDM) [16]. The authority is currently carried out by the Special Task Force for Upstream Oil and Gas Business Activities/SKK Migas.
Apart from the upstream sector above, before the enactment of Law No. 22 of 2001, for the distribution of subsidized fuel/PSO (Public Service Obligation) in the downstream sector carried out by Pertamina, but after Law No. 2 of 2001 there were very crucial changes, one of which was the appointment of several private companies (PT. Petronas Niaga Indonesia, PT. Surya Parna Niaga and PT. AKR Korporindo) together with PT. Pertamina (Persero) to distribute subsidized fuel/PSO by BPH Migas in 2011. This is also added to the opening of distribution channels and sales of Non-PSO BBM in Indonesia to private parties. For information, besides Pertamina, there are currently several private companies that have business activities at Public Fuel Filling Stations (SPBU) in Indonesia, including Total, Shell, AKR, the Implementing Agency and so on.

The foregoing proves that since the enactment of Law No. 22 of 2001, oil and gas policies in Indonesia in the downstream oil and gas sector have also become more liberal because they gradually include the role of the private sector in fuel distribution activities for both subsidized and non-subsidized fuel [18].

<p>| Table 2. Comparison of Legislation in the Oil and Gas (Migas) Sector |
|-------------------------|-----------------------|-------------------------|-----------------------|
| <strong>Comparison</strong> | <strong>Indische Mijnwet</strong> | <strong>UU No. 44/PRP/1960</strong> | <strong>UU No. 8 of 1971</strong> | <strong>UU No. 22 of 2001</strong> |
| <strong>Period</strong> | 1899 to 1950 | 1960 to 1971 | 1971 to 2001 | 2001- Nowadays |
| <strong>Content</strong> | Regulations related to Mining | Regulations related to Oil and Gas Mining | Establishment of Pertamina | Regulations related to Oil and Gas |
| <strong>Subject of Oil and Gas Legal Entities</strong> | Divided into two: a. Dutch Oil and Gas Company | Must be incorporated in Indonesia | Must be incorporated in Indonesia | Must be incorporated in Indonesia |</p>
<table>
<thead>
<tr>
<th>Operations Management of Oil and Gas</th>
<th>All Assets (Goods, Equipment, Facilities and Land) owned by Oil and Gas Contractors</th>
<th>PSC (Production Sharing Contract): All assets become state assets and all land acquisition costs that have been issued by oil and gas contractors will be replaced through the Cost Recovery scheme</th>
<th>PSC (Production Sharing Contract): All assets become state assets and all land acquisition costs that have been issued by oil and gas contractors will be replaced through the Cost Recovery scheme</th>
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<tbody>
<tr>
<td>b. Non-Dutch Oil and Gas Company (a/l, STANVAC, BP)</td>
<td>Management of petroleum operations is in the hands of Oil and Gas Contractors</td>
<td>The management of oil and gas business is in the hands of the Mining Power (PERTAMINA) as a representation of the state.</td>
<td>Management of oil and gas business is in the hands of regulators (Oil and Gas Implementing Agency) and is implemented partially only performs the function of control and supervision over oil and gas management while oil and gas management directly in the upstream sector is carried out by state-owned enterprises and non-state-owned enterprises</td>
</tr>
<tr>
<td>Management of business and ownership of the production of excavated materials/minerals are entirely in the hands of Mining Concession holders</td>
<td></td>
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<tr>
<td>Status of Oil and Gas Assets (Goods, Equipment, Facilities and Land Areas)</td>
<td>a. During the period of the Contract: All Assets (Goods, Equipment and Facilities) owned by oil and gas contractors. For land objects to belong to the state</td>
<td>Profits taken from Remaining production with a distribution of 85% for the country and 15% for oil and gas contractors</td>
<td>Profit taken from the remaining production with a distribution of 85% for the country and 15% for oil and gas contractors</td>
</tr>
<tr>
<td></td>
<td>b. PSC (Production Sharing Contract): All assets become state assets and all land acquisition costs that have been issued by oil and gas contractors will be replaced through the Cost Recovery scheme</td>
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</tr>
<tr>
<td>Profit Sharing</td>
<td>Consists of two periods: a. In the Period of Contract: Distribution of oil and gas sales results</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>b. In the PSC Period: Profit is taken from the remaining production with a distribution of 85% for the country and 15% for Oil and Gas Contractors</td>
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<tr>
<td></td>
<td>The state only receives mining fees of 0.25 guilder per hectare every year as well as a royalty of 46% of gross proceeds (Article 35-IM 1989)</td>
<td>Consists of two periods: a. In the Period of Contract: Distribution of oil and gas sales results</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. In the PSC Period: Profit is taken from the remaining production with a distribution of 85% for the country and 15% for Oil and Gas Contractors</td>
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</tr>
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</table>

Source: Susetio [6].
2.2 Efforts to Overcome Disharmony of Laws and Regulations in the Oil and Gas Sector

According to AA Oka Mahendra, stated that in the event of disharmony in laws and regulations, there are three ways to overcome these problems, namely the following:

a. Amend/revoke certain articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them.

b. Apply for a material test to the judiciary as follows: 1) For the testing of the law against the Constitution to the Constitutional Court. 2) For the testing of legislation under the law against the law to the Supreme Court.

c. Apply the principle of law/legal doctrine of legislation, namely: 1) Lex Superior Derogat Legi Inferiori (Higher legislation overrides the lower legislation). 2) Lex Specialis Derogat Legi Generalis (Legislation that specifically overrides the general legislation). 3) Lex Posterior Derogat Legi Priori (The new legislation overrides the old legislation) [19].

In addition to the above steps, prevention of disharmony legislation among others can be done through harmonization of the draft legislation. The drafting of a harmonized bill can be carried out at the stage of drafting a national legislation program within the government or in the House of Representatives [17]. Harmonization is carried out by the Minister of Law and Human Rights with other Ministers or leaders of non-ministerial government institutions drafting plans for the establishment of draft laws and leaders of other relevant government agencies as well as with the Legislature of the House of Representatives [15].

Until today, Indonesia has no plans to amend the Law No. 22 of 2001. Indeed, in the last two years a draft of the Oil and Gas Law has been circulating, but it has never been realized. In fact, on June 12, 2020, The President Joko Widodo's government has issued a privatization policy of PT. Pertamina (Persero) in the form of separation of Holding and Sub Holding which is increasingly out of the spirit of Article 33 of the 1945 Constitution. According to the authors, a systemic step is needed to harmonize national law which is based on the paradigm of Pancasila and the 1945 Constitution which creates a system with two fundamental principles, the principle of democracy and the principle of a rule of law which is idealized to create a national legal system with three components, namely legal substance, legal structure with its institutions and legal culture.

3 Conclusion

The character of legislation in the sector of oil and gas management in the perspective of Article 33 of the 1945 Constitution starting from Indische Mijnwet Stb 1899 No. 214 Jo. Stb 1906 No. 434 on Mining Concessions, Law No. 44/PRP/1960 on Oil and Gas Mining, Law No. 8 of 1971 on the Establishment of Pertamina and Law No. 22 of 2001 on Oil and Gas dynamics ranging from those in accordance with the soul of Article 33 of the 1945 Constitution to those that do not. The discrepancy is one of the causes of international pressure and there is still a global interest in natural resources management of oil and gas in Indonesia. One example is the failure to realize the new draft oil and gas law by the House of Representatives and the Government. In the Draft Oil and Gas Law, all oil and gas management, both upstream and downstream is integrated into a Special State-Owned Enterprise, this agency is directly responsible to the President. Possible efforts in addressing the problem of disharmony between legislation and non-conformity with the 1945 Constitution are: 1.) Amend/revoke certain
articles that undergo disharmony or all articles of the relevant laws and regulations, by the institution/agency authorized to form them. 2.) Apply for a material test to the Judiciary (judicial review). 3.) Apply the principle of laws of legislation.

3.1 Suggestion

To harmonize laws and regulations in the sector of oil and gas management and to be in line with the spirit of Article 33 of the 1945 Constitution, it can be done by including it in the Omnibus Law. Omnibus law is a method in a legal drafting which is more progressive and effective to harmonize so many laws and regulation in the sector of oil and gas management to be in line with the spirit of constitution.

References

Improving the Protection of Children’s Constitutional Rights Through Constitutional Court Decision

Titis Anindyajati
{titis.anindya79@gmail.com}

Constitutional Court of the Republic of Indonesia, Indonesia

Abstract. A child as a legal subject occupies a particular position in the constitution because his constitutional rights are regulated explicitly in the provisions of Article 28B paragraph (2) of the 1945 Constitution. Thus, the state should guarantee the constitutional rights of children in various aspects of life. Problems with violations of children's rights occurred by the inadequacy of laws and regulations to protect and guarantee children's rights. The several studies before have not been yet researched and compile comprehensively on how the Indonesian Constitutional Court decisions affected the protection of children rights. This study aims to know how the regulation of children's rights in the framework of international human rights law and national law and how the Constitutional Court decisions uphold the violations of children's constitutional rights. This research is normative legal research that uses library data materials such as the 1945 Constitution, laws related to children's rights and decisions of the Constitutional Court, and international legal regulations on children's rights such as the CRC. This research combines statutory and analytical approaches to find answers in the formulation of the problem. Several rules were found that were not in line with the Declaration of Human Rights, the Declaration of Children's Rights, and the 1945 Constitution, such as the Marriage Law and the Juvenile Court Law. The presence of the Constitutional Court is significant in maintaining the constitutional rights of children. It shows in the Constitutional Court Decision Number 1/PUU-VIII/2010, which changes the minimum age limit for children to be processed in court and the Constitutional Court Decision Number 22/PUU-XV/2017 amends the minimum age for girls to marry. Thus, the protection mechanism for children's constitutional rights still needs improvement and strengthening to ensure the sustainability of the rights of Indonesian children.

Keywords: Child, Constitutional Rights, Decision, Constitutional Court

1 Introduction

The position of children in national law and international law has a remarkable position because as the next generation for their nation, they need to be protected from birth until birth. Talking about a child's life will not be separated from discussing the rights and obligations attached to it. The state is obliged to guarantee and protect children's rights because children are one of the country's development capital. For this reason, not only in international conventions but also through national law, the protection of the implementation of children's rights is regulated in Indonesian laws and regulations. The existence of Law Number 23 of 2002 concerning Child to complete several laws, related children. As stated in the Child Protection Law consideration section, various laws that existed before formed this law, such as the Child
Welfare Law and the Human Rights Law, have not been accommodated yet to regulate all aspects of child protection. In addition, the state needs to provide institutional support and legislation to prevent and overcome violations of children's rights in all aspects of life.

According to data from the Indonesian Ministry of Women and Child Protection [1], the most reported cases of child complaints at the Indonesian Child Protection Commission (KPAI) were cases of children in conflict with the law, namely 1,251 children. Meanwhile, according to the Criminal Investigation Unit of the Police report, in 2019, the number of children as perpetrators of criminal acts was 2,981 children. Another complaint that is no less important in the case of children related to family and alternative care environments, namely 896 cases. The data shows that most of the problems in children are children as perpetrators of criminal acts. However, based on the Child Protection Law, there are at least 15 (fifteen) types of certain conditions in which the central government, regional governments, and other state institutions are obliged to provide exceptional protection for these children. The fifteen types include (1) children in emergencies; (2) the child conflicts with the law; (3) children from minority and isolated groups; (4) economically and sexually exploited children; (5) children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances; (6) children who are victims of pornography; (7) children with HIV/AIDS; (8) child victims of abduction, sale, and/or trafficking; (9) child victims of physical and/or psychological violence; (10) child victims of sexual crimes; (11) child victims of terrorist networks; (12) children with disabilities; (13) child victims of abuse and neglect; (14) children with deviant social behaviour; and (15) children who are victims of stigmatization from labelling related to their parents' condition. The fifteen types of children are considered to have more potential to experience violations of their rights.

Since the issuance of Law Number 35 of 2014 concerning the first amendment to the Child Protection Law, the parties who are obliged to protect children's rights have expanded that the community, families, and parents or guardians are obliged and responsible for the implementation of Child protection [vide Article 20 The Child Protection Law]. Thus, any violation of children's rights that is considered contrary to the constitution, anyone can submit a judicial review to the Constitutional Court. It can find The contribution of the Indonesian Constitutional Court to protecting the constitutional rights of children in several of its decisions, one of which is the Constitutional Court’s Decision Number 32/PUU-XV/2017 on the review of Law Number 21/2007 concerning the Eradication of Trafficking in Persons which the Court rejected. This application was submitted by a cobek seller who asked that the phrase "exploit" be interpreted as an act aimed at educating and helping the family economy and instilling the values of children's independence. The applicant is subject to criminal charges for employing minors as sellers of mortar. In its decision, the Constitutional Court rejected the applicant's application because, according to the Court, trafficking in persons whose substance is formulated in Article 2 paragraph (1) of Law 21/2007 cannot be classified as a job decent living for humanity. In addition, the Constitutional Court strongly opposes the existence of trafficking in persons, especially women and children, because it is contrary to human dignity and violates human rights.

Research that examines the role of the Indonesian Constitutional Court in the protection of children's constitutional rights by summarizing several decisions of the Constitutional Court has not been widely carried out. For example, Hanum [2] only analyzes the legal considerations related to Constitutional Court Decision Number 22/PUUXV/2017 and its legal consequences in protecting children's rights. Then the research conducted by Thania [3] concluded about the need for the state's role to be more in favour of neglected children and to be more severe in solving the problems of neglected children through policy-making and legislation. Fitriani [4]
examined the role of child protection providers consisting of five pillars (parents, family, community, regional and state governments) in protecting and fulfilling children's rights. In addition, a violation of the protection of children's rights is also considered a violation of human rights. Thus, this study aims to examine how children's rights in Indonesia are regulated within the framework of international law and national law and how the Constitutional Court decisions can be used to uphold the violations of children's constitutional rights.

2 Research Method

This research is normative legal research or doctrinal legal analysis, which is research conducted on statutory regulations and other legal materials, including judges' decisions. The legal materials used are primary legal materials such as the 1945 Constitution, Laws related to the Rights of the Child and international law such as the UDHR, the Convention on the Rights of the Child, etc. Then secondary legal materials include books, legal journals, and articles related to children's rights concerning the Constitutional Court's role. In this literature research, the writer uses the statutory approach and the analytical approach to analyze laws, regulations and the constitutional court decision related to children's rights and the constitutional court's role in reviewing statutes relating to children's rights. Furthermore, several legal theories such as the rule of law theory, the human rights law, and the idea of child protection are also used to analyze and develop data on legal materials, data on laws and international legal regulations related to children's rights.

3 Results and Discussion

3.1 The Regulation of Children’s Rights

According to the Indonesian Language Dictionary (Kamus Besar Bahasa Indonesia/KBBI) [5], the definition of a child is a second descendant of their parents or any person under the age of 18 (eighteen) years old. Meanwhile, according to the Child Protection Law, the definition of a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Child protection is all activities to guarantee and protect children and their rights to live, grow, and develop. Develop, and participate optimally in accordance with human dignity and receive protection from violence and discrimination [vide Article 1 of Child Protection law]. Indeed, children's constitutional rights are part of human rights as regulated in the 1945 Constitution and specifically mentioned the rights of children in the provisions of Article 28B paragraph (2) of the 1945 Constitution. Thus, 4 (four) fundamental rights of children refer to Article 28B paragraph (2) The 1945 Constitution is the right to survival, growth and development, protection from violence and discrimination.

The issue of child protection in the international world is a problem that has always been one of the critical issues and is highly considered by the international community in the world. It is somewhat different from the situation in Indonesia, which pays less attention to the issue of child protection. However, children are vulnerable to become victims of crime because of the physical and psychological condition of children who are not yet mature. For this reason, the regulation of children's rights departed from the UDHR and then regulated more specifically in the Convention on the Rights of the Child, which the UN set in 1989. Meanwhile, the types of
child rights and child protection according to national law vary. For example, in Presidential Decree No. 36/1990, it is stated that there are 29 kinds of children's rights, according to the Child Welfare Law, there are 11 kinds of child rights, and the Child Protection Law as many as 20 types of children rights. Then, the types of children's rights/protection of children's rights according to the Convention on the Rights of the Child are regulated in the provisions of Articles 6 to 17, including the child's right to birth registration, the child's right to a name, nationality and family relations, the child's right to freedom of expression, the child's right to education, etc.

Fundamentally, the implementation of rights and child protection are both guided by Pancasila and the 1945 Constitution as well as the basic principles of the Convention on the Rights of the Child, including:

a. Principle of Non-discrimination [Article 2 para.1 and para.2 CRC].

b. The Best Interest of the Child Principle [Article 3 para.1 CRC].

c. The Right to Life, Survival and Development principled. [Article 6 para.1 and para.2 CRC].

d. Respect for the views of the Child principle [Article 12 para.1 CRC].

Meanwhile, the arrangements for the implementation of children's rights within the framework of international law and national law are as follows:

a. International law, namely:

1) Article 25 paragraph (2) of the Universal Declaration of Human Rights (UDHR).


3) Article 24 paragraph (1) of The International Covenant on Civil and Political Rights.

4) ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination for the Worst Forms of Child Labor.

b. National law

1) Article 28B, Article 28G paragraph (1) and paragraph (2), Article 28H paragraph (1) paragraph (2), Article 28I paragraph (1) and paragraph (2) but specifically stated in Article 28B paragraph (1) 1945 Constitution.

2) Law Number 17 of 2016 concerning Stipulation of Government Regulation in place of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.


4) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

5) Law Number 21/2007 concerning Eradication of the Crime of Trafficking in Persons.

6) Law Number 32 of 2004 concerning Elimination of Domestic Violence.

7) Law Number 23 of 2002 concerning Child Protection.


In Indonesia, human rights regulation is included in the written constitution, so that what is called a constitutional right. Because the constitution is a fundamental or primary law, any state action contrary to constitutional rights can be annulled because it is suitable with the nature of the constitution as a basic law (fundamental) [6]. The formation and legislation itself can be one of the state's actions that can violate citizens' constitutional rights if it is contrary to the constitution. In general, and objectively, human rights violations are violations that occur when there are active or passive actions by state actors or non-state actors who abuse, ignore or allow fundamental human rights (including civil, political, economic, social and cultural rights) in a manner or result in harm or suffering to others. Acting actively means that state actors commit
human rights violations intentionally, while acting passively means that perpetrators of human
rights violations do not allow the occurrence of these violations. Thus violations of the
constitutional rights of children can be active or passive. Moreover, in a democratic country like
Indonesia, the perpetrators of violations of children's rights can be committed by anyone, not
only the state but also by fellow citizens [7]. Enforcement of children's constitutional rights
violations is significant because children are individuals who have the same rights as adult
humans and have a vital role as the successor to the continuity of human life in the future.

The issue of violations of children's rights in each country can be different. PLAN
International [8], a global organization for the protection of children's rights, concluded 7
(seven) main issues of violation of children's rights around the world, including Child marriage,
child labour, lack of access to education, child soldiers, lack of access to clean water, female
genital mutilation and lack of access to healthcare. Meanwhile, the Indonesian Child Protection
Commission divides into 10 (ten) child protection clusters, including social and children in
emergencies, family and alternative care, religion and culture, civil rights and participation,
health and Narcotics Addictive Substances, education, pornography, and cybercrime, children
in conflict with the law, both as perpetrators and victims, or witnesses, trafficking and
exploitation, and finally other cases of child protection [9]. Furthermore, the National
Commission for Child Protection states that at least 8 (eight) factors cause violence against
children, including weak community involvement in preventing violations of children's rights,
low public knowledge, especially families, regarding children's rights in the applicable positive
law, degradation of values and a crisis of solidarity between communities, lack of knowledge
of the government, especially law enforcement officers, on children's rights, The government's
approach is still sectoral, weak coordination between Child Protection Institutions in the
community and government institutions, lack of local government budget allocations for child
protection, and few related regulations children's rights in the region.

Given that there are still many violations of children's rights in Indonesia, the government
has made several efforts, such as replacing the Law on the Juvenile Court System with Law No.
11/2012. In Law 11/2012, there are several changes to the concept of protecting children's rights,
one of which is the presence of institutions that have a specific role in child protection, such as
the Child Special Guidance Institution (LPKA), Temporary Child Placement Institution
(LPAS), and Social Welfare Organizing Institution (LPKA). Another government effort is the
establishment of Law 17/2016. In the past few years, the state has started to rise and strive
optimally in increasing child protection efforts, one of which is the establishment of Law
Number 17/2016. The formation of this Law is motivated by the ineffectiveness of the
enactment of Law number 35 of 2014. In the general explanation section of Law number
17/2016, it is explained that the existence of Law Number 35/2014, which emphasizes the
 provision of more severe criminal sanctions against perpetrators of child sexual violence, is seen
as not having a significant impact. Thus, the state carries out heavier criminal sanctions and
prevents by giving punishments in the form of chemical castration, installing electronic
detection devices and rehabilitation for perpetrators of child sexual violence to provide a
deterrent effect on perpetrators and prevent child sexual violence.

Basically, Article 1 para 2 and para 3 of the 1945 Constitution reflected how Indonesia is a
democratic constitutional state law. In the concept of the rule of law, legal protection of the
people right's is one fundamental essence that needs to be fulfilled by a state of law. According
to Asshiddiqie [10], one of the principles of modern state law is the Due Process of Law that is
all the government actions must be based on valid and written law regulations. In this case, the
law becomes the crucial instrument in implementing the protection of children's rights. The
provisions of Article 21 of Law 35/2014 concerning Child Protection emphasizes the obligations
3.2 The Role of the Constitutional Court of the Republic of Indonesia

3.2.1 The Dispositions of the Court

Basically, the implementation of human rights is divided into two types: 1) the implementation of human rights has been carried out properly, and 2) human rights violations. According to the Human Rights Law, the definition of a violation of human rights is every act of a person, or group of people, including state officials, whether intentionally or unintentionally limiting and or revoking the human rights of a person or group of people guaranteed by law [12]. Moreover, they cannot accept a fair and correct legal settlement in resolving these problems according to the applicable legal procedures. Because violations of human rights can also be a violation of children's constitutional rights, the state's obligation to guarantee children's constitutional rights, apart from being regulated in the 1945 Constitution, requires regulation in the form of rules below such as law. This provision refers to Article 28I paragraph (5) of the 1945 Constitution, which reads, “To uphold and protect human rights with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and outlined in-laws and regulations”. Therefore, several laws related to child protection were formed as a form of state responsibility. However, in the implementation, several provisions were found that turned out to have the potential and impact on the violation of the child's rights. Judicial review to the Constitutional Court is one solution to overcome these problems.

The presence of the Indonesian Constitutional Court began with the third amendment to the 1945 Constitution Article 24C paragraph (1), where one of the powers of the Constitutional Court is to examine laws against the Constitution at the first and final levels, which are final and binding. Thus, after the Constitutional Court's decision is handed down, there is no legal effort to change it. As the supreme law of state administration, the Constitution has functions, among others, to protect human rights based on the Constitution so that they become the constitutional rights of citizens. For this reason, the Constitutional Court is often referred to as the protector of the citizen's constitutional rights and the protector of human rights [13]. Thus, the Constitutional Court's role in protecting the children's constitutional rights is crucial since the 1945 constitution regulated.
3.2.2 The Decision related the Children’s Constitutional Rights

Several Constitutional Court Decisions related to the protection of children’s constitutional rights, including:

a. The Decision Number 011/PUU-III/2005 judicial review to the Law of 20/2003 on the national education system

This application was submitted by teachers, lecturers, students and students because the explanation of Article 49 paragraph (1) of the National Education System Law is considered contrary to Article 31 paragraph (4) of the 1945 Constitution. The Court believes that the 1945 Constitution expressis verbis has determined that the education budget must prioritize a minimum of 20%, which is regulated in the APBN and The APBD. Thus, the minimum number must not be reduced by laws and regulations that are hierarchically subordinate. The Court decided in the midle legal stance to determine state obligation of transparent assessment of the progress in order to allocate of funds to education under the Constitution. In this decision, the Constitutional Court affirms the rights of children in the field of education.

However, Indonesia as a welfare legal state guarantees the right to education of every citizen based on the constitution. Therefore, education is part of human rights because it becomes an instrument of self-development to improve the quality of life and welfare. In addition, the consideration of Law 20/2003 includes the preamble to the 1945 Constitution, states that the government is obliged to educate the nation's life. For this reason, education as an effort to improve the quality of human resources should become the main priority of development in Indonesia.

b. Constitutional Court Decision Number 1/PUU-VIII/2010 concerning the review of Law Number 3/1997 Juvenile Court

This issue concerns the constitutionality of the minimum age for criminal responsibility for children proposed by the Indonesian Child Protection Commission and the Medan Child Protection and Study Center Foundation.

The Court uses international legal instruments, the Child Convention and the UN Recommendation on the Rights of the Child as a comparison only, not as a touchstone in assessing the constitutionality of the norms being tested. However, the Court believes that a minimum age of 12 (twelve) years is seen as a relatively stable age to be criminally responsible. In addition, setting a minimum age of 12 years has become a common practice in several countries. The Court's decision was later applied in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which revoked the previous Law Number 3 of 1997 concerning Juvenile Court. In Law 11/2012, Children in Conflict with the Law are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

The determination of the minimum age limit for children under legal responsibility from the age of 8 years to 12 years by the Court is a manifestation of the Constitutional Court's role not only in protecting children's constitutional rights, especially the right to life but also in upholding the philosophy of punishment itself. According to Mulyadi [14], the current legislative body does not apply the philosophy of punishment in its policies. This institution should work based on the philosophy of punishment based on the fundamental values that live in Indonesian society today. Law 3/1997 was finally replaced with Law 11/2012 which emphasised a restoration/restorative justice approach to maintain their dignity and ensure the legal protection of children's rights in the court system.
c. Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the review of Law No. 1/1974 concerning marriage

The application submitted by Machica Mochtar and his son departed from the awareness to protect the rights of their children as stated in Article 28B paragraph (2) of the 1945 Constitution, namely the right to live, grow and develop and the right to be treated equally/non-discriminatory. The marital status of the parents is not clear. It is considered invalid because the unregistered religious marriage is resulting in the child only had a civil relationship with the mother and her mother's family. Moreover, eliminating the child’s constitutional right to obtain legal status/origin that is clear and legal in the eyes of the state. The Constitutional Court granted the petitioners and state that Article 43 paragraph (1) is contrary to the 1945 Constitution and has no legal force if it is not interpreted as: “Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with men, like his father, who can be proven based on science and technology and/or other evidence according to the law”. Thus, it has blood relations, including civil relations with his father's family.

The Court believes that children born need to get protection regardless of the marriage procedure/administration. In addition, children who are born without a clear father status are often mistreated. Therefore, Article 43 paragraph (1) is contrary to the constitution if it is not interpreted as having civil relations with men as long as it can be proven by science and technology and/or other evidence-based on the law having blood relations as his father. Regulating marriage registration in the Marriage Law is an effort by the state to ensure the protection and fulfilment of human rights, especially the rights of women and children who will be born. Although the explanation of the Marriage Law stated that marriage registration is not a determining factor for the validity of marriage as some religions or beliefs believe, it does not cause the slightest loss if a marriage is registered. It relates to the issue of children born out of wedlock who are not registered. The Marriage Law stipulates that a child born out of wedlock does not have a civil relationship with his father. Because the Court believes that an unregistered marriage does not make a wedding non-existent, a child born outside of marriage can have a civil relationship with his father as long as it can be proven. The Court believes that the law must provide adequate legal protection and certainty to avoid unfair treatment of the child.

d. Constitutional Court Decision Number 18/PUU-XI/2013 Review of Law Number 23 of 2006 concerning Population Administration

A parking attendant submitted this application in Surabaya regarding the constitutionality of the birth registration procedure, which exceeds the one-year time limit, which requires a very long and complicated process and requires a lot of money. In its legal considerations, the Court believes that the residence document is the right of every resident. In addition, since the child is born, the child has the right to a name as self-identity and citizenship status. According to the Court, delays in reporting births of more than one year through a court order can harm the community, especially for those who live far away in remote areas. For this reason, the state is obliged to serve every citizen in fulfilling their fundamental rights and needs, providing identity and citizenship, which is the mandate of the 1945 Constitution. If a person does not have self-identity, a birth certificate, his existence is de jure considered non-existent by the state. The worst legal consequences are causing widespread exploitation of children because children's identities can be manipulated, child trafficking, use of child labour, and violence against children. Thus, the Court partially granted the Petitioner’s request and stated that the provision for registration of births beyond the time limit required a district court ruling contrary to the constitution. In this decision, the Constitutional Court affirms children's rights to identity and
citizenship and in line with Article 24 paragraph (2) and paragraph (3) of Law 12/2005 concerning ICCPR.

e. Constitutional Court Decision Number 22/PUU-XV/2017 reviewing Article 7 paragraph (1) of Law 1/1974 concerning Marriage

This application was submitted by 3 (three) housewives who underwent early marriage due to poverty. The Petitioner believes that the provisions of Article 7 paragraph (1) of Law 1/1974 are contrary to the constitution because the determination of the age of marriage in the Marriage Law is a form of real discrimination between women and men. Moreover, the Petitioners describe some of the impacts experienced in early marriage, such as the loss of opportunities to continue their education, the risk of health problems such as reproductive development disorders, and increased exploitation of children by both their parents and others on. In addition, the age limit provided in Article 7 paragraph (1) provides the potential for domestic violence.

Indeed, the provisions of Article 7 para. 1 of the marriage law at that time reflected the values prevailing in society. However, in line with the development of the Indonesian state administration, namely increasing the guarantee of protection of human rights, to prevent friction or sharp friction between the laws before, adjustments and harmonization with other rules are needed. Judicial review is one of the mechanisms for harmonizing the law. Thus, the Court believes that the minimum age limit for children to marry in the Marriage Law needs to be adjusted to the values that develop in today's society. Early marriage causes a lot of harm, especially to the child himself, for example, psychological and health disorders due to unpreparedness in undergoing a relationship. The Court believes that this is the right time to guarantee the children's rights, as Article 28B para.2 of the 1945 Constitution stated. The adjustment of the minimum age limit for children to marry to 19 (nineteen) years is expected to restore the noble ideals of the ideal goal of marriage itself, namely to form a happy family based on the One Godhead.

In its legal considerations, the Court believes that the difference in treatment between men and women, which deter the fulfillment of citizens' fundamental rights or constitutional rights, including groups of civil and political rights, economic, social and cultural rights, is not allowed because it constitutes discrimination. Furthermore, Article 7 paragraph (1) of the Marriage Law also contradict the 1945 constitution, particularly of other constitutional rights such as the right to grow and develop [Article 28B paragraph (2)], the right to obtain and attend education [Article 28C paragraph 1) and Article 31 paragraph (2)].

The 5 (five) example of the decision above shows that there is some constitutional consideration to decide and protect the children's rights. Those are: the right of education (the Decision Number 011/PUU-III/2005), the right to life (the Decision Number 1/PUU-VIII/2010), the right of life and right to protection against discrimination (the Decision Number 46/PUU-VIII/2010), the right to identity and citizenship (the Decision Number 18/PUU-XI/2013), the right to grow and develop and attend education (the Decision Number 46/PUU-VIII/2010). As the protector of human rights, the Constitutional Court should prioritize children rights, particularly those written in the constitution. It is because besides the child classifies as vulnerable groups [vide explanatory Art.5 para.3 UU 39/1999], the children become the key to successful development. Moreover, in the concept of transitional human rights, children must get protection. This is because they have privileges and specificities; namely, children are a mandate from Allah SWT as the nation's next-generation; therefore, if they are not protected, then who will continue the nation's life in the future [15]. Suppose fundamental rights are binding against the state. In that case, a child whose fundamental rights have been violated by an administrative authority or by the law itself shall be entitled to obtain appropriate relief as
provided by the constitution. When a written constitution guarantees fundamental rights along the judicial review to enforce them, particular emphasis is added to the primary role of the judiciary, for the courts are regarded as the custodian or guardian of the guaranteed rights or the sentinel to guard them against violations by the organs of the state [16].

4 Conclusion

The regulation of the protection of children's constitutional rights, basically both in international law and national law, occupies a particular position considering that children are an asset of national development. Practically, the laws and regulations established by the government have the potential to intersect with the violation of the constitutional rights of children. For this reason, several Indonesian people have submitted a judicial review to the Constitutional Court of the Republic of Indonesia to uphold and develop the constitutional rights of children in Indonesia. Moreover, there needs to be an effort to socialize the legal instruments of children's constitutional rights and implement agencies to protect children's rights to increase awareness of the enforcement of children's constitutional rights in Indonesia.

References


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Deconstruction of the Concept of Former Convicts in the Law Number 10 Year of 2016 Concerning the Election of a Regional Head

Tongat
{tongat@umm.ac.id}
Universitas Muhammadiyah Malang, Indonesia

Abstract. This study was aimed at analyzing the concept of “former convict” in the Law Number 10 Year 2016 and the related laws causing public confusion. Ambiguous interpretations of who is qualified as a former convict result in long debates especially when it was approaching to the 2020 regional heads elections. Conceptual discussions of the matter become interesting issues in the regional head’s elections. In some areas, the debates on the concept of former convicts may end in the courts. This present article will bring up the main issue of ambiguous interpretations of the concept of former convicts in the election of a regional head and the deconstruction of the construct in the Law Number 10 Year of 2016. Therefore, this writing is aimed at analyzing the ambiguous interpretations of the concept of former convicts and the efforts that may be made to deconstruct the concept. Through a normative study, the results of the analysis are as follows. First, the ambiguous interpretations of the meaning of former convicts arise due to inconsistency in using the legal term. As a result, to assure its legal certainty, the use of the legal term in various laws should be consistent in line with the applicable laws. Second, the deconstruction of the concept of former convicts should be adjusted to the prevailing regulations.

Keywords: Deconstruction, Former Convicts, Election, Regional Head

1 Introduction

It is indicated that the stipulation of Article 7 (2) explicitly states that the Candidates for Governor and Vice-governor, Regent and Vice-regent and also Mayor and Vice-mayor as mentioned in the verse (1) should fulfill the predetermined requirements. One of the requirements as stated in the Law Number 10 Year of 2016 as required in the stipulation of the Article 7 (2) letter g is that one is never a convict on the basis of the decision made by the court with permanent legal force or for a former convict, one openly and sincerely tells the public that one is a former convict. The rationale of this stipulation is greatly various such as to prevent corruptions [1], to avoid corrupt leaders [2] and to assure the integrity of a leader [3].

The requirements in the election of the regional head are further stipulated in the Regulation of the General Elections Commission Number 1 Year of 2020 Regarding the candidacy for Governor and Vice-governor, Regent and Vice-regent, and/or Mayor or Vice-mayor. In the stipulation of the Article 4 (1) of the Regulation of the General Elections Commission Number 1/20, it is stated that Indonesian citizens may become candidates for Governor and Vice-governor, Regent and Vice-regent, or Mayor and Vice-mayor by fulfilling predetermined requirements. One of the requirements is as expressed in the stipulation of the...
Article 4 (1) letter f of the Regulation of the General Elections Commission Number 1 Year of 2020, namely one is never a convict based on a court decision that has got a permanent legal force since one has committed a crime threatened with 5 (five) years or more in jail. The studies of the requirements of the candidacy in the election of a regional head has been done by Aryani and Hermanto [3], Amrullah [4] also by Hardiyanto et al. [5].

The stipulation of the Article 4 (1) letter f of the Regulation of the General Elections Commission Number 1 Year 2020 containing requirements of candidates in the election of a regional head is followed up by the emergence of the stipulation of the Article 4 (2a) Regulation of the General Elections Commission No. 1 Year of 2020 that explicitly states that one is never a convict as mentioned in the Article (1) letter f except for a former convict that has passed a period of 5 (five) years after completing the punishment in the prison based on the court decision that has permanent legal force. It is the stipulation of the Article 4 (2a) of the Regulation of the General Elections Commission Number 1 Year 2020 that then triggers prolonged pros and cons in the administration of the regional head’s election.

2 Research Method

It is legal research with some approaches. They are statute, analytical, and philosophical approaches [6]. This research would start from a textual study namely the regulations and judge decisions. It would study legal norms contained in the regulatory texts (regulatory languages). However, it would not merely see legal languages as meanings from a static dimension but also as events or discourses possessing living and dynamic dimensions. As a result, this research would not only make interpretations of texts but also catch contextual meanings of texts/languages of the regulations [7]. It would also explore values in laws; therefore, it would be also philosophical research [8]. It would not only see a law in its textual appearance, but also in its ideas, ideals, values, morale’s and justice called as a legal concept which is ideological, philosophical, and moralistic in nature [9].

3 Results and Discussion

3.1 Ambiguous Interpretations of the Concept of a Former Convict in the Law No. 10 Year of 2016 Regarding Regional Heads Elections

Referring to the stipulation of the Article 7 (2) letter g of the Law Number 10 Year of 2016 regarding the Second Amendment of the Law Number. 1 Year of 2015 on the Determination of the Government Regulation in Lieu of Laws Number 1 Year of 2014 regarding the Elections of Governor, Regent, and Mayor into a law, it is clearly stated that the use of the term “former convict” in the context of the law is improper. Moreover, in the official explanation of the Article 7 (2) letter g of the Law Number 10 year of 2016 it is clearly declared that what is meant by “former convict” is one that does not have any relation either technically (crime) or administratively to any ministers in the administration of government affairs in the legal field or human rights except former convicts of narcotics and drug dealers and the convicts in sexual crimes to children. The explanation of the Article 7 (2) letter g of the Law Number 10 Year of 2016 feels very odd, remembering that the status of a convict that will serve as a criminal period has been a “former convict (mantan terpidana)” or becomes a “convicted (narapidana)” and
technically or administratively it is impossible to have any relations with the ministers in the administration of the government affairs in the legal field and human rights. It is in this place where the term “former convict” occurs in the context of the Article 7 (2) letter g of the Law Number 10 Year of 2016. All convicts that will serve their sentence in prison technically and administratively will have relationships with the ministers who administrate the government affairs in the legal field and human rights. Even, when one changes his/her status from a convict into a convicted, it is the earliest stage in the coaching process.

It seems that what is meant in the Article 7 (2) letter g of the Law Number 10 Year of 2016 is one who has completed his/her punishment in the correctional institution, and s/he is not called a “former convict (mantan terpidana)” but a “former convicted (mantan narapidana)”. Because, in the Criminal Procedural Law and also in the Law Number 12 Year of 1995 on Correctional Institution, various juridical terms dealing with the criminal law enforcement are clearly distinguished. Each juridical term possesses different meanings. In the context of the criminal procedural law, various terms may simultaneously refer to a stage where the concerned person is at the stage of a criminal court process namely a suspect, a convict, and a convicted. Meanwhile, since the mechanism of a criminal justice after the judge decision (verdict) is continued into the correctional institution, the juridical term in the criminal procedure law is proceeded in the Law Number 12 Year of 1995 on Correctional Institution. At the stage in the institution, the coaching stage of a convicted is tightly implemented, starting from a stage of the orientation admission to that of the assimilation [10]. At the stage of assimilation, it is meant that the convicted may be accepted by the society [11].

In the stipulation of the Article 1 Number 14 of the Law Number 8 Year of 1981 on Criminal Law, it is declared that a suspect is one who is due to his/her act or condition, on the basis of the preliminary evidence, is predictable as the doer of a crime. Meanwhile in the stipulation of the Article 1 Number 15 of the Law Number 8 Year of 1981 on Criminal Law, a limitation is provided that a suspected is a suspect who is sued, examined, and tried in a court. whereas, according to the Article 1 Number 32 of the Law Number 8 Year of 1981 on the Criminal Law, a convicted is one who is convicted on the basis of a sentence that has obtained a permanent legal force. Therefore, it can be concluded that a suspect is someone who is in the investigation process, a suspected is someone who is sued, examined and tried in the process of the court proceedings. While a convict is one who has been sentenced by a judge based on a sentence that has possessed a permanent legal force (incrahct van gewijsde) [12].

After one is sentenced by a judge based on the conviction verdict that has possessed a permanent legal force, s/he will be sent to a correctional institution to serve her/his punishment in prison. In line with the stipulation of the Article 10 (1) of the Law Number 12 year of 1995 on Correctional Institution, a convict accepted in the Correctional Institution is obliged to be registered. Then in the stipulation of the Article 10 (2) it is stated that the registration as meant in the verse (1) changes the status of a convict into a convicted. The change of the legal status from a convict into a convicted certainly also changes the concerned person’s rights. The stipulation of the Article 10 (2) of the Law Number 12 Year of 1995 Regarding Correctional Institutional actually has distinguished explicitly who is meant as a convict and a convicted. On the basis of the stipulation of the Article 10 (2) of the Law Number 12 Year of 1995 on Correctional Institution, when a convict is registered in a correctional institution to serve his/her punishment period, his/her status changes. It is an early stage in the coaching process [13]. His/her status is not a “convict” anymore, but a “convicted”. In a formal juridical manner, a convict serving his/her punishment in the correctional institution may be called a “former convict” and s/he should be cleared from any stigma [10].
Although s/he does not have any status as a convict – s/he may also be called as a “former convict” – s/he has some technical (criminal) or administrative relations with the ministers administrating the government affairs in the legal field and human rights. Because, his/her status is a convict, namely someone who is serving a punishment in a correctional institution. As a result, the designation of the term “former convict” in the Article 7 (2) letter g of the Law Number 10 Year of 2016 Regarding Regional Heads Elections and also its designation of its derivative terms in the Regulation of General Election Commission Number 1 Year of 2020 Regarding Candidacy for Governor and Vice-governor, Regent and Vice-regent, and/or Mayor and Vice-mayor either in the Article 4 (1) letter f and Article 4(2a) is contradiction in terminist. The mention of the term “former convict” in various regulations regulate regional heads elections potentially confuses the people. The description of the ambiguity of the concept of former convict in the Law Number 10 year of 2016 on Local Heads Elections and some related laws is presented in Table 1:

### Table 1. The Term Convict in Various Regulations

<table>
<thead>
<tr>
<th>No</th>
<th>Various Regulations</th>
<th>The Article Texts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Article 7 (2) letter g Law Number 10 Year of 2016.</td>
<td>One is never a convict on the basis of a court decision with permanent legal force or a former convict who has declared to the public openly and sincerely that one is a former convict.</td>
</tr>
<tr>
<td>2</td>
<td>Article 1 Number 14 Law Number 14 Year of 1981 Regarding the Criminal Law Book.</td>
<td>A suspect is someone due to his act or condition, based on the preliminary evidence is properly suspected as a criminal.</td>
</tr>
<tr>
<td>3</td>
<td>Article 1 Number 15 Law Number 8 year of 1981 Regarding the Criminal Law Book.</td>
<td>A defendant is a suspect who is charged, examined and put on trial in court.</td>
</tr>
<tr>
<td>4</td>
<td>Article 1 Number 32 Law Number 8 year of 1981 Regarding the Criminal Law Book.</td>
<td>A convict is someone who has convicted based on a court decision that has obtained permanent legal force.</td>
</tr>
<tr>
<td>5</td>
<td>Article 4 (1) letter f of the Regulation of the General Election Commission Number 1 Year 2020 on Nomination of the Election of governor and vice-governor, regent and vice-regent, and/or mayor and vice mayor.</td>
<td>One is never a convict based on the court decision that has obtained permanent legal force because one has committed a crime which is charged with imprisonment 5 years or more, except the convict who has conducted a crime due to negligence or a political crime in the sense that an act stated as a crime in the positive law only because the doer has different political views with the ruling regime.</td>
</tr>
<tr>
<td>6</td>
<td>Article 4 (2a) The Regulation of the General Election Commission Number 1 Year 2020 on the Nomination of the Election of governor and vice-governor, regent and vice-</td>
<td>A requirement someone who is never as a convict as stated in the article (1) letter f is excluded for a former convict who is charged with imprisonment for 5 years after completing punishment in prison based on the court decision that has permanent legal force.</td>
</tr>
</tbody>
</table>
7 Article 10 (1) Law Number 12 Rear of 1995 on Correctional Institution

The convict accepted in the Correctional Institution should be registered.

8 Article 10 (2) Law Number 12 Tahun 1995 on Correctional Institution

The registration as meant in the article (1) changes the status of a convict into a convicted.

3.2 Deconstructing the Concept of “Former Convict” in the Law Number 10 Year of 2016 Regarding the Election of a Regional Head

Conceptually, the term deconstruction essentially is a term used to explain a next chapter of philosophy, an intellectual strategy or a model of understanding [14]. Referring to this general conception. In this writing, the term deconstruction means a way of explaining or of understanding or interpreting a legal text [15]. However, deconstruction basically is the way of interpreting a text by revealing hidden meanings, meanings behind the legal text itself. Therefore, the way of reading and interpreting is not linear, rigid, stiff and legalistic that often merely functions as a mirror producing the meaning that should be the same with its textual (literal) sound without paying attention to whether the produced meanings are in line with the reality or not, in accordance with the demands of the times or not, even they are in line with the justice or not [15].

The ambiguity of the concept “former convict” as stated above gets more chronic when it is related to the phrase of the next sentence in the stipulation of the Article 4 [2] of the Regulation of the General Elections Commission Number 1 Year of 2020, namely the phrase “that has passed a period of five years after completing punishment in prison based on the court decision that has permanent legal force”. The ambiguity of the interpretation of the concept “former convict” not only confuse the people in general, but also the law enforcers themselves. This may be seen from the existence of interpretation growing among the law enforcers themselves dealing with the meaning of “former convict”. A researcher of Perludem, Fadli Ramadhanil noted that at least there were two regions where former convicted participated in the 2020 Regional General Election had passed the process of the nomination disputes at the level of the local General Election Supervisory Agency (Bawaslu), namely Lampung Selatan and Dompu regencies [16]. In Lampung Selatan for example, the decision made by the local Bawaslu stipulated that a former convict is not categorized as someone who shall undergo a waiting period of 5 years. The argument given by the Bawaslu of Lampung Selatan was that the waiting period had started since the court decision had permanent legal force, and because the concerned person did not serve a sentence in the form of body confinement [16]. Meanwhile in the decision made by the Bawaslu in Dompu regency, in its legal consideration it was stated that the waiting period had started when a convict had left from a correctional institution [16]. Even the phrase “former convict” is often confused with the phrase “former convicted”. Even though juridically, the term “convict” is different from the term “convicted”. To give an overview of the meaning of “former convict”, and the phrase “that has passed a period of five years after completing punishment in prison based on the court decision that has permanent legal force”, the following analysis is presented.

Firstly, factually, the textual writing in the Article 4 (2a) of the General Elections Commission Number 1 Year of 2020 may be related to the stipulation of the Article 12 Year of 1995 on Correctional Institution. If it is linked with the stipulation of the Article 1 letter 7 of the
Law Number 12 Year of 1995 on Correctional Institution, the phrase “passing a period of 5 (five) years after completing punishment in prison as stated in the Article 4 (2a) of the General Elections Commission Number 1 Year of 2020 may be interpreted as passing a period of 5 (five) years after the convict does not serve punishment in prison anymore. Remembering the textual implicit stipulation of the Article 1 letter 7 of the Law Number 12 Year of 1995 on Correctional Institution, a limitation is clearly shown that a convicted is a convict that has committed a crime loss his independence in the correctional institution. Therefore, textually, a convicted that has not served his punishment prison is not called a convicted anymore, but s/he may be qualified as a former convicted. The explanation of the limitation on a convicted as explicitly formulated in the stipulation of the Article 1 letter 7 of the Law Number 12 year of 1995 on Correctional Institution should be used as a binding reference, but not all convict sentenced may be called a convicted, for instance, a person who is sentenced a conditional punishment or probation. On the basis of this legal foundation, it is logical if one who is not in prison is not called a convicted anymore, but as a ‘former convicted’. Hence, it can be understood that in the Letter of the Young Head of the Criminal Affairs of the Supreme Court of the Republic of Indonesia Number 30/Tuaka.Pid/IX/2015, especially in the third point, it is stated that someone with a conditionally free status since one has served his/her punishment the prison, is categorized as a former convicted. This foundation or way of thinking is based on grammatical or systematical interpretations.

Secondly, factually, the textual writing of the Article 4 (2a) of the Regulation of the General Elections Commission Number 1 Year of 2020 may also be linked with the stipulation of the Article 6 of the Law Number 12 Year of 1995 on Correctional Institution. When it is related to the stipulation of the Article 6 of the Law Number 12 Year of 1995 on Correctional Institution, the phrase “passing a period of 5 (five) years after serving punishment prison in the Article 4 (2a) of the Regulation of the General Elections Commissions Number 1 Year of 2020 may be interpreted as the pass of the period of 5 (five) years since the convicted has served his/her punishment in prison as decided by the judge. The textual (explicit) stipulation of the Article 6 of the Law Number 12 year of 1995 on Correctional Institution implies that the coaching of the inmates in prison is done in the correctional institution and their mentoring is in the Correctional Center. This stipulation implies that the process where a convict is serving his punishment in prison is also conducted by the Correctional Centre besides coaching by the Correctional Institution. The stipulation of the Article 6 of the Law Number 12 Year of 1995 regarding Correctional Institution implies that the coaching of a “convicted that has obtained conditional freedom” in the Correctional Center is one unity of coaching in the integrated criminal justice system [17].

Therefore, getting guidance in the Correctional Center may be included into serving the punishment period. In the same vein, passing a period of 5 (five) years in the prison is interpreted as the passing of a period of 5 (five) years after completing punishment in prison as a whole (purely free). Hence, it can be understood that the Article 1 letter 21 of the Regulation of the General Elections Commission of the Republic of Indonesia Number 1 Year of 2000 on the candidacy for Governor and Vice-governor, Regent and Vice-regent, and/or Mayor and Vice-mayor states that a former convict is someone who has completed his punishment in prison, and technically (criminally) and administratively it is not related to the ministers that organize government affairs in the legal field and human rights. The construction of the Article 1 letter 21 of the Regulation of the General Elections Commission Number 1 Year of 2020 is actually from the official explanation of the Article 51 (2) letter g of the Law Number 10 Year of 2016 that explicitly states that what is meant by “former convict” is someone who has not
have any administrative or technical (criminal) relation with the minister organizing government affairs in the legal field and human rights.

Due to the wide and open interpretations of the term “former convict” in the Article 7 verse (2) letter g of the Law Number 10 Year of 2016 which is then followed by various regulations, the easiest way to do is to revise the stipulation of the Article 7 verse (2) letter g of the Law Number 10 Year of 2016. This revision is conducted at least to avoid two ambiguities.

4 Conclusion

On the basis of the short analysis above, some conclusions may be drawn: First is that the ambiguity of the interpretation of the concept “former convict” in the Law Number 10 Year of 2016 is caused by inconsistency in the use of the legal term which is not in line with the prevailing regulations. Therefore, to assure legal certainty, it is necessary to quickly revise the term in accordance with the current criminal procedure law. Second is that, deconstructing the concept “former convict” in the Law Number 10 Year of 2016 is multi-interpretative in nature, so that it potentially causes confusions among the people and some legal uncertainty.

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The Rights to Belief Education in the Higher Curriculum in Indonesia

Tuti Widyaningrum
{tuti.widyaningrum@gmail.com}

Universitas 17 Agustus 1945 Jakarta, Indonesia

Abstract. The adherents of belief still facing discriminations about the implementation of belief education in the higher curriculum because the Higher Education Law still only recognizes religious education as a compulsory curriculum. This has resulted in discrimination for students who are adherents of belief so that they do not obtain religious education as they should be as a form of freedom of belief in God Almighty which is protected by the constitution as that of the adherents of religion. This research using juridical normative method by doing an abstraction of the process of deduction from the prevailing positive legal norms about constitutions and human rights law. This research aims to breaking the chain of discriminations against believers with giving new perspectives for recognizing belief education into compulsory curriculum in higher education law in Indonesia. Therefore, it is fundamental to immediately recognize education of belief in God Almighty and include it in the higher education curriculum as a form of respect for human rights and citizen rights of the adherents of belief in Indonesia.

Keywords: Citizen Rights, Believers, Belief Educations, Curriculum

1 Introduction

In a constitutional state, one of the important elements is the equal position of citizens before the law and government which is guaranteed in Article 27 Paragraph (1) of the 1945 Constitution. When a person becomes a citizen, he/she will immediately become an active subject with no discrimination in enjoying their rights and the implementation of their obligations as citizens. The Indonesian state, which was founded with a noble desire to have a free national life, has placed the God The Only One in a special position. Article 29 Paragraph (1) of the 1945 Constitution stipulates that the Indonesian state is based on the one and only God, showing the religiosity side of the Indonesian nation that will never enjoy independence other than because of the grace of Allah The Almighty. Then to ensure that independence is manifested in the spiritual sphere of the Indonesian nation, Article 29 Paragraph (2) of the 1945 Constitution has been stipulated as a guarantee of freedom of religion in Indonesia. Furthermore, Article 29 Paragraph (2) becomes the basis for thinking that the implementation of a rule of law based on Pancasila is based on religious values (religious nation-state) [1]. This rationale was taken by religious groups to legitimize that all state administration, especially those related to citizens’ rights and human rights, must depart from religious values. Article 29 Paragraph (2) of the 1945 Constitution becomes the basis for the implementation of citizens’ rights such as the rights to marriage, employment, citizenship status, social security, education, health, and other constitutional rights stated in the 1945 Constitution.
These constitutional rights are the embodiment of respect for human rights protected by the state. The supreme treaty in the state of law places the rights of citizens, which are derived from human rights, as the responsibility of the state to respect, protect and, fulfill. In John Locke’s view, the government’s duty is to protect the people and or the rights of the people because the state is held to do that [2]. The rights of citizens include the right to education as listed in Article 28C paragraph (1) and Article 28E Paragraph (1) of the 1945 Constitution, stating that every citizen has the right to obtain education and choose education.

The relationship between the recognition of religious freedom in Article 29 Paragraph (2) of the 1945 Constitution and the right to education is manifested in the recognition of religious education in the curriculum. In relation to the field of education, the right to education specifically discussed in this study is related to the religious education curriculum in schools as part of an effort to educate children according to their religious beliefs. For adherents of official religions (Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism) the right to religious education for the children is not a problem because the constitution has been derived into implementing regulations in the National Education System Law and the Higher Education Law for both primary and secondary education as well as higher education which regulates the existence of religious education as a compulsory curriculum.

However, the conditions are different regarding the right to belief education in the curriculum in schools and higher education for the adherents of belief. In the development of state life, the right to freedom of religion/belief of ancestors has not been fully recognized and guaranteed in terms of believing, worshiping, and practicing the teachings of their beliefs as enjoyed by the 6 major religions that are “officially” recognized by the Government. Due to the different perspectives in understanding the notion of religion and belief, citizens who belong into the category of adherents of belief not benefiting from the right to freedom of religion and belief.

So far, religious education in schools is not only a matter for the Ministry of Education and Culture, but also a concern for the Ministry of Religion through the Regulation of the Minister of Religion No. 16 of 2010 regarding the management of religious education in schools. Article 7 paragraph (1) states that the Religious Education Curriculum is compiled, developed, and implemented by education units in accordance with the National Education Standards. The specialization of religious education which only accommodates religion without including belief is then corrected by the Minister of Education and Culture Regulation No. 27 of 2016 regarding Education Services of Belief in God Almighty in Education Units, which states that students fulfill religious education requirements through belief education by following the provisions of the laws and regulations on the curriculum.

The Minister of Education and Culture Regulation No. 27 of 2016 regarding Education Services of Belief in God in the Education Units has become the basis for implementing belief education services for children of adherents of belief in education units. However, in this regulation, belief education must be based on a belief organization, namely MLKI, which implies the will of the State to fulfill the rights of the community. In several regions in Indonesia, it has accommodated belief education for the believers in education units from elementary to secondary levels.

Meanwhile, belief education services in higher education has no regulations. Law No. 12 of 2012 concerning Higher Education in Article 35 Paragraph (3) states that the Higher Education Curriculum must contain religion as a compulsory subject besides Pancasila, Citizenship, and Indonesian Language. Even though the Constitutional Court Decision No. 97/PUU-XIV/2016 has placed belief in God as equal and parallel to “religion”. Nevertheless, the equal position of religion and belief has not immediately changed all aspects of the believers’
life, including the right to belief education in the higher education curriculum in Indonesia. This shows that the benefits of having equal status of citizens through recognition of basic rights in the field of education have not reached the believers even though education is the basis to develop whole human beings. It seems that the recognition of the right to freedom of belief in the field of belief education in higher education is still discriminatory and does not guarantee equal treatment for citizens. This study looks into the recognition of the rights to belief education in the higher education curriculum in Indonesia. It is hoped that this research can become the basis for legislators to be more accommodating to the right of belief education so that they can fulfill the ideals of the state welfare in Indonesia.

2 Research Method

This study employs juridical normative method or normative legal research approach by doing an abstraction of the process of deduction from the prevailing positive legal norms, namely examining the law as a positive norm using deductive thinking and based on coherent truth, where the truth in this study has been declared credible without having to go through a testing or verification. This study used secondary data which were analyzed with statute approach and conceptual approach to find the answers for the research questions. This study looks at the gap in the provisions of the rights of practicing citizens in developing themselves to choose education and teaching according to their beliefs. The basic norms in the constitution which were then elaborated on the provisions of the Law on Human Rights and confirmed by the Constitutional Court Decision No. 97/PUU-XIV/2019 were used as a touchstone against the National Education System Law which only accommodates religious education as a compulsory curriculum. The author provides solutions to problems with a statutory approach and a conceptual approach accompanied by basic arguments from theories about the welfare state law, citizens’ rights and human rights.

3 Result and Discussion

In principle, the fulfillment of citizens’ rights in the field of civil, politics, social, culture, and economy in Indonesia begins with the recognition of religious freedom as stipulated in Article 29 Paragraph (2) of the 1945 Constitution. This is because, so far, religion as the main identity of the citizens becomes an administration requirement in accessing services for citizens’ rights and guaranteeing the fulfillment of human rights. There is no one area of life in Indonesia that does not include the category of religion as a prerequisite, such as admission to school, wedding, working, and matters of funeral and inheritance. These rights depend on the religion adhered to by citizens with protection of the existence, guidance, and facilitation of the state by the Ministry of Religion. From the Ministry of Religion, the politics of religion spread to various fields and influence the policies of related ministries in the implementation of human rights and citizens’ rights.

One of the characteristics of an Indonesian constitutional state based on Pancasila, apart from respecting human rights, is equality before the law and the government. The equal position of citizens guaranteed in Article 27 of the 1945 Constitution should be realized in all areas of life including the right to freedom of religion. The implementation of the right to freedom of religion which benefits the fulfillment of human rights and the rights of other citizens should be
enjoyed by all Indonesian citizens. In the field of education, adherents of religion also benefit from Article 29 Paragraph (2) of the 1945 Constitution. Both formal and non-formal education related to religious education and teaching for children of religious adherents can be enjoyed. The freedom to teach religion is accommodated by the inclusion of religious education in the curriculum from primary education to higher education.

However, this becomes different when discussing the adherents of belief who do not embrace a religion but believes in God Almighty. The latest data on the belief organizations registered at the Ministry of Education and Culture in 2017 amounted to 188 organizations spread across Indonesia with a total of 11,288,957 people [3]. It is possible that the number will increase as 14 provinces will be included in the data. In addition to those listed, there are still many beliefs that do not belong to organizations and/or having a very small scope.

The history of clashes between religious groups and belief groups in Indonesia began in the 1950s. At that time, belief had a significant development, with 73 local religious groups. Concerned about the development of local religions, the Ministry of Religion issued a definition of religion which stipulated that a religion must have a prophet, holy book, and international recognition. This definition was rejected by Balinese Hindus and followers of the faith. The purpose of this definition was to suppress the growth of local beliefs that are considered dangerous to Islam. The discourse raised was that believers of faith are the main supporters of the Indonesian Communist Party (Partai Komunis Indonesia/PKI) hence their teachings are contrary to Islam [4, p. 69].

Tensions and conflicts between adherents of beliefs and religions culminated in the G 30 September incident which eventually led President Soekarno to issue Law No. 1 PNPS/1965 concerning the Prevention of Abuse and/or Defamation which confirmed the official religions of the state and punished the beliefs as defamers of the six religions [4, p. 71]. Since then, the beliefs and the believers have been completely eliminated from religious life in Indonesia. The official definition of the state became the basis for the belief to be excluded from the Ministry of Religion in 1978. Subsequently, the management of beliefs was given to the Sub-Directorate of Belief in God at the Ministry of Education and Culture (Kementrian Pendidikan dan Kebudayaan/Kemdikbud).

It was a normative mistake when the beliefs were taken care of by the Ministry of Education and Culture because it contains cultural values and characteristics that lead to externum forums. However, the government allowed the differentiation of treatment in the internum forum which should have been the base of belief manifestation and derived the citizen rights of the believers. It seems that since the management was handed over to the Ministry of Education and Culture, the regulation of the citizen rights of the believers is limited to the technical administration of educational services. Even though there is a Joint Regulation of the Minister of Education and Culture with the Minister of Home Affairs No. 43 and 41 of 2009 concerning Guidelines for Service to Believers in God, it is unable to answer the need for legal regulation and protection of the believers in civil, political, and socio-cultural rights.

3.1 The Weakness Curriculum against Believers

Education for the believers has been regulated under the Regulation of the Minister of Education and Culture No. 27 of 2016 concerning the Educational Services of Belief in God in the Education Unit. It is explicitly stipulated in Article 2 to Article 4 of the Regulation No. 27 of 2016 regarding the technical implementation of the belief education for students in schools. These articles state about the existence of belief educators who must adjust the belief education curriculum compiled by the Belief Council. Furthermore, in the provision of Belief Education
as referred to in Article 2, the Central Government, Regional Government, and educational units can cooperate with the Organization of Belief in God which has been registered in accordance with the statutory regulations.

In the Regulation of the Minister of Education and Culture No. 27 of 2016, although there are provisions on education for believers, none provide a guarantee of full freedom that is not related to the organization of believers. Education for the children of believers is still strongly dependent on the believer organization. Meanwhile, the organization of belief in God at the central level, which is said to embrace the believers, cannot be seen as a representation of the various kinds of existing beliefs. Seemingly, there is still a covert coercion behind the absence of belief teachers, but at the meantime, students must still have a score for the subject of religion in their report cards. Thus, they cannot help but take religion subject from one of the official religions.

Although the laws and regulations issued by the Ministry of Education and Culture are a step forward in the field of education, they are only limited to a response to the responsibility for managing the believers under the ministry. Apart from the many weaknesses in educational services for believers, a legal gap exists in the basis of the Regulation. Law No. 20 of 2003 concerning the National Education System has not yet regulated the implementation of belief education for the adherents of belief because it only accommodates the interests of the religions in the curriculum. Similarly, this also happens to the management of the belief education curriculum in the higher education setting.

One important variable that determines the efforts to improve the quality of education is the quality of the curriculum. This means that the formulation of a quality curriculum has a significant effect on the quality of education. The demand for quality education is a challenge in formulating the quality of the curriculum. Education and curriculum are interrelated; analogous to the human body, the curriculum is the “heart” of education [5, p. 19]. In regulating higher education in Indonesia, the curriculum plays an important role in the overall higher education system. The curriculum has a strategic and central position in the delivery of education at all levels and types. The curriculum is a reference in organizing and directing all forms of educational activities to achieve educational goals. The curriculum is an educational plan, providing guidelines on the type, scope, and order of content, as well as the educational process [6, p. 4].

In short, the journey of changing the Indonesian higher education curriculum began in 1994 through the Decree of the Minister of Education and Culture of the Republic of Indonesia No. 056/U/1994 concerning Guidelines for Higher Education Curriculum Development and Assessment of Student Learning Outcomes, in which the curriculum prioritizes the achievement of mastery of science and technology, therefore called the Content-based Curriculum. In this curriculum model, national compulsory courses are stipulated in existing study programs. Then in 2000, with the UNESCO mandate through the concept of four pillars of education, namely learning to know, learning to do, learning to be, and learning to live together, Indonesia reconstructed its curriculum concept from the Content-based Curriculum to a Competency-Based Curriculum. The 2000 and 2002 era curriculum prioritized the achievement of competence, as an effort to bring education closer to the labor market and industrial conditions. The Competency-based Curriculum consists of a core and institutional curriculum. In implementing the Competency-based Curriculum, the main competencies are determined by mutual agreement between universities, the professional community, and graduate users. Other supporting competencies are determined by the university itself. Encouraged by the global development which currently demands recognition of internationally equated learning outcomes and the development of the IQF, the 2012 curriculum has shifted slightly by providing an equal
measure of learning outcomes. This curriculum is still based on achieving equalized abilities to maintain the quality of graduates. This curriculum is known as the Higher Education Curriculum [7].

3.2 Time for Recognizing Belief Education in Higher Curriculum

From the beginning of the higher education curriculum to the latest Law No. 12 of 2012 on Higher Education, they still only accommodate religion as a compulsory curriculum content. Based on the Law No. 12 of 2012 concerning Higher Education, it is stated that curriculum development is the right of universities; however, it is subsequently stated that it must refer to the national standards (Article 35 paragraph (1) of Law No. 12 of 2012). The National Higher Education Standards in the Regulation of the Minister of Education and Culture No. 3 of 2020 regarding the National Higher Education Standards, does not specifically regulate the curriculum. The explanation of the curriculum appears to be limited to that the national education standards are used as a reference in compiling, implementing, and evaluating the curriculum. As for the mandatory higher education curriculum, it still refers to the provisions of Article 35 paragraph (3) of Law No. 12 of 2012 concerning Higher Education, in which religion is a compulsory curriculum other than Pancasila, Citizenship, and Indonesian Language.

Thus, it can be concluded that the provisions regarding religious education in the scope of the higher education curriculum have not recognized the rights of believers to obtain and or develop belief education for students. This definitely hampers the fulfillment of the recognition and protection of citizen rights of the adherents of beliefs in the higher education setting. In addition, not recognizing belief education in the curriculum is evidence of neglect of citizen rights of the adherents of beliefs so as to perpetuate discrimination on the basis of different beliefs.

This discrimination results in the neglect and a reduction in the benefits of the State of law and welfare for every citizen. This is further rooted in the lack of a basis for regulating the right to freedom of belief. In principle, there is a legal gap in the regulation of the rights of the believers because Article 28E Paragraph (2) of the 1945 Constitution, which states that everyone has the right to freedom to have a belief, and to express thoughts and attitudes according to their conscience, cannot be elaborated in the regulation of the rights of the believers. Article 28E paragraph (2) of the 1945 Constitution is a recognition of the human rights of the believers which is internal and related to the right to believe in God. This article explains human rights and citizen rights of the believers in relation to their belief in God but it is not an implementable article so that the right to freedom of religion can be guaranteed by the state and implemented based on the provisions of the law.

Therefore, the Constitutional Court Decision No. 97/PUU-XIV/2016 will not automatically bring about significant changes if it is not followed by changes in laws and regulations that guarantee the fulfillment of the rights of believers in the higher education setting. It is necessary to amend Law No. 12 of 2012 concerning Higher Education which recognizes beliefs equal to religion so that it is included in the compulsory higher education curriculum. This legal gap needs to be filled so that students who are believers can also obtain an education for the belief in God in the higher education curriculum in Indonesia. Amendments to the National Education System Law and the Higher Education Law are urgently required to ensure the implementation of the believers’ rights in terms of belief in God. With the change in the main regulation, it is hoped that the laws and regulations under it through the Ministry of Education and Culture regulations can be in harmony and meet the goals of higher education and fulfill the objectives of the state of law and welfare in educating the nation.
4 Conclusion

Higher education is a strategic level of education for improving the quality of the nation’s life. Therefore, careful consideration is needed in compiling a higher education curriculum to accommodate the need for democratic learning to educate the nation. The a legal gap in the implementation of the religious education curriculum for believers of faith is an urgent matter to be resolved immediately. The recognition of the equality of religion and to belief in God based on the Constitutional Court Decision No. 97/PUU-XIV/2016 should be followed by forming laws and regulations that accommodate the rights of believers to be recognized in the compulsory higher education curriculum. It is time for changes to the Law on Higher Education to include belief education in the compulsory curriculum as a reference for curriculum formulation in the higher education setting. By including belief education in the compulsory curriculum, it is hoped to break the chain of discrimination against the recognition of the rights of believers in education, especially in the scope of higher education. In addition, the objectives of a state of law and welfare that are oriented towards serving the rights of citizens based on human rights will be optimally fulfilled.

References

Integrated Law Enforcement toward Illegal Fishing in Indonesian Water Areas

Untung Sri Harjanto¹, Diastama Anggita Ramadhan²
{hardjanto.untung@gmail.com¹}

Universitas Diponegoro, Indonesia¹,²

Abstract. Problems in the management of marine resources in Indonesian waters are mostly caused by the existence of illegal fishing, but in its enforcement are still carried out by scattered bodies as regulated in Law Number 6 of 1996 concerning Indonesian Waters which provide authority to the Indonesian Navy, National Police, and the Ministry to enforce the law in the sea area. The overlapping enforcement not only raises information on law enforcement, but also provides opportunity or bribery in the enforcement process. This has become the main foundation that as an archipelagic state, Indonesia should have implemented a water law enforcement system that is integrated by one body. The method used in this study is sociological juridical, with the hypothesis that in order to realize optimal water law enforcement, an integrated arrangement is needed to realize an effective and efficient law enforcement system.

Keywords: Illegal Fishing, Integrated Law Enforcement, Indonesian Water Area

1 Introduction

Republic of Indonesia is the largest archipelagic country that has great potential to become the world's maritime axis, but can also be a threat to Indonesia itself. Seeing the geographical condition of Indonesia, it becomes a necessity for the Indonesian State to be able to act more in defending its sovereign territory and safeguarding its authority from acts of transnational law violations that often occur in the boundaries of Indonesian territorial water funds. Constraints, threats or problems can arise because as a country that has very rich and diverse marine resources, it is very open to the possibility of certain parties being provoked to exploit these marine resources illegally. Especially considering that not all countries have sufficient sea for their economic interests, so they are trying to obtain natural resources from the sea illegally. This possibility can not only disrupt the stability of security at sea, but also can lead to conflict with other countries, it is even possible to become an open war between nations [1]. Border areas are areas prone to conflict between countries and the international world, therefore safeguarding sea water territories which are also national border areas is a major problem for every country, because at that limit there is added value in the form of natural resources and sovereignty.

In this regard, basically the State of Indonesia has implemented several regulations relating to the management of marine resources including fisheries, namely Act Number 6 of 1996 concerning Indonesian Waters (called the Water Act) Act Number 32 of 2009 concerning Management Environment (Environmental Law), Act Number 45 of 2009 concerning Amendments to Act Number 31 of 2004 concerning Fisheries (hereinafter referred to as
Fisheries Law), and Act Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Regional Government (hereinafter referred to as Regional Government Law). The regulation stipulates that the state has a large role in managing natural resources in territorial waters, especially the provisions relating to the lives of many people.

Law enforcement efforts in the Indonesian territorial waters related to illegal fishing fisheries are carried out by three competent institutions namely: the Indonesian National Navy, the Indonesian National Police and Civil Servants, all three of which have been governed by its own laws and regulations. The granting of the same authority in the case of investigating illegal fishing in the field of fisheries is the result of political compromise between the three investigating agencies. However, the political compromise is very appropriate considering it is not possible to surrender the authority of the investigation to only one investigating agency as a single investigator, with the reason: The implementation of SPDP can be understood as a mechanism for the operation of criminal law enforcement officers starting from the process of investigation, prosecution, examination in court sessions and implementation of court decisions. These four components work together to form what is known as an “integrated criminal justice system administration” and have an interdependent relationship, namely the justice system approach to criminal justice that opens up space for consultation and cooperation between sub-systems. Substantial synchronization includes the synchronization of laws and regulations relating to the duties and authorities of law enforcement officers and judges. For example, the synchronization of Act Number 8 of 1981 concerning the Criminal Procedure Code with other regulations, so that it is expected to provide clear guidance for law enforcement. Cultural synchronization in carrying out its duties and authorities includes harmony in the mechanism of the administration of criminal justice within the framework of relations between sub-systems. In addition to the police, the investigation is also carried out by Civil Servants investigators or other investigators [2].

The basic classification form of the investigation authority in investigating illegal fishing in the field of fisheries to officers of the Indonesian Navy, Fisheries Civil Servants, and police officers of the Republic of Indonesia which contains the consequences that each investigating agency has the right to carry out illegal fishing investigations in the field of fisheries that occur in all territorial waters Indonesia, and Indonesia's Exclusive Economic Zone. These consequences raise fears of overlapping investigations of illegal fishing in the fisheries sector. In practice in the field, to avoid this, the investigation of illegal fishing in the field of fisheries is based on an “unwritten agreement” between investigators, namely that whoever knows or deserves to suspect that illegal fishing has taken place, it is he who has the right to conduct an investigation. This unwritten agreement is not without consequences because it could have occurred in the same area as there were three investigating vessels from different agencies and this meant inefficiency and resulted in suboptimal law enforcement.

2 Material and Method

This research was prepared using the type of normative juridical research, namely the method of legal research conducted by examining library material or secondary data. In normative legal research, written law is examined from various aspects such as aspects of theory, philosophy, comparison, consistency, general explanation and binding power of a law and the language used is legal language. The method of thinking used is the method of deductive thinking (a way of thinking in drawing conclusions drawn from something of a general nature
that has been proven that he is right and the conclusion is intended for something of a special nature). Then strengthened with using the Statute Approach, This Statute Approach is carried out by studying the compatibility between the laws and regulations implemented in Indonesia. Then using the Historical Approach, which is an approach that is carried out by examining cases related to the legal issues at hand, and reinforced by the Conceptual Approach which is moving from an understanding of the doctrines that develop in the science of law can be a foothold to build legal arguments when resolving issues the law at hand. Reasons for using these research approaches so that later researchers can produce results of fundamental thinking in solving existing problems.

3 Results and Discussion

As an archipelagic state, Indonesia has a configuration to be very challenging at the same time for other countries to participate in enjoying its natural resources. Such conditions place Indonesia in an important position and role in relations with the international world as a center of gravity in the Asia-Pacific region. Indonesia's position which is located between two continents and two oceans is also not immune to high vulnerability to external threats and influences. This geographical position is widely used by outsiders who carry out prohibited or unlicensed activities in Indonesian waters especially in relation to fisheries resources. The threat of violation of the law (law transgression threat) that is not complying with national and international laws that apply in the waters of national jurisdictions including illegal fishing. To deal with certain crimes at sea like this, actually there is a body that has handled it, namely the Sea Security Agency. However, the problems in the field of fisheries as stipulated in Act Number 45 of 2009 concerning Fisheries, the institutions authorized to enforce the law as investigators are Indonesian National Navy, the Indonesian National Police and Civil Servants as stipulated in Article 73 as follows:

Article 73
(1) Investigator of criminal offenses in the field of fisheries in the area of fisheries management
(2) The Republic of Indonesia is carried out by investigators of the Civil Servants of Fisheries, Navy Officers' Investigators, and/or Police Investigators of the Republic of Indonesia.
(3) In addition to Navy investigators, the Fisheries Civil Servant Investigator has the authority to conduct investigations into criminal offenses in the field of fisheries that occur at EEZ.
(4) Investigation of criminal offenses in the field of fisheries occurring at the fishing port, preferably carried out by Investigators of the Civil Servants of Fisheries.
(5) Investigators as referred to in paragraph (1) can coordinate in the handling of investigations of speech acts in the field of fisheries. (5) To coordinate the handling of criminal acts in the fishery sector as referred to in paragraph (4), the Minister shall form a coordination forum.

Based on these provisions, it can be understood that there are institutional classifications with the scope of authority as follows: (1) The Indonesian National Police is authorized to conduct an investigation of all criminal acts in accordance with the criminal procedure code and
other laws and regulations; (2) The Indonesian Navy also has the duty to uphold law and maintain security in the national jurisdictional sea area. (3) The Indonesian Civil Servant investigators who are given special authority by law. In addition, the authority of civil servant investigators in investigating criminal offenses in the territorial waters of the sea is also expressly stated in various statutory regulations governing both the territorial waters of Indonesia and regarding certain criminal acts in the territorial waters. Bakamla applies the Single Agency Multi Tasks system in carrying out its authority. The system, which makes Bakamla the holder of command/control over the 12 stakeholder agencies in an integrated manner, has the authority to conduct hot pursuits; stop, inspect, arrest, carry, and hand over the ship to the relevant competent authorities for the implementation of further legal processes; and integrate security and safety information systems in Indonesian waters and Indonesian jurisdictions.

Then the three institutions are coordinated through the Maritime Security Agency, which is a non-ministerial government agency under the President, which has the main task of conducting security and safety patrols in Indonesian waters and Indonesian jurisdictions. Basically, Bakamla is a revitalization of Bakorkamla, which has been strengthened by its authority, which is the central command of law enforcement in Indonesian territorial waters in contrast to Bakorkamla which only coordinates related institutions [3].

The establishment of Bakamla will shift the paradigm of law enforcement at sea from multi-tasked multi-agency, to multi-tasked single agency, which in practice will create effectiveness and efficiency, as well as real law enforcement. The concept of centralization like Bakamla itself has actually been practiced by several countries, such as Malaysia Maritime Enforcement Agency/MMEA, Japan Coast Guard/JCG, United States Coast Guard/USCG, and Indian Coast Guard/ICG [3]. The establishment of the Maritime Security Agency as stipulated in Act Number 32 of 2014 concerning Maritime Affairs in turn also cannot be a solution that can solve the problem of law enforcement at sea. Presidential Regulation Number 178 of 2014 the Maritime Security Agency: (1) Maritime Security Agency was formed not based as a government institution regulated through the Act; (2) The task carried out is only to conduct security and safety patrols in the territorial waters of Indonesia and the jurisdiction of Indonesia, so that it is not specific to the crime of Illegal Fishing. The authority of Bakamla is not regulated in Law Number 45 of 2009 concerning Fisheries as an investigator, so that the existence of Maritime Security Agency cannot affect the enforcement of illegal fishing law that occurs in the waters of national jurisdiction; (3) The authority held by Maritime Security Agency is to conduct an instant chase, stop, inspect, capture, carry and deliver the ship to the relevant agencies authorized for further legal processes, integrating security and safety information systems in Indonesian waters. From this authority it appears that the focus is on shipping law and security matters in general; (4) The implementation of the Maritime Security Agency task if related to the illegal fishing case will actually extend the chain of command and control because it is not regulated in Law Number 45 of 2009 concerning fisheries because the next process must be submitted to the authorized agencies namely Civil Servant Fisheries, National Police and the Navy. From the elaboration on the establishment of Bakamla, it is known that it cannot provide a solution in an effort to harmonize the implementation of fisheries law enforcement in the territorial waters of the national jurisdiction. The Ministry of Maritime Affairs and Fisheries from mid-2017 to November 2018. has handled 134 illegal fishing cases, of which 41 cases have received court decisions with permanent legal force.

Not only this problem, but there are also factors that lie behind the poor enforcement of illegal fishing waters in Indonesia, namely:
a. Regulatory and regulatory factors starting from the process of making, implementing and supervising Policies in the field of supervision and control of illegal fishing activities are considered ineffective. The perpetrators of illegal activities are well aware that legal supervision in Indonesia is still very weak. Supported by an archipelagic state structure that makes law enforcers have many obstacles in conducting surveillance. During this time, various regulations and policies related to illegal fishing activities are attached to various sectors, so that supervision and handling are carried out very sectoral as well. Besides law enforcement officers such as the Indonesian National Police and Civil Servants, Polri and territorial guard apparatus such as the Navy, to oversee marriages with a very wide area has not been matched by maritime patrol vessels and aircraft capabilities, facilities and human resources.

b. Competency Factors of Human Resources (HR) illegal fishing law enforcement is not optimal. The reality of illegal fishing activities is clearly based on making personal/corporate profits merely by ignoring the public interest. The existence of unscrupulous officials who can be bribed in the licensing process so that it can result in an increasing number of people or corporations who want to take part in doing so, and there are also officials who not only help with licensing issues but instead protect the crimes committed by the perpetrators. These acts are often done by persons from relevant agencies that aim to seek personal gain.

c. Facilities and Infrastructure Factors Infrastructure securing the domestic market, especially in fishing ports and ships/aircraft as defense equipment in sea waters, needs to be improved. The lack of such security infrastructure is not comparable to the area of the sea that must be secured from illegal fishing violations. The ratio between the fleet of ships owned by Fisheries Civil Servant, Water Police, and the Navy is not proportional to the area and number of ports. Similar conditions also occur with the fleet of the Directorate of Water and Air Police. It is undeniable that areas prone to illegal fishing such as in the Arafuru Sea and Natuna can no longer be handled by existing illegal fishing law enforcement personnel. In this era, the ability of foreign fishing vessels is far more resilient, so that customs and security authorities are increasingly constrained in overseeing ports and vulnerable areas [4].

On that case, the threats faced by Indonesia as a state in the Southeast Asian region and ASEAN members in the form of threats of lawlessness, threats of violence, and threats to marine resources are piracy, piracy, pollution and destruction of marine ecosystems, conflicts over management of marine resources, illegal fishing and smuggling. The threat has an impact on the country's economy every year at least Rp. 300 trillion of state wealth evaporates through illegal fishing, illegal logging, illegal mining, smuggling of fuel oil, and various other illegal economic activities [5]. These problems arise due to poor maritime connectivity which results in high and most expensive logistical costs in the world and many parties carrying out activities in the Indonesian maritime region that violate statutory provisions, both nationally and internationally [6].

These problems can at least be overcome by the main basic steps in the framework of improving the law enforcement system against illegal fishing, namely through the unification of law enforcers who synergize through a coordinating system of regulation and institutions, namely Bakamla is only used as a coordinating body and the Indonesian National Navy, the Indonesian National Police and Civil Servants as law enforcement are limited to their respective scope which can be described as follows:
Fig. 1. Uniting Law Enforcement for Illegal Fishing.

These provisions should also be supported by other steps which are as follows, namely: (1) Mapping the problems that arise related to coordination between agencies in resolving illegal fishing. (2) Establish a joint supervisory agency tasked with overseeing the implementation of the tasks of each institution, so as to avoid the practice of abuse of authority by fisheries law enforcement officials at the level of fisheries supervisors, investigators, prosecutors and judges. (3) Integrating and synchronizing community services so that they can run quickly and without overlapping. (4) Establish cooperation and joint operational control commands and the division of operating sectors according to their respective authorities in accordance with applicable laws and regulations. (5) Building information and technology networks in order to obtain intelligence information and data relating to: potential fishery resources, ship permit administration, fisheries business licensing, shipping safety, reporting systems, and law enforcement processes. These provisions should also be supported by measures other steps are as follows, namely: (1) Mapping the problems that arise related to coordination between agencies in resolving illegal fishing. (2) Establish a joint supervisory agency tasked with overseeing the implementation of the tasks of each institution, so as to avoid the practice of abuse of authority by fisheries law enforcement officials at the level of fisheries supervisors, investigators, prosecutors and judges. (3) Integrating and synchronizing community services so that they can run quickly and without overlapping. (4) Establish cooperation and joint operational control commands and the division of operating sectors according to their respective authorities in accordance with applicable laws and regulations. (5) Building information and technology networks to obtain intelligence information and data relating to: potential fishery resources, ship permit administration, fisheries business licensing, shipping safety, reporting systems, and law enforcement processes.

4 Conclusion

This research produces several basic ideas, namely realizing the harmonization of each of the government's initiatives in harmony and integration in this case the Maritime Coordinating Ministry, the Ministry of Fisheries, the National Police, the Attorney General’s Office, the Supreme Court, the Navy. As well as striving for the establishment and/or improvement of legislation and regulations into a legal codification product related to law enforcement in order to realize legal certainty.
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References

Regulatory Development of Objection Legal Efforts to the Indonesia Competition Commission (KPPU) Decision After the Enactment of Law No. 11 of 2020 Concerning Job Creation

Zil Aidi¹, Hasna Farida²
{zil.aidi93@gmail.com¹, hasna99@gmail.com²}

Universitas Diponegoro, Indonesia¹, ²

Abstract. This normative juridical research using secondary data aims to explain how and what are the reasons underlying the changes in regulations related to filing objections to the Indonesia Competition Commission (KPPU) decision after the enactment of Law No. 11 of 2020 concerning Job Creation. These changes include changing the place for filing objections from the District Court to the Commercial Court and changing the period for examining objections from the previous maximum of 30 days to a minimum of 3 months and a maximum of 12 months. These changes are to improve the quality of decisions on filing objections to KPPU’s decisions. It is hoped that giving authority to the Commercial Court will provide a higher quality decision because Judges at the Commercial Court are more familiar with economic law cases. In addition, the extended time for examination of objection legal efforts will provide flexibility for the Commercial Court Judges in examining cases. In conclusion, this condition is expected to contribute to realizing a healthy business climate and attracting investment to increase Indonesia’s economic growth.

Keywords: Objection Legal Efforts, KPPU Decision, Job Creation Law

1 Introduction

Indonesia is a country that makes the welfare of all its people the primary goal. This can be seen in the preamble to the 1945 Constitution of the Republic of Indonesia, which states that the objectives of the Government of the Republic of Indonesia are to protect the entire Indonesian and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in carrying out world order that is based on freedom, lasting peace and social justice.

One of Indonesia's ways to realize the welfare of its people is by applying the concept of economic democracy. The regulations regarding economic democracy are also contained in Article 33 of the 1945 Constitution of the Republic of Indonesia.

In essence, economic democracy includes three aspects. First, access to economic resources, the level of community income related to purchasing power, and workers' participation in economic activities [1]. Public access to economic resources is one of the critical essences in realizing economic democracy, which Indonesia must realize. In general, access to economic resources can be interpreted as the availability of equal opportunities for the community to participate in the production and marketing process of a product, goods, and
services. It then became one of the considerations for the issuance of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, after this referred to as Law No. 5 of 1999.

In more detail, the reasons for the issuance of Law No. 5 of 1999 can be seen in the preamble to a quo law, namely:

a. Realizing democracy in the economic field by providing equal opportunities for every citizen to participate in the production and marketing of goods and services in a healthy, effective and efficient business climate to promote economic growth and the operation of a fair market economy;

b. Creating a healthy and fair competition situation so that it does not lead to a concentration of economic power in certain business actors, inseparable from the Republic of Indonesia's agreements on international treaties.

In substance, Law No. 5 of 1999 regulates the prohibition of agreements, activities, and dominant positions against fair business competition [2]. Prohibited agreements include oligopoly, price-fixing, zoning, boycotts, cartels, trusts, oligopsony, vertical integration, closed agreements and agreements with foreign parties, and prohibited activities in Law No. 5 of 1999, namely monopoly, monopsony, market control, and conspiracy. Furthermore, matters that fall into a dominant position include multiple positions, share ownership, as well as mergers, consolidations, and acquisitions.

Furthermore, in addition to regulating the prohibition of activities and agreements deemed contrary to fair business competition, Law No. 5 of 1999 also regulates law enforcement and mandates the establishment of an independent institution to oversee the implementation of this law, known as the Indonesia Competition Commission/KPPU. Based on Article 1 No. 18 of Law No. 5 of 1999, KPPU is a commission established to supervise business actors in carrying out their business activities, not to exercise monopoly and/or unfair business competition. In carrying out its functions, KPPU is independent of government power and other parties' influence and is directly responsible to the President. Thus, with this regulation, KPPU has a unique position and is expected to be more effective in overcoming monopolistic practices and unfair business competition in Indonesia.

KPPU has the authority as stipulated in articles 35 and 36 of Law No. 5 of 1999. However, the duties and powers of KPPU are considered too large because there are three law enforcement functions in it, namely the police, prosecutors, and judges at the same time. KPPU conducts investigations, prosecutions and even decides on an unfair business competition case [3]. It has resulted in the emergence of authority similar to a judicial institution (quasi-judicial) in which KPPU, as an initial court, has been placed in the Indonesian legal system, then business actors who are not satisfied with the KPPU’s decision can take legal efforts [4].

A series of activities carried out by the KPPU will decide whether the business actor violates the provisions in Law No. 5 of 1999 or is proven not to have violated the provisions in the law. Concerning the decision, if the business actor does not accept the decision handed down by the KPPU against it, the business actor can file a legal effort for objection.

The technical arrangements regarding the submission of objection legal efforts against the KPPU’s decision can be found in the Supreme Court Regulation (PERMA) No. 3 of 2005 concerning Procedures for Submitting Objection Legal Efforts against the KPPU’s Decisions which were later replaced and refined by the Supreme Court Regulation (PERMA) No. 3 of 2019 concerning Procedures for Filing Legal Efforts for Objection of the KPPU’s Decision.

Regulations regarding the procedure for filing an objection again have changed with the issuance of Law No. 11 of 2020 concerning Job Creation, hereinafter referred to as Law No. 11 of 2020, along with its derivative regulations, namely Government Regulation No. 44 of 2021.

Based on the background and explanation above, it is interesting to answer the following problems: (1) How are the regulations regarding objection legal efforts against the Indonesia Competition Commission (KPPU) decision after the enactment of Law No. 11 of 2020 About Job Creation? (2) What are the reasons for the change in regulations related to objection legal efforts against the Indonesia Competition Commission (KPPU) decision as regulated in Law No. 11 of 2020 About Job Creation?

2 Research Methods

This research is normative legal research. Normative legal research is literature law research that uses secondary data related to the author's main issues [5]. Secondary data is data obtained from library materials, including official documents, books, research results in reports, diaries, and soon [6]. Meanwhile, secondary data used in this study are primary legal materials, secondary legal materials, and tertiary legal materials. The data obtained will be presented descriptively and then drawn to a conclusion using a deductive method or general to specific things.

3 Results and Discussion

3.1 Regulations Regarding Legal Efforts for Objection Against the Decision of the Indonesia Competition Commission (KPPU) after the enactment of Law No. 11 of 2020 concerning Job Creation

On November 2, 2020, the President passed Law No. 11 of 2020 concerning Job Creation. Law No. 11 of 2020 changes several provisions in Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The amendments are listed in Chapter VI concerning Ease of Doing Business, namely in Part Eleven concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, precisely in Article 118.

Furthermore, on February 2, 2021, the government issued Government Regulation No. 44 of 2021 concerning the Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition, which is a derivative rule of Law No. 11 of 2020, especially regarding the Prohibition of Monopolistic Practices and Unfair Business Competition.

At least four essential changes have occurred after Law No. 11 of 2020 and its derivative regulations. First, the provisions regarding the amendment of filing an objection to the KPPU's decision previously submitted to the District Court to the Commercial Court. This provision can be found in Article 118 of Law No. 11 of 2020, which amends Article 44 paragraph (2) of Law No. 5 of 1999.

So far, business actors can file objections to the District Court, where the business actor's legal domicile is. Based on data, in 2019, 31 KPPU decisions were stating that business actors violated Law No. 5 of 1999, of which 16 (sixteen) filed an objection process in the district court, 4 (four) appealed to the Supreme Court, and 11 cases with permanent legal force/inkracht [7].
As a form of follow-up to Law Number 11 of 2020 concerning Job Creation, the Supreme Court issued a Circular Letter of the Supreme Court Number 1 of 2021 concerning Transition of Examination of Objections to the Decision of the Business Competition Supervisory Commission to the Commercial Court. Through this circular, the Supreme Court determined that the district court no longer accepted any objections to the KPPU’s decision as of February 2, 2021. The objection efforts were transferred to the Commercial Court.

Based on the Decree of the President of the Republic of Indonesia Number 97 of 1999, only 5 (five) Commercial Courts in Indonesia consist of the Commercial Court at the Central Jakarta District Court, the Commercial Court at the Ujung Pandang District Court (Makasar), the Commercial Court at the Medan District Court, The Commercial Court at the Surabaya District Court, and the Commercial Court at the Semarang District Court. Each Commercial Court has its jurisdiction; for example, the Commercial Court at the Central Jakarta District Court has jurisdiction covering DKI Jakarta, West Java Province, South Sumatra, Lampung, and West Kalimantan. Thus, if the domicile of the business actor is in West Java Province, an objection may be submitted to the Commercial Court at the Central Jakarta District Court.

So far, the process of transferring cases from district courts to commercial courts has been ongoing. The first attempted objection by the commercial court was the PT Conch South Kalimantan Cement (CONCH) case. On January 15, 2021, the Case Commission Council Number 03/KPPU-L/2020 decided that CONCH had violated Article 20 of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. CONCH was proven to have sold and lost in 2015 and set very low prices in 2015-2019 [8]. Regarding this decision, CONCH filed an objection to the Commercial Court at the Central Jakarta District Court. Regarding the objection filed by CONCH with case number 01/Pdt.Sus.KPPU/2021/PN.Niaga.Jkt.Pst, the Commercial Court Judge at the Central Jakarta District Court, decided to uphold the KPPU’s decision Number 03/KPPU-L/2020 [8].

Secondly, it was related to the period of examination for legal efforts against the KPPU’s decision. Previously in Article 45 paragraph (2), Law No. 5 of 1999 stipulated that the District Court must issue a decision within 30 days from the objection examination's commencement. After the issuance of PP. 44 of 2021 as a guideline for implementing the Prohibition of Monopolistic Practices and Unfair Business Competition, examination of objections by the Commercial Court is carried out within at least 3 months and a maximum of 12 months stipulated in Article 19 paragraph (3) of the Government Regulation.

Third, the elimination of maximum fines. The imposition of fines on business actors is one of the administrative sanctions that KPPU can impose. Previously, this was regulated in Article 47 paragraph (2) letter g, Law No. 5 of 1999, which states that administrative action can be in the form of imposition of fines of as low as IDR 1,000,000,000) one billion rupiah and a maximum of IDR 25,000,000,000. After enacting Law No. 11 of 2020 concerning Job Creation, maximum fines were abolished. Article 47 paragraph (2) letter g, Law No. 5 of 1999, is amended to state that administrative measures may include the imposition of a fine of as low as IDR 1,000,000,000.

Although the provisions regarding the imposition of fines are abolished, based on Article 12 paragraph (1), Gov. Reg. No. 44 of 2021, administrative action in the form of fines shall be carried out with the following conditions:

a. A maximum of 50% of the profits obtained by the Business Actor in the Relevant Market, during the period of time when the violation of the Law occurs; or
b. A maximum of 10% of the total sales in the relevant market, during the period of violation of the Law.
Determination of fines is also carried out by considering several factors such as the negative impact of violations, mitigating factors, burdensome factors, duration of violations, and business actors' ability to pay. Thus, by imposing limits on sanctions imposed by KPPU, it is hoped that it can achieve legal certainty in its implementation, and the parties can get justice.

Finally, things amended by Law No. 11 of 2020 are related to eliminating additional criminal law threats. The enactment of Law No. 11 of 2020 abolishes Article 49 of Law No. 5 of 1999, which states that by referring to the provisions of Article 10 of the Criminal Code, additional penalties as regulated in Article 48 can be imposed in the form of:

a. Revocation of business license; or
b. Prohibition on business actors who have been proven to have violated this law from serving a director or commissioner for at least two years and a maximum of 5 years; or
c. Termination of certain activities or actions that cause losses to other parties.

3.2 Reasons for Changing Regulations Related to Objection Legal Efforts Against the Decision of the Indonesia Competition Commission (KPPU) as Regulated by Law No. 11 of 2020 concerning Job Creation

Investment is significant for national income or Gross Domestic Product (GDP). Investment in Indonesia contributes significantly to the Gross Domestic Product, around 34% [9]. So, if investment increases, production capacity will increase, job opportunities will open, and people's purchasing power will increase.

There is a ranking of the ease of investment or business in a country issued by the World Bank at the international level. The ranking is known as EoDB or Ease of Doing Business Index. This ranking is obtained based on the indicators set by the World Bank, which include starting a business, the ease of getting electricity access, easiness in getting credit, paying taxes, enforcing contracts, dealing with construction permits, property registration, protection of minority shareholders, trading between countries, and resolving insolvency [10]. Indonesia's position in the 2020 rankings is ranked 73rd in the world [10].

Of course, Indonesia’s EoDB ranking can be said to be not good, so the government in the 2020-2024 National Medium-Term Development Plan targets to increase Indonesia's EoDB ranking from 73 to 40 in 2024. For this reason, the Government continues to strive to create a conducive climate for ease of doing business.

Meanwhile, President Joko Widodo does have a priority on improving the economy by optimally attracting investment into Indonesia. It can be seen in the first period of President Joko Widodo's administration in 2014-2019, which focused on strengthening and growing the economy with 16 Economic Policy Packages (PEK) to attract investors through relaxation of investment permits and regulations [11].

Furthermore, in the second period of President Joko Widodo's administration, the Omnibus Law on Job Creation was passed in October 2020, aiming to stimulate the economy and attract investors to create jobs [12].

However, attracting investors is not enough just by making it easier for licensing to provide tax incentives and other matters related to other economic policies without paying attention to law enforcement aspects in Indonesia [12], mainly related to law enforcement in the field of business competition. Of course, healthy business competition can create a healthy business competition climate and create a conducive investment climate. The spirit of the passing of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, hoping that this law will provide legal certainty for business competition in Indonesia.
In its implementation, business competition law enforcement experiences several problems, especially in relation to the District Court judge’s decision on Legal Efforts to object to the KPPU’s decision. Based on the data, from 2002 to 2019, there were 181 decisions in the cases processed in the District Court, about 58.5% won by KPPU, while 41.5% KPPU lost at the District Court [13]. The data shows that there are still significant disparities between the KPPU’s decisions and the District Courts.

The KPPU has made efforts to understand business competition to district court judges by providing regular training. In 2019 alone, the Commission has provided Business Competition Training and Education 3 times and facilitated the visit of prospective judges to witness firsthand the implementation of court cases at KPPU [7]. The hope is that judges at district courts will better understand business competition law and can provide fair decisions for the parties. However, the training conducted by KPPU is deemed insufficient to improve the competence of district courts in handling business competition cases. In the process of examining objection efforts, there are often differences in interpretation between the KPPU and the District Court, resulting in disharmonious decisions [14].

If traced further, the condition above becomes reasonable because based on data for 2019 alone, the number of cases in district courts excluding traffic violations was 326,098 cases. The number of general court judges in 2019 is as many as 2,833 people. From this data, it can be seen that the ratio between the number of judges and the number of cases is 1:115, while the average burden per judge is 345 cases [15]. Thus, judges at district courts have a huge workload. The problems faced in business competition disputes are problems in economic law. It requires more in-depth knowledge of economic law; meanwhile, state courts are general courts that decide civil and criminal cases [16].

Starting from this problem, Law No. 11 of 2021 concerning Job Creation and its derivative regulations was born, hoping that law enforcement in the business competition will run better so that an investment ecosystem and better business competition practices will be obtained.

There is a change in filing an objection to the KPPU’s decision from the District Court to the Commercial Court; it is hoped that it will improve the quality of case examinations, leading to an increase in the quality of decisions. Judges at the Commercial Court are accustomed to handling cases that intersect with business and economic law, such as bankruptcy cases, Intellectual Property Rights (IPR). Therefore, Judges at the Commercial Court are deemed to have sufficient knowledge and can understand the spirit and purpose of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition [21].

In addition to that, the change in the period for examination of legal efforts against the KPPU’s decision from the previous Article 45 paragraph (2), Law No. 5 of 1999, is limited to a maximum of 30 days from the start of the examination of objections by the District Court to the fastest three months and the maximum 12 months as regulated in Article 19 paragraph (3) Gov. Reg. No. 44 of 2021 is expected to provide more time for Commercial Court Judges to examine cases more carefully so that an unbiased decision can be produced and fulfills a sense of justice for the parties.

**4 Conclusion**

There are four essential changes related to filing an objection to the KPPU’s decision after the promulgation of Law No. 11 of 2020 concerning Job Creation and Government Regulation No. 44 of 2021 concerning the Prohibition of Monopolistic Practices and Unfair Business
Competition as its derivative regulations. First, concerning the location for filing an objection to the KPPU’s decision which was previously at the District Court to become a Commercial Court. Second, related to the examination period for legal efforts against the KPPU’s decision, which previously was a maximum of 30 days, becomes a maximum of 3 months and a maximum of 12 months. Third, the elimination of maximum fines for business actors and finally eliminating additional penalties. The reasons for this change in regulation are that the examination and decision on an objection to the KPPU’s decision can achieve justice for the parties and contribute to realizing a fair business competition climate in Indonesia.

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References


Abstract. Competition in the globalization era requires protecting trade secrets of Micro, Small, and Medium Enterprises (MSMEs) products. MSMEs have strategies that should be kept from other people or companies. MSMEs as business actors have a very strategic role in the Indonesian economy. The products of MSMEs in Indonesia are born from valuable thoughts and ideas, have high economic value, are unique, have the potential to develop rapidly, and have competitive prices. Therefore, they need to be protected through trade secrets. This study aims to analyze the development of MSMEs in Indonesia and the urgency of trade secret protection for MSME products. This study uses the normative juridical method. The data were secondary data, including primary and secondary legal materials. The results show that MSMEs in Indonesia have experienced very significant developments in the national economy. The importance of trade secret protection for MSME products is to prevent fraud between business actors to healthy competition. Also, MSMEs players can exploit their products with a sense of security, creating a climate or business condition that allows people to create products or other subsequent innovations.

Keywords: Intellectual Property, Protection, Trade Secrets

1 Introduction

Economic globalization is increasingly being developed based on the principles of trade liberalization or other free trades. It has influenced the laws of every country involved in economic globalization and free trade. Economic globalization and free trade flow must be followed because of their developments through international negotiations and agreements [1]. The implications of economic globalization on law cannot be avoided because legal globalization follows economic globalization. Substantially, various laws and treaties are cross-border [2]. The view of Lawrence M. Friedman is then precise, stating that the law is not autonomous but is open at all times to outside influences [3]. Globalization is a new feature of post-industrial societies [4].

Protection of Intellectual Property Rights (IPR) is vital in the globalization era and is closely related to trading at the international level. Since the early 18th century, Europeans have started thinking about the IPR, as reflected in Vienna's international exhibition of discoveries in 1873. Furthermore, some countries were reluctant to participate in the exhibition because they were worried that their new ideas were stolen and exploited commercially in other countries. Ever since, the international community’s attention to IPR protection has increased. The TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement discussed in the Uruguay
Round within the framework of the GATT (General Agreement on Tariffs and Trade) is a step taken to enforce IPR legal rules. Indonesia has agreed to the Uruguay Round of GATT and should adjust the IPR legal system as regulated in the TRIPS. Ratification by the Government of Indonesia through Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization (WTO). As a consequence, Indonesia should implement the provisions in the TRIPS, which regulate the IPR. Since implementing this policy, Indonesia has already had laws for Copyrights, Patents, Trademarks, Trade Secrets, Industrial Designs, and Layout Designs of Integrated Circuits.

TRIPS is known as the most comprehensive international agreement on the IPR, which is a unique blend of the basic principles of GATT. Various international conventions were conducted before the introduction of TRIPS which has been amended several times. The industrial concept that is considered as the most significant is the Paris Convention for the Protection of Industrial Property (Paris Convention), while for the copyright is the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).

The IPR legal system at the beginning of its development was not well known and received little attention in Indonesia. This right was often ignored and there were many infringements. This is not surprising, considering that the IPR concept and legal system are not rooted in Indonesia's legal culture and national legal system. The legal system of ownership in Indonesia originates from the values of Pancasila, which mandate a populist economic system that emphasizes a concept imbued with communalism. Meanwhile, the IPR legal system originates from the western world, which fights for a liberal economic system that tends to have a concept of ownership law based on individualism. Western law values spiritualism more than materialism, while original Indonesian law is the opposite [5].

MSMEs as business actors in Indonesia have a significant role in economic development [6]. Since their business activities can expand employment opportunities and provide broad economic services to the community [7], the quality of high-value MSMEs products should be followed by a high level of awareness to protect the IPR of their products. Protection of MSMEs products through IPR will protect the product itself from imitators or thieves and have economic value. Other parties producing such products must have approval from the right holders who will get royalties from the exclusive rights given. Protecting MSMEs products by registering them in IPR will give Indonesia have substantial competitive advantages in facing the global market.

There is a relationship between the protection of trade secrets or undisclosed information and the globalization of trade [8]. Trade secrets are classified information that is considered to have economic value because it is not generally known, such as recipes, dishes, client lists, and others. MSMEs actors who hold this right can prohibit other parties from disclosing these secrets to third parties who are feared to cause economic losses. The Trade Secret Rights are regulated in Law Number 30 of 2000 concerning Trade Secrets. The term of this right is unlimited. The purpose of regulating trade secrets is to promote industries to compete in the scope of national and international trades, especially for MSMEs. It can increase added values for entrepreneurs, including the acquisition of special rights held by MSMEs. Protection of trade secrets is an absolute requirement if it is associated with the globalization of trade because trade secrets are an essential factor in fair trade competition and being a precious commodity and having high economic value.

MSMEs in Indonesia is still very traditional and have not considered protecting the intellectual property for their products. This is due to a lack of understanding and information that the products they produce have high economic values when entering foreign markets. Lack
of sensitivity and awareness to protect their products lead to thefts of ideas and designs of traditional Indonesian products by outsiders. If MSMEs in Indonesia is not ready to defend against technological changes, many may go bankrupt. This technological change must be followed by the IPR protection of the product technology. Therefore, it can close opportunities for other business actors to survive in a business industry that depends on such technological changes. The possibility of adequate IPR protection can stimulate a creative process, resulting in a country's technical improvements and economic growth [9]. Based on the description above, it is necessary to study several things that become the problem's formulation. They are how MSMEs in Indonesia develop and how the urgency of trade secret protection for MSMEs products in Indonesia is.

2 Research Method

Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the content of the law at hand [10]. The research approach used was juridical normative, namely legal research conducted by examining library materials [11]. A juridical approach was an approach that refers to the prevailing laws and regulations [12]. A normative approach was research on secondary data in the law concerning primary legal entities, namely various legal instruments and statutory regulations and other secondary legal materials in the form of scientific works by scholars. The normative juridical approach emphasized reviewing legal documents and library materials related to the principal protection of MSMEs products related to trade secrets. The legal research examines trade secret legal protection referred to Law Number 30 of 2000 concerning Trade Secrets and Law Number 20 of 2008 concerning MSMEs. This is in line with obtaining scientific truth through a statutory approach. The statutory approach looks at the statutory regulations and examines the content [10].

3 Results and Discussion

3.1 Development of MSMEs in Indonesia

Micro, Small, and Medium Enterprises (MSMEs) play an essential role in the Indonesian economy. MSMEs contribute to the expansion of employment opportunities and absorption of labor, growth of Gross Domestic Product (GDP), provision of safety nets, especially for low-income people to carry out productive economic activities. MSMEs are also influential in exports and the creations of fixed/investment capital. MSMEs have a very strategic role for economic growth in Indonesia, where they have been able to absorb as many as 116.97 or about 97% of the 120.598 million workers in Indonesia [13]. The contribution of MSMEs GDP to National GDP was 61.07%. The entrepreneurial ratio in 2018 was 3.47%. Another contribution from MSMEs in supporting the Indonesian economy is 61.07% of the formation of Gross Domestic Product (GDP) and the remaining 38.9% are contributed by large business actors, which amount to 5,550 or 0.01% of the total business actors [14].

The number of MSMEs in Indonesia has increased from 59.26 million units in 2015 to 64.1 million in 2018. It was expected to grow to 68.60 million in 2020. The productivity of the MSMEs sector per business unit has increased from Rp. 27.93 million in 2015 to Rp. 86.22 million in 2017. It was expected to grow to Rp. 182.59 million by 2020 [15].
### Table 1. Number of MSMEs 2009—2019

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Number of Unit</th>
<th>Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>52,764,750 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2010</td>
<td>54,114,821 Units</td>
<td>100.53%</td>
</tr>
<tr>
<td>2011</td>
<td>55,206,444 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2012</td>
<td>56,534,592 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2013</td>
<td>57,895,721 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2014</td>
<td>57,895,721 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2015</td>
<td>59,262,772 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2016</td>
<td>61,651,177 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2017</td>
<td>62,922,617 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2018</td>
<td>64,190,000 Units</td>
<td>99.99%</td>
</tr>
<tr>
<td>2019</td>
<td>67,400,000 Units</td>
<td>99.99%</td>
</tr>
</tbody>
</table>

MSMEs are productive businesses owned and managed by individuals or business entities that have met the micro-business criteria. Meanwhile, the criteria for Micro, Small, and Medium Enterprises (MSMEs) according to Law Number 20 of 2008 are classified based on the number of assets and turnover owned by a business.

### Table 2. Classification of Micro, Small, and Medium Enterprises

<table>
<thead>
<tr>
<th>No.</th>
<th>Classification</th>
<th>Asset Criterion</th>
<th>Turnover Criterion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Micro</td>
<td>Max Rp. 50 Millions</td>
<td>Max Rp. 300 Millions</td>
</tr>
<tr>
<td>2</td>
<td>Small</td>
<td>&gt; Rp. 50-500 Million</td>
<td>&gt; Rp. 300 Millions-2.5 Billion</td>
</tr>
<tr>
<td>3</td>
<td>Medium</td>
<td>&gt; Rp. 500 Millions-10 Billion</td>
<td>&gt; Rp. 2.5-50 Billion</td>
</tr>
</tbody>
</table>

The development of MSMEs in Indonesia is inseparable from the factors that encourage this progress covering technology, information and communication facilities, the ease of borrowing business capital, and reducing the final income tax rate. MSMEs in Indonesia have become an essential part of the economic system because they are business units that are more numerous than large-scale industrial businesses and have the advantage of absorbing more labor. Also, MSMEs can accelerate the process of equalization as part of development. MSMEs can support the country's economy and equalize the people's economy because they are located in various places and even reach remote areas. Based on this fact, it is appropriate for MSMEs to be protected by laws and regulations related to their operational activities and development.

According to Law Number 20 of 2008, substantial efforts in developing resilient and independent MSMEs businesses as the people's economy are to create a conducive business climate. The flow of globalization and high competition make MSMEs face global challenges, such as increasing product and service innovation, developing human and technological resources, and expanding the market size.

### 3.2 The Urgency of Trade Secret Protection for MSMEs Products in Indonesia

Trade secrets are parts of information that are considered confidential in the field of technology and business. Information is considered secret as long as certain parties only know it, has economic value, and is kept confidential through reasonable efforts. As long as the information criteria are maintained, trade secret protection will still apply to the information. Information is considered confidential in the form of company information known only to the
company's director. Examples are a list of clients, a list of suppliers of goods from a company, etc. Information is considered to have economic value if it can be carried out for commercial activities or businesses or increase economic benefits. The examples are recipes with secret information about the spices used and processing methods, making the product distinctive. In the Batik industry, some MSMEs also have secret formulas about the color mixing technique or night blocking technique with canti ng (a pen-like tool used to apply liquid hot wax). These characteristics make them different from other Batik MSMEs.

Detailed information can provide economic benefits for a company. Information is considered to be kept confidential if the owner has taken appropriate or proper steps. Examples are when a food formula is stored in a safe deposit box and a confidentiality agreement between the company and its employees or third parties [16].

Indonesia makes regulations on trade secrets so that business actors can carry out fair and healthy competition in the national and global markets. The business that is most vulnerable to occurring is unfair competition in trade secrets. For example, in the food sector, food recipes with economic values are stolen and then copied by other business actors. It results in losses to the owner of trade secrets and unfair profits for fraudulent business actors.

The existence of MSMEs is inseparable from their relationship with intellectual property. The benefits of intellectual property for MSMEs are: a) Products of MSMEs in Indonesia have high economic value, are unique, have the potential to develop rapidly, and have competitive prices; b) More than 90% of enterprises in all economic sectors are MSMEs which make a significant contribution to employment, trade, investment, and economic growth; c) MSMEs have been proven to be investment-driving tools and behind a large number of technological breakthroughs; d) In the economic management associated with new knowledge, intangible assets that include innovative ideas, know-how, and information have become the center of business; e) Intellectual property can be used as a company asset because it has proper economic values [17].

For MSMEs, using or exploiting their products with a sense of security will create a climate or business that allows people to create products or innovations. Many products of MSMEs in Indonesia have high economic value and are unique, especially when they enter the free market. The characteristics of a business become a precious asset. Its confidentiality must be maintained because that is where the profits grow. Trade secrets include the right to use the trade secret and the right to license or prohibit other parties from using or disclosing trade secrets to third parties for commercial purposes [18].

The high quality of MSMEs' superior products should be followed by high awareness to protect the intellectual property contained in these products. Several principles of protection in the law regarding MSMEs activities [19], are: 1) the economic principles in the 1945 Constitution as stipulated in Article 33, which is the direction of national goals for the creation of a just and prosperous society; 2) the principle of protecting the national interest which implies that the public interest must not be contradictory to the principle of freedom of contract—meaning that in the public and national interest the freedom of contract for business actors is not getting narrower in their business activities; 3) the principle of protection in international law and civil law in the framework of trade among countries through various means of transportation and communication with mutual respect based on international agreements and the principles of the pacta sunt servanda (agreements must be kept); and 4) the principle of protection for the economically weak group through Law Number 9 of 1995 as a protection and guidance effort provided by the government to small businesses.

Protection of intellectual property rights (IPR) plays an essential role in technological change and economic growth. In Indonesia, a trade secret is a branch of IPR whose protection
is recognized. Through this IPR protection, right owners can exploit their intellectual property, namely the rights to create, use, distribute, sell, and import. They can also take legal actions if someone violates these rights [20]. Micro, small, and medium enterprises (MSMEs) have the same opportunity to take advantage of IPR protection in their business processes. One of the opportunities to increase the value of the MSMEs GDP contribution can be taken through IPR protection.

Protection of IPR by MSMEs in Indonesia cannot be underestimated because it can be one factor in doing business in the industrial world. New technologies can change the face of existing industries, cause some industries to go bankrupt, and open up opportunities for new industries [21]. If MSMEs in Indonesia is not ready to defend against technological changes, many MSMEs may go bankrupt. This technological change must be followed by IPR protection of the technology to close opportunities for other business actors to survive in a business industry dependent on these technological changes.

The trade secret owner thoroughly pursues the trade secret protection mechanism to prevent the secret from being exposed to the public. The period of trade secret protection is as long as it is not disclosed. Also, a trade secret has no registration as it is not required. The owners themselves only keep trade secrets. Intellectual property rights are unique because they do not need to be registered and announced to get legal protection [18].

Protection of trade secrets in intellectual property rights is unique. It is based on the characteristics of trade secrets that are very different from other intellectual property rights such as trademarks, patents, industrial designs, and integrated circuit layout designs. Confidential information used in trade can be said to be ideas originating from human intellectuals that also need to be protected due to justice and respect for the trade secret owner. Not every confidential information in trade will always be protected with an intellectual property right. It is also not easy to categorize information in the trade as trade secrets. Several factors are used to determine whether a secret qualifies as a trade secret. This factor is the extent to which the secret owner maintains the confidentiality of the information. This action regulates all the ease and difficulty of information to be known by others.

Based on these considerations, the general rule is that such information can be protected as a trade secret. If the information has been widely disseminated to the public, it is no longer a trade secret. If adequate precautions are taken to keep the information confidential from being made public, the information is still considered a trade secret. A person is deemed to have violated the Trade Secret of another party if he obtained or controlled the Trade Secret by violating the prevailing laws and regulations.

Concerning MSMEs products, it is also necessary to make defensive efforts from the government and to have a definite guarantee. Therefore, the competitiveness and ability of MSMEs need to be further improved to take advantage of the current free trade system. This system can be used to introduce and even practically involve superior products in the global market. While the condition for market opportunities is increasingly open, trade liberalism is not automatically able to help. It even becomes a threat to MSMEs. To anticipate this threat, MSMEs are required to be creative and innovative to take steps by creating products better than those of large companies [6].

Many MSMEs in Indonesia are reluctant to take advantage of the IPR system, especially concerning trade secrets. There is an assumption that law enforcement for IPR violations is feeble. This can be understood because MSMEs do not understand that all criminal offenses in the IPR Law are complaint offenses. As a result, when a violation occurs and the IPR holder does not make a complaint, the case cannot be processed further.
Trade secret protection can also be done through agreements. The owner of a Trade Secret is obliged to maintain the confidentiality of the information in his possession. This can be done through various steps, such as creating a contract that explicitly obliges the other party not to divulge the secret in writing. This kind of written contract will be especially helpful in avoiding misunderstanding the scope that should be kept secret. The obligation to maintain confidentiality can also be accomplished through the making of implicit contract terms and conditions.

Protecting trade secrets is automatic if confidential information with economic value is kept secret through reasonable efforts. Trade secret owners must be active and repressive in maintaining the confidentiality of their trade secret information. The owner must keep and maintain the confidentiality of his/her trade secret information.

Maintaining confidentiality is one of the fundamental elements in getting the rights. Trade secret rights are included in property rights that can be transferred and altered to other parties. Unlike other intellectual property, trade secrets are not registered so that the public cannot access and get the secret substance or formula. To protect Trade Secret rights, it is unnecessary to register to the Directorate General of Intellectual Property Rights because the law directly protects the trade secret if the information is confidential, has economic value, and is kept as secret. So, trade secret rights do not require a registration procedure. Although there is no regulation regarding the registration, the transfer of trade secret rights and licenses must be registered at the Directorate General of Intellectual Property to have legal consequences for the third parties (Articles 5 and 6 of Trade Secrets Law), as shown in the Figure 1.

![Fig. 1. Mechanism of Transferring Trade Secrets.](image)

### 4 Conclusion

MSMEs play significant roles in the Indonesian economy at a macro level. The development of MSMEs in Indonesia has increased from year to year. The government supports them by issuing policies to protect their existence. The urgency of trade secret protection for MSME products to prevent fraud among business actors is meant to create healthy competition. Furthermore, MSMEs players can exploit their products with a sense of security to create a climate or business that allows people to create products or subsequent innovations. For MSMEs, it is essential to protect innovation and creativity for the sustainability of their business.
to continue to improve their competitiveness because the strength of MSMEs is not from their capital but the protected innovation and creativity. MSMEs, as owners of trade secrets, are required to maintain the confidentiality of their information. This can be done through various steps, such as creating a contract that explicitly obliges the other party not to divulge the secret in writing.

References

Substantive Justice and Speedy Trial in the Regional Head Election Disputes in the Constitutional Court

Oly Viana Agustine
{oylviana@mkri.id}

Center of Research and Case Studies, Indonesian Constitutional Court, Indonesia

Abstract. The Constitutional Court as a transitional court until the establishment of a special election court that adjudicates regional head election disputes has been given restrictions in the procedural law in accordance with the provisions of the laws and regulations. One of the limitations is the provision of acceptance of dispute requests, namely 3 working days after the announcement of the decision by the Regional Election Commission. This provision is in line with the principle of speedy trial in resolving regional head election disputes. In this research, we will discuss about how substantive justice and the application of speedy trial Regional Head election dispute at the Constitutional Court. This research is needed in order to obtain a balance and proportionality between the two principles applied in the settlement of regional head election disputes at the Constitutional Court. The research method used is normative juridical with a case study approach to dispute over the results of the 2020 regional head election in the Constitutional Court. The results showed that there were 5 (five) constituencies that were violated by the provisions related to the grace period for receiving applications at the Constitutional Court, namely 3 (three) working days after the announcement of the Regional Election Commission. The six cases are the dispute over the Election of Pesisir Barat Regency, Bandung Regency, Samosir Regency, Nabire Regency and 2 (two) Sabu Raijua Regencies. The deviation made by the Constitutional Court against the provision on the grace period for submitting an application which is a formal requirement for a petition is based on the existence of a casuistic problem in each electoral district where there is no legal rule in the statutory regulations requiring resolution.

Keywords: Constitutional Court, Regional Head Election Dispute, Speedy Trial, Substantive Justice

1 Introduction

The debate between formal justice and substantive justice has never been absent in Regional Head Election disputes from year to year. The settlement of Regional Head Election disputes which is bound to formal procedural law creates a gap in the need for substantive justice. Formal procedures in the process of examining and adjudicating cases of Regional Head Election disputes require legal certainty in accordance with what is written in the laws and regulations. Meanwhile, substantive justice demands on how a case can be resolved with the complex problems underlying the case, so that an in-depth examination is needed and not just formal legalism. This has also happened a long time ago in other trials as stipulated in the Speedy Trial Act of 1974 which set a time limit so that raised widespread concern about the impact on the
operation of the Federal justice system. Many praised the law as a decisive step in delaying congestion, while others argue that the speedy trial will have the effect of complicating court matters. Debates about speedy trials are frequent, no simple answers to complex problems [1].

The formal procedure for resolving disputes for Regional Head Election includes, among other things, a time limit of 45 (forty five) working days in accordance with the provisions of the laws and regulations for the settlement of Regional Head Election disputes. The count of 45 working days is marked by the commencement of a case that has been received and registered by the Constitutional Court. Acceptance of applications for Regional Head Election disputes is also given a time limit in accordance with statutory regulations, namely 3 (three) working days after the Provincial/Regency/City General Election Commission (KPU) delivers an announcement regarding the final result of the vote acquisition for the Regional Head election.

With the stipulation of the 3 (three) working days time limit for filing a request for a dispute over the Regional Head Election at the Constitutional Court, of course it has a juridical impact. As stipulated in the laws and regulations, if the application is submitted after the deadline for submitting the application, the application will be terminated with an unacceptable warning (niet ontvankelijk verklaard/NO). The provision for a grace period of 3 (three) working days for filing the application is one part of the formal requirements that must be fulfilled by the Petitioners. Thus, if the 3 (three) working day grace period for filing the application is not fulfilled, then it will have the same legal consequences as not fulfilling other formal requirements such as incomplete documents or unclear identity of the Petitioner and so on. As applied, all time-precise speedy trial statutes and rules are in some respects stricter, and in some respects more lax, than constitutional speedy trial rights [2].

Legal problems arise when there are casuistic conditions that cause applications to be submitted late or exceed the 3 (three) working days time limit as stipulated in the statutory regulations. These conditions have not been anticipated by the provisions of laws and regulations. This was found in the dispute over the results of the regional head election at the Constitutional Court in 2020. Namely in the 2020 Regional Head Election, there were elected pairs of regional heads with dual citizenship status, namely in the regional head elections in Sabu Raijua Regency. The fact of the existence of dual citizenship in the elected Regional Head candidates is known long after the Regional Head Election process has been completed. Meanwhile, there is not a single provision in the statutory regulations that accommodates this situation.

Of course, by starting with a formal perspective in responding to the case of the Regional Head Election in Sabu Raijua Regency, the Constitutional Court could not accept the request. However, this is where the meeting point of the Constitutional Court's legal search and discovery in realizing substantive justice. Based on these problems, it was found that in the 2020 Regional Head Election, there were several cases that made the Constitutional Court have to make legal breakthroughs by setting aside the 3 (three) working days grace period upon receipt of the Petitioner's petition. Based on this description, this research will discuss how the Constitutional Court's efforts in realizing the fulfillment of substantive justice in the application of the speedy trial in resolving disputes for the 2020 Regional Head election in the Constitutional Court.
2 Method

The major aim of any type of research is to find out the reality and facts which is unknown and which has not been exposed [3]. The research method used is to use the normative method with a case approach. This method is used by observing how the procedural law provisions in both laws and regulations of the Constitutional Court regulate the grace period in disputes over the results of regional head elections. The case approach is used to see problems at the implementation level and how the Constitutional Court provides solutions to these problems. The cases used as research objects are 6 (six) cases in 5 (five) electoral districts that have been examined and decided by the Constitutional Court in disputes over the results of the 2020 regional head election. Case Number 39/PHP.BUP-XIX/2021, Bandung Regency in Case Number 46/PHP.BUP-XIX/2021, Samosir Regency in Case Number 100/PHP.BUP-XIX/2021, Nabire Regency in Case Number 84/PHP.BUP-XIX/2021, and Sabu Raijua Regency in Case Number 133/PHP.BUP-XIX/2021 and 135/PHP.BUP-XIX/2021. Of the six cases, an analysis was then carried out by taking an inventory of decisions and identification based on the provisions regarding the grace period, so that problems were obtained regarding the existence of deviations from the provisions of the grace period as regulated in the legislation.

3 Results and Discussion

3.1 Provisions on the Deadline in the 2020 Regional Head Election Dispute Procedure Law at the Constitutional Court

Provisions related to the procedural law for the 2020 Regional Head election disputes at the Constitutional Court are specifically contained in the Constitutional Court Regulation Number 6 of 2020 concerning Procedures for Dispute Cases in Election Results of Governors, Regents and Mayors, Constitutional Court Regulations Number 7 of 2020 and 8 of 2020 concerning Stages, Activities and Schedules for Handling Dispute Cases on the Results of the Election for Governors, Regents and Mayors. In these two regulations, complete and specific arrangements for the stages of case handling as well as the procedures for drafting applications. The provisions of the Court's procedural law which are regulated through the Constitutional Court Regulation are made possible based on Article 86 of the Constitutional Court Law which gives the Constitutional Court the authority to further regulate the matters required for the smooth implementation of its duties and powers.

Provisions on the Deadline for Receiving Applications in Disputes over Regional Head Election Results are regulated in Article 157 paragraph (5) of Law 10/2016 and Article 1 number 31 as well as Article 7 paragraph (2) and Article 9 paragraph (7) of the Constitutional Court Regulation Number 6 of 2020 concerning Procedures for Dispute Cases in Election Results for Governors, Regents, and Mayors (PMK 6/2020), as well as General Election Commission Regulation Number 19 of 2020 concerning Amendments to General Election Commission Regulation Number 9 of 2018 concerning Recapitulation of Vote Count Results and Determination of Governor Election Results And the Deputy Governor, Regent and Deputy Regent, and/or Mayor and Deputy Mayor (PKPU 5/2020), respectively as follows:

“Article 157 paragraph (5) of Law 10/2016 states that: “Election participants submit a request to the Constitutional Court as referred to in paragraph (4) no later than 3
(three) working days from the announcement of the determination of the vote acquisition results of the Election by the Provincial KPU or Regency KPU/City KPU”; Then Article 7 paragraph (2) PMK 6/2020 states that: “The application as referred to in paragraph (1) shall be submitted no later than 3 (three) working days after the announcement of the determination of the votes acquired by the Respondent of the Election results”; Whereas in Article 1 number 31 PMK 6/2020 states that: “Working days are working days of the Constitutional Court, namely Monday to Friday, except for official holidays stipulated by the Government”. Then in Article 9 paragraph (7) PMK 6/2020 states, that “the working day as referred to in Article 7 paragraph (2), is effective from 08.00 WIB up to 24.00 WIB”; and Article 31 paragraph (5) PKPU 19/2020 states, that “Regency KPU/City KPU/KIP announces the District/City-KWK Model D. Result form and a copy of the Decree as referred to in paragraph (2) for the Election of the Regent and Deputy Regent or Mayor and Deputy Mayor on the website of Regency KPU/City KPU/KIP and/or a place that is easily accessible to the public for 7 (seven) days”.

Based on the above provisions, it can be concluded that based on Article 157 paragraph (5) of Law 10/2016 and Article 7 paragraph (2) PMK 6/2020, the deadline for submitting a request for cancellation of the Final Vote Determination of Election Results is no later than 3 (three) days work since the Respondent announced the determination of the vote acquisition results of the election. With respect to applications submitted beyond the deadline for filing applications as regulated in Article 157 paragraph (5) of Law 10/2016 and Article 7 paragraph (2) PMK 6/2020, the applicant's petition cannot be accepted. This is in accordance with Article 55 PMK 6/2020 which states that the application decision cannot be accepted, (niet onvankelijk verklaard) if the Petitioner's petition does not meet the formal requirements of the application.

3.2 Principles of Speedy Trial in Disputes over the Results of Regional Head Elections

The principle of speedy trial itself is part of a principle long known in a court of law which mandates a fast, simple and low cost process. From this principle it mandates that the process of examining and deciding a case from a judicial institution must be carried out quickly, simply and at low cost and must be applied consequently at all levels of the judiciary [4]. This principle has been listed since the existence of Herziene Inlandsch Reglement (HIR), for example Article 71 calls it “once twenty-four hours”; which has a more definite meaning than the term “immediately” (which is widely included in the provisions of the Criminal Procedure Code), as well as the term “in the shortest possible time”, to indicate a fast judicial system [5]. The inclusion of a fast trial (contante justitie; speedy trial) in the criminal procedure law, especially to avoid long detention before a judge’s decision is made, is part of human rights; Likewise with a free, honest and impartial trial [6].

This principle was then reformulated in Law Number 48 of 2009 concerning Judicial Power, Chapter II, concerning the Principles of Implementing Judicial Power, as stipulated in Article 2 paragraph (4), which requires that every trial be carried out simply, quickly and at low cost. The description of the principle of a trial that is fast, precise, and low cost, among others, the suspect/defendant has the right [7]: to immediately be examined by the investigator, immediately submitted to the public prosecutor by the education officer, immediately submitted to court by the public prosecutor, and has the right to be tried immediately by the court. The principle of justice is carried out simply, quickly, and at low cost and does not only apply to
criminal or civil procedural law. In disputes over the election of a Regional Head, it is also closely related to the speedy trial process, known as the speedy trial.

In resolving disputes over the Regional Head Election at the Constitutional Court using the speedy trial principle. The use of the speedy trial principle in disputes over regional head elections has received various pros and cons responses. This is because there is an opinion from some people who state that implementing rapid justice can conflict with aspects of Justice. The judiciary quickly makes the case examination process time-limited as determined by statutory regulations. Even though it is the obligation and authority of the Constitutional Court to explore the real truth as one of the objectives of the law.

In reality, speedy trial is not a wrong thing in the world of justice. A speedy trial is needed so that an issue can be resolved quickly. A speedy trial is needed in order to reduce existing conflicts as a result of a Regional Head election. Some people argue that obedience to the principle of speedy trial in regional head election disputes is necessary because whatever the type of violation actually requires a legally binding decision in a short time. So that in electoral matters, certainty is needed in the resolution mechanism. Thus, the judiciary in electoral matters must be viewed as one form or type of speedy trial, the process of which is sufficiently carried out with a fair legal certainty approach and on the principle of formal proof only [8]. Therefore, in every election dispute and regional head election that is included in the category of speedy trial, it requires each party to prepare applications, answers, and statements in a relatively fast time with a high precautionary principle in preparing tools evidence [9].

Fast trial is also related to the goal of legal certainty in the electoral process. Legal certainty is also related to the capacity of dispute resolution institutions, in this case the Constitutional Court, to decide disputed cases quickly. Thus, if the Constitutional Court’s decision grants the petitioner's petition, then the legal action to restore the right is still within the scope of the ongoing electoral process stages [9]. Such actions by the Constitutional Court are related to the capacity of the election process dispute settlement institutions in assessing and resolving disputes between the parties based on the provisions of election law, both statutory regulations and legal principles relating to the election.

### 3.3 Extension of the Deadline for Acceptance of Applications as Efforts to Find Substantive Justice in Disputes over the Results of Regional Head Elections

In the implementation of the 2020 Regional Head Dispute, the Constitutional Court received 6 (six) cases from 5 (five) electoral districts that have passed the deadline. With regard to the six cases, the Constitutional Court continued to examine and continue the case up to the case examination stage with the agenda of the trial of evidence. The six cases, namely:

- b. The Election Dispute of Bandung Regency in Case Number 46/PHP.BUP-XIX/2021.
- c. The Samosir Regency Election Dispute in Case Number 100/PHP.BUP-XIX/2021.
- d. The Election Dispute of Nabire Regency in Case Number 84/PHP.BUP-XIX/2021.
- e. The Election Dispute of Sabu Raijua Regency in Case Number 134/PHP.BUP-XIX/2021 and 135/PHP.BUP-XIX/2021.

From the six cases, it can be concluded that there are constitutional reasons that caused the Constitutional Court to set aside the deadline for submitting the Petitioner’s petition, namely as follows:

- a. There are legal facts about the absence of convincing evidence when the announcement through the announcement board was made by the KPU, which led to the Constitutional Court of the opinion that the petition was declared not past the deadline.
b. There are legal facts in the form of a statement made by the Respondent regarding the deadline for submitting a petition for objection to the election results of the Regent and Deputy Regent to the Constitutional Court, which according to the Court the Respondent's statement constitutes an official notification/announcement that is integrated into the schedule/stages of the election program. Thus, the Court is of the opinion, the Petitioner's petition does not violate the deadline for filing the Petitioner's petition as determined by the prevailing laws and regulations.

c. There are legal facts that were revealed in the trial where the verdict was announced through an announcement board without being announced on the KPU website.

d. There are legal facts where the Permanent Voters List is invalid and illogical and voting is not done using a direct voting system.

e. There are legal facts that are only known and questioned after the completion of the recapitulation stages of vote count results and the determination of the elected candidate pair, and the elected candidate pair has not been appointed as regional head, which is an unprecedented legal event. Such events have not been anticipated in the laws and regulations which cause legal uncertainty in the completion of the said election stages.

From the five explanations above, it shows that the Constitutional Court has fulfilled substantive justice by extending time in receiving petitions. The Constitutional Court's actions are such, given that the constitution as the highest law regulates state administration in this case justifies the attitude of the Constitutional Court of extending the time for acceptance of applications. The extension of time to receive requests is based on democratic principles and protects human rights. This is consistent with the Constitutional Court which functions as the guardian of democracy, the protector of the citizen's constitutional rights and the protector of human rights [10].

Waiving the grace period by extending the acceptance of applications is a development practice in the Constitutional Court in resolving Regional Head Election disputes in 2020 which is a manifestation of upholding substantive justice. The Constitutional Court made a legal breakthrough in resolving Regional Head Election disputes in 2020 without neglecting the principle of speedy trial. The enforced substantive justice shifts procedural justice by not allowing procedural justice rules to override substantive justice.

The priority of substantive justice is due to the existence of legal facts found in the trial process casuistically violating the constitution. These violations include, among other things, violations of democratic principles and general election principles that are direct, general, free, secret, honest and fair as stipulated in Article 22E paragraph (1) of the 1945 Constitution. Pesisir Barat in Case Number 39/PHP.BUP-XIX/2021, Dispute on the Election Results of Bandung Regency in Case Number 46/PHP.BUP-XIX/2021, Dispute on Election Results of Samosir Regency in Case Number 100/PHP.BUP-XIX/2021, and Disputes over the Election Results of the Regent and Deputy Regent of Nabire Regency, Papua Province in Case Number 84/PHP.BUP-XIX/2021, as well as the Dispute on the Election Results of Sabu Raijua Regency in Case Number 134/PHP.BUP-XIX/2021 in Case Number 135/PHP.BUP-XIX/2021.

Enforcement of substantive justice by itself does not mean that the Court ignores the sound of statutory provisions regarding grace periods. As long as the provisions of the law regarding the grace period provide a sense of justice, the Constitutional Court will make it the basis for making a decision. Conversely, if the application of the provisions of the law regarding the grace period cannot provide justice because of violations that are against the constitution, the Constitutional Court can ignore it and then make its own decisions for the sake of substantive
law enforcement. Substantive law enforcement implies a message of learning and education so that at the next Regional Head Election, such violations will not occur again.

The need for a breakthrough made by the Constitutional Court is due to the opinion that judicial institutions such as the Constitutional Court are capable of filling the legal vacuum. The judiciary is an institution that is believed to be able to resolve disputes that arise as a result of disputes over election results. Robert A. Carp, Ronald Stidham, and Kenneth L. Manning believe that in the context of legal politics in America, the significant role of the judiciary in fixing the political system is due to the ability of these institutions to protect democracy. Carp, Stidham, and Manning in full mention that [11]:

“The legal subculture has an impact on American jurists. Evidence shows that popular democratic values – manifested in a variety of ways through many different mediums have an influence as well. Some scholars have argued that the only reason courts have maintained their significant role in the American political system is that they have learned to bend when the democratic winds have blown. That is, judges have tempered rigid legalism with commonsense popular values and have maintained “extensive linkages with the democratic subculture”.

The six decisions above are an illustration of the many decisions of the Constitutional Court that have shifted from procedural justice in Regional Head Election disputes by prioritizing the concept of substantive justice. As with judicial review, in a Regional Head election dispute, apart from protecting the constitutional rights of citizens which should be protected, there are also election principles which are part of the constitutional values. By basing on the violation of the constitutional rights of citizens and the principles in the General Election, it becomes a justification for the Constitutional Court to break through substantive justice by setting aside the grace period for receiving the Petitioner's petition. The assistance carried out by the Constitutional Court was not automatically carried out without constitutional reasons, but the Court was based on the existence of legal facts that were ignored by the organizers and the existence of a legal vacuum.

The extension of the grace period for regional head election disputes is intended to uphold substantive justice and to provide benefits in upholding democracy and the constitution. The Constitutional Court has moved from procedural justice to substantive justice. This provision has also been repeatedly carried out by the Constitutional Court by deviating from the narrowly interpreted provisions of the law. The Constitutional Court is of the opinion that formal truth does not embody material truth so that it will be difficult to find justice that is beneficial in upholding democracy and the constitution. The Constitutional Court in adjudicating cases, not only refers to the formal object of election disputes, but also must explore and find the truth of law and justice in accordance with the evidence and convictions of judges. In an effort to realize procedural justice and substantive justice, as well as the principle of benefit for the supremacy of the constitution, law and democracy, the Constitutional Court has assessed all statements of the parties, evidence of letters, and witnesses at the trial in accordance with the duties and functions of the Constitutional Court as guardian of the constitution and democracy and protection of human rights [12].

To ensure the realization of direct regional head elections that are truly in accordance with the principles of democracy, their implementation and enforcement must be carried out with a system based on the principles of honesty and fairness, while at the same time proving that the implementation of the regional head elections did not have structured, systematic, and massive violations. This principle is applied in a good and integrative system, including: 1) availability
of a material and formal legal framework that is applicable, is binding and serves as a guideline for organizers, contestants (pairs of candidates), and voters in carrying out their respective roles and functions; 2) the implementation of all activities or stages directly related to the implementation of regional head elections based on statutory provisions, (3) the integration of the electoral law enforcement process on the rules for regional head elections according to the stages at each level, whether related to administrative, criminal, ethical issues, and also disputes over results [13].

4 Conclusion

The results showed that there were 6 (six) cases in 5 (five) constituencies that were violated by the provisions related to the grace period for receiving applications at the Constitutional Court, namely 3 (three) working days after the announcement of the KPU. The six cases are the dispute over the election results of the West Coast District, Bandung Regency, Samosir Regency, Nabire Regency and Sabu Raijua Regency. The deviation made by the Constitutional Court against the grace period which is a formal requirement for a petition is based on the existence of casuistic problems in each electoral district where there is no legal rule in the statutory regulations that require resolution. Such actions by the Constitutional Court are part of the search and discovery of substantive justice without violating the principle of speedy justice in resolving disputes over regional head elections.

The spirit of the constitutional court must be upheld by prioritizing substantive justice in order to be able to prove the application of honest and fair democratic values as mandated by Article 24 of the 1945 Constitution. Electoral justice is an important instrument for upholding the law and ensuring the full application of democratic principles through the implementation of free, fair and honest elections. The justice system is developed to prevent and identify irregularities in elections, as well as as a means and mechanism to correct these irregularities and provide sanctions to perpetrators of violations [14].

4.1 Suggestions

The extension of time to receive requests for disputes over the results of regional head elections conducted by the Constitutional Court is an effort to find law in overcoming any legal problems that have not been regulated in statutory regulations. Nevertheless, a follow-up from legislators is needed to provide written rules in the implementation of disputes over the results of the upcoming regional head elections. The written provisions at the law level become a reference not only for regional head election organizers but also as a manifestation of the principle of legal certainty.

References


The Authority of the Regional Government of Magelang Regency in Handling the Eruption Disaster of Mount Merapi Amid Covid-19

Lita Tyesta Addy Listya Wardhani\textsuperscript{1}, Bonaventura Pradana Suhendarto\textsuperscript{2}, Adissya Mega Christia\textsuperscript{3}

\{litatyestalita@gmail.com\textsuperscript{1}, bonaven97@gmail.com\textsuperscript{2}, adissya.mega@umk.ac.id\textsuperscript{3}\}

Universitas Diponegoro, Indonesia\textsuperscript{1, 2}
Universitas Muria Kudus, Indonesia\textsuperscript{3}

Abstract. The handling of the Mount Merapi eruption disaster cannot be fully borne by the central government, because it requires fast and precise handling, especially for refugees. Since 2020 the situation has experienced a Covid-19 pandemic where positive cases in Magelang Regency have soared as well. It takes the presence and authority of The Regional Government of Magelang Regency to handle this problem. In this case, The Regional Government of Magelang Regency has chosen Sister Village that born from Paseduluran values in the disaster management system. This research is done through normative juridical method with secondary data. This research aims to show the steps and effectiveness of Sister Village strategy by The Regional Government of Magelang Regency to handle both the Mount Merapi eruption and the transmission of Covid-19 to refugees.

Keywords: Regional Government, Sister Village, Covid-19

1 Introduction

Indonesia is an archipelago which has a very large area. Thus, governmental affairs can not be borne entirely by the central government, because the centralization of authority at the central government can result in slow and ineffective public services. Local governments need to gain authority in carrying out government affairs so that the needs of the community can be served properly and the welfare of the community can be evenly distributed throughout the country for example in term of natural disasters. So many natural disasters have occurred in various regions of Indonesia with relatively high magnitude and frequency. Natural disasters cause significant losses such as casualties, damage and loss of property, damaged infrastructure, damaged living environment, and trauma for survivors. Natural disasters can be caused by nature itself, for example earthquakes and volcanic eruptions [1].

Indonesia holds the highest number of volcanoes within the world with the tall hazard of natural disasters [2]. One that needs immediate response is the eruption of Mount Merapi. On November 5, 2020, the Geological Disaster Technology Research and Development Center (BPPTKG) began to improve the status of Mount Merapi from alert to standby. This means that there is an increase in the eruption of Mount Merapi and requires people living in disaster-prone areas III (KRB III) to evacuate. Learning from the considerable experience of eruptions in 2006 and 2010, disaster management must be carried out quickly, precisely and effectively so that it
does not cause casualties, based on the fact that Indonesia is one of the world’s most disaster-prone nations. Be that as it may, it has not customarily apportioned adequate assets to calamity avoidance and relief exercises, centering instep on disaster reaction [3].

On the other hand, the State of Indonesia and also the world are experiencing a Covid-19 pandemic, even Magelang Regency (which some of its areas are in KRB III Mount Merapi) at that time was in the red zone of the spread of Covid-19 and was experiencing an increase in positive cases as well. In spite of the endeavors of government to decrease catastrophe dangers through decentralized nearby administration, victories recorded have been or maybe negligible as the consistent event on natural risks clears out much to be craved [4]. This situation has never happened before where the handling of the eruption of Mount Merapi was carried out in the midst of a massively contagious Covid-19 pandemic situation. Therefore, the handling can not depend and be borne entirely by the central government. Every local government, including the Magelang Regency Government, needs to be given the authority to deal with disasters in order to avoid casualties.

Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI) states that the Unitary State of the Republic of Indonesia (NKRI) is divided into regions both at the provincial and city/regency levels in order to carry out the wheels of government of the State of Indonesia properly. On that basis, each province and city/regency has a regional government that is integrated into the central government to run the wheels of government in their respective regions. The Regional government with its authority to run the government is based on the principles of regional administration in the 1945 Constitution of the Republic of Indonesia, some of which are: First, The Regional principle regulates government affairs by itself according to the principles of autonomy and assistance tasks. This means that the implementation of regional government is based on regional autonomy and assignments from the Central Government to autonomous regions to carry out part of government affairs that fall under the authority of the central government or from the provincial government to regency/city regions to carry out part of the government affairs that fall under the authority of the province. Second, the principle of carrying out the broadest possible autonomy. This means that regions have sufficiently broad autonomous authority in carrying out government affairs in their respective regions. Regions also have the right, authority and obligation to regulate and manage their own government affairs and the interests of local communities in the NKRI system.

Law Number 23 of 2014 concerning Regional Government divides government affairs into three, namely absolute, concurrent and general government affairs. Based on this division, concurrent government affairs authorize regions to carry out basic services to the community. Regarding disaster management - particularly the eruption of Mount Merapi - it is classified as a sub-affair of concurrent government affairs concerning basic services in the field of Public Peace and Order and Community Protection. This means that The Regional Government of Magelang Regency has the authority to handle the eruption of Mount Merapi, especially for the residents around KRB III who were affected.

Based on the authority possessed by The Regional Government of Magelang Regency, the author wants to review the steps taken by the Magelang Regency Government based on its authority in handling the eruption of Mount Merapi, especially for refugees in the midst of the Covid-19 pandemic situation. Besides that, he also saw the effectiveness of the handling of refugees that had been done.
2 Steps of the Regional Government of Magelang Regency in Handling Mount Merapi Eruption Disaster Refugees Amid the Covid-19 Pandemic Situation

Magelang Regency is one of the areas affected by the eruption of Mount Merapi quite a lot. A number of villages in Magelang Regency are included in KRB III. The determination of the alert status by the BPPTKG makes The Regional Government of Magelang Regency have to determine handling steps, especially for KRB III residents because they have been given authority by law for regency/city level disaster management. After the determination of Mount Merapi’s alert status by BPPTKG, The Regional Government of Magelang Regency immediately determined the status of disaster emergency response through the Decree of the Regent of Magelang Number 180.182/364/KEP/46/2020 with a period starting from November 6, 2020 to November 30, 2020 extended by the Regent of Magelang Regency on December 1, 2020 to December 14, 2020 (extension I); December 15, 2020 to December 31, 2020 (extension II); January 1, 2021 to January 15, 2021 (extension III) and February 16, 2021 to February 14, 2021 (extension IV) before being downgraded to disaster emergency alert status.

Determining the emergency response status for the eruption of Mount Merapi is one of the strategic jurisdictions of The Regional Government of Magelang Regency. This authority is granted by Law Number 24 of 2007 concerning Disaster Management in Article 51 which states that The Regional head has the authority to determine the emergency response status according to the scale of the disaster that occurred. Administration techniques through the method of recuperation, restoration and remaking, incorporates upgrading calamity hazard maps, creating data framework to encourage the administration, including of all partners in post-disaster needs appraisal, paying consideration to the goals and arranging [5]. This means that if the disaster is in accordance with the scale covering a regency/city disaster, the determination is made by the regent/mayor; if the scale of the disaster is provincial, the stipulation is made by the Governor; and if the scale is national, then the determination is made by the President. The basis for determining the scale of a disaster refers to Article 49 of the Law on Disaster Management, namely by studying and identifying the scope of the disaster location, the number of victims, damage to infrastructure, disruption of functions of public and government services, and the ability of natural and artificial resources.

This authority is also regulated in Article 23 of Government Regulation (PP) Number 21 of 2008 concerning Implementation of Disaster Management and Article 47 of Regional Regulation (Perda) of Magelang Regency Number 3 of 2014 concerning Implementation of Disaster Management in Magelang Regency which in essence provides the authority to determine emergency response status to The Regional head according to the level/scale of the disaster that occurred. The authority to determine this is considered very important in disaster management, because it will give flexibility and certain actions to be taken by elements of The Regional government. As one of the elements of The Regional Government that focuses on handling disasters, namely The Regional Disaster Management Agency (BPBD) based on Article 50 of the Law on Disaster Management, easy access includes mobilizing human resources; deployment of equipment; deployment of logistics; immigration, excise and quarantine; licensing; procurement of goods/services; management and accountability of money and/or goods; rescue; and commands to command sectors/institutions.

After determining the emergency response status, the Magelang Regency Government instructed the evacuation of residents living in KRB III to flee to a safer area. The current pattern of displacement is different from previous years. The pattern of evacuation is carried out using
the Sister Village system or in Javanese it is called *Paseduluran Deso* (villages as sisters). *Paseduluran* ties shaped within the structure of family values [6]. *Paseduluran* deso is in accordance with Koentjaraningrat statement that individuals basically giving without thinking about misfortune. *Paseduluran* can be seen from the common help and the similarities in daily life customs. Connection from *paseduluran* causes symbiosis-mutualistic which does not decrease and hurt [7][8][9]. This system is a new thing for disaster management and the Regency Government of Magelang initiated the use of this system to handle the refugees of Mount Merapi. Sister village is a shape of participation between disaster-affected villages and villages security [10]. The holding of a sister village includes the Government and BPBD which moreover requires coordination with the community and help from private non-government parties. Dealing with outcasts with a well-organized sister village is exceptionally simple since the influenced community as of now knows the area of the clearing. Sister Village is a refugee management system where the village located at KRB III Mount Merapi is paired with a buffer village (safe area) to be used as a refugee camp and handling refugees in KRB III village. There are 19 KRB III villages in Magelang Regency which are paired with a buffer village, as well as 2 villages (Tlogolele and Klakah villages) from Boyolali Regency which are paired with a buffer village in Magelang Regency as follows, where Kecamatan (Kec.) identified as Sub-District, Desa indentified as Village and Dusun (Ds.) identified as Hamlet.

<table>
<thead>
<tr>
<th>Sub-District</th>
<th>No</th>
<th>Vulnerable Village</th>
<th>Buffer Village/Save Village</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sawangan</td>
<td>1</td>
<td>Wonolelo</td>
<td>Desa Banyuroto, Kec. Sawangan, Ds. Pogalan, Kec. Pakis</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>Kapuhan</td>
<td>Desa Mangunsari, Kec. Sawangan</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Ketep</td>
<td>Desa Podosuko, Wulunggunung, Kec. Sawangan, dan Desa Ketundan, Kec. Pakis</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>Sengi</td>
<td>Desa Butuh, Tirtosari, Jati, Kec. Sawangan Desa Treko dan Senden, Kec. Mungkid</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>Sewukan</td>
<td>Desa Ambartawang, Mungkid, dan Rambeanak, Kec. Mungkid</td>
</tr>
<tr>
<td>Dukun</td>
<td>6</td>
<td>Paten</td>
<td>Desa Gondang, Bumirejo, dan Paremono, Kec. Mungkid Desa Banyurojo dan Mertooyudan, Kec. Mertooyudan</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>Kringing</td>
<td>Desa Deyangan, Kec. Mertooyudan</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>Kalibening</td>
<td>Desa Adikarto dan Tanjung, Kec. Muntilan</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>Sumber</td>
<td>Desa Pucungrejo, Kec. Muntilan</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>Ngargomulyo</td>
<td>Desa Tamanagung, Kec. Muntilan</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>Keningar</td>
<td>Desa Ngrajek, Kec. Mungkid</td>
</tr>
<tr>
<td></td>
<td>13</td>
<td>Kemiren</td>
<td>Desa Salam, Kec. Salam</td>
</tr>
<tr>
<td></td>
<td>14</td>
<td>Ngablak</td>
<td>Desa Kradenan, Kadiiuwih, Somoketro, dan Tirto, Kec. Salam</td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>Nglumut</td>
<td>Dusun Sucen, Kec. Salam</td>
</tr>
</tbody>
</table>
This sister village system has been facilitated and prepared by The Regional Government of Magelang Regency several years before the 2020 eruption as a step for implementing disaster management at the pre-disaster stage. This can be justified, because the Disaster Management Law in Article 36 paragraph (1) and Government Regulation Number 21 of 2008 concerning Disaster Management gives this authority to local governments such as carrying out disaster management planning, disaster risk reduction, etc. The Regional Government of Magelang Regency facilitates the KRB III village and the buffer village to collaborate in handling the eruption disaster of Mount Merapi. What is done by The Regional Government of Magelang Regency is also under its authority in government affairs in the field of community and village empowerment in the sub-affairs of inter-village cooperation. This also implements Central Java Governor Regulation Number 6 of 2018 concerning the Merapi Eruption Contingency Plan for Central Java Province which encourages local governments in the Mount Merapi area to encourage cooperation between villages. The villages are in the end and then formed a partnership and expressed its commitment through the MOU between the villages of KRB III with the buffer villages.

Understanding how communities react to and recoup from common calamities is fundamental not as it were for governments, scholastics, and analysts but moreover for communities themselves. The sister village program that has been started by The Regional Government Of Magelang Regency points at upgrading community versatility after Mount Merapi Explosion by expanding community’s readiness to confront future fiasco \[11\]. The part of sister village program in building community strength capacity can be investigated by analyzing the components of community flexibility counting the characteristics of a disaster-resilient community and characteristics of the sister village program \[11\].

Through the sister village system, the implementation of basic social services by the Magelang Regency Government for refugees can be distributed evenly. Basic needs and trauma recovery efforts for victims are provided evenly and on target because there is clarity regarding the number of refugees and places for refugees. This treatment involves the residents of the buffer villages together to help meet the basic needs of refugees. This means that indirectly empowerment of village communities is applied to train villages in disaster preparedness, especially the eruption of Mount Merapi.

This sister village system was actually not designed to deal with the displacement that occurred during the Covid-19 pandemic from the start. However, in implementation in the field it can be modified so that it can accommodate efforts to contain the spread of covid-19. The Regional Government of Magelang Regency through its authority takes care of government affairs in the health sector by utilizing the sister village system to manage and prevent the emergence of a new covid-19 cluster for refugees. Refugee shelters are designed by implementing strict health protocols, starting from insulation (1 family 1 room), suppressing the
mobility of refugees, using masks, maintaining distance, washing hands and keeping the environment clean, etc. Monitoring of health protocols is carried out together with the Covid-19 supporting village and KRB III village officers themselves. Basic health services for refugees are also carried out by involving various elements of the local government, especially the health office through the local community health centers as well as health volunteers from the community. Thus the community empowerment in the health sector is also applied to assist the handling of refugees. Central Java Province in general also holds incredible potential for volunteers during catastrophe [12].

On the basis of determining the status of disaster emergency response, The Regional Government of Magelang Regency has also activated the Unexpected Expenditure Budget (BTT) Regional Revenue and Expenditure Budget of five billion rupiah. This budget is used for handling refugees as well as anticipating the impact of Covid-19 on refugees. Provision of a budget for disaster management has become the authority and even the obligation of local governments. This can refer to Article 6 letter f and 61 paragraph (1) of the Disaster Management Law where regional governments need to allocate funds for disaster management.

3 The Effectiveness of Handling Mount Merapi Refugees by The Regional Government of Magelang Regency

The handling of refugees using the sister village system has become a new pattern implemented by the Regional Government of Magelang Regency. The application of this system in the handling of Mount Merapi refugees is based on the evaluation of the handling of refugees that occurred in 2006 and 2010 where the patterns of displacement were not well organized and effective. This system seeks to deal with refugees quickly, precisely and effectively so as not to cause casualties and the needs of refugees can be accommodated properly.

Based on the processes that took place in the field, this system made it easier for refugees to evacuate with clear destinations for refugees, for example village A (KRB III) was paired with village B (buffer). Thus, the villagers of A, when they needed a quick evacuation or even carried out independently, already knew they had to evacuate to the designated place. This is different from previous times where when evacuating KRB III villagers often experienced confusion about where to evacuate or even in certain places, the most important that this place could be used to evacuate.

On the other hand, the sister village system also facilitates the availability of basic needs as well as trauma recovery efforts for refugees. All the refugee needs ranging from food, health, proper place to other supporting facilities are accommodated and distributed evenly because the evacuation is well organized and the Regional Government of Magelang Regency has clear data on refugees. Provision of these needs is also assisted by the buffer village by empowering the village community. Thus, the availability of the basic needs of refugees can be guaranteed.

Likewise, the necessity to adapt to the Covid-19 pandemic situation which has become a new situation for the handling of Mount Merapi refugees. The sister village system is able to help prevent the spread of covid-19 to refugees so as not to cause new spread clusters. This system limits the number of refugees to a certain place (buffer village) so that there is no accumulation of refugees that can lead to crowds and ignore health protocols. The pattern of placing refugees in one well-ordered room using a divider also suppresses the spread of Covid-19. The mobilization of refugees was limited because the health protocol in refugee camps was in effect which also adjusted to the Regent's policy regarding the prevention of the spread of
Covid-19 in Magelang Regency. Thus, this system is also effective even in a covid-19 pandemic situation.

The handling of refugees with the sister village system was effectively applied when the eruption of Mount Merapi was included in the Covid-19 pandemic situation. This sister village system was also nominated for TOP 99 in the public service innovation competition by the Ministry of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia. This system is an innovation in community-based disaster risk reduction from the Disaster Management Agency (BPBD) and an icon for Magelang Regency regarding the handling of Merapi refugees.

An imperative portion of disaster administration endeavors in actions dealing with tall trusts to set up communication and participation within the divisions in its management system [13]. The sister village system comes as a unique pattern of handling, because it departs from the cultural values of the Javanese community, especially the people of Magelang Regency. The culture of Paseduluran (brotherhood) typical of the Javanese community can be applied well as a form of togetherness among community members to help people who are affected by the eruption disaster. In the Paseduluran culture, there is a sense of nyengkuyung together (jointly bearing) the burden of the refugees so as to create mutual cooperation, working hand in hand to help meet the needs of the refugees. This system is effectively implemented because it can not be separated from the pathways that become the spirit of the community both in the KRB III village and the buffer village. This system is also done in accordance with legal basis that have been mentioned above and health protocols.

<table>
<thead>
<tr>
<th>Legal Basis</th>
<th>Fields in Government Affairs</th>
<th>The Role of Magelang Regency Regional Government</th>
<th>Sister Village System</th>
<th>Paseduluran Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Number 23 of 2014</td>
<td>Concurrent Government Affairs, Compulsory Non-Basic Services in the field of community and village empowerment, sub-business cooperation between villages</td>
<td>Encouraging and facilitating cooperation between vulnerable villages and safe villages to become a place of refuge in the event of Mount Merapi eruption</td>
<td>One village that is considered vulnerable to cooperate with one or two buffer/safe villages located far from the slopes of Mount Merapi. There are 21 pairs of sister villages, including 2 vulnerable villages from Boyolali Regency paired with 2 safe villages in Magelang Regency.</td>
<td>Family ties between communities are ties of cooperation between vulnerable villages and buffer/safe villages. The vulnerable villages and safe villages are like brothers or sisters so that a sense of kinship is created between the two.</td>
</tr>
<tr>
<td>Central Java Governor Regulation Number 6 Of 2018</td>
<td></td>
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</tr>
<tr>
<td>Article 51 Law Number 27 of 2007</td>
<td>Handling Mount Merapi eruption as a whole through Concurrent Government Affairs and Mandatory Basic Services in the Field of Public Peace and Order and Community Protection</td>
<td>Determination of disaster emergency response status, including evacuation instructions for villagers in Disaster-Prone Areas</td>
<td>Evacuation of residents in vulnerable villages is carried out by Regional Disaster Management Agency, Army and Police Officers as well as independent residents. The sister village system makes it easier for</td>
<td></td>
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<tr>
<td>Article 23 Government Regulation Number 21 of 2008</td>
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<td>Article 47 Magelang</td>
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</tr>
<tr>
<td>Article 6 letter f and Article 61 Paragraph (1) Law Number 27 of 2007</td>
<td>Preparation of disaster management budget</td>
<td></td>
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<tr>
<td>---------------------------------------------------------------</td>
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<td></td>
<td></td>
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<tr>
<td>Article 12 Law Number 23 of 2014</td>
<td>Decentralization of the authority to handle government affairs by local governments through Concurrent Government Affairs, Compulsory Basic Services in the Social Sector Sub-disaster handling affairs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision of basic needs and trauma recovery for refugees</td>
<td>The distribution of aid for infrastructure and food for refugees is organized. The advantage of the sister village system is that data and refugee locations are clear and appropriate, making it easier for equitable distribution of aid management</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Empowering villages in disaster preparedness by involving safe villagers in handling refugees</td>
<td>Residents of the buffer/safe villages as well as volunteers or elements of The Regional Disaster Management Agency help provide clothing, food and shelter needs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management of health efforts by involving elements of health volunteers or local health centers to anticipate the spread of Covid-19 in refugee locations as well as providing infrastructure to support health protocols.</td>
<td>Anticipating the spread of Covid-19 in the refugee environment, refugee shelters are made according to health protocols, namely with cubicle partitions (1 family 1 room), wearing masks, washing hands, maintaining distance, staying away from crowds and reducing mobility. The advantage of evacuating the sister village system is that the number of refugees does not accumulate in one particular place because only vulnerable villages A can evacuate in...</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4 Conclusion

The handling of refugees with the sister village system is considered effective because it makes it easier for refugees, the pattern of refugee management is good, the provision of basic needs is accommodated and distributed evenly, and is able to prevent the spread of Covid-19 to refugees. This system is quite unique and works well because it departs from the typical cultural values of Javanese society, namely passeduluran (brotherhood) with a sense of togetherness and mutual cooperation to help fellow communities.

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References


Reconstruction of the Mining Policy Perspectives of Progressive Law

Faisal¹, Ndaru Satrio², Andi Cery Kurnia³
{progresif_lshp@yahoo.com¹, satrio.ndaru9@gmail.com², andicery@gmail.com³}

Universitas Bangka Belitung, Indonesia¹, ², ³

Abstract. The mining sector is a reality that is always attractive to researchers conducting studies. In the field of criminal law, punishment is always oriented towards criminal sanctions. The most important part of the basic idea and purpose of punishment has often gone unnoticed by policy formulation. This is what sometimes makes criminal law enforcement lose its criminal philosophy orientation. So how important it is to reconstruct criminal policies, especially in the mining sector. The aim of this research is to restructure criminal policy through textual (legal) and contextual (mining reality) studies. The link between the two will be studied in a reflective and analytical manner. The research method uses socio-legal research. The results of the research study concluded that the design of criminalization policies in the mining sector must be built based on a scheme that is inseparable from social policy and criminal policy, Siskumnas, elaboration on the theoretical basis of the objectives of punishment, and based on a scientific approach. In the end, punishment will be born with a progressive legal dimension with a holistic paradigm and criminal law politics through policy design.

Keywords: Progressive Law, Criminal Policy, Mining, Reconstruction

1 Introduction

The existence of abundant natural resources, minerals and coal must be preserved and well managed as a form of accountability to the Lord yme for his bounty. The basic principles and principles for managing our natural resources are found in chapter 33 verses (3) the national republic of Indonesia 1945. That the earth, the water and the natural resources it contains are controlled by the state and used for the greatest of people's prosperity. The deep significance found in the chapter is notable for the state organizers to carry out their activities on the management of natural resources, including the management of mineral and coal mines. The right of state ruling over the mineral and coal gives the state a mandate to perform policies (beleid) and stewardship (bestuursdaad), regelendaad (regelendaad), processing (beheersdaad), and supervision (toezichthoudensdaad) for the greatest cause of people's prosperity. The use of the word “for the greatest measure of people's prosperity” meant a central purpose that was to be embodied in the exercise of the natural resources of sustainable prosperity. It must not be misunderstood or even distorted for the benefit of some groups. Because rulers often use a particular momentum to put their own interests first. Nina Indriati Lestari in her paper governance, conflicts and rights: case studies on the informa.
“Through the country’s mining law and government decrees, these ‘controlling’ and ‘exploiting’ aspects often manifest themselves in the granting of mining permits to selective big companies and in the prioritising of their investments and interests” [1].

Following the issuance of the Minerba Law, the central government was given the mandate and authority to restructure mining management. We know that the most recent mining regulation is Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. According to the author, there are quite a lot of criminal provisions in it. The first is Article 158 of Law Number 3 of 2020 concerning Amendment on Law Number 4 of 2009 concerning Mineral and Coal Mining. This article contains criminal provisions related to licensing.

Other criminal provisions are contained in Article 159 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The offense in this article is related to submitting false reports and false information. Criminal provisions related to the use of permits that are not in accordance with their designation are contained in Article 160 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Further criminal provisions related to the smuggling of the transportation and sale of mineral and coal, as well as the criminal act of processing mineral and coal without rights. The provisions for the offense are contained in Article 161 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Another criminal provision is related to not carrying out post-mining reclamation and not providing post-mining reclamation guarantee funds. This provision is contained in Article 161 B paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Other criminal provisions are contained in Article 162 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The above offense is related to obstructing mining business activities. Further criminal provisions in Article 163 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. This article regulates the provisions for criminal offenses committed by corporations. Finally, the criminal provisions related to additional crimes contained in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Understanding carefully the criminal provisions contained in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, we can underline that punishment which is attempted as a stimulant to improve the situation always and always prioritizes criminal sanctions. It is important to note that the basic idea and purpose of punishment must always be held firmly. Do not let this most important part escape the attention of the formulation policies.

The urgency is very clear, namely that efforts to restructure criminalization policies through textual (legal) and contextual (mining reality) studies must be encouraged. Not only from the perspective of understanding the law, but in real terms we must also be able to measure how effectively the legal policies issued by the authorities can overcome the existing problems. The study explored by the author in a focused manner is related to the design of criminal policies in the mining sector with a progressive legal perspective.
2 Research Method

The research method uses socio-legal research. Articles in laws and regulations and policies can be analyzed critically and their meaning and implications for legal subjects can be explained. In this case reviewing Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and its influence in society [2].

3 Results and Discussion

3.1 Design of Criminal Policy in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the authors admit, cannot be separated from administrative law. The reason is quite clear, namely, of the various articles in this regulation, the issue of permission has caught the attention of the author. Even Barda Nawawi Arief in his book Kapita Selektta Hukum Pidana, it can be said that administrative criminal law is essentially an embodiment of criminal law policy as a means of enforcing or implementing administrative law.

Practically and logically the author tries to focus on discussions related to his criminal policy. It has been stated at the beginning of several articles that contain criminal provisions. The author tries to examine them one by one. Starting from Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The penalty is imprisonment for a maximum of 5 years and a maximum fine of 100 billion Rupiah. Second, Article 159 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The criminal sanction is a maximum imprisonment of 5 years and a maximum fine of 100 billion Rupiah. Third, Article 160 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

The criminal sanctions are imprisonment for a maximum of 5 years and a maximum fine of 100 billion Rupiah. Fourth, Article 161 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. 105. The criminal sanction in this article is imprisonment for a maximum of 5 years and a maximum fine of 100 billion Rupiah. Fifth, Article 161 A of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The criminal sanction is imprisonment for a maximum of 2 years and a maximum fine of 5 billion Rupiah. Sixth, Article 161 B paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The criminal sanction is a maximum imprisonment of 5 years and a maximum fine of 100 billion Rupiah. Seventh, 162 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The criminal sanction in this article is a maximum imprisonment of 1 year and a maximum fine of 100 million Rupiah. Eighth, Article 163 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The criminal sanction is a fine with an additional weight of 1/3 (one third) of the maximum penalty imposed.

Based on the explanation above, we can trace the design of the criminal policy through the criminal system which includes: (1) type of crime (strafsoort), (2) serious/light punishment (strafmaat), (3) how to carry out the crime (strafmodus). The types of criminal sanctions
contained in the mineral and coal regulations are not much different from those contained in the Criminal Code. The reason is that this regulation uses the same sanctions, namely the main and additional penalties. Regarding the severity of the existing criminal sanctions, the mineral and coal regulations provide a general maximum threat in the provisions of criminal sanctions. This gives the judge the freedom to give his verdict to the accused. The method of carrying out crimes contained in the mineral and coal regulations is also not regulated in detail. When this happens, the provisions used will still be returned using the main criminal law.

### 3.2 Criminal Policy Design in Mineral and Coal Mining Regulation Based on Progressive Law

Policies or efforts to tackle the problem of crime are essentially an integral part of community protection efforts (social defense) to achieve social welfare (social welfare). Therefore, it can be said that the ultimate goal of criminal policy is “protection of society” to achieve the main goal which is often referred to by various terms, such as “happiness of the citizen” (happiness of the citizen); “A healthy and refreshing cultural life” (a wholesome and cultural living); “Social welfare” or to achieve “balance” (equality). This is in line with the concept developed by progressive law. The basic philosophy of progressive law is an institution that aims to lead people to a just, prosperous life and make humans happy [3].

In the Criminal Code, to be precise in Article 10 of the Criminal Code, there are two types of criminal sanctions, namely primary and additional penalties. The main penalties are capital punishment, imprisonment, imprisonment, and fines and imprisonment as contained in Law No. 2 of 1946 concerning closure. Additional punishments are in the form of revocation of certain rights, confiscation of certain items and announcement of a judge's decision. Laws that contain criminal provisions are mostly administrative criminal laws (administrative criminal law). The criminal provisions in the Minerba Law are not much different from those contained in the Criminal Code. What makes it different is that there is no death penalty in it. However, what needs to be a common concern is that the criminal provisions in mining management regulations only provide assistance to administrative law, but seem to rely on criminal law enforcement. Especially if you look at the nature of this criminal law naturally, it should be enforced when other branches of law are unable to solve their problems. One of the evidences that can be stated is that if the Minerba Law is seen as a system, with the introduction of Chapter XXII regarding Administrative Sanctions previously the criminal rules contained in Chapter XXIII regarding Criminal Provisions, this shows that administrative sanctions take precedence first and then criminal sanctions [4].

The awareness to pay more attention to the existence of the community around the mining business has actually begun to be realized by various parties, including the entrepreneurs themselves. As stated by Sara Bice in the Willemien du Plessis article entitled Responsible Mining: Key Principles for Industry Integrity by Sara Bice. He said that:

> “There is a realisation that mining should not only protect the natural environment but also contribute to the upliftment of the surrounding communities and the communities from whence their workers originate (the sending communities)” [5].

Mining businesses must provide economic and social benefits, as well as accelerate regional development and encourage community/small and medium-sized business/entrepreneur economic activities as well as encourage the growth of mining supporting industries [6]. Seeing some Indonesian people who still depend a lot on their lives through their mining business, the
The author thinks that the criminal sanctions that are being threatened should be based on the real situation on the ground. This is done to minimize the issuance of judges' decisions that do not reflect justice in society if they only see it from a textual point of view without seeing the contextual. Regulations that include a general minimum limit are also very necessary, so that judges as determinants of a decision will be easier and more balanced in determining criminal sanctions. Sudarto stated that criminalization is defined as the process of determining an act as an act that can be punished. This process ends with the formation of a law in which the act is punishable by a criminal sanction [7].

The way of carrying out crimes in the mineral and coal regulations that we know is not regulated in detail. This situation should be covered by implementing regulations, so that it will make it easier for law enforcement officers at each stage of the examination to apply the law. Especially with regard to fines, if there is no clear regulation about the criminal sanctions being threatened, it will certainly be useless because it is ineffective and efficient.

Based on the analysis of the main issues of criminal law in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which are based on progressive law, it is hoped that there will be improvements related to criminal sanctions which of course are adjusted to the analytical knife used by the author that is based on progressive law. The reconstruction of criminal sanctions carried out in principle are: (1) The existing formulation of criminal sanctions should be adjusted to the actions, so that a balance will be realized; (2) The formulation of the criminal sanction must be clear and intact, especially in relation to the way the punishment is executed.

Everything must be returned to its original destination. If we look back at Barda Nawawi Arief's opinion in his book entitled Purpose and Guidelines for Criminalization (Perspective of Criminal Law Reform and Comparative Perspective) that:

“The formulation of the objectives and guidelines for punishment is intended as a function of controlling/countrolling/directing and at the same time providing a philosophical basis/foundation, rationality, motivation and justification for punishment” [8].

So in principle, law must be able to be a clear solution to the problems experienced by humans, not that humans are sacrificed for the law itself.

4 Conclusion

The design of the criminalization policy of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining can be traced through a criminal system which includes: (1) type of crime (strafsoort), (2) serious/light penalties (strafmaat), (3) how to carry out the crime (strafmodus). The types of criminal sanctions contained in the mineral and coal regulations are not much different from those contained in the Criminal Code. The reason is that this regulation uses the same sanctions, namely the main and additional penalties. Regarding the severity of the existing criminal sanctions, the mineral and coal regulations provide a general maximum threat in the provisions of criminal sanctions. This gives the judge the freedom to give his verdict to the accused. The method of implementing the crime contained in the mineral and coal regulations also does not regulate in detail.
Based on the analysis of the main issues of criminal law in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which are based on progressive law, it is hoped that there will be improvements related to criminal sanctions which of course are adjusted to the analytical knife used by the author that is based on progressive law. The reconstruction of criminal sanctions carried out in principle are: (1) The existing formulation of criminal sanctions should be adjusted to the actions, so that a balance will be realized; (2) The formulation of the criminal sanction must be clear and intact, especially in relation to the way the punishment is executed.

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References

Compensation for Damaged Land: Comparative Study between Indonesia and Japan

Embun Sari¹, Muhammad Yamin², Hasim Purba³, Rosnidar Sembiring⁴
{embunsari69@gmail.com¹, muhammad.yaminlubis@yahoo.com², lklod_sumut@yahoo.com³, oni_usu@yahoo.com⁴}

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. Indonesia and Japan regulate compensation for damaged land differently, especially in land expropriation process. This article aims to compare compensation concept of damaged land in Indonesia and Japan to get better understanding of the differences, similarities, and consequences. Using qualitative descriptive approach, rules and regulations that apply in Indonesia and Japan are compared. Land acquisition for development for the public interest is regulated by Law Number 2 of 2012. In land expropriation, the state provides appropriate compensation for the parties involved. In context of land acquisition, there is no compensation for damaged land. Law Number 24 of 2007 concerning Disaster Management mandates the government to oversee disaster management that accommodate compensation for damaged land due to natural disaster. In Japan, land expropriation will not happen unless landowners are appropriately compensated. Regarding compensation value, Japan has superior regulations compared to Indonesia. Japan uses consensus to determined compensation while Indonesia uses single value determined by public appraisal. However, Indonesia has special regulations for damaged land. Therefore, if damaged land is used for the public interest, landowners will not receive compensation through land acquisition procedures but rather through disaster management procedures.

Keywords: Land Acquisition, Compensation, Damaged Land, Compensation Money

1 Introduction

Throughout their lives, human cannot separate themselves from their dependence on the land. From birth to death, land continues to be an essential part of life, which is why it is considered as basic human need. On the one hand, national development, especially the development of various facilities for public purposes, requires a substantial plot of land [1]. On the other hand, all land is bound to their respective land rights. Without land, the development will merely stay as plan [2]. Thus, land acquisition for public interest requires proper regulations, observation of its impact on the public, and ensuring legal fulfilment of land rights. Besides having economic value, land also possesses social functions [3].

In Indonesia, land acquisition for development purposes is regulated by Law Number 2 of 2012 concerning Land Acquisition for the Implementation of Development for Public Interest (Land Acquisition Law). The types of land used for the public interest are regulated in Section 10 of the Land Acquisition Law and expanded in Law Number 11 of 2020 concerning Job Creation Chapter VIII.
These laws are expected able to guarantee the implementation of land acquisition for the development of public interests while still prioritizing the value of humanity, democracy, and justice. Appropriate compensation is provided for land acquisition for the development of public interests, as regulated in Land Acquisition Law which states that “Compensation is a proper and fair payment to landowners in the land acquisition process” [4].

As the population increase, demand for land, such as for a place to settle and grow as well as for development, also increase. However, land continuously decreases due to natural occurrences such as land abrasion that makes land accusation more challenging [5]. Abrasion is natural disasters that can make landowners lose their privilege to control, to use, or to take benefit from their partially or completely damage land. Abrasion commonly occurs on coastal or riverside area caused by destructive waves and currents triggered by disruption of natural balance [6]. Law Number 5 of 1960 regarding Basic Agrarian Regulations (Basic Agrarian Law) states that land rights are nullified if the land is damaged. In land acquisition for the public interest, compensation cannot be given to the owner if the land was damage as base on this law; the land rights are no longer exist.

Land damaged due to natural phenomenon is occurred beyond landowner control. This similar natural disasters that destroy land such as landslides, flash floods, earthquakes that cause liquefaction, tsunamis and so on. Law Number 24 of 2007 concerning Disaster Management states that the government oversees disaster management process. As mandated by fourth Alinea of the Preamble of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the Government protects the entire nation and all citizens of Indonesia, and so on. Disaster management is an inseparable part of national development, considering that Indonesia is located near the confluence of various tectonic plates that is prone to seismic and volcanic disasters. In implementing disaster management, the state can take over ownership rights over an object, including land and then designate the area or place of settlement as a prohibited area that unsuitable for human habitation.

Semarang-Demak Sea Wall Highway Project is part of Trans Java highway project located in northern coastal area of Java Island. Trans Java highway will connect Semarang with Surabaya on the northern route. Apart from being transportation network that will connect several centres of economic activities to spur growth, this project is expected to be an alternative solution to seawater abrasion problem that has submerged residential buildings in the area. There is challenges faced regarding damaged land during land acquisition process for the construction of this project, which has created a sense of urgency of further regulate damaged land by the government. Most of the sea wall highway tracts will be built on residential areas that are subject to abrasion and are inundated by seawater. Should landowners of damaged land not be entitled to compensation from the State in accordance with the Land Acquisition Law or should they, in accordance with the Disaster Management Law? This question should not have existed if there were clear regulations regarding damaged land or the stipulation of seawater abrasion as a natural disaster followed by the expropriation of all objects by the state with appropriate compensation for landowners.

Empirical research conducted in many countries show that amount of compensation for affected landowners after expropriation is often insufficient to rebuild their properties. Banerjee and Van Eerd found that compensation and resettlement assistance provided to affected landowners in Cambodia, Indonesia, Nigeria, Sri Lanka, and Philippines were insufficient to cover their losses, purchase alternative land, and maintain acceptable living standards. In China, a survey of 476 expropriation cases conducted by Keliang et al. revealed that 65.5% of affected farmers were dissatisfied with the amount of compensation [7].
2 Research Methodology

This article aims to compare compensation concept of damaged land using qualitative descriptive approach by comparative study between the Indonesian and Japanese laws. Primary and secondary data were obtained by conducting literature review and case study.

3 Discussion

3.1 Land Law System in Indonesia

Indonesia has laid the political foundations for the National Agrarian law, as referred to Section 33 Paragraph (3) of the 1945 Constitution: “The land, water, and natural resources contained therein are the rights of the state and used to its fullest extent for the prosperity of the people”. The word “rights” does not mean ownership, but at the highest level, the statement “giving authority to the highest authority” refers to the state [8]. The state ensures, administers, and controls the legal ties between humans and land, water, and skies. As the highest form of authority, the state has authority to control and organize the use, supply, and maintenance of land, water, and skies. In this case, the Agrarian Law must be intended for the happiness, welfare, and prosperity of Indonesians based on Pancasila (the Five Basic Principles of the Republic of Indonesia) as the state philosophy [9].

Based on this authority, the state is obliged to regulate the provision, allocation, and use of land, water, and skies to fullest extent by considering the principles of justice, certainty, and benefits. The land is natural resource with a relatively fixed amount and unlikely to increase. Therefore, regulation and land use control are needed so land conversions can be controlled, especially those which can have a detrimental impact on the community [9].

3.2 Natural Disasters and Damaged Land in Indonesia

Many people have registered their land but they lost their land due to abrasion, which voids their land rights according to the Basic Agrarian Law. Land rights are private rights, providing authority to right holders that can be an individual, a group or a legal entity. In practice, even after obtaining a certificate, the right to control, to use, or to take benefit from their land can still be void if the land was lost to abrasion [10].

Should the state eliminate legal relations between citizens and their land? It is to be carried out properly through clear and firm legal protection institutions that ultimately realize the aspiration of ensuring the welfare and prosperity of the people. Every individual has the right to obtain recognition of guarantees, receive protection, and legal treatment as fair as possible, receive equal treatment before the law, and obtain legal certainty [11]. This is regulated in Section 3 Paragraph (2) of Law Number 39 of 1999 concerning Human Rights. The Basic Agrarian Law voids the rights of damaged land, causing legal uncertainty to those whose lands were damaged due to a disaster such as abrasion.

Section 1 point 1 of Law Number 24 of 2007 concerning Disaster Management defines disaster as a series of events that disrupt life and livelihoods of the public, is caused either by natural or non-natural factors, including humans themselves, causing loss, damage, psychological impact, and casualties. Does land simply disappear without legal certainty? Land
registration aims to provide the public with legal certainty through land registration certificates, creating a feeling of security in individuals [12].

Governments in various countries play a role in supporting their citizens whose residences or places of business have been rendered unusable due to salinization or flooding, the disappearance of coastal lands and riverbanks, or land shifts. The government is expected to not only rehouse those affected but also be able to rebuild communities. For example, various national, bilateral, international, and non-governmental programs were carried out for recovery, reconstruction, and reform of development in countries affected by Hurricane Mitch namely Honduras, Nicaragua, El Salvador, Guatemala, and Belize [13]. Another example is the 2011 Tohoku tsunami disaster management where the Japanese government carried out reconstruction in various fields, including infrastructure design, transportation, land use management, urban design, relocation, as well as economic and industrial prospects [14].

In Indonesia, the government has frequently relocated and compensated those who have lost their land and homes due to disasters, as was the case with the tsunami in the Nanggroe Aceh Darussalam Province and Nias Islands on 6 December 2004. Post-disaster community recovery is regulated in Section 5 of Government Regulation Number 2 of 2007, ensuring that landowners whose lands, registered or not, have been damaged receive replacement land or compensation through rehabilitation and reconstruction according to the regional government or the Rehabilitation and Reconstruction Agency.

The Sidoarjo mudflow is the result of an erupting mud volcano at the Lapindo Brantas Inc. drilling location in Sidoarjo, East Java. The first eruption occurred on May 29, 2006, which lasted for several months causing inundation of residential, agricultural, and industrial areas in the three surrounding sub-districts, as well as affecting economic activity in East Java. The National Mudflow Disaster Management Team in Sidoarjo was formed through Presidential Decree No. 13 of 2006. The decree states that the team was formed to save residents around the disaster site, maintain basic infrastructure, and solve the mudflow problem with minimal environmental risk.

In 2010 after the eruption of Mount Merapi, as many as 3,612 people living in danger zones were permanently relocated to permanent residences in Pagerjurang, Giriharjo Neighborhood, and Kepuharjo Village in Cangkringan Subdistrict. The first eruption of Mount Sinabung occurred on August 10, 2010, and has not stopped, causing the government to relocate locals, especially those within a 0–3-kilometer radius from Sinabung as it is considered as a highly dangerous area. During the first phase, 370 families from Sukameriah and Bekerah villages were relocated to housing in Siosar Village, Merek Subdistrict.

The tsunami earthquake and liquefaction that occurred in Palu, Sulawesi destroyed and even sank several residential areas including Petobo Village, the housing complex in Balaraa Village, some parts of Sidera Village, and Jon Oge Village in Sigi District. The government ordered residents of the Palu Koro fault line and adjacent locations to relocate to the previously prepared 320 hectare-area located approximately 20 km from the initial location, as it is prone to disasters.

### 3.3 Compensation for Damaged Land in Indonesia

In the concept of the relationship between humans and land, Indonesian philosophy places the individual and society as an inseparable unit (duality). An individual’s need for land is considered part of community needs, showing that the relationship is not merely individualistic, but rather collective while still providing place and respect for individual rights [15]. For many
people, land is a necessity in realizing human rights. Land is not merely a commodity but an essential element for the realization of human rights [16].

With human rights to land in mind, if the state needs land for the public interest, including the interests of the state as well as the common interests of the public, land rights can be revoked by providing appropriate compensation. Furthermore, it is regulated in the Land Acquisition Law by carrying out a compensation appraisal on a plot of land that produces a single monetary value. Further discussions are conducted only to determine the form of compensation.

In the case of the Sea Wall in Semarang-Demak, the community is unable to prevent their land from being damaged and submerged caused by abrasion, which is a natural phenomenon that occurs out of control of the landowners. Following the Basic Agrarian Law, a plot of land must be registered for termination to be considered as damaged land. In addition, according to the Disaster Management Law, the termination of land rights must be compensated accordingly if caused by force majeure (disasters), changes in the landscape beyond human control, and related to the realization of human rights where the state should be present to provide compensation or relocation to affected communities. Examples of these are actions of the state towards those affected by the tsunami, earthquake, and liquefaction.

3.4 Compensation for Damaged Land in Japan

The train of thought and law of Japan continue to move steadily toward the West. The latest legal actions are often brought to court and the popular Japanese press are now paying more attention to laws, prosecutions, and economic and political relations with the West. Showing remarkable economic and industrial progress, Varley noted, “The Japanese continue to uphold their cultural heritage. They are the gulf that still separates the East and West in this modern era” [17].

Japanese Civil Law regarding property law is based on Roman Law. Section 29 of the Japanese Constitution expresses the basic rights of Japanese citizens concerning property, including the right to own property is inviolable; in accordance with the public welfare, property rights must be determined by law; and private property may be seized for public use based on fair compensation. The definition and scope of property rights in Japan are further codified in the Civil Code. Japanese Property Law (zaisan ho) has remained unchanged since the adoption of the original Civil Code in 1896, save for facing modern trends and keeping up with increased urbanization [18].

The Japanese civil law system respects individual property rights, rejects fragmentation, and avoids sharing of ownership [19]. In 1951, The Land Expropriation Law (LEL) was enacted under Paragraph 3 of Section 29 of the Japanese Constitution as a general law on compulsory land acquisition for general purposes. LEL regulates the requirements, procedures, and impacts of expropriation and use of land, and decisions related to the public interest under the authority of the Ministry of Land, Infrastructure, and Transport. These procedures ensure a quick and simple process of land acquisition.

If necessary, public consultation will be held. The government or parties who need land will only acquire by force if more than 80% people are agree or after 3 years from the initial announcement, whichever occurs first. This must be announced to all parties involved [20].

The role of compensation consultant or appraiser is crucial in determining amount or form of compensation. If landowners are not satisfied with the proposed compensation, they can appeal to the minister. Such appeal can also be submitted directly to the court, provided the matter is limited to the amount of compensation. In recent years, Japan's Supreme Court issued
eight expropriations in five cases and made two important decisions regarding compensation [21].

Negotiations between parties involve strict legal procedures and all property decisions have to be made by all landowners and must reach a consensus. Since 1966, the construction of the New Tokyo International Airport in Narita, Japan has received negative and extreme reactions from landowners who oppose its development. Farmers were involved in violent protests, and some of them even lost their lives. Apart from farmers and landowners, students and political parties formed the Sanrizuka Shibayama Union against the Airport (Sanrizuka-Shibayama Rengo Kūkō Hantai Dōmei) [22]. Strong protest and resistance continued until 2003. Almost forty years later, the project was still underway but had come to a halt. This experience became a valuable lesson for the Japanese Cabinet; efforts to strategize and negotiate with landowners proved to be much more effective than forced evictions.

Compensation for damaged land due to disasters has not been regulated in Japan. There is no structured compensation program for disaster victims in general, no specific program, or law that provides more than token compensation to earthquake or tsunami victims, and no compulsory insurance (and often none at all) for those living in disaster-prone areas [23].

3.5 Comparison of Damaged Land Compensation in Indonesia and Japan

The term “law comparison” (not “comparative law”) does not compare civil law, criminal law, constitutional law, and so on with one another [24], but rather one legal system with another. Law is compared based on two understandings that are unmistakable that they never need to be mentioned at all. The first is that law, as understood in the West, is a harbinger of civilization. The second understanding is that the most dominant civilization in Europe (which has extended to America, due to emigration and previous European settlements). Simply put, in the early twentieth century, civilization was viewed primarily as Western, white and Christian [25]. Law comparisons include improvements to international law: it is useful in historical and philosophical legal research; it is essential to better understand and correct national laws; and, it enhances understanding of outsiders, thus contributes to the creation of favourable development of international relations [25].

Kamba in Peter De Cruz [17] stated that there are three stages involved in the comparison process; 1) Description phase: describing the norms, concepts, and institutions of the related system; 2) Identification phase: showing the differences and similarities of the systems being compared and; 3) Explanation phase: explaining the similarities and differences between systems, concepts, or institutions. The differences, similarities, and consequence comparison in compensation for damaged land in Indonesia and Japan are shown in Table 1, Table 2, and Table 3, respectively.

| Table 1. Differences in land acquisition compensation in Indonesia and Japan |
|-----------------|-----------------|-----------------|
| **Difference**  | **Indonesia**   | **Japan**       |
| Legal Basis     | Basic Agrarian Law, Land Acquisition Law, Law Number 11 of 2020 | The 1951 Land Expropriation Law (LEL) |
| Land Acquisition Compensation | 1. Compensation is a proper and fair replacement for the entitled parties in the land acquisition process. | 1. There are special regulations governing compensation or losses. |
|                 | 2. Everything attached to the property. |                  |

Kamba in Peter De Cruz [17] stated that there are three stages involved in the comparison process; 1) Description phase: describing the norms, concepts, and institutions of the related system; 2) Identification phase: showing the differences and similarities of the systems being compared and; 3) Explanation phase: explaining the similarities and differences between systems, concepts, or institutions. The differences, similarities, and consequence comparison in compensation for damaged land in Indonesia and Japan are shown in Table 1, Table 2, and Table 3, respectively.
2. Land, space above and below ground, buildings, plants, and objects attached to the land, and other assessed losses.
3. With consideration, the remaining land can be compensated.
4. The land court does not exist.

<table>
<thead>
<tr>
<th>Damaged Land</th>
<th>Properly set</th>
<th>Not set</th>
</tr>
</thead>
</table>

### Table 2. Similarities in land acquisition compensation in Indonesia and Japan

<table>
<thead>
<tr>
<th>Similarity</th>
<th>Indonesia</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal System</td>
<td>Civil Law System</td>
<td>Civil Law System</td>
</tr>
<tr>
<td>Legal Basis</td>
<td>Regulate land acquisition compensation through law</td>
<td>Regulate land acquisition compensation through law</td>
</tr>
<tr>
<td>Land Acquisition Purpose</td>
<td>Public Interest</td>
<td>Public Interest</td>
</tr>
<tr>
<td>Constitution</td>
<td>All laws regarding land are based on the constitution</td>
<td>All laws regarding land are based on the constitution</td>
</tr>
</tbody>
</table>

### Table 3. Consequences comparison in land acquisition compensation in Indonesia and Japan

<table>
<thead>
<tr>
<th>Consequence</th>
<th>Indonesia</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Basis</td>
<td>Land acquisition is regulated in three laws, shows the complexity and development process.</td>
<td>More settled regulation.</td>
</tr>
<tr>
<td>Compensation</td>
<td>Adjust principle, compensation for all physical and non-physical lost base on public appraiser valuation but more potential to appeal.</td>
<td>Consensus principle, compensation just for materials attached to the property. Sometime consensus takes more times.</td>
</tr>
<tr>
<td>Appeal</td>
<td>Takes more times as general court has many cases.</td>
<td>Need less time.</td>
</tr>
<tr>
<td>Damaged Land</td>
<td>Making compensation becomes more complex to determine.</td>
<td>It is not part of compensation.</td>
</tr>
</tbody>
</table>

In Indonesia, legal basis of compensation in land acquisition consists three different laws, Basic Agrarian Law, Land Acquisition Law, and Law Number 11 of 2020 compare to single law in Japan. It seems that Japan has more settled law relating to land expropriation. Compensation for physical and non-physical lost are given to the landowner in Indonesia. This includes the remaining land that no longer can be used as prior the project. While in Japan, compensation just for everything attached to property that will be used as development of public interest. In Indonesia, adjust principles are carried out by public appraiser to determine the compensation. Japan uses public appraiser as well but consensus more dominant in the process. Land court in Japan makes appeal related with land acquisition finish relatively faster than in Indonesia. In Indonesia, similar appeal likely needs more times as general court already have many cases. Indonesia has better regulation relating to damaged land. Compensation is given to landowner who lost their land due to natural disaster.
4 Conclusions

In Indonesia, compensation for landowners can be given after the land has been fully acquired, in which the value of compensation is determined by public appraiser. According to the Basic Agrarian Law, damaged land cannot be compensated as its land rights are terminated. According to the Disaster Management Law, the government is responsible for overseeing disaster management, including determining disaster-prone areas as non-settlement areas by revoking or reducing part or all ownership rights and providing appropriate compensation.

In Japan, no land expropriation takes place unless compensation rights are granted to the landowner in exchange for the acquisition of land rights. The Japanese constitution is the underlying authority for fair compensation. For example, if certain laws allow acquisition without fair compensation, fair compensation will be declared constitutionally under Section 29 Paragraph 3 of the Japanese Constitution and the landowner can file a lawsuit to demand compensation under the said provision. However, if certain laws do contain provisions for fair compensation, the landowner should claim it under that provision as this is the manifestation of fair compensation under the constitutional provision of “in substance and procedure”. In Japan, no specific regulation is governing damaged land.

Regarding compensation value, Japan has superior regulations compared to Indonesia. In Japan, the amount of compensation related to land must be settled based on consensus while in Indonesia, the amount of compensation is a single value determined by an appraisal. However, for land damaged by disasters, Indonesia has special regulations while Japan does not. In Indonesia, if damaged land is used for the public interest, the landowner will not receive compensation through land acquisition procedures but rather through disaster management procedures.

References


Legal Culture in Border Areas (Study in Ketungau Hulu and Ketungau Tengah Subdistricts, Sintang District, West Kalimantan Province)

Robert Hoffman¹, Budiman Ginting², Kamarullah³, Mirza Nasution⁴
{tobing_unka@yahoo.com¹, budiman.gt59@gmail.com², kamarullah.uun@gmail.com³, mirzanasution72@gmail.com⁴}

Universitas Sumatera Utara, Indonesia¹, ², ⁴
Universitas Tanjungpura, Indonesia³

Abstract. The statutory regulation governing the border areas of Indonesia is Law Number 43 of 2008 concerning State Territory (State Gazette of the Republic of Indonesia of 2008 Number 177 and Supplement to State Gazette of the Republic of Indonesia Number 4925). The purpose of this paper is to determine and analyze the legal culture of the communities surrounding the border areas of the country. The theory used in this study is the Legal System theory from Lawrence M. Friedman which says that legal culture is defined as a number of ideas, values, expectations and attitudes towards law and legal institutions, some of which are public or some are in the public domain. This study uses a normative juridical research method using a statutory approach with a descriptive analytical research nature, which provides an overview of the legal culture of the community around the border area. This study analyzed the data obtained, then systematically compiled and analyzed the data qualitatively to clarify the problem being discussed. The legal culture of the communities surrounding the border of Indonesia and Malaysia, specifically in various villages in Ketungau Hulu and Ketungau Tengah Subdistricts, Sintang District, West Kalimantan Province is below standards. Due to a lack of publication of statutory regulations, these communities show little regard to the law. They only see the law as the police, soldiers, and other officials in uniform. The information must be published by all responsible parties, namely the central, regional, and village governments and the community through various means of communication, information, socialization, or other forms of means or media.

Keywords: Legal Culture, Territory, Border, Country

1 Introduction

Indonesia adheres to a Civil Law System which prioritizes laws and regulations. Therefore, the Indonesian borders are also managed according to laws and regulations. The regulation that governs the borders of Indonesia is Law Number 43 of 2008 concerning State Territory (State Gazette of the Republic of Indonesia of 2008 Number 177 and Supplement to State Gazette of the Republic of Indonesia Number 4925). The law consists of 12 chapters, 26 articles, and explanatory sections which were passed by the President on November 14, 2008.

The existence of Law Number 43 of 2008 concerning State Territory is to ensure that there will be no discord in the border which can affect the attitudes and actions of citizens in protecting the territory of the country [1]. The borders of Indonesia need to be strictly regulated considering
that there are multiple border areas. The main ideas contained in Law Number 43 of 2008 concerning State Territory are [1]:
a. The territory of the state, namely land, inland, archipelagic and territorial waters, the seabed and the land underneath, as well as the skies above, including the resources contained therein.
b. Sovereign rights of the Republic of Indonesia in the exclusive economic zone and the continental shelf as well as supervisory rights in additional zones.
c. The government’s authority to regulate the management and utilization of state territory and border areas.
d. Institutions authorized to manage border areas.

This regulation is intended to provide legal certainty regarding the scope of the state territory, the authority to manage state territory, and sovereign rights [2].

To successfully manage state borders, a legal culture needs to be established for the surrounding communities. This must be prioritized by all related parties to ensure justice and prosperity for the people and the nation.

Friedman [3] states that law is a combination of legal substance, structure, and culture. The legal substance is the output of the legal system in the form of regulations and decisions that are used by both the regulators and the regulated. The legal structure is the institutions created by the legal system that contain various functions to support the operation of the system. Legal culture consists of values and behaviors that affect the enforcement of the law which are, according to Ali [4] the social mindset and forces that determine how the law is used, avoided, or abused. Friedman defines legal culture as a collection of ideas, values, expectations, and behavior towards the law and legal institutions, some of which are public or in the public domain [5]. The purpose of this paper is to determine and analyze the legal culture of the communities surrounding the border areas of the country.

2 Research Method

This is normative juridical research using a statutory approach with the nature of descriptive analysis research, which is to provide an overview of the legal culture of the surrounding communities of border areas. This research qualitatively analyzes the data, then systematically arranges and qualitatively analyzes the data to clarify the issues being discussed.

3 Results and Discussion

3.1 Legal Culture in Border Areas

Territorial boundaries on land are the boundaries agreed upon by the Dutch East Indies Government and the British Government in Kalimantan and Papua, and the Portuguese Government on Timor Island which subsequently became Indonesian territory based on the principle of uti possidetis juris applicable in international law. Based on this principle, an independent country inherits the territory of its former colonial state.

The land boundary between Indonesia and Malaysia was established on the basis of the Dutch East Indies and British Indies Conventions of 1891, 1915, and 1928. The land boundary
between Indonesia and Timor Leste was determined on the basis of the Convention on the Delimitation of the Boundaries of the Dutch East Indies and Portugal in 1904 and the decision of the Permanent Court of Arbitration (PCA) 1914. The land boundary between Indonesia and Papua New Guinea was established on the basis of the 1895 Dutch-British Indies Boundary Treaty.

The boundaries of the Indonesian state on land bordering Malaysia are in the Provinces of West Kalimantan, East Kalimantan Province, and North Kalimantan Province. In particular, West Kalimantan Province has a land border area which is spread over 5 (five) regencies, namely: Sanggau, Sambas, Sintang, Kapuas Hulu, and Bengkayang. The land border line in West Kalimantan Province along 966 Kilometers separates the territory of the Republic of Indonesia from the territory of Sarawak, Malaysia.

Sintang District, West Kalimantan Province, is a district that is directly adjacent to East Malaysia, with the administrative boundaries being: a) North: Kapuas Hulu District and Malaysia; b) South: Melawi District, Central Kalimantan Province; c) East: Kapuas Hulu District; d) West: Sekadau District, Sanggau District, and Melawi District.

The border area of Sintang District covers 4,306 km², consisting of 58 villages and 186 hamlets. Sintang has 2 subdistricts that are directly adjacent to Malaysia, namely Ketungau Hulu and Ketungau Tengah. The two sub-districts are sub-districts that are directly adjacent to the State of Malaysia, precisely in the Sri Aman District, a sub-district located in the State of Sarawak, East Malaysia. The population in the two sub-districts in 2019 reached a total of 53,691 people, respectively 22,532 people in Ketungau Hulu District and 31,159 people in Central Ketungau District.

According to the government structure in Indonesia, border areas are managed by village governments within the subdistrict. There are several villages in Ketungau Hulu and Ketungau Tengah subdistricts, Sintang, West Kalimantan which are directly adjacent to the Malaysia, namely: Sungai Kelik, Jasa, Nanga Bayan, Sungai Seria, Senaning, Rasau, Muakan Petinggi, Sebuluh, Riam Sejawak, Engkeruh, and Neraci Jaya.

These villages are home to traditional communities. Villagers rely on agricultural and forest products that are sold to Malaysia as the closest destination with higher selling prices compared to Indonesia.

Customary law and leaders govern these villagers; they are more prevalent than state laws and regional regulations. Even village regulations as legal products are sparsely found.

Further attention is required to improve the conditions of these villages, as the facilities and infrastructure are generally inadequate.

Residents in these two sub-districts are still often in and out of Malaysia. The goal is not to picnic, travel or travel, but solely to meet their needs. There are several factors that cause residents to often go in and out of Malaysia, including:
a. The distance to Malaysia is closer when compared to Sintang City, as the capital of Sintang Regency. The distance from Senaning, the capital of Ketungau Hulu sub-district to Sintang City is about 189 km, while to Sri Aman, Malaysia it is about 156.8 km. Meanwhile, the distance from Nanga Merakai, the capital of Central Ketungau District to Sintang City is about 99 km, while to Sri Aman, Malaysia it is 78.3 km.
b. Prices of basic commodities in Sri Aman, Malaysia are cheaper.

Population traffic to neighboring Malaysia is not a desire but a necessity, because conditions in their area (Ketungau Hulu and Ketungau Tengah sub-districts) still lack facilities and infrastructure or public facilities in all fields, such as roads, electricity, educational facilities, health, market, and so on.
The limited conditions finally made the residents look for a way out to venture across to neighboring Malaysia even though they had to walk through jungles and hills or river paths. There is no official border route as an entry point between Indonesia and Malaysia, so the border routes that are often used by residents of the two countries to enter and leave are strictly guarded by the military of each country, Indonesia and Malaysia with the establishment of the Border Security Post (Pos Pamtas) to protect the boundaries of their respective countries.

Residents in the two sub-districts view that neighboring Malaysia provides a lot of their necessities of life, so they often go in and out of Malaysia. So, they travel to Malaysia not for tours or picnics but to survive by selling agricultural and plantation products, shopping to meet household needs and medical treatment when sick. Residents in Ketungau Hulu and Ketungau Tengah sub-districts want their area to be developed that provides various facilities and infrastructure for their survival. This then raises the author's sad attitude towards the fate of the Indonesian population living in the border areas of the country who have not yet enjoyed the comfort of life when the State of Indonesia has entered the age of 75 years of independence.

Seeing the life of the people in the border areas of the country which is still a concern, the sub-districts which are part of the district/city area as their place of residence must of course be managed as well as possible. The management of sub-districts located in state border areas must be carried out with clear arrangements which include authority, budget and so on.

In addition, the legal culture of these villages raises concerns. The community is rather disobedient to the law. There are still many cases of illicit trafficking between Indonesia and Malaysia. Many people in border areas still do not know and understand the laws and regulations in Indonesia due to the lack of publication of statutory regulations in the region.

It is highly important to publish statutory regulations as Indonesia is a state of law. One of the principles of a legal state is the principle of legality; the actions of the government and all its citizens must be based on the prevailing laws and regulations. Gautama [6] stated that there are 3 (three) characteristics or elements of a legal state, one of which being the principle of legality: “Every state action must be based on the law which must also be obeyed by the government and its apparatus”. Ten Berge [7] states that the principle of legality is one of the principles of a legal state: “The limitation on the freedom of citizens (by the government) must be based on laws as general regulations”.

The legal state of Indonesia also adheres to the principle of legality as stated by Prodjodikoro [7]: “in acting towards citizens and among each other, all state organs, especially governmental organs cannot act carelessly; they must adhere to the law. All social relations must comply with the applicable legal regulations”. From the explanation of the experts above, it can be concluded that a legal state contains the principle of legality.

As a constitutional state, Indonesia possesses written law as stated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations amended by Law Number 15 of 2019, which includes: 1) The 1945 Constitution of the Republic of Indonesia; 2) The People’s Consultative Assembly Decrees; 3) Laws/Government Regulations in Lieu of Laws; 4) Government Regulations; 5) Presidential Regulation; 6) Provincial Regulations; and 7) District/City Regulations.

Other laws and regulations include the regulations stipulated by the People’s Consultative Assembly, the People’s Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank of Indonesia, Ministers, agencies, institutions, or commissions of the same level which is formed by law or the government at the behest of the law, the Provincial People’s Representative Council, the Governor, the Regency/City People’s Representative Council, the Regent/Mayor, the Village Head, or its equivalent. The existence of these laws and regulations is recognized
and has binding legal force as long as it is ordered by higher laws and regulations or is established based on authority.

In the science of legislation, the publication of laws and regulations is one of the principles of statutory regulations, namely: the principle of “het beginsel van de kenbaarheid” (recognizable). Attamimi [8] states that this principle is one of the principles that define a good law and/or regulation in the Netherlands: “If a law or regulation is not recognized and known by the general public, especially by higher-ups and officials, then it will lose its purpose. It fails to enact the principle of equality and the principle of legal certainty, thus failing to enact the regulation itself. This principle is very much needed, especially if the laws and regulations impose the people with various obligations. The principle which states that the general public is considered to understand the laws and regulations needs to be balanced with this principle” [8]. Fuller [3] said that the regulations that have been issued must be published, so Twining’s [9] “ex-cathedra” statement of the law applied equally in society is very accurate indeed.

The principle of publication is different from the principle of promulgation. The principle of promulgation assumes the general public knows the laws and regulations. This principle is commonly known as the theory of legal fiction or commonly known as the theory of prejudice [10]. In her work, Soeprapto [11] considers the term “promulgation” to be different from “announcement” (in her writing, the publication is part of the “announcement”). According to her, in the Dutch language, promulgation is translated to “Afkondiging” while the announcement is translated to “Publicatie”. The definition of each is as follows [11]:

a. Afkondiging (Promulgation): ter openbare bekendmaking, voor orderscheidene overheidshandelingen voorgeschreven en wel veal op strafe van nietigheid (public announcement regarding government actions, partly with criminal sanctions).

b. Publicatie (Announcement/Publication): bekendmaking, openbaarmaking (announcement, disclosing information to the public).

c. Promulgation: The order given to cause a law to be executed and published; it differs from publication.

d. Publication: To make public, to make known to people in general; to bring before public.

According to Soeprapto [11]: “promulgation is a formal announcement of state regulation through a special official publication following the applicable provisions. Through this, the regulation has fulfilled the principle of formal notification, fulfilled the requirements to be a regulation, fulfilled the formation procedure, and has been recognized (kenbaar) which gives it binding power. The purpose of promulgation is to ensure that the general public formally recognizes state regulations (een ieder wordt geacht de wet te kennen) so that there is no excuse for not knowing them (opdat niemand hiervan onwetendheid voorwende), and ignorance of these regulations does not make a person subject to pardon (ignorantia iuris neminem excusat).

Promulgation is necessary to ensure that the general public formally recognizes state regulations (een ieder wordt geacht de wet te kennen) and ignorance of these regulations does not make a person subject to pardon (ignorantia iuris neminem excusat) [11]. The publication is a material announcement of a law or regulation to the public with the main objective of making the contents of the law or regulation as widely known as possible. Laws and regulations can be published in various ways, through dissemination, issuance, and many others. The purpose of a publication is to make the public as much as possible materially aware of the laws and regulations and understand the contents and purposes contained therein [11].

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1 See Article 7 Paragraph (1) and Article 8 Paragraphs (1) and (2) Law Number 12 of 2011 concerning the Formation of Laws and Regulations.
From Maria Farida Indrati Soeprapto’s statement, it can be said that the concept of promulgation contains the principle: "the general public is assumed to know the laws and regulations" or also known as the theory of legal fiction in law science. Meanwhile, the concept of the publication contains the principle: "the general public knows the laws and regulations".

In addition, Soimin’s [12] work defined promulgation: "Promulgation is the sole condition for binding power". Binding power is the basis of validity. From this, the theory of legal fiction which states that "the general public is assumed to know the laws and regulations" emerged. Soimin defines publication as an instrument to ensure that the general public is made aware of the laws and regulations that have been promulgated by both central and regional governments. Whether or not people understand is another matter, as it depends on the implementation of the publication itself. From Soimin’s statements above, it can be said that the concept of promulgation contains the principle: "the general public is assumed to know the laws and regulations" or also known as the theory of legal fiction. Meanwhile, the concept of the publication contains the principle: "the general public knows the laws and regulations".

In comparing promulgation and publication, several similarities and differences can be found. Promulgation and publication are similar in that both are required by laws and regulations. The differences can be seen from the principle, characteristic, goal, and time as described below:

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Promulgation</th>
<th>Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principle</td>
<td>The general public is assumed to know the laws and regulations.</td>
<td>The general public knows the laws and regulations.</td>
</tr>
<tr>
<td>Characteristics</td>
<td>An assumption or preconceived notion that the general public knows a statutory law.</td>
<td>A fact that applies to the general public.</td>
</tr>
<tr>
<td>Goal</td>
<td>To create binding power and the enactment of laws and regulations.</td>
<td>To ensure obedience to the laws and regulations that have been promulgated so that they are binding and valid.</td>
</tr>
<tr>
<td>Time</td>
<td>After laws and regulations have been passed, they will then be promulgated in an official state publication.</td>
<td>After laws and regulations have been promulgated in an official state publication, it is then published to the general public.</td>
</tr>
</tbody>
</table>

From the description above, it can be concluded that the publication of laws and regulations aims to provide knowledge and understanding of a law or regulation.

To provide knowledge and understanding of laws and regulations, publication requires means of communication as according to Soimin [12]: "to know and understand laws and regulations, means of communication are needed". Thoha [13] states that: "communication is a process of delivering and receiving news or information from one person to another". Davis and Newstrom [14] argue that: “communication is the transfer of information and understanding from one person to another. It is a way of conveying ideas, facts, thoughts, and values to others”. Meanwhile, Edwin Fillipo as conveyed by Jiwanto [15] defines communication as an act of encouraging other parties to interpret an idea in a way desired by the speaker or writer.

Laws and regulations are information that can be used as a form of communication. According to Davis [16], information is data that has been processed into a form that is important
to the recipient and has real value that can be felt in current or future decisions. Likewise, Burch and Strater [17] state that information is the collection or processing of data to provide knowledge or information. Meanwhile, Terry [18] defines information as important data that provides useful knowledge.

In the Indonesian constitutional system, information is a human right and thus the right of Indonesian citizens that is guaranteed under Article 28F of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which states that the purpose of obtaining information is to develop character and social environment². The principle of guaranteeing the right to obtain information is under the nature of the Republic of Indonesia as a legal state that upholds human dignity and guarantees the equal position of all citizens in the face of the law, and the desire of the Indonesian people to continuously promote and protect human rights in the life of the people and of the nation. The right to obtain information to develop character and social environment is expressly regulated in Article 14 Paragraph (1) and (2) of Law Number 39 of 1999 concerning Human Rights which states that everyone has the right to communicate and obtain information needed to develop character and social environment and everyone has the right to seek, obtain, own, store, process, and convey information using all available means.

In addition, the right to obtain information is guaranteed in all countries in the world, as stated in Article 19 Paragraph (2) of the International Covenant on Civil and Political Rights, which has been adopted by General Assembly Resolution 2200 A (XXI) of the United Nations on December 16, 1966. Indonesia has ratified this into Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. Article 19 Paragraph (2) of the International Covenant on Civil and Political Rights states that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart any information and thoughts, regardless of restrictions in oral, written, or printed forms, through artwork or any other media of choice.

From the explanation above, it is clear that Indonesia as a legal state guarantees all individuals to be able to obtain information and there are no limitations on the information that is sought, obtained, owned, stored, or processed by all individuals. This means that anything can be considered as information, including laws and regulations.

According to Article 1 point 1 of Law Number 14 of 2008 concerning Disclosure of Public Information, information is defined as information, statements, ideas, and signs that contain values, meanings, and messages, data, facts, and explanations that can be seen, listened to, and read which are presented in various digital or analog packages and formats following the development of information and communication technology. Laws and regulations can be considered as public information; according to Article 1 point 2 of Law Number 14 of 2008 concerning Disclosure of Public Information, public information is information that is generated, stored, managed, sent, and/or received by state administration and/or other public bodies following this law and other information related to the public interest.

In the aforementioned article, public bodies are defined as executive, legislative, judicial, and other bodies whose main functions and duties are related to state administration and partly or fully funded by the state/regional budget or non-government organizations as long as some or all of the funds come from the state/regional budget, public donations, and/or foreign countries (Article 1 point 3).

Therefore, laws and regulations can be considered as public information that must be published to the general public to ensure public awareness and understanding of the published laws and regulations and the contents and purposes contained therein. Satjipto Rahardjo states

² See Article 28F of the 1945 Constitution.
that “the general public must know the existing regulations” [19]. Likewise, Ronny Hanintijo Soemitro who quoted Metzger’s opinion states that the effectiveness of laws and regulations is determined by the extent to which the general public is aware of the contents contained therein [20].

From the above explanation, the publication of laws and regulations in border areas is very important in the context of realizing a legal culture in which the people know and understand the laws and regulations to create a law-abiding society. The information must be published by all responsible parties, namely the central, regional, village governments, and the community through various means of communication, information, socialization, or other forms of means or media.

4 Conclusion

Simply, it can be concluded that the legal culture of the communities surrounding the border of Indonesia and Malaysia in various villages in Ketungau Hulu and Ketungau Tengah subdistricts, Sintang District, West Kalimantan Province require further improvements. The community is rather disobedient to the law. This can be seen in the many cases of illicit trafficking between Indonesia and Malaysia. Many people in border areas still do not know and understand the laws and regulations in Indonesia due to the lack of publication of laws and regulations in the region. The publication of laws and regulations in border areas is very important in the context of realizing a legal culture in which the people know and understand the laws and regulations to create a law-abiding society. The information must be published by all responsible parties, namely the central, regional, village governments, and the community through various means of communication, information, socialization, or other forms of means or media.

References


The Optimization of e-Court Integrated System in Providing Access to Justice During the Covid-19 Pandemic

Aju Putrijanti¹, Anggita Doramia Lumbanraja², Aditya Yuli Sulistyawan³
{ayuputriyantirubismo@gmail.com¹, anggitalumbanraja@live.undip.ac.id², adityayulisulistyawa@lecturer.undip.ac.id³}

Universitas Diponegoro, Indonesia¹, ², ³

Abstract. The pandemic has brought the limitation of on-site court services. It raised the urgency for optimizing the e-Court system. The amounts of e-Court cases have been rising since the outbreak of the pandemic. Integrated services are one of the issues required to be fixed to make the system more effective. This research provides the reference type of integrated system that is suggested for Indonesia e-Court services. This research is conducted by the literature study in normative perspective frameworks. E-Court has developed the PTSP service as a one-stop service. However, these services are still limited to serving within the scope of hierarchical institutions. Meanwhile, in order for court decisions to have legal consequences effectively, they require affirmation from other involved institutions. This requires a transformation of the system integration model from a vertical integration model to a horizontal integration model. So, it will not leave unfinished things for the Court service user to do. On the contrary, the horizontal integration model will make court services much more effective on one side and reduce public mobility on the other side, especially during the Covid-19 pandemic.

Keywords: e-Court, Integrated System, Transformation Court Services, Court Management

1 Introduction

This pandemic has changed the whole world civilization, i.e., school, work, social relationship, and governance responsibility become complicated and comprehensive compared to the previous condition. It has brought social changes to society [1]. The way we socialized and got access to everything has to adjust and follow the health protocol, without exception, is access to justice [2]. Regulations have also changed to keep that people could fulfill their rights properly and stay healthy for everyone.

As stated in the United Nations Declaration of Human Rights (hereinafter abbreviated as UDHR), everyone is equal before the law. In this pandemic, this right is disturbed because we have to avoid crowd situations. On the other side, there are still problems regarding courtroom regulation which is needed to be solved. In this case, there should be regulations about court administration and court process during the pandemic.

Access to justice is a fundamental right for everyone, Indonesian Constitution in Article 28. The fulfillment of this right is under Law Number 39 of 1999 concerning Human Rights stated in Article 2. Therefore, states admit and uphold human rights and freedom as fundamental rights.
that can not be separated and protected, respected, and enforced to human dignity, welfare, happiness, and justice.

States should guarantee that everyone is entitled to get their rights, also for rights to justice. Some countries remain ruling the strict regulations to reduce human transmission of Covid-19. In South Africa, they issued guidance to Court including limiting physical distancing in the courtroom except for urgent and essential matters, while India and Nepal give guidance on how courts can operate safely by allowing lawsuit file submission via e-mail, using video conference for hearings, in Portugal, for hearing and judgments in the lower courts are remotely and in the U.S. hearing process remotely so do the judgments [3].

In Indonesia, during the pandemic, reach 824 cases of e-court, not include the criminal process. When the previous research takes, Supreme Court had not been launched the regulation e-court for the criminal justice system [4]. In Latvia, they decided to use a digital platform during the pandemic since it is not possible to shut down the legislative, executive, and judicative activities. Based on the rule of law and democracy principle, it needs special requirements to implement its functions [5]. The judiciary role has an important role in keeping the democracy. The rule of law still continues. It has to redefine its process in adjudicating the cases since it is a fundamental right that can not be ignored.

The modernization of technology should be appropriately used for civilization. At the same time, in pandemic situations, physical distancing is a must, and circumstances have to change some common values in regard to the judiciary system. The technology ensures that the function of governance, either executive or judicative, still operates using digital platforms properly. China started implementing digital systems such as big data, cloud computing, artificial intelligence to improve and transparency efficiency to develop judicial reform and shifted from judicial —system innovation to judicial— technological innovation. These efforts lie in the concept of legality, implantation of behavior from the government and the society [6].

The digitalization era influences people’s behavior in how they interact with others in social media and the government’s matter. The shifting paradigm from modern life to digital life can not be avoided. Otherwise, we will be left behind everything. These circumstances trigger to make new regulations, in addition to the pandemic, as life keeps on going without knowing when the pandemic will end.

The article is an effort to question and seek the answer to the implementation of Indonesia e-Court and the reference type of integrated system needed to be applied in the Indonesia e-Court system.

This article is a result of legal research with the legal study method, using a literature study to provide the research material, such as the Indonesian regulations regarding e-Court, journal articles, thesis, and several books regarding the judiciary system in Indonesia.

2 The Implementation of e-Court System in Indonesia

Access to justice is important. It is one goal of seventeen goals of Sustainable Development Goals (SDGs). It launched in September 2015 and was adopted by UN member states in 2015. However, it needs strong commitment from stakeholders to make it becomes a reality.

Justice has always been an interesting topic since ancient times, so does the meaning have a broad understanding of different opinions from ethical, social justice, substantive justice, and others. Meaning the word of justice had been changed followed human civilization, it is not only
legal aid to whomsoever or the procedure of the Court, but it also covers other forms of injustice, while it has a wide meaning related to modern states and governance.

Access to justice can not be defined precisely, but it can be understood as a way for people to get justice if they have case law. For some people, the obstacles i.e, the lack of knowledge of making lawsuits, gender, children, poor transportation, and geographic conditions, can be more complex when there is no infrastructure to support societies. The various type of obstacles may differ in each country.

Rights to get access to justice regulated in Article Number 27 of Constitution and the implementation to get justice supervised by Supreme Court and Constitutional Court; under Supreme Court, there are general Court, religious Court, military Court and administrative Court based on each regulation for their competence.

Conventional courts should shift to electronic Courts due to modernization, digitalization, and globalization in every path of human life. In 2010, Supreme Court had issued a Supreme Court Circulair Letter Number 10 of 2010 concerning Electronic Document as a Supporting File to Cassation and judicial review, then renew with Supreme Court Circular Number 1 of 2014. This circular as an embryo to build e-litigation for today.

In the Annual Year Report of Supreme Court 2018 with the title New Era of Modern Judiciary Based on Information Technology more strengthen the aims to implement e-courts. In performing the aims, Supreme Court stipulates Supreme Court Regulation Number 3 of 2018 concerning Electronic Case Administration in the Court. This regulation is replaced by Supreme Court Regulation Number 1 of 2019 concerning Case Administration and Court Electronically is regulation for general Court, religious Court, administrative Court, military Court, except criminal Court. For criminal Court, there is Regulation of Supreme Court Number 4 of 2020 concerning Case Administration, and e-Court in Criminal Court had been legalized in September 2020.

Judiciary system has a complex system which should consider special condition for certain system. The implication of pandemic should not ignore the access to justice, and has to maintain the relevant procedures and to promote, ensure the continuity all system of courts.

There is a challenge for the Supreme Court to find the right way to keep the balance between the rights of the citizen, the interest of the public, state purposes. On the other side, there should be no restrain to receive and examine cases that came to Court to get justice. Citizens might have difficulties facing the changing situation in this pandemic, and the Supreme Court has given a solution to solve it.

In Czech Republic, Supreme Administrative Court considered to postponed the Senate by-election by the government’s decision in the state of emergency and added a general note stated that not only health, life, economics to be protected but also the democracy and the rule of law. There should be preparedness, flexibility, openness and open dialogue is necessary to find the right balance between the executive emergency situation, to prevent the spread of disease, and the judicial institution [7]. It shows that it is important harmonization between the legislative, executive, and judicative to protect the citizen’s rights, included rights of democracy.

Under the Human Rights Act 2004 in Australia may also provide a standard for litigation all jurisdictions to determine the measures and make their services for the public without ignoring the risk of the pandemic [8].

This pandemic triggers the people to use e-court instead of conventional Court, as suggested by the government. Before the pandemic came, most people did not use e-court. They like to go the Court as it used to be, even the Supreme Court Regulation had been stipulated.

The advantage of e-court, it gives benefit to both parties because it is simple, low-cost, fast, but on the other hand, there are some problems and challenges to solve [9]. Problems and
challenges are the preparation of regulations, infrastructures, and culture, especially the internet crime that might happen because of the leak of data.

Beyond the problems and challenges, e-court is very helpful to get access to justice in this situation. As stated by Kukuh Santiaidi, there are several advantages implementation of e-court, first, as an effort of Supreme Court to minimize the three obstacles of Court, second is to create superior and transparent judicial process and mechanism, three, impact the efficiency of administrative justice, fourth, it is beneficial for justice seekers to save the cost since they have easy access to control all the process electronically [10]. Another benefit of using e-court, it can reduce bribery crime in the Court, the harassment of the Court, modernizing the judiciary system [11][12].

The uncertainty of when the pandemic will end should make us think deeper since pandemic still takes place, it is advised to people to use e-court in order to fulfill their rights. The existence of e-court is beneficial in this pandemic. People still keep on fulfilling their rights by using e-court, there is no delay, no boundaries to put lawsuits, and this is a good phenomenon for the justice system.

In order to improve services to the community seeking justice use realizing fast, easy service, it is necessary to be transparent, scalable, and affordably implemented changes to the service system. Change in the service system is a service that is carried out in a manner integrated into a single process that begins from the initial stage to the stage high court service product settlement and district courts through one door. These services are required “one door one-stop service” (in Bahasa: Pelayanan Terpadu Satu Pintu, abbreviated as PTSP) as appropriate with court functions. PTSP is an integrated service in a single process starting from the initial stage up to the stage of product completion court services through one door. PTSP is conducted by the High Court and District Court.

According to the annual report of the Indonesian Supreme Court in 2020, implementation of PTSP throughout the judicial environment under the Supreme Court has reached the 100 percent mark. The integrated e-Court table in the PTSP system facilitates every problem faced by judicial service users, especially other users, to get an account if the public wants to litigate and hear electronically in Court. Therefore, the optimization of PTSP supports the complete transformation of the court work process into the Electronic System currently being implemented. In addition, this policy is in accordance with the initial goal of PTSP to realize a simple, fast, and low-cost judicial process, provide easy, definite, measurable, and corruption-free administrative services to Service Users and maintain independence and impartiality of court officials. Thus, PTSP will improve court performance and services as well as community satisfaction.

Supreme Court policy in encouraging the use of information technology in Court encourages the judicial bodies under the Supreme Court to develop innovations to improve organizational performance and public services. As a result, some innovations such as PTSP Virtual Assistant application, Online PTSP application, CCTV Online application, Online License Virtualization application, Data Bank, Divorce Deed Validation Application have been implemented since 2019.
3 Paradigm Transformation from Old Public Services into New Public Service

E-Court refers to the use of technology by the judiciary to provide web-based remote services by using Internet applications to improve access and delivery of information and services to court service users and government entities. E-court can build better relations between the courts and the public, making inter-court interactions and communications with citizens smoother, easier, and more efficient. The use of electronic-based services is indeed more effective in delivering information, and services are becoming faster, cheaper, and easier to be accessed by public, especially during the Covid-19 pandemic.

PTSP, which has been developed by the Indonesian Supreme Court in accordance to facilitate the e-Court system, has shown the development of the Court services process. According to Layne & Lee four stages of integrated public services described in Figure 1, PTSP has stepped the integrating process in the level of Vertical Integration. Basically, PTSP is one door service but only providing the services in the hierarchical institution frameworks. The technology and organization in PTSP are considered being complex enough to bring it to the integrated model system.

![Fig. 1. Dimensions and Levels on electronic-based of Public Services Development [13][14].](image)

To enhance the Court services, Supreme Court needs to consider about optimization integrated model system into the Horizontal Integration level. Not only as an integrated system through one door but also providing a holistic service, we call it as “one stop shopping” that is
engaged with another institution (outside of the judicial body). Take, for example, after validating the divorce deed, The Court service user needs to update the information of the marital status in the District Civil Registry Office, as well as the deed of adoption. The vertical integrating model still leaves much-unfinished homework for court service users to do. PTSP may have started to make it easier for Court service users to access court services without having to go to the Court. However, the one-stop service will not be effective if it is not supported by inter-institutional services that are interrelated in the horizontal integrating model.

In developing a system integration model from vertical integration to horizontal integration, Supreme Court needs to cooperate and provide services between institutions and several related institutions, such as Public Prosecutor institution, Civil Registry Office, Advocate Law Office, Ministry of Law and Human Rights, Notary Office, and the other stakeholders.

Covid-19 has taken a role as a digital accelerator transformation in public service delivery. All public services depend on digital services as the only option. The biggest challenge that must be faced is not limited to the Covid-19 pandemic issue only but also to the digital transformation in civilization future. This problem is very close to the technology things, social challenges phenomenon, and the parties which are connected to digital transformation. Information can be collected, and personalized services can be implemented through catalog models and transactional models. However, looking for the best technology that specifically supports judicial management may be possible causing delays and stagnation. The new transformational ministry will be the key to dealing with this new arrangement, requiring a new paradigm, adequate assets, professional human resources, and other required resources [15].

The biggest challenge in bringing PTSP into a horizontal integration model is defeating sectoral egos and increasing the extreme cooperation between institutions by adopting a paradigm shift from the old public service paradigm to the new public service paradigm. In Table 1 we see how the paradigm shift of public service from old public service to new public service paradigm. From here, we realize that the demands for change are not solely on technology, organizational systems, and judicial management but also on public servants mindsets.

<table>
<thead>
<tr>
<th>Old Public Services</th>
<th>New Public Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Public servants are responsive to the clients and constituents (involved parties)</td>
<td>The Public servants are responsive to the citizens</td>
</tr>
<tr>
<td>The role of the institution is “Rowling”. The institution designing and implementing policies only for certain parties (the domination of political interest)</td>
<td>The role of the institution is “Serving”. The institution negotiating and bridging the interests of citizens, and community group, creating shared values</td>
</tr>
<tr>
<td>The accountability is approached by the hierarchical model (subordinate system)</td>
<td>Using the multifaceted model to approach accountability. Public servants could accommodate the interest between the law, community values, political norms, and citizens</td>
</tr>
<tr>
<td>Only allowed limited discretion</td>
<td>Discretion is most needed with the constrained and accountable responsibility</td>
</tr>
<tr>
<td>The motivation of public servants is assumed based on pay and benefits</td>
<td>The motivation of public servants based on the passion for contributing to the development of society</td>
</tr>
</tbody>
</table>
The mindset of “Serving” in the new public service paradigm is urgently needed to optimize one-stop E-Court services in Indonesia. The Court in this case plays a role in negotiating and bridging the interests of citizens and community groups, creating shared values within the framework of democracy, namely prioritizing the values of the public interest above all else.

Accountability indicators Court institutions are not only affirmed by the hierarchical institution but also need to be affirmed by the public. It is a consequence of partnership model which is stated by Fang [17]. Courts must also have the courage to take discretion based on the principles of appropriateness, applicable laws and regulations as well as general principles of good governance. The normative approach that is very thick in the old public service paradigm can hinder the Court in developing its services, especially to address problems arising from inter-agency service practices (the issue of sectoral ego needs to be given attention). This paradigm transformation is very relevant with the Paradigm Concept of Guba & Lincoln. In the Guba and Lincoln’s positivism paradigm is very near to the Old Public Service Paradigm concept. The public servants are limited to do discretion, as they are required to do their service normatively in the “Rowling” model. The political interest conducts the service. Meanwhile, the New Public Service Paradigm concept is very near to Guba and Lincoln’s constructivism paradigm. The New Public Service Paradigm is trying to change the “Rowling” model into the “Service” model that requires the public servant to take a role in negotiating and bridging the interests of citizens, and community groups, creating shared values. Of course, it is in harmony with the description of Epistemology (Transactional and Subjectivist) and Methodology (Hermeunitical and Dialectical) of Guba and Lincoln’s Constructivism Paradigm [18].

Courts must uphold the spirit of contributing to community development. The Court is not an inanimate object but should be transformed into an institution that lives and develops together with society to meet the needs of society according to the demands of democracy.

In a democracy-based society such as Indonesia, values such as efficiency and productivity must not be lost but must be placed in context the greater one in the public interest. The new public service paradigm is the basic foundation of democracy to provide the best service to society in the midst of all the challenges of the times that must be faced one and another. Public servants must be brave take a risk in shooting for the sky to develop their services, including the judiciary body. The vision of achieving a full system integration model and accommodating the public interest as the highest priority scale must be taken by court institutions to respond to the challenges of the times.

4 Conclusion

The Covid-19 pandemic demands large-scale restrictions on the mobility of people. this creates obstacles for the community to access justice. E-Court, which has been initiated since 2019 by the Indonesia Supreme Court, is the only alternative to provide long-distance services, so that court service users do not have to come directly to the court. This internet-based service has been developed in a modern and quite complex manner. However, there is still some homework to optimize the one-stop service delivery. This requires Indonesia Supreme Court to develop PTSP from a vertical integration model to a horizontal integration model. The biggest challenge in improving the integrated service is the demand for a paradigm shift from the old public service paradigm to a new public service paradigm. This demand must be fulfilled by the judiciary to answer demands for democracy that prioritizes the public interest above all else.
The use of internet in judiciary system is becoming important as a part to develop New Public Service in order to provide access to justice for everyone.

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References


Legislation Disharmony of Land and Business Management on State Land in Belawan Seaport

Muhammad Fauzie¹, Sunarmi², Muhammad Yamin³, Maria⁴
{muhammadfauzie@student.usu.ac.id¹}

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. This paper analyzes the causes of inefficiency in land and business management in Belawan Port and examines the legal steps that will be taken. The results of the study show two kinds of obstacles: 1) juridical barriers caused by disharmony of 3 (three) laws governing land and business management on state land, including the Basic Agrarian Law Number 5 of 1960, the State Treasury Law Number 1 of 2004, and the Shipping Law Number 17 of 2008 and 2) non-juridical constraints, including business practices at the cargo and passenger ports which are still dominated by PT Pelindo I (Persero) so that private companies cannot compete. This paper uses a normative juridical research method with a conceptual approach and legislation. In the management of fishing ports, the Belawan Fisheries General Company Branch Office has not been able to create conducive, advanced, and efficient land and business management for fisheries industry and trade. Belawan Port has difficulty competing with other foreign ports, especially in the economic, trade and industrial sectors. Another non-juridical obstacle is the Port Authority, as a government agency under the Ministry of Transportation has obtained the authority to manage state land and business activities at the cargo and passenger ports replacing PT Pelindo I (Persero). Currently, they cannot exercise their authority due to the multiple interpretations of the articles in the Shipping Law. Then, the Regulation of the Minister of Transportation as the implementing regulation of the Shipping Law contradicts the hierarchy of laws and regulations.

Keywords: Belawan Port, Pelindo, Authority, Fisheries Public Company

1 Introduction

The right to control the land and the livelihood of many people by the state is regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia. In addition, the right to control the land by the state has also been regulated in the Basic Agrarian Law Number 5 of 1960. A seaport is one of the places related to the livelihood of many people so that it is controlled by the state. The management of the state’s right to control the land of Belawan Seaport is delegated to 2 (two) State-Owned Enterprises (SOEs): PT Pelindo I (Persero) for the cargo and passenger port and the Branch Office of Fisheries Public Company in Belawan for the fishing port with a certificate of Management Right issued by the National Land Agency (NLA) of the Republic of Indonesia. Management right is the right to use the land for business, part of which is also allocated to third parties with a land-use agreement and the third parties administer a Right to Build certificate or Right to Use certificate to NLA. Until recently, the implementation of land regulations concerning Management Right is not fully conducted by PT Pelindo I (Persero) and the Branch Office of Fisheries Public Company in Belawan. The management of state land by
State-Owned Enterprise (SOEs) is also regulated in the State Treasury Law Number 1 of 2004 and Government Regulation Number 27 of 2014 concerning State/Regional Property Management. The SOEs’ inability to manage state land shows disharmony in legislations which results in inefficiencies in the management of land and business on state land in the seaport.

Business activities at Belawan Seaport are still dominated by PT Pelindo I (Persero) which seems to monopolize the business of private companies. As an SOE, the branch office of Fisheries Public Company in Belawan has not been able to create a conducive business climate due to some lawsuits submitted by private entrepreneurs concerning the regulations issued by Fisheries Public Company. One of the articles in the Shipping Law Number 17 of 2008 concerning Shipping states that land management in seaports is under the Seaport Authority, a government agency controlled by the Ministry of Transportation. However, until recently PT Pelindo I (Persero) has not yet submitted the management rights of the seaport land to the state through NLA, based on which the Seaport Authority requests, through NLA, to obtain a Management Right certificate on state land in the seaport. This occurs due to multiple interpretations of the articles in Shipping and, more surprisingly, the existence of Regulation of the Minister of Transportation as the implementing regulation of the Shipping Law.

Management of state land in seaports is regulated not only by the law made by NLA but also by other relevant regulations. The same condition also occurs in the management of state land in many sectors, e.g. in the mining, forest, and plantation sectors, where the management of state land is not only regulated by Basic Agrarian Law (BAL) and its implementing regulations but also by other laws.

This situation will result in a lot of bureaucracy and can become an obstacle for the Republic of Indonesia to compete with other countries in the era of globalization. This becomes even worse since Indonesia participates in some international agreements, the contents of which will be ratified into laws related to such agreements. The era of globalization also requires the Republic of Indonesia to immediately overcome disharmony in legislations occurring in all sectors.

Legal science appears to be very lagging behind reality, which remains marked by a profound plurality. Old and new global patterns of migration and exchanges between countries, economies, societies, and legal systems, to varying degrees and through different methods have created a transnational legal environment that is naturally plural, multi-ethnic, and multi-cultural, which has increasingly emerged in today's reality [1].

The problems are formulated into the following questions:

a. How is the disharmony in the legislations regarding the land and business management on state land in Belawan Seaport?

b. What are the effects of disharmony in the legislations regarding the land and business management on state land at Belawan Seaport?

c. What are the efforts to overcome the disharmony in the legislations regarding the land and business management on state land in Belawan Seaport?

2 Research Method

This research is a normative juridical law research by using approaches, namely conceptual approach and statutory approach. This study uses secondary data which includes primary, secondary, and tertiary legal materials relating to alternative management of the Belawan Seaport which is more effective and efficient.
3 Results and Discussion

3.1 Disharmony in the Legislations Regarding the Land and Business Management on State Land in Belawan Seaport

The meaning of control by the state as stated in the decision of the Constitutional Court of the Republic of Indonesia Number 01/PUU-I/2003 includes 5 (five) aspects: implementing policies (beleid), administrative actions (besturdaad), regulating (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad), all of which are implemented for the greatest prosperity of the people.

Following the construction of the Constitutional Court Decision above, the control of land by the state is manifested by issuing various laws and regulations concerning land. The issuance of these laws and regulations can be categorized as the implementation of ‘regelendaad’ aspect as one of the scopes in the interpretation of the meaning “controlled by the state”. The issuance of these laws and regulations also becomes the characteristic of Indonesia in building a legal system, considering that Indonesia is a country with a civil law system [2].

There are at least 42 legal systems in the world, and the comparisons among these legal systems have traditionally focused on the three main legal families in the world, i.e. civil law system, common law system, and socialist law system [3].

The term ‘state land’ in the BAL system is not recognized, the only recognized term is ‘land controlled by the state’. Article 1 and Article 2 of the BAL also state that land controlled by the state is a translation of the state’s right to control over land, water, and sky. Nevertheless, many legal products still use state land as the misused term. State land has a connotation that the land belongs to the state, even though it is not really the case. The term ‘state land’ is basically the translation of staaddomein, so it is no longer appropriate to use, and it is better to use the term ‘land controlled by the state’ as regulated in the BAL. There must also be a distinction between what is called state land and government land. State land is not land attached to a land title; meanwhile, government land is the land controlled by certain government agencies and can be granted with land rights in the form of rights to use or management rights.

Land management rights are the delegation of the rights to control the state land to government agencies, including local governments, state-owned enterprises (SOEs), local-owned enterprises (LOEs), PT Persero (limited liability companies), Authority Agency, and other legal entities appointed by the government. In addition to being used for the interests of the agencies themselves, the land is also intended to be granted with a certain right to a third party (Right to Use and Right to Build) if the third party’s activities are related to the activities of the agencies holding the land management rights.

The holders of land management rights have the authority to plan the allocation and use of land, use the land to carry out their duties, and hand over parts of the land under their management rights to a third party and/or cooperate with a third party. The authority to hand over parts of the land to a third party and/or cooperate with a third party requires a land certificate issued by the Regional/Municipal Land Office. Submission of parts of the land to a third party that gives rise to the right to build or right to use is carried out in the form of a BOT (Build Operate Transfer) Agreement. Moreover, submission of parts of the land to a third party that gives birth to ownership right is carried out in the form of relinquishing the land by the
holders of the land management rights. The right to build or the right to use of the land does not break the legal relationship between the holders of the land management rights and their land, but the ownership right to the land breaks the legal relationship between the holders of the land management rights and their land [4].

PT Pelindo I (Persero) Belawan manages the port of cargo and passengers at Belawan Seaport based on the Management Rights certificates issued on March 3, 1993. There are 4 (four) certificates with a total area of 289.36 ha in the name of the branch office of PT Pelabuhan Indonesia I (Persero) Belawan. It has 5 (five) subsidiaries, namely PT Prima Indonesia Logistik, PT Prima Pembangunan Kawasan, PT Prima Husada Cipta Medan, PT Prima Terminal Petikemas, PT Prima Multi Terminal, and PT Terminal Petikemas Indonesia, all of which are engaged in the seaport sector. Based on Government Regulation Number 64 of 2001, the position, duties, and authorities of the Minister of Finance as a shareholder in a limited liability company of PT Pelindo I are transferred to the Minister of State-Owned Enterprises of the Republic of Indonesia. Meanwhile, operational technical guidance is controlled by the Ministry of Transportation of the Republic of Indonesia and implemented by the Directorate General of Sea Transportation.

Belawan Fishing Port is managed by a State-Owned Enterprise with Public Company legal entity which was established under the laws of the Republic of Indonesia in accordance with Government Regulation Number 2 of 1990 concerning Prasarana Perikanan Samudera Public Company and was re-regulated by Regulation of the Government of the Republic of Indonesia Number 23 of 2000 concerning Prasarana Perikanan Samudera Public Company. Its name was changed to Perusahaan Umum Perikanan Indonesia (Indonesian Fisheries Public Company) based on Government Regulation Number 9 of 2013 concerning Indonesian Fisheries Public Company. It serves as an extension of the State’s authority in providing services for public benefit (public services) based on the principles of company management in carrying out business activities in terms of optimizing the utilization of potential resources owned by the company for offices, warehousing, tourism, hotels and resorts, sports and recreation, health services, telecommunication infrastructure, and leasing and management services for assets owned and/or controlled by the company based on the principles of sound corporate management following Article 8 Paragraph (1) of Government Regulation Number 9 of 2013 concerning Indonesian Fisheries Public Company. The Branch Office of Indonesian Fisheries Public Company in Belawan has built an ice factory, supplied electric power (around 50%), and carried out leasing and management services for land assets. Besides, it has obtained management rights on state land covering an area of 28.57 ha located in the Belawan Ocean Fishing Port Area, on Jalan Gabion Belawan, Bagan Deli Village, Medan Belawan Sub-District, Medan City, based on Point 2 of Management Rights as outlined in the Decree of the State Minister for Agrarian Affairs/Head of National Land Agency Number 198/HPL/BPN/97 issued on October 17, 1997.

PT Pelindo I and Branch Office of Fisheries Public Company in Belawan are the SOEs with the rights to manage state land in Belawan Seaport based on the Management Rights granted by the state through the National Land Agency but currently, in their relations with third parties, they are not guided by regulations regarding management rights based on BAL and its implementing regulations. PT Pelindo I and Branch Office of Fisheries Public Company in Belawan do not hand over their management rights to third parties (partners in carrying out their duties) either in the form of right to use or right to build with a certain time limit. After the defined time is due, all the buildings on the granted land become the rights of those who have the management rights. In managing state land, PT Pelindo I and Branch Office of Fisheries Public Company in Belawan shall refer to the Regulation of the Minister of SOEs. The
submission of using parts of the land in the seaport included in the management rights can be granted by utilizing the land with a lease agreement. This is contradictory to the Regulation of the Minister of Home Affairs Number 1 of 1977 which states that the rights that can be given to land with management rights are Right to Build and Right to Use. Thus, this land-use agreement, in which the object of the agreement is state land that is leased, is not in accordance with the principles of the right to control by the state. Thus, by looking at the object of the management rights, i.e. state land and the public law (publicrechtelijk) characteristic of management rights, the practice of granting this lease right is not allowed. The holders of management rights on state land should not be allowed to lease the land because they are not the owners but only the managers of the delegation of authority over the right to control the land. Even the state itself is not the owner of the land but it only “controls” the land. Management rights, which essentially constitute a delegation of authority from the right to control by the state, do not stipulate the authority of the management rights holders to lease land to third parties.

The presence of Law Number 1 of 2004 concerning the State Treasury and Government Regulation Number 6 of 2006 concerning the Management of State/Regional Property has made the terms “state land” and “government land” interchangeably. This occurs because both of them use the terminology of state property and regional property interchangeably to all the assets, including the land [5].

Regulation of Minister of Finance Number 78/PMK.06/2014 governs the Implementing Procedures for Utilizing State Property.

Based on the rules regarding fixed assets such as land, if the land is purchased or acquired by SOEs by other legal means, then the way to partner with the third parties as described above is reasonable. But if the land is obtained from State Ownership Rights and is delegated with Management Rights, then land management should comply with agrarian regulations, especially the right to manage state land. A state is the manifestation of all the people of the Republic of Indonesia to control land and administer it through the state institution, the National Land Agency. State land cannot be leased because the state is not the owner of the land.

Belawan Seaport in the current era of globalization also extremely needs restructuring in all port sectors.

The government has increasingly paid attention to the logistics sector, especially since Indonesia and ASEAN countries signed the ASEAN Sectoral Integration Protocol for the Logistic Services Sector in August 2007. The agreement led to the full integration and liberalization of the logistics services sector in ASEAN. Especially in shipping business activities which are one of the pillars of logistics distribution in Indonesia, the spirit to create a healthy business competition climate is included in Law Number 17 of 2008 concerning Shipping [6].

Based on the Shipping Law, the seaport operator is Seaport Authority or Seaport Implementing Unit. The two agencies are the representatives of the government at the seaport to carry out the function of regulating, controlling, and monitoring seaport activities in Indonesia. Besides, the two agencies are technical implementing units of the Ministry of Transportation which is controlled by and responsible to the Director-General of Sea Transportation [7].

The Shipping Law clearly returns the role of the regulator to the government and PT Pelindo only becomes an operator at the seaport for one purpose, i.e. to create a competitive seaport business climate and to have more conducive business competitiveness. The Shipping Law has transformed the national seaport management system by clearly separating the operator and regulator through the presence of the Seaport Authority and Seaport Operator [8].
Thus, such separation automatically eliminates PT Pelindo’s monopoly on commercial seaports as well as opens up the sector for the participation of other operators, including those from the private sector [8]. The Seaport Authority also acts as a government representative to provide concessions or other similar forms to the Port Business Entity (PBE) to carry out business activities at the seaport outlined in the agreement as regulated in Articles 90-92 of the Shipping Law.

Until recently, the functions and authorities of the Seaport Authority have not run according to what is mandated in the Shipping Law Number 17 of 2008. The management of State Land in the Seaport has not been released by PT Pelindo to the state through NLA and there has been no application for Management Rights by the Seaport Authority to manage the land in the seaport to the state through NLA.

3.2 Effects of Disharmony in the Legislations Regarding the Land and Business Management on State Land at Belawan Seaport

The Concession Agreement between Seaport Operators (Belawan Main Seaport Authority, Tanjung Priok Main Seaport Authority, Tanjung Perak Main Seaport Authority, and Makasar Main Seaport Authority) and PT Pelindo (Persero) I, II, III, and IV related to business activities and control of the existing assets ultimately stipulates the clauses by using the approach of Article 344 Paragraph (3) of the Shipping Law Number 17 of 2008 instead of the approach of Articles 90-92. Article 344 Paragraph (3) states that the determination of the term clause for the expiration of the concession implicitly shows that there is no time limit for the validity of the concession period as long as PT Pelindo belongs to the SOEs and there is no transfer of assets to the Seaport Operator at the end of the concession period. The use of the approach of Article 344 Paragraph (3) in the formulation of agreement clauses in the seaport concession agreement of PT Pelindo (Persero) I, II, III, and IV has been deemed to reduce the authority of Seaport Operator as the Seaport Authority, especially in terms of Control of Seaport Land Management Rights as well as in terms of Control of other seaport assets. As a matter of fact, the concept of Seaport Authority in the Shipping Law is as a landlord port and a controller of seaport assets obtained during the concession period. The position of PT Pelabuhan Indonesia (Persero) as the SOE in the seaport sector provides many exceptions when compared to the mandate of port concessions in the Shipping Law, Government Regulation Number 61 of 2009 concerning Seaports, and other statutory regulations. The concession agreement for seaport business activities that have been undertaken by PT Pelindo (Persero) I, II, III, and IV as signed by the Belawan Main Seaport Authority, Tanjung Priok Main Seaport Authority, Tanjung Perak Main Seaport Authority, and Makasar Main Seaport Authority with the President Director of PT Pelindo I (Persero) I, II, III, and IV on 9 and 11 November 2015, which is essentially made only to create obligations, has created uncertainty, and eventually, the provisions of port concessions as mandated in the Shipping Law cannot be fulfilled [9].

However, this factor is also caused by the Letter of the Minister of Transportation Number HK/003/1/11/Phb/2011 which appoints PT Pelabuhan Indonesia I, II, III, and IV (Persero) as the temporary implementer but without a time limit.

If carefully analyzed, the Letter of the Minister of Transportation Number HK/003/1/11/phb/2011 cannot be used as a basis by PT Pelabuhan Indonesia to continue to monopolize the seaport sector. The Letter of the Minister of Transportation contradicts Law Number 17 of 2008 [10].

According to Adolf Merkl, legal norms have two faces; one of which is upward (sourced from other higher legal norms) and the other one is downward (becoming the source and basis
for other lower legal norms) [11]. In Stufen’s theory expressed by Hans Kelsen, a lower norm applies, originates, and is based on higher norms [11].

In the hierarchy of legislation based on Article 7 Paragraph (1) Law Number 12 of 2011, the position of Law Number 17 of 2008 is higher than the ministerial letter, so the monopoly conducted by PT Pelabuhan Indonesia is not justified. Based on Articles 7 and 8 of Law Number 12 of 2011 along with their elucidation regarding this matter, Ministerial Letter is not even listed in the hierarchy of legislation even though the elucidation states that there are other forms of regulation that are recognized in addition to those stipulated in Article 7.

The fishing port managed by the Indonesian Fisheries General Company Branch Office in Belawan is also unable to create an ideal land and fishery business management together with private companies, resulting in a number of lawsuits being filed in court. Private companies must be fostered and work in ports must be supported according to the mandate of the BUMN Law Number 19 of 2003.

To overcome this problem, there are two steps that can be taken to create efficiency in ports: (i) law enforcement of regulations that are considered adequate but not yet effective; and (ii) optimizing the role of institutions that have the authority to regulate and supervise.

4 Conclusion

There have been obstacles in the management of land and business on state land at the cargo and passengers port managed by PT Pelindo I (Persero) and at the fishing port managed by the Branch Office of Indonesian Fisheries Public Company in Belawan which have resulted in inefficiency. The obstacles are both juridical and non-juridical obstacles. The juridical obstacles come from the disharmony of the 3 (three) laws governing the management of land and business on state land at the seaport, including Basic Agrarian Law Number 5 of 1960, State Treasury Law Number 1 of 2004, and Shipping Law Number 17 of 2008 along with Government Regulations and Ministerial Regulations as implementer of these laws. Meanwhile, non-juridical obstacles include business practices at the cargo and passenger port which are still dominated by PT Pelindo I (Persero) which seems to have monopolized business at the seaport leading to the inability of private companies to compete. In addition, the fishing port managed by the Branch Office of Indonesian Fisheries Public Company in Belawan has also not been able to create ideal land and business management for fisheries together with private companies, resulting in a number of lawsuits submitted to the court. Private companies should be fostered and their roles at the seaport should be supported under the mandate of the SOEs Law Number 19 of 2003. Private companies together with SOEs are expected to realize development in the seaport so that they can compete with other countries in the current era of globalization, especially in the trade and industry sectors.

Another non-juridical obstacle is that Seaport Authority, which is a government agency under the Ministry of Transportation based on Shipping Law Number 17 of 2008, has obtained the authority to manage state land and business activities at the cargo and passenger port replacing PT Pelindo I (Persero). However, until now, it has not been able to carry out its authority due to multiple interpretations of the articles in the Shipping Law Number 17 of 2008 and the regulation of the minister of transportation as the implementing regulation of the shipping law which is certainly contrary to the hierarchy of legislation. As a solution to this problem, two measures can be taken aimed at creating efficiency in the seaports: (i) law enforcement against the regulations that are deemed adequate but not yet effective; and (ii)
optimizing the role of institutions that have the authority to carry out regulation and supervision. Another effort is to conduct a judicial review to the Supreme Court on ministerial regulations that are contrary to the law. Moreover, most importantly, the Government together with the House of Representatives of the Republic of Indonesia should immediately revise the law which regulates the management of state land and businesses in seaports whose articles are not harmonious with other laws.

References

A Juridical Study of Land Waqf in Indonesia in Realizing the Rule of Law

Islamiyati¹, Dewi Hendrawati², Aisyah Ayu Musyafah³, Asma Hakimah⁴, Ruzian Marom⁵
{islamiyati@yahoo.co.id¹}

Universitas Diponegoro, Indonesia¹, ², ³
Universiti Kebangsaan Malaysia, Indonesia⁴, ⁵

Abstract. Land waqf, which is continuously developing, requires a juridical basis to be orderly and orderly. The research describes the juridical development of land waqf law in Indonesia and analyzes it with law theory. The benefits of research can broaden the understanding of the dynamics of the development of land waqf law in Indonesia. This type of research is Library Research, taking data from literature studies on land waqf and its legal basis. Juridical normative research approach. The research specification was descriptive analysis, and the research data were analyzed qualitatively. The research results explain that the juridical study of land waqf law in Indonesia is an attempt to elaborate the statutory regulations on land waqf established by the state, which is divided into three terms. Namely; During the Dutch colonial period, after independence, and the third period, after the issuance of the Basic Agrarian Law No. 5 of 1960. The state establishes regulations for land waqf to provide protection and legal certainty for land waqf to minimize disputes. The government establishes land waqf regulation, showing that Indonesia is a state of law, not mere power, meaning that legal provisions regulate every behavior of the rulers and the people.

Keywords: Juridical Study, Land Waqf, Indonesia, Rule of Law

1 Introduction

Land waqf is a legal action to transfer land benefits and ownership rights from an individual property to public property for interests following Islamic sharia. Islamic law commands Muslims to donate land because the donated land can be built as a place of worship, education, a hospital, a tomb, and others. According to its principle, Waqf land may not be sold, inherited, removed, granted, secured, and withdrawn/canceled. However, it must be preserved to become evidence of the history of Islamic civilization in the world (Article 40 of the Waqf Law No. 41 of 2004).

Even though the land price is getting more expensive, the Muslim community’s enthusiasm for land waqf increases. The reasons are, among others; utilizing abandoned land as a form of amal jariyah ordered by religion, wakif already feels secure and sufficient, to make it easier for the community to worship and practice their religious teachings, as a means of fostering social relations and a spirit of togetherness among community members. Furthermore, as a form of inheritance, the community and their descendants can utilize the land. In ancient times, property owned by the community was land and as a means of realizing obedience to parents through their will [1][2][3].
According to data from the Directorate of Waqf Empowerment of the Ministry of Religion, the above phenomena, making donated land assets increase every year, show that in 2016, the national land waqf assets reached 4.359 billion m² in 435,768 locations. In 2017, it reached 4.364 billion m², and in 2018 it reached 4.4 billion m² [4]. Based on SIWAK data (Waqf Information System), it shows that the amount of donated land assets in 2019 shows 50,200.38 ha, spread over 372,322 locations [5]. The development of the waqf land assets above can be seen in the following figure:

![Figure 1. Development of Waqf Land Assets in Indonesia.](image)

The land waqf community goes through several stages, among others; intention to donate land, complete the documents and requirements for land waqf (proof of land ownership and certificate of waqf land not in dispute), coordination of wakif with manager (nadzir) and two witnesses, as long as pledge waqf in front of PPAIW [6][7]. Furthermore, PPAIW provides a report to the Waqf and Zakat Sector at the City Ministry of Religion, and Nadzir or the Municipal Ministry of Religion takes care of the status of changing property rights to waqf land to the National Land Agency (BPN). This BPN issues the waqf land certification on behalf of Nadzir as the custodian and manager of the waqf assets (Article 10 Government Regulation No. 28/1977).

Several stages of the land waqf regulation as above, are based on the land waqf legal rules based on Government Regulation No. 28 of 1977 concerning Ownership of Land Owned, in which this rule is an implementing regulation of Article 49 of the Basic Agrarian Law No. 5 of 1960, which explains that the state protects the waqf land because it has social and religious functions. Since UUPA No. 5 of 1960 was stipulated by the government, so the juridical rules regarding land waqf have obtained the principle of legal certainty [8][9]. Land waqf, which is one of the practices of Islamic law teachings, its legal basis also comes from the values and principles of Islamic legal teachings that are believed to be accurate and adhered to by its adherents. Thus, there are two sources of land waqf law, sourced from Islamic law, which is the law that lives in the community and comes from laws established by the state.

Based on the explanation above, when analyzed, it shows that the community’s legal awareness in land waqf is very high because land waqf is always related to religious, economic, social, and political values, which can potentially cause conflict in the community. Therefore, we need a legal basis for land waqf law to anticipate the above conditions so that people can donate land easily and in an orderly manner, not violating religious and state regulations. It is crucial to research the legal, judicial study of land waqf in Indonesia in realizing the rule of law. The research objective is to describe the development of land waqf rules in Indonesia and analyze it by linking it to law theory. The benefits of research can provide insight into a comprehensive understanding of the dynamics of the development of land waqf law in Indonesia, since its inception until now, which is associated with the rule of law theory.
2 Research Methods

Research on the juridical study of land waqf in Indonesia in realizing the rule of law is library research. Data was collected through a literature reference review of land waqf and its legal basis. The research approach uses a historical approach to land waqf legislation formation. The data needed is secondary data through primary, secondary, and tertiary legal materials related to the research theme. The research specification is descriptive analysis, which means to describe the research results on the juridical study of land waqf in Indonesia and to analyze it by linking the rule of law theory. The research data were analyzed qualitatively, using explanations in the form of theories and concepts related to land waqf’s legal basis, and concluded deductively.

3 Results and Discussion

3.1 Research Result

Land waqf in Indonesia began to be implemented along with the entry of Islam in Indonesia. From the end of the 12th century AD to the beginning of the 16th century AD, waqf had become a religious institution and had a tradition in people’s lives [10]. Waqf has been implemented by the aristocracy of Islamic kingdoms in the archipelago, for example, Islamic kingdoms in Aceh, Tidore, Ternate, Banten, Solo, Banjarnegara, Yogyakarta, and Ampel Surabaya. At that time, donated land assets were in places of worship, educational institutions, Islamic boarding schools, and graves.

Since Indonesia was colonized by Dutch colonialism in 1596, the waqf rule has been subject to the Islamic political rationality of the Dutch East Indies. The colonial government established several land waqf rules to ensure waqf land maintenance. However, due to the different understanding of waqf between Muslims and the Dutch colonialists, the waqf regulation is oriented towards fulfilling the formal administrative aspects of waqf [8]. During the colonial period, the first waqf law regulation was enacted in 1905, based on a Circular of the Secretary of the Government dated June 31, 1905, and contained in Bijblad 1905 Number 6196. This regulation stipulates that land waqf deeds must obtain permission from the Regent.

This regulation from the Dutch colonial received a negative response from the Muslim community so that the prevailing waqf law was largely derived from the principles of Islamic law. The 1905 waqf regulation was then replaced and refined based on the Government Secretariat Circular Number 1361/ab contained in Bijblade Number 12573 of 1931 concerning Toezich van de Regering op Mohammedaansche Bedehuizen, Vrijdagdiensten en Wakaps issued January 4, 1931, which regulates the registration of waqf land to the Regent of the area where the waqf land is located. In addition, the Dutch colonial government also issued a Government Secretariat Circular No. 3088/A contained in the Bijblade No. 13390 issued on December 24, 1934, which stipulates that the Regent is willing to settle waqf land disputes if requested by the disputing parties. Furthermore, the Dutch Colonial Government issued a Circular Letter of the Secretariat of Government Number 1273/A which was contained in the Bijblade 1935 Number 13480, on May 27, 1935, concerning Toezicht van de Regeering op Mohammedaansche Bedehuizen En Wakaps, which stipulates that Muslims when going to waqf do not need to apply for waqf. permit, but it is sufficient to notify the government/Regent.
Government Secretary Circular 1931, 1934, and 1935. These regulations stipulate that the act of waqf land does not have to obtain permission from the Regent, but it is sufficient to inform the government represented by the Regent. This regulation is accepted and applied in the community because it aims to collect data and avoid disputes in the future [11][12][13].

After Indonesia’s independence in 1945, waqf’s legal regulation underwent developments in the institution of waqf. On January 3, 1946, Government Regulation No. 33 of 1949, jo Government Regulation No. 8 of 1950 in conjunction with Government Regulation No. 9 and 10 of 1950 concerning the Ministry of Religious Affairs which is obliged to investigate, determine, register and supervise the maintenance of waqf land. Based on the Ministry of Religion Circular Letter No. 5/D/1966, waqf affairs were handed over to the Office of Religious Affairs (KUA) located in each district. Also, the Ministry of Religion has drawn up rules on land waqf procedures, in which the wakif (who has waqf) should make a pledge of waqf in front of a nadzir and two male witnesses, then the KUA shall write it down in the waqf pledge deed. After that, the KUA notified the Regent to be ratified. Then, the inauguration of the waqf was carried out, witnessed by the pamongpraja, waqif, nadzir, and witnesses. Furthermore, the KUA or nadzir registers the donated land with the pamongpraja and the Registration Office [8].

On September 24, 1960, the Indonesian government enacted the Basic Agrarian Law, namely Law No. 5 of 1960. Article 49 of Law No. 5 of 1960 states that waqf land used for religious and social purposes is recognized and protected by the state. Waqf land can be controlled directly by the state, and the community gets use rights. Furthermore, the state regulates the representation of owned land through a Government Regulation. After 17 years, the government issued Government Regulation No. 28 of 1977, which regulates the clear and detailed representation of owned land.

With several regulations regarding ownership of land waqf, it is hoped that land waqf implementation can be more accessible, orderly, and safer from the emergence of disputes in the future. Concerning waqf land disputes’ settlement, the government has given the Religious Courts authority as the institution that resolves waqf land disputes. It is contained in Article 49 of Law No. 7 of 1989 in conjunction with Law No. 3 of 2006 concerning Religious Courts.

Along with the increasing awareness of waqf for Muslims, which is shown by the increase in waqf assets every year, the government has established waqf legal rules for Muslims in the Compilation of Islamic Law (KHI) Presidential Instruction No. 1/1991 Book III, which regulates the Law of Waqf. The existence of Presidential Instruction No. 1/1991 strengthens the implementation of land waqf law in Indonesia. It makes it easier for people to waqf because the understanding and implementation of waqf have been explained in detail.

In connection with the increasingly rapid development of waqf law in Indonesia and the benefits of waqf land in various aspects, the government has further strengthened the land waqf’s legal rules. With the formation of Law No. 41 of 2004 concerning Waqf, which Government Regulation complements No. 42 of 2006 in conjunction with Government Regulation No. 25 of 2018 concerning the Implementation of Law No. 41 of 2004. The legal substance of land waqf in the Waqf Law is (See the introduction to the explanation of the Waqf Law No. 41 of 2004):

1. For the sake of legal order, the act of waqf land must be registered with PPAIW, and PPAIW issues proof of the waqf pledge deed to register the donated land at BPN in order to issue a certificate of waqf land.
2. The allocation of waqf land is not only in the religious and social sectors. However, it is also directed at management with economic value to promote public welfare as long as it is in accordance with Sharia economic management principles.
3. The Indonesian Waqf Board (BWI) establishment as an independent institution to develop Indonesian land waqf.

4. There is a nadzir fee (salary) for developing the waqf assets, amounting to 10% of the income from the waqf land management.

Based on the explanation above, it can be understood that the formation of land waqf regulations has existed since the Dutch colonial era, the era after independence, and until now. The explanation above can be concluded through the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Period I (Dutch Colonial)</th>
<th>Period II (Post Independence)</th>
<th>Period III (Nowadays)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of Legislation</td>
<td>- Circular Letter of Governor's Decree Number 435 contained in Bijblad Number 6195 of 1905</td>
<td>- Government Regulation No. 33 of 1949, in conjunction with PP No. 8 of 1950 in conjunction with PP No. 9 and 10 of 1950</td>
<td>- Basic Agrarian Law No. 5 Year 1960</td>
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<td></td>
<td></td>
<td>- Circular Letter of Governor's Decree Number 1361/ab, contained in Bijblad Number 6196 of 1931</td>
<td>- Ministry of Religion Circular No. 5/D/1966</td>
<td>- PP No. 28 of 1977 concerning Waqf of Owned Land</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Circular Letter of Governor's Decree Number 3088/A is the oldest in the Bijblade Number 13390 of 1934</td>
<td></td>
<td>- UU No. 7 of 1989 in conjunction with UU No. 3 of 2006 concerning Religious Courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Circular Letter of Governor's Decree Number 1273/A is contained in the Bijblade Number 13480 of 1935</td>
<td></td>
<td>- KHI Inpres No. 1 of 1991 Book III on Endowments</td>
</tr>
<tr>
<td>2</td>
<td>Substance Licensing and registration of waqf land to the Regent</td>
<td>The Ministry of Religion is obliged to investigate, determine, register, supervise and maintain waqf land. Waqf affairs are handed over to PPAIW, which is under the Office of Religious Affairs at every district</td>
<td></td>
<td>- UU No. 41 of 2004 concerning Waqf</td>
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<td>- PP No. 42 of 2006 concerning Regulations for the Implementation of Waqf</td>
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<td>- State protected waqf land</td>
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<td>- Registration and certification of waqf land</td>
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<td>- Administration of waqf land</td>
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<td></td>
<td></td>
<td>- Optimization of institutions that manage waqf land (BWI)</td>
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<td>- Waqf dispute settlement institution</td>
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<td></td>
<td>- Management of waqf land that has economic value</td>
</tr>
</tbody>
</table>
3.2 Discussion

Based on the explanation of the research results above, it can be analyzed that historically the land waqf law in Indonesia has developed in accordance with the existing social construction of the community. Initially, the law of land waqf originated from the laws that lived and were practiced by the community in carrying out their religious teachings (Islamic law). However, because waqf land is a treasure with high economic value and there are many varied interests in it, the state is trying to regulate land waqf implementation by enacting land waqf regulations. The goal is that the waqf land has protection and legal certainty so that the donated land benefits can be felt in the community.

The government stipulated a donated land regulation, indicating that the Indonesian state was based on a constitutional state. In accordance with the rule of law theory that explains that the state is based on law, the state runs government based on the law and aims to carry out legal order [14][15]. The term the rule of law in Indonesia is often translated Rechtsstaat or Rule of Law to denote the same thing. It is reflected in the 1945 Constitution of the Republic of Indonesia (UUD NRI). Fourth Amendment to Article 1 Paragraph (3) explains that Indonesia is a constitutional state. The consequence is that the highest power in the state is the law. Law is defined as a rule contained in the legislation.

Likewise, with land waqf regulations, the government establishes land waqf regulations to provide legal order. The donated land assets receive protection and legal certainty and avoid
arbitrary actions against waqf assets. The background of the government in stipulating the regulation of waqf land is because the practice of implementing land waqf in the community is often problematic, which is caused by waqf which has a verbal waqf, nadzir who do not carry out their duties and obligations so that there are waqf land assets that are abandoned, stalled, and change hands to other parties [16].

In today’s world, land waqf is a religious matter and deals with social, economic, legal, and administrative relations. Therefore, harmonization is needed so that the issue of land waqf is in accordance with religious and the rule of law, makes social relations better, and improves social and economic welfare through the management and utilization of the donated land. Thus, the government’s efforts to establish land waqf regulations manifest the rule of law.

Although philosophically, the land waqf law comes from Islamic law, the state seeks to establish the law in accordance with the development of society because the law is indeed to regulate human life so that humans are happy and prosperous. The law is derived from Pancasila’s values, namely the values of divinity, humanity, unity, democracy, and social justice. Concerning the land waqf regulations set by the state, in reality, it shows that the source of land waqf regulation is in accordance with religious values because the teachings of land waqf originate from the belief in God’s rules based on Allah’s revelation, namely the Qur’an and Al-Hadith. The state’s land waqf regulation also aims to foster humanitarian relationships full of love, cooperation, care for others, and social justice values. It is the case with the management and utilization of waqf land in the community.

The above land waqf rules, when analyzed, show legal dynamics at the time of stipulation of legislation with its implementing regulations. The incomplete and ineffective government regulations indicate this, and the impression is too late with the growth of awareness of waqf in society. To complement these legal needs, people use legal principles derived from Islamic law. Thus, the land waqf law that applies in Indonesia is based on the laws that live in the community, namely Islamic law and laws established by the state. The basic guidelines and procedures for implementing land waqf (material law) come from Islamic law, a tradition in society. Meanwhile, rule of law is related to the formality of implementing land waqf, and a written document of land waqf proves its legal force. Also, it relates to institutions that serve land waqf in the community, such as PPAIW, BWI, BPN, and Ministry of Religious Affairs.

The explanation above can be concluded through the following figure:

Fig. 2. State Flow Sets Land Waqf Rules.
4 Conclusion

The juridical study of land waqf law in Indonesia attempts to elaborate the statutory regulations on waqf established by the state. The state aims to stipulate land waqf regulation to provide protection and legal certainty for land waqf so that there are no disputes in the future. The government establishes laws and regulations, showing that the Indonesian state is based on law. Every behavior of the rulers and the people is regulated by law, which is based on the values contained in Pancasila. Relating to land waqf law, its juridical rules are based on religious values, social justice, humanity, and society. Guidelines for land waqf law are based on the laws that live in the community (material law) and the laws that are stipulated in the form of legislation (formal law). Therefore, there is an effort to harmonize religious/Islamic law and the rule of law to enforce the land waqf law in Indonesia so that these rules benefit the community.

References


Commanditaire Vennootschap: An Indonesian Micro Small Medium Enterprise, Environmental Crime Responsibility

Abdul Aziz Alsa  
{aziz.alsa@live.com}  
Universitas Diponegoro, Indonesia

Abstract. Commanditaire Vennootschap, a popular entity for micro small medium enterprise in Indonesia, is an incorporated business entity as a perpetrator of environmental crime is obliged to maintain the function of the environment and manage the pollutions or environmental damages. Pollutions or environmental damages caused by an economical content and will be increase as the progress of economical. It is a duty of every person to maintain the functions of the environment and manages the pollutions or environmental damages. The responsibility of an incorporate business entity to environmental protection and management may be convicted to the business entity, and also those who govern the environmental crimes and people who lead the offense. The incorporate responsibility in environmental crime may be convicted to the association and to the agents that consist by general partner and limited partner on a duty that caused a pollutions and environmental damages.

Keywords: Responsibility, Corporate, Commanditaire Vennootschap, Indonesian Micro Small Medium Enterprise, Environmental Protection and Management

1 Introduction

In general, there are three forms of corporate organization [1], namely sole proprietorship or sole trader, partnership and companies or corporations [2]. However, along with the development of the corporate structure within the partnership, a special form of partnership has developed, namely the Commanditaire Vennootschap [3] or Limited Partnership [4].

A business entity in the form of a Commanditaire Vennootschap is a business entity that is quite popular in Indonesian society. At least there are more than hundreds of thousands of business entities in the form of Commanditaire Vennootschap that have developed in Indonesia. This form of business entity originated in the Middle Ages in Europe which was formulated in the codification of the Napoleonic Code, and through the concordance of Dutch law which was then applied in the Dutch East Indies.

Indonesia and another countries categorize Commanditaire Vennootschap into unincorporated business entities [5]. Although this form of business entity is quite popular in Indonesia, there is no specific law that regulates business entities in the form of Commanditaire Vennootschap, in contrast to firms and civil associations (maatschap) and limited liability companies which already has clear arrangements so as to provide legal certainty. If studied further, Commanditaire Vennootschap is a special form of Firma. This is because the firm only
has active partners, while in Commanditaire Vennootschap there are active and limited partners (sleeping partners) [6].

This paper discusses the existence of Commanditaire Vennootschap in Indonesia, but without the applicable regulations. Although the existence of Commanditaire Vennootschap is considered a lot in Indonesia, there are no regulations regarding Commanditaire Vennootschap in Indonesia, Commanditaire Vennootschap should be regulated in the Company Law 2007, but in reality, the Commanditaire Vennootschap regulation is only regulated in the Company Law 1995 which is no longer valid. The paper stresses the importance of Commanditaire Vennootschap regulation, without the clear regulations governing the Commanditaire Vennootschap will potentially create a legal vacuum and create confusion in determining criminal liability.

Commanditaire vennootschap is part of the community, this can be seen from the growth of this form of business entity in people's daily lives in running the economy. And the Indonesian government has given special attention to this form of business entity in the form of direct cash assistance during the Covid-19 pandemic outbreak, this is done by the government in order to encourage a better people's economy so that they contribute something useful for the benefit of people's lives.

In carrying out its function to encourage the economy, sometimes business entities also often take actions that are contrary to the provisions of the legislation, for example, the perpetrators of these business entities pollute and/or damage the environment. Business entities are often negligent in their obligations to manage the environment [7]. Environmental pollution and/or damage has increased along with the increase in industrial activities, so that the environment needs to obtain legal protection [8].

Criminal law contributes to providing legal protection for the environment. Policies in terms of the environment are not formulated in the form of legal norms, enforcement efforts in environmental law are carried out through criminal law and are more complementary than regulatory instruments [9].

In criminal law, the principle of Nullum Delictum nulla poena sine praevia lege poenali is known, which means that there is no punishment without a regulation which first states that the act is an offense which has a penalty for the offense [10]. It is stated that if there is a criminal act committed by a person based on an employment relationship or based on other relationships within the scope of work of the business entity, criminal sanctions are given to the giver of the order or the leader in the criminal act that occurred without regard to the offense being committed alone or together [11].

Commanditaire Vennootschap as a business entity that is popular as a micro, small and medium business [12] in Indonesia can be held accountable for environmental crimes that occur because of the business activities carried out by these business entities. The formulation is adopted by the Indonesian Criminal Code, if a crime occurs, the person who is asked to be held accountable is the person who committed the crime. So if the one who commits a criminal act is a corporation or business entity, then those who are accountable are the management of the corporation or its allies in the Commanditaire Vennootschap.

It will argued that the provisions of the Environmental Law require that everyone maintains environmental functions and controls environmental pollution and destruction, and is required to provide true and accurate information on environmental protection and management, maintain sustainable environmental functions, and standard criteria for environmental damage. It is argued that the Article 116 of the Environmental Protections and Management Act 2009 is a concept of criminal liability in the environmental field for corporations that commit criminal acts that cause environmental pollution and damage.
It is argued that the responsibilities of the Commanditaire Vennootschap allies while the criminal of environmental protection and management committed. It also argued the justifications and excuses for the Commanditaire Vennootschap allies based of environmental crime that occurred within the scope of business activities Commanditaire Vennootschap.

2 Research Method

The methodology adopted in the current research is doctrinal, which emphasizes the legal propositions and doctrines. This methodology is founded upon the analytical, and critical study of statutes, its interrelationship and interpretation of statutes made by the judiciary. The research is conducted through investigating and using secondary sources including books, reviews of case law, statutes, articles and journals. Material collection shall include intensive library research and internet searches.

3 Results and Discussion

3.1 Commanditaire Vennootschap in Environmental

3.1.1 Crimes Existence of Commanditaire Vennootschap in Indonesia

One of the forms of non-legal entities is Commanditaire Vennootschap or better known to the Indonesian people as Commanditaire Vennootschap. This business entity is still growing and alive, especially for small and medium-sized businesses or businesses. And during this Covid-19 pandemic, this form of individual business entity is popular among small and medium businesses. At least there are more than 161,303 business entities in the form of Commanditaire Vennootschap that have developed in Indonesia [13]. The simple management structure attracts Micro, Small and Medium Enterprises in Indonesia to run their business in the form of a Commanditaire Vennootschap.

Commanditer Vennootschap there are two types of allies, namely Complementary allies and Commanditaire allies. This means that the rights and obligations of an ally are determined by the function of the status whether as beherend or Commanditaire, and not because of the role(rol) that is performed as the amount of control one has in the company. Thus, although the Articles of Association of the Commanditaire Vennootschap limit the authority of the managing partner in the management of the company, he is still a responsible partner, with the same rights and obligations as other responsible partners [3]. The liability of partners is only limited to the contribution [14], while The liability of the managing partner is not limited, meaning that the personal assets of the managing partner become collateral for the creditors of the Commanditaire Vennootschap [15].

3.1.2 Obligations and Responsibilities of the Commanditaire Vennootschap Partners

The main characteristic of a partnership, including the Commanditer Vennootschap partners, is the unlimited liability of the managing partners. In theory, this unlimited responsibility can be an attractive factor or an inhibiting factor as a form of business entity that develops in micro, small and medium enterprises. This unlimited liability on the one hand causes
partners to face financial risks, but on the other hand provides certainty for clients to trust one partner in the capabilities of other partners [16].

As for the full responsibility imposed on the management partners, it is based on the opinion that whether it's good or bad, the progress of the partnership depends on their own efforts and leadership. Such a situation will change if a limited partnership partner intervenes in the organization and arrangement of the partnership [17].

There are 2 (two) types of partners in a limited partnership, namely management partners and limited partnership partners, resulting in two types of responsibilities, namely unlimited liability and limited liability. Personal liability means that creditors can claim partnership obligations not only from the partnership assets but also from the partners' personal assets. In other words, the contribution of the management partner provides a guarantee for the company's obligations; while limited liability means that the owner's responsibility for the company is only equal to the capital invested in the company. The owner's risk is not more than the money he has paid or has agreed to share. Owners with limited liability only fulfill agreed promises [3].

3.1.3 Commanditaire Vennootschap as Perpetrators of Environmental Crimes

Business entities that act as perpetrators of environmental crimes, not only business entities that can be prosecuted, but also a person (natuurlijk persoon). A person can be sued either as the one who gives orders/tasks or as a leader [18]. In other words, it can be said that a business entity in the form of a limited partnership is obliged to maintain the preservation of environmental functions and control pollution and/or environmental damage. Inability or failure to fulfill obligations without reasons that are objectively acceptable according to law, can certainly result in the birth of legal liability in the field of civil law and criminal law for legal subjects who are unable or fail to fulfil these obligations [19].

3.1.4 Liability of the Commanditaire Vennootschap Entity in Environmental Crimes

The criminal liability of a business entity can be requested from the business entity and or the person who gave the order to commit the crime or the person acting as the leader of the activity in the crime [11]. Criminal liability can also be imposed on a business entity if the environmental crime were committed by a person or legal subject who has a work relationship or other relationship to the entity, and its commit within the scope of work of the business entity. If its happen, the criminal sanction is directed to the giver of the order or the leader of the crime. The sanctions can be imposed to regardless of whether the criminal act is committed by the giver of the order or the leader of the crime by himself or with others [11].

The provisions in the Indonesian Environmental Law make the concept of corporate criminal liability in the environmental field imposed on a business entity and its management (in a limited partnership consisting of limited partnership and complementary partners) jointly, in terms of the activities and/or business of the corporation causing pollution and/or environmental damage [8].

The criminal liability of a business entity can be based on the following matters [20]:

a. On the basis of an integrated philosophy, that is, everything its will is measured on the basis of balance, harmony and harmony between individual interests and social interests.

b. On the basis of the principle of kinship in Article 33 of the 1945 Constitution.

c. To eradicate anomie of success (success without rules).

d. For consumer protection.

e. For technological progress.
In relation to criminal liability of corporations or business entities, according to VS Kanna, it was stated that there are three conditions that must be met for the existence of corporate criminal liability, namely; the agent commits a crime; the crime committed is still within the scope of its work and is carried out with the aim of benefiting the corporation or business entity [21].

Regarding the nature of limited partnership liability in Indonesian Criminal Law, there are several methods or formulation systems adopted by legislators, namely:

a. Allies of the board as the maker and allies of the responsible management.

b. The limited partnership entity is the maker and the limited partnership entity is responsible.

c. Limited partnership as the maker and also as the one in charge.

### 3.1.5 Reasons for Eliminating the Crime for the Responsibility of the Commanditaire Vennootschap in Environmental Crimes

Criminal law recognizes several reasons that can be used as the basis for judges not to impose penalties/criminals on the perpetrators or defendants who are brought to court because they have committed a crime. These reasons are called the reasons for the abolition of the crime. In fact, the perpetrator or defendant has fulfilled all the elements of a crime formulated in the criminal law regulations. However, there are several reasons that can cause the perpetrator to not be convicted, or to be excluded from the imposition of criminal sanctions as formulated in the said legislation, thus enabling people who have committed acts that have actually fulfilled the formulation of the offense, to be punished; and this is the authority given by law to judges [22].

The basis for eliminating the crime (strafuitsluitingsgronden) must be distinguished from the basis for the abolition of prosecution (verval van recht tot strafvordering). The first is determined by the judge by stating that the unlawful nature of the act of erasing or the error of the maker of the eraser is due to the provisions of laws and laws that justify the act or forgive the maker. In this case the right to sue the prosecutor remains, but the defendant is not sentenced. He must be charged with and separated from the basis for eliminating criminal prosecution, eliminating the right to sue the prosecutor, because of the provisions of the law [23]. From a dualistic point of view, the rationale for justification negates the unlawful nature of the act, and the defendant should be released, whereas if there is a basis for forgiveness, it means that the criminal act of the accused is proven, but the perpetrator of the offense is forgiven [23].

The partners of Commanditaire Vennootschap can submit a reason for eliminating criminal and free from criminal liability if they have carried out their obligations and responsibilities in carrying out the management of the company within its scope in good faith, full of responsibility, and also applying the principles of business judgment risk.

### 4 Conclusion

Criminal liability is everyone's responsibility for the crime they have committed. Criminal liability for business entities Commanditaire Vennootschap needs to be considered first the element of error that occurred (strict liability). Business actors can also be held accountable for criminal acts committed by other people who are within the scope of their business activities resulting in losses for others (vicarious liability). In the structure Commanditaire Vennootschap, criminal liability for criminal acts that occur is addressed to the management partners, however,
limited partners can also be held accountable if they participate in managing the running of the business entity.

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[12] Indonesian Omnibus Law.
[14] Indonesian Commercial Law.
The Role of Indonesia Virtual Police in Countering Hate Speech on Social Media

Adya Paramita Prabandari¹, Irma Cahyaningtyas², Kadek Cahya Susila Wibawa³
{apprabandari@gmail.com¹, irmanfjr83@gmail.com², kadekwibawa@undip.ac.id³}

Universitas Diponegoro, Indonesia¹, ², ³

Abstract. The increase in the number of internet users and their activities in cyberspace, including using social media, on the other hand, is also followed by an increase in the emergence of the negative impact of the digital world such as the misuse of social media. The phenomenon of social media misuse that is increasingly widespread today is hate speech. This is then triggered the Indonesian National Police to launch the Virtual Police. This paper used a normative juridical method, using the statute approach, and the conceptual approach. The data used are secondary data obtained through library research. The widespread and fast-growing hate speech in social media can lead to open conflicts and national disintegration, if not addressed immediately. One effective way to combat the spread of hate speech, as well as to prevent the spread of hate speech, is to form a team of cyber police called the Virtual Police. The Virtual police play an incredibly important role in countering hate speech on social media, especially because the settlement used is a restorative justice approach.

Keywords: Role, Virtual Police, Counter, Hate Speech, Social Media

1 Introduction

The Three T Revolution (Transportation, Telecommunications, and Tourism) [1] resulted in very rapid and fundamental changes in the order of human life since the beginning of the 21st century known as globalization. Since then, globalization has occupied a central point in various discussions in various fields, not limited to economics, transportation, and telecommunications.

One of the developments in the field of telecommunications that is very influential on people's lives is the existence of computers and the internet. The internet has 3 characters namely (1) space/time compression; (2) no sense of place; and (3) blurred boundaries and transformed communities [2][3]. The internet itself has changed a lot during these years. At first, it was a static network designed to transport a small number of bytes or short messages between two terminals; it was a repository of information where content is published and maintained only by expert coders. But today, a large amount of information is uploaded and downloaded through the internet, and the content is very much our own because now we are all commentators, publishers, and creators [4]. Along with the rapid development of the internet, a community in cyberspace is formed as a new type of global society, consisting of what is called net generation or digital natives [5][6][7]. Digital Natives is a generation that grew up primarily by the mass media and the internet, which was born after the 1980s, where the internet began to be widely used by the public. This generation is a generation that grows with the setting of information...
technology developments, especially mobile phones and the internet, which can bring the younger generation to roam the world in a virtual world without borders [8].

The digital natives as internet users have grown rapidly during the years, as shown in the graphic below [9].

Graph 1. Number of Internet Users Worldwide (2012-2021).

From the graphic, we can see that the number of internet users worldwide has more than doubled in 2021 with 4.66 billion people, compared to the number of internet users worldwide in 2012. This shows that more and more people are using the internet for convenience and comfort in their daily lives.

The rapid growth of internet users globally, of course, also occurs in Indonesia. This can be seen from the graphic below [10].

Graph 2. Internet Users.
It can be seen that in only 3 years (2018-2021), the number of internet users in Indonesia has been increased by as much as 26 million people. Meanwhile, for the newest data, we can see the annual digital growth in Indonesia in the infographic below [11].

**Graph 3. Annual Digital Growth.**

The increase in the number of internet users and their activities in cyberspace, including in using social media. Social media now has become a vital part of the daily life of our society. If used wisely, social media can have positive impacts on its users and society as a whole. For example in terms of connectivity as in connecting family members and people around the world; in education; also in spreading information and updates throughout the world [12].

Nevertheless, the increasing use of social media is also followed by an increase in the emergence of the negative impacts of the digital world such as the misuse of social media. The misuse of social media can lead to, but is not limited to, sexual harassment; criminal misconduct; breach of work obligations; unlawful judgment; misconduct or violation of student, staff, or parent privacy; and exposure to legal obligations [13]. These things can take the form of child pornography, cyberbullying, and the widespread of hoaxes and hate speech [14].

The phenomenon of social media misuse that is increasingly widespread today is hate speech. Hate speech can be defined as “any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factors” [15]. This hate speech phenomenon appears partly due to the opinion of netizens that they can treat accounts on social media as their private space, and therefore are free to express anything without control. This is based on the reason that they have the freedom of speech [16]. In the beginning, the phenomenon of hate speech emerged when there were certain major events in Indonesia, such as political contestations during the general election. For example the widespread hate speech in the political contestation of the 2019 Presidential Election [17]. But lately, the phenomenon of hate speech often appears in everyday life and does not only occur during certain big moments [18]. For example is the fast-growing and spreading religious hate speech in social media, which if not immediately addressed can lead to openly sectarian violence (inter-religious conflict) and national disintegration [19]. The more hate speech is spreading on social media, of course, it...
raises concerns about conflicts and disintegration in society which will ultimately be very detrimental to the Indonesian nation. This is then triggered the Indonesian National Police to launch the Virtual Police on February 23, 2021.

From the description above, the purpose of this paper is to analyze the role of the Indonesian Virtual Police in countering hate speech on social media.

2 Research Method

The research method used in this paper is a normative juridical method, using 2 approaches namely the statute approach, and the conceptual approach. The data used are secondary data obtained through library research in the library and the internet. The data collected from the internet such as journal articles, online surveys, and news reports from various websites. The data is processed and analyzed using qualitative analysis methods and then presented in the form of systematic writing [20][21].

3 Results and Discussion

Social media is a term commonly used to refer to “new forms of media which involve interactive participation” [22]. Social media can be defined as “a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content” [23]. There are 2 characteristics of social media i.e., 1) social media allow some form of participation; and 2) social media involve interaction whether with established friends, family, or acquaintances or with new people who share common interests or even a common acquaintance circle [22].

The emergence of social media in cyberspace has resulted in very radical and significant changes in the patterns and ways of communicating in society with its huge benefits, especially supported by the use of smartphone technology which can now be purchased by everyone with price ranges from cheap to very expensive [5].

However, the ease and convenience offered by the use of the internet and social media on the other hand also have negative impacts. One of them is the misuse of social media to spread hate speech. Hate speech is one form of aggressive behavior in an individual, or more precisely, an indirect active verbal aggression behavior [24]. The EU Community defines the concept of hate speech as “the expressions that incites, propagates, justifies the hatred which is usually associated with certain tribe, race, and religion”. Some see hate speech as a form of intolerance to other people, and can be considered as “an expression that attacks and encourages violence” [25].

The cases of hate speech that occur in Indonesia are very diverse, including defamation, harassment, slander, provocation, and threats against individuals or groups, prohibition of worship for minority groups, and identity politics [26]. Hate speech has even become one of the serious problems in terms of using social media for the people of Indonesia. This condition then triggered the Indonesian National Police to issue the Chief of Police Circular Number SE/6/X/2015 concerning the Handling of Hate Speech. Hate speech has also been regulated in the law as in Article 28 jis. Article 45 paragraph (2) of Law No. 11 of 2008 concerning Electronic Information and Transactions (EIT Law), and in Article 16 of Law No. 40 of 2008
concerning the Elimination of Racial and Ethnic Discrimination. However, these actions did not succeed in reducing the spread of hate speech on social media.

The Indonesian National Police then launched the Virtual Police on February 23, 2021, with the Circular Letter of the Chief of Police Number SE/2/11/2021 on the Awareness of Ethical Culture to Create a Clean, Healthy, and Productive Indonesian Digital Space. The virtual police is a unit initiated by the National Police Chief General in response to President Joko Widodo's directive so that the Police are careful in applying the articles in the EIT Law [27]. In general, Virtual Police (sometimes called Internet Police or Cyber Police) can be defined as police or government agencies in charge of policing the internet, to fight all forms of cybercrimes.

The launching of Virtual Police aims to provide education to the public on social media about cases that can be charged under the EIT Law. In addition, the establishment of the Virtual Police is also an effort by the Police in creating public order security in the cyber world so that they move in a clean, healthy, and productive manner. Thus basically, the establishment of the Virtual Police is intended to hit negative content and hoaxes, as well as a means of public education related to the EIT Law.

As for the working procedures of the Virtual Police is as follows:

a. Asking for experts opinions on such content
   - Virtual Police (cyber patrol team) conducts cyber patrol.
   - If an upload is found to indicates violating the law (for example contains hate speech or hoax content), the findings will be notified to the headquarters to ask for opinions from experts (criminal experts, linguists, and EIT experts).
   - If the expert says the content contains a criminal offense, whether insulting or otherwise, the next step is to submit it to the cyber director or a designated official in cybercrimes to provide approval.
   - Thus the warning message will be given after considering expert opinions, not the subjective opinion of the National Police investigators.

b. First warning
   - Virtual Police officially send the first warning message to accounts on social media that are suspected of violating the law.
   - The warning will be sent via direct message (DM) or other personal media because the Police do not want the warning to be known by other parties. After all, it is confidential.

c. Second warning
   If there is no response from the account owner to the first warning, the Police will send a second warning that the content must be taken down a maximum of 1x24 hours after the second warning is given.

d. Summoning for clarification
   - If the upload is not deleted within 1x24 hours after sending the second warning, the account owner will be summoned for a clarification.
   - The summons and clarification are closed from the public.

e. Prosecution as ultimum remedium
   If the above process does not solve the problem, then further steps will be taken and the process of prosecution as the ultimum remedium.

From the working procedures of the Virtual Police aforementioned, it can be seen that in terms of virtual operation in countering hate speech content on social media, the Virtual Police use a restorative justice approach. The concept of the restorative justice approach focuses on the direct participation of perpetrators, victims, and the community in the process of resolving criminal cases. Restorative justice aims to empower victims, perpetrators, families, and
communities to correct an unlawful act by using awareness and conviction as a basis for improving community life [28][29].

If the concept of restorative justice is applied by the Virtual Police in controlling and preventing the rise of hate speech and hoaxes, then the success of the Police in handling them is not seen from arresting suspects or obtaining evidence, but preventing crime by accommodating the interests of the perpetrators, the victims as the most disadvantaged parties, and the public interest. Because restorative justice prioritizes the creation of justice and balance between perpetrators and victims. Unless the hate speech content has the potential to be divisive, SARA, radicalism, and separatism can damage the unity and integrity of the Indonesian nation.

4 Conclusion

The widespread and fast-growing hate speech in social media can lead to open conflicts and national disintegration, if not addressed immediately. One effective way to combat the spread of hate speech, as well as to prevent the spread of hate speech, is to form a team of cyber police called the Virtual Police.

The Virtual Police play an incredibly important role in countering hate speech on social media, especially because the settlement used is a restorative justice approach. By using the restorative justice approach, it is expected that the settlement of the cases on hate speech contents in social media can create justice and balance between perpetrators and victims, unless the hate speech content has the potential to be divisive, SARA, radicalism, and separatism that can damage the unity and integrity of the Indonesian nation.

References

Elimination of Parliamentary Threshold and Efforts of Democratization in Parliament

Amalia Diamantina¹, Lita Tyesta A. L. W.², Diastama Anggita R.³, Sandra Leoni P. Y.⁴
{amaladiamantina.undip@gmail.com¹, litatyestalita@gmail.com²,
diastamaanggita@lecturer.undip.ac.id³, sandra.yakub@yahoo.com⁴}

Universitas Diponegoro, Indonesia¹, ², ³
Universitas Indonesia, Indonesia⁴

Abstract. In the 2019 election, the size of the parliamentary threshold is 4%. The use of the parliamentary threshold is very burdensome for small and new parties and often gives injustice. For this reason, the author will discuss the evaluation of the use of the parliamentary threshold and the solution to the abolition of the parliamentary threshold. This research is juridical normative, which is carried out by examining library materials or secondary data in the form of primary and secondary legal materials. The parliamentary threshold is benefit large parties already relatively well-established, and also impacts wasted voter vote acquisition on parties that cannot the minimum parliamentary threshold votes. It has implications on disproportionalitof seats. Necessary remove the parliamentary threshold so that parties with votes below 4% get seats. Worries about the large number of parties in parliament which will affect the stability of the government, is to simplify the factions in the DPR or reduce the number of seats in each electoral district which is followed up by changing the quota mechanism for one seat to a fixed seat, this matter to make political decision making in the DPR more effective, and efforts to democratize in the parliament.

Keywords: Parliamentary Threshold, Democracy, Parliament

1 Introduction

The parliamentary threshold is a threshold requirement for a political party's vote acquisition to enter parliament, which is calculated after each political party's total number of votes is known. The Parliamentary threshold was first applied in the 2009 election, which stipulates in Article 202 paragraph (1) of Law No. 10 of 2008 concerning the General Election for members of the DPR, DPD and DPRD, that political parties participating in the election must meet the threshold for vote acquisition at least 2.5% of the number of valid votes nationally to be included in the determination of seat acquisition for DPR [1][2]. That way, even though a candidate for DPR members gets a majority vote in an electoral district because nationally, the political party's vote acquisition does not reach 2.5%. It is automatically excluded from the distribution of seats.

In the 2014 election, the parliamentary threshold policy increased from 2.5% to 3.5%, while in the 2019 election, it increased to 4%, as stipulated in Article 414 paragraph (1) of Law No. 7 of 2017 concerning General Elections, which states that political parties participating in the election must meet the threshold for obtaining votes of at least 4 of the number of valid votes nationally to be included in the determination of seat acquisition for
DPR members. This problem, too, has caused many reactions in society, especially among legal, political, and other experts [3].

Suppose the parliamentary threshold continues to be enforced. In that case, the democratic concept will not be realized in Indonesia because parties that do not enter the parliament due to not obtaining a parliamentary threshold will be immediately wasted even though they get a high number of votes in election participation. For example, in the 2019 election, of the many new parties that participated in the 2019 election, none could pass the parliamentary threshold. For example, Grace Natalie from the PSI party received 179,949 votes. This figure can only be surpassed by the total votes obtained by PDIP, Gerindra, and PKS in DKI Jakarta III's electoral districts. However, even though Grace Natalie's number of votes was prominent in the electoral district, he could not enter the parliament because PSI did not reach the parliamentary threshold [4].

Supriyanto and Mellaz [5] explained that the implementation of the parliamentary threshold certainly had implications for the wasting/loss of votes or not being converted into seats, resulting in the democratic concept being injured. As in the 2019 elections, around 13,594,842 votes were wasted because they did not reach the threshold [4]. If many voters are wasted or do not convert into seats, this implies disproportionality or reduces the proportionality of seats in the proportional electoral system. If this happens, it is contrary to Article 22E paragraph (3) of the 1945 NRI Constitution, which explicitly requires a proportional electoral system [6]. The weak point of the provision mentioned above lies because voters who do not pass the parliamentary threshold tend not to be considered. It is necessary to abolish the parliamentary threshold. It is an interesting analysis to study; therefore, it is necessary to study the elimination of parliamentary threshold and efforts of democratization in parliament.

2 Research Methods

This research is structured using normative juridical research, namely legal research methods, by examining library materials or secondary data. The data analysis technique used is a qualitative data approach by analyzing secondary data to explain an event or phenomenon being studied with the data obtained. The thinking method used is the deductive thinking method, a process of thinking that starts from something general principles, laws, beliefs towards something specific. This research is also oriented towards problem solutions with the statute approach, the case approach, and the conceptual approach. Using this research approach is so that later researchers can produce primary thinking to solve existing problems.

3 Results and Discussion

3.1 Evaluation of the Implementation of the Parliamentary Threshold as a Political Legal Simplification of Political Parties

The enactment of the parliamentary threshold is not new in elections in Indonesia. It is recorded that the implementation of the parliamentary threshold has been enforced with different magnitudes starting from 2.5% in the 2009 election, 3.5% in the 2014 election, and 4% in the 2019 election. On paper, the parliamentary threshold implementation is intended to
create political stability, the national system, so that the presidential system can run without too many obstacles. It means that the lack of political parties in the parliament is expected to accelerate the parliament's decision-making process and support the President's performance as an executive body. However, on the other hand, applying the parliamentary threshold in the DPR is to simplify political parties or prevent new/small parties' entry into the DPR. This motive can be seen very clearly by establishing a parliamentary threshold that is closely related to political factors and party interests [4].

The parliamentary threshold mechanism is basically more profitable for the big parties, which are pretty well established. Therefore, the parliamentary threshold tends to strengthen the emergence of cartel parties. In cartel parties, it is often difficult for new parties to enter the electoral arena and gain support from voters. Political parties that have obtained seats, especially the major coalition and ruling parties, often try to prevent new parties from coming to power and cannot gain seats in parliament. Established parties tend to support the parliamentary threshold application in the elections [7].

For example, Grace Natalie and Tsamara from the PSI party, who could not enter parliament. Grace Natalie participated in the DKI Jakarta III electoral district, covering the cities of West Jakarta and North Jakarta. He received 179,949 votes. Only the total votes acquired by PDIP, Gerindra, and PKS in the DKI Jakarta III electoral district can exceed this figure. The total votes for the other parties were still less than Grace's. PSI itself obtained 236,217 votes in the Jakarta III electoral district. Meanwhile, Tsamara won 140,557 votes in the DKI Jakarta II electoral district. In this constituency, PSI obtained 228,367 votes, defeating Golkar and Democrats [8]. However, even though they received a large number of votes in the Jakarta III and Jakarta II electoral districts, they could not enter parliament because they did not meet the parliamentary threshold.

From these results, it can be seen that there was an injustice in the determination of DPR seats. This injustice can be seen from the use of the parliamentary threshold calculation which is used to determine the parties that can pass to the parliament based on Law No. 7 of 2017. The data we obtained through the KPU RI website, for example, the vote acquisition in DKI Jakarta III electoral district:

<table>
<thead>
<tr>
<th>Political Parties</th>
<th>Votes</th>
<th>Political Parties</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PKB</td>
<td>76.285</td>
<td>Perindo</td>
<td>61.598</td>
</tr>
<tr>
<td>Gerindra</td>
<td>330.033</td>
<td>PPP</td>
<td>41.564</td>
</tr>
<tr>
<td>PDIP</td>
<td>643.311</td>
<td>PSI</td>
<td>236.217</td>
</tr>
<tr>
<td>Golkar</td>
<td>74.770</td>
<td>PAN</td>
<td>120.568</td>
</tr>
<tr>
<td>Nasdem</td>
<td>142.756</td>
<td>Hanura</td>
<td>15.991</td>
</tr>
<tr>
<td>Garuda</td>
<td>5.113</td>
<td>Demokrat</td>
<td>129.212</td>
</tr>
<tr>
<td>Berkarya</td>
<td>25.622</td>
<td>PBB</td>
<td>20.769</td>
</tr>
<tr>
<td>PKS</td>
<td>283.969</td>
<td>PKPI</td>
<td>5.105</td>
</tr>
</tbody>
</table>

From the data above, the DKI Jakarta III electoral district is only fighting for 8 seats in the DPR RI, of which Gerindra has 1 seat, PDIP has 3 seats, Nasdem, PKS, PAN, and Democrats each have 1 seat. The rules regarding the parliamentary threshold do not provide an opportunity for legislative candidates who get the most votes in their electoral districts if their parties do not meet the parliamentary threshold.

The parliamentary threshold rule does not only concern which political party has the right to get seats and exceeds the percentage threshold. However, besides that, the parliamentary threshold also impacted wasted voter votes on parties unable to exceed the parliamentary
threshold's minimum percentage. The 2009 election resulted in 19,047,481 wasted votes [9]. Meanwhile, the 2014 election resulted in 2.9 million wasted votes, and in the last election in 2019, the number of wasted votes rose to 13.5 million votes. Suppose many votes in legislative elections are wasted and cannot be converted into parliamentary seats. In that case, the impact will be disproportionality in allocating seats in the proportional electoral system, which is part of the Indonesian electoral system [10]. Lijphart and Aitkin [11] defines disproportionality as the deviation between the party's seat gains (as a percentage) and the actual seats acquired in parliament (as a percentage). Conversely, with the increasing number of voters who cast their votes for parliamentary seats and the more representative voters are represented in representative institutions, the election results will be increasingly proportional. The ratio itself is influenced by the number of electoral districts and the parliamentary threshold. Many constituencies and the large threshold resulted in the number of votes not being accommodated as seats.

The number of party's vote that could not be converted into seats because the party did not pass the parliamentary threshold, the authors present it in a table with details as follows [12]:

<table>
<thead>
<tr>
<th>Political Parties</th>
<th>Votes</th>
<th>Percentage</th>
<th>Seat</th>
</tr>
</thead>
<tbody>
<tr>
<td>PKB</td>
<td>13 570 097</td>
<td>9.69%</td>
<td>58</td>
</tr>
<tr>
<td>Gerindra</td>
<td>17 594 839</td>
<td>12.57%</td>
<td>78</td>
</tr>
<tr>
<td>PDI-P</td>
<td>27 053 961</td>
<td>19.33%</td>
<td>128</td>
</tr>
<tr>
<td>Golkar</td>
<td>17 229 789</td>
<td>12.31%</td>
<td>85</td>
</tr>
<tr>
<td>NasDem</td>
<td>12 661 792</td>
<td>9.05%</td>
<td>59</td>
</tr>
<tr>
<td>Garuda</td>
<td>702 536</td>
<td>0.50%</td>
<td>-</td>
</tr>
<tr>
<td>Berkarya</td>
<td>2 929 495</td>
<td>2.09%</td>
<td>-</td>
</tr>
<tr>
<td>PKS</td>
<td>11 493 663</td>
<td>8.21%</td>
<td>49</td>
</tr>
<tr>
<td>Perindo</td>
<td>3 738 320</td>
<td>2.67%</td>
<td>-</td>
</tr>
<tr>
<td>PPP</td>
<td>6 323 147</td>
<td>4.52%</td>
<td>19</td>
</tr>
<tr>
<td>PSI</td>
<td>2 651 361</td>
<td>1.89%</td>
<td>-</td>
</tr>
<tr>
<td>PAN</td>
<td>9 572 623</td>
<td>6.84%</td>
<td>44</td>
</tr>
<tr>
<td>Hanura</td>
<td>2 161 507</td>
<td>1.54%</td>
<td>-</td>
</tr>
<tr>
<td>Demokrat</td>
<td>10 876 507</td>
<td>7.77%</td>
<td>54</td>
</tr>
<tr>
<td>PBB</td>
<td>1 099 848</td>
<td>0.79%</td>
<td>-</td>
</tr>
<tr>
<td>PKPI</td>
<td>312 775</td>
<td>0.22%</td>
<td>-</td>
</tr>
</tbody>
</table>

From the table above, there are parties with votes below the threshold (4%), namely Garuda, Berkarya, Perindo, PSI, Hanura, PBB, and PKPI. Which if we add up the parties that do not enter the threshold, namely 13,595,842 votes. Even though there are many candidates who have a higher number of votes than the other participants in the electoral district, they are stumble by the rule of the threshold.

Three things can be used as a measure to assess whether an election is held democratically or not, namely: whether there is recognition, protection, and cultivation of human rights; there is fair competition from election participants, and building public trust in elections that produce a legitimate government. These three things become an inseparable unity to achieve democratic elections in a country that upholds democratic values [13]. The application of the parliamentary threshold system, which has an impact on election participants who cannot enter the parliament even though the number of votes is high, and the waste of people's votes because political parties do not meet the parliamentary threshold, is something that can reduce the implementation of democratization.
3.2 Simplifying Fractions and Reducing the Number of Seats in Each Election as a Democratization Efforts in Parliaments

Creating an effective government does not mean sacrificing the principle of minority representation in parliament to maintain political stabilization at the national government level. However, political parties are vehicles and bridging between aspirations and policymakers to create a harmonious relationship between the people and the government. According to Danny, if an effective presidential system is to be implemented, he recommends: First, there must be a simple political party system design; Second, it is important to consider building a suitable and limited coalition government (minimum-winning coalition) that is permanent and disciplined; Third, to avoid cohabitation, the presidential and vice-presidential candidates must come from the same political party [14][15].

Forming a solid party coalition system is the main key in realizing a stable government. Because a programmed multiparty system will find it difficult to produce a party strong enough to form a government by itself, so it must form a coalition with other parties [16]. Therefore, a multiparty coalition format in the parliament is needed without applying the parliamentary threshold. The solution that can be done is to simplify fractions.

Referring to Article 12 of Law No. 17 of 2014 concerning MD3, a group consisting of MPR members from various factions reflects the party structure formed to optimize the MPR and its members in carrying out their duties as representatives of the people. The faction consists of DPR members who have the same political views. Faction allows council members to do their job best. Each member of the Council must be a member of the faction. The task of this faction is to coordinate its members' activities to optimize the effectiveness and efficiency of the work of members of the board. The faction is also responsible for evaluating the performance of its members and reporting the evaluation results to the public.

Furthermore, Article 21 of DPR Regulation No. 1 of 2020 concerning Rules of Procedure states that factions can also be formed by combining two or more political parties. Although the formation of a faction can be done by combining two or more political parties, the formation of each faction in the DPR is currently formed by each political party that has passed the parliamentary threshold. It was recorded that nine factions consisted of 9 political parties that passed the parliamentary threshold. The PDIP faction is the fraction with the largest number of seats, namely 128 seats, to the PPP faction with the smallest seats, namely 19 seats.

With the abolition of the parliamentary threshold, parties with votes below 4% can get seats in the DPR. In order to avoid worries about the large number of parties in parliament which will affect the stability of the government, the best way is to simplify the factions in the DPR. It means that it is necessary to establish a rule regarding the minimum number of seats in the DPR to form a faction so that parties with a small number of seats in the DPR must join with other parties to form a new faction. It implies that the context of decision-making in parliament is also simpler.

With the number of seats in the DPR reaching 575 seats, ideally, the minimum fraction formation consists of 10% of the number of seats. It is based on the DPR faction's role in implementing the legislature's functions and duties and the factions that determine the composition of the membership, propose the names of members and replace the complete members of the DPR [17]. Meanwhile, the DPR equipment number consists of 10 tools, including the DPR Leadership; Deliberative Body; Commission; Legislation Body; Budget Agency; BURT; BKSAP; BAKN; The Honorary Council of the Council; and Special Committees. The ideal number of seats to form a fraction is at least 55-70 seats per fraction.
Later, each party with the number of seats under these provisions will be required to join and merge to form a new faction. According to the author, this method is much more concrete in forcing parties to form simpler factions. In this way, the merger of political parties in creating factions will lead to two possibilities, namely the creation of a faction in accordance with the party's ideology (for example, nationalist, conservative Islam, moderate Islam), or based on its interests (for example, the government faction, the opposition faction, and the middle party faction).

However, the principle of democracy with the output of presenting representatives in the DPR through conversion of votes that can be even the smallest must be maintained by abolishing the parliamentary threshold and replacing it with a fraction simplification mechanism, prioritizes not only the principle of representation in a democratic country but also creates government stability between the executive and legislative branches at the national level. The biggest job is how each political party will lower its ego and accept the necessity that the multiparty system in Indonesia is inevitable. Therefore, political parties must be more able to adapt to conducting political lobbying to create a qualified force in the parliament that plays a role in creating national political stability.

Apart from simplifying the factions, simplifying political parties in parliament can also be done by reducing each electoral district's number of seats. So far, based on the provisions of Article 187 of Law No. 7 of 2017 concerning General Elections, it states that the number of seats for each DPR Election is 3-10 seats. Logically, the more seats there are in each constituency, the more likely it is that more parties will enter parliament. So that by reducing the number of seats in each electoral district, only the parties with a large number of votes could win seats in their electoral districts, and parties with small votes were automatically eliminated.

It should be noted that in the 2019 election there was an increase in the number of seats in the DPR from the previous 560 seats to 575 seats. According to Deputy Chairperson of the Election Special Committee, Benny K. Harman, the Special Committee on the Election Bill (Law 7 of 2017) has taken into account the area, population growth, as well as the existence of several new expansion areas that underlie the addition of seats. I think this is a bit surprising, considering that so far the determination of the number of seats in the DPR has been determined by the population. The members of the DPR represent the population, represent the people, not the regions. If the reason is because of a large area, it is considered inappropriate, because Indonesia's electoral system is proportional. Compared to other large democracies nations, the DPR RI has a large number of members. Comparing to India that has an area of 3,287,590 square kilometers and a population of 1,307,010,000, while the DPR only has 552 seats. Similarly, the United States has 325,988,000 inhabitants, an area of 9,629,091 square kilometers, and only 435 seats. This means that one seat represents 749,398 people [18].

Another reason for the large number of seats for members of the DPR is because Indonesia has implemented a one-seat quota system, in which the number of seats in the DPR will be determined after knowing the population, so the number of DPR members will change along with changes in the number of residents. In addition, with this system, the division of DPR seats in each province is not the same as the total population of the province. In fact, in a proportional electoral system, the proportionality of the number of seats to the provinces is a must. As a result, some regions have too many seats (over-represented), and some provinces have insufficient seats (under-represented) [19].

As a country that continues to develop and the population growth rate is increasing at 4.5 million people per year, Indonesia should now change the way the number of seats in the DPR
is determined from a one-person quota system to a fixed seat system. With this change, if the population increases, there is no need to increase the number of seats in the representative institutions, but the performance of each member of the representative institutions must be improved. From here on, the reallocation of DPR seats to the provinces based on one person, one vote, one value is more important than increasing the number of seats. In addition to maintaining equality of representation between provinces, rearrangement of seats can also boost the performance of DPR members who so far have more electoral districts and a large number of voters. If redistributed, it can increase the sense of closeness between the people's representatives and the people. For example, the fixed seat system has been implemented by the United States since 1920. The United States has set the number of members of the DPR as many as 435, and it continues to this day. Then, the American method is widely used by other countries, be it countries that have established an established democratic system or countries that are building a democratic electoral system [20].

Simplifying the number of political parties can be achieved by reducing the number of seats in the DPR, for example, to 500 seats as implemented in 1999 and the three previous periods. Then the number of seats that will be the dividing value of the total population to be represented will then be used to determine the electoral district. Therefore, this reduces the number of political parties in the DPR and increases the representative figure proportionately in every region in Indonesia. Simplifying the number of factions or reducing the number of seats in each electoral district followed up by changing the one-seat quota mechanism to become fixed seats provides a real solution to simplify the number of political parties in the DPR. These alternative options can also be combined later so that the more effective political decision-making in the DPR leads to the national government's stability and as an effort to democratize in the parliament.

4 Conclusion

The parliamentary threshold mechanism is basically more likely to benefit big parties that are pretty well established. The enactment of the parliamentary threshold will create an imbalance between the old and new parties. It is because in terms of realizing, campaigning, and disseminating the party's vision and mission, it is very limited and usually only takes place two years before the general election. It was because the new party was always preoccupied with energy-consuming administrative requirements. The parliamentary threshold rule also impacts wasted voter votes on parties that are unable to exceed the minimum percentage of the parliamentary threshold. Suppose many votes in legislative elections are wasted and cannot be converted into parliamentary seats. In that case, the impact will be disproportionality in allocating seats in the proportional electoral system, which is part of the Indonesian electoral system. Based on this, it is necessary to abolish the parliamentary threshold to reach parties with votes below 4% to get seats in the DPR. In order to avoid worries about the large number of parties in parliament which will affect the stability of the government, the best way is to simplify the factions in the DPR or reduce the number of seats in each electoral district which is followed up by changing the quota mechanism for one seat to a fixed seat, and alternative options can also be made; then combined, so as to make political decision making in the DPR more effective, which leads to the stability of the national government and efforts to democratize in the parliament.
Acknowledgements

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Development of Electronic Good Governance Based Investment License System in the City of Semarang

Henny Juliani¹, Kadek Cahya Susila Wibawa²
{hennyjuliani.fhundip@gmail.com¹, kadekwibawa@lecturer.undip.ac.id²}

Universitas Diponegoro, Indonesia¹, ²

Abstract. Development requires enormous funds. Investment is one of the ways that the Semarang City Government can absorb funds or invite investors to support development in the city of Semarang. The development of technology, information, the internet, and communication demand digital-based licensing services. The SI-IMUT application is a licensing-based service innovation developed by the Semarang City Government. The main problem at this time is related to the implementation of the SI-IMUT application. This paper aims to examine the urgency of an electronic good governance-based investment permit system policy in the city of Semarang and examine the implementation of the SI-IMUT application in providing accessible and integrated licensing services in the city of Semarang. This research uses doctrinal and non-doctrinal legal research, which is part of qualitative research with descriptive-analytical research specifications. The results showed that the implementation of electronic-based licensing services in the city of Semarang still pays attention to the principles of good governance to improve service quality. The SI-IMUT application is an innovation made by the Semarang City Government to realize easy, simple, and low-cost licensing services. The SI-IMUT application in its implementation is still hampered by many things, both technical and non-technical. However, the launch of the application has become a symbol of the movement direction of Semarang City towards e-government and smart government.

Keywords: Licensing System, SI-IMUT, Good Governance

1 Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) clearly states that: “The State of Indonesia is a constitutional state” [1]. The concept of a rule of law that Indonesia owns is the concept of a rule of law that can improve the welfare of its people [2]. National development guaranteed by law is one way to achieve people’s welfare or social welfare.

Wibawa [1] stated that: “national development is a series of efforts and actions undertaken to achieve national goals and ideals”. In principle, national development focuses on developing development in the regions, both at the provincial and district/city levels. The success of regional development is a prerequisite for the success of national development. Regional strengthening through regional autonomy policies is the main door for local governments to be more innovative and work hard in implementing regional development.

The Semarang City Government also realizes that in this period of regional autonomy, the City of Semarang has carried out development activities in various fields of life to realize people’s welfare. The successful development of the city of Semarang is very costly. The funds
owned by the Semarang City Government are insufficient to carry out regional development in total.

Sources of regional development financing can be obtained from within the country and/or originating from abroad, including taxes, grants, domestic and/or foreign loans, investment, or proceeds from export activities. Investment is one of the leading sources of financing in the implementation of development. It is because investment involves other parties participating in the implementation of development.

Investment is seen as one way to improve people’s welfare by increasing infrastructure development activities that absorb labor and improving infrastructures such as electricity that is still lacking in various regions and other facilities and infrastructure that can support development. Investment plays a vital role in driving the nation’s economic life because the formation of capital increases production capacity, increases national income, and creates new jobs. In this case, it will further expand employment opportunities. Investment can also be interpreted as spending or spending by investors or companies to buy capital goods and equipment to increase the ability to produce goods and services available in the economy.

Local governments throughout Indonesia are currently competing to attract investors to invest in their regions. The Semarang City Government, under the leadership of Hendrar Prihardi is actively attracting investors to invest in the city of Semarang. During the Covid-19 pandemic, Semarang City still recorded positive numbers in terms of investment. It is recorded that Semarang City investment in 2020 is IDR 21,8 trillion and can absorb around 65,000 workers.

Furthermore, there are five main problems attracting investors to invest in Indonesia. The first and foremost problems relate to uncertain regulations, complex licensing, and a lack of coordination between government agencies and central-regional coordination. Other issues include complex tax collection, slow tax collection services, and unattractive fiscal incentives for investors; problems related to land acquisition; a limited number of skilled workers and complicated procedures for obtaining foreign worker permits; and slow dwelling time at the port and lack of infrastructure due to limited funds for financing.

Particularly regarding uncertain regulations and licensing procedures considered complicated and high cost, the Semarang City Government has begun introducing an accessible and integrated investment permit system through the SI-IMUT application. The existence of this system is in line with the development of the digitalization era, which demands openness, accountability, simplicity, low cost. It is in line with the demands of the principles of good governance in managing governance based on electronic (e-government) and intelligent government.

Electronic-based licensing services are a public need in the era of digitalization. The policy to develop an electronic-based investment permit system in Semarang City is in line with the mandate of Law No. 25 of 2007 concerning Investment (Law on Investment) and Government Regulation No. 24 of 2018 concerning Electronically Integrated Business Licensing Services.

This paper examines the urgency of developing an electronic-based investment permit system in the context of realizing good governance in licensing services in Semarang and examining the implementation of policies for implementing the SI-IMUT application in the city of Semarang. This paper is different from several previous studies discussing licensing policies, the development of electronic-based licensing systems, and research related to licensing services and good governance.

President Joko Widodo. Suriadinata [7] examines the preparation of investment laws and their correlation with the preparation of the Omnibus Law. Fadhilah and Prabawati [8] write about the implementation of integrated electronic online single submission (OSS) licensing services for a study at the Nganjuk Regency Investment and One-Stop Integrated Services Service (DPMPTSP). Arliman [9] writes that investment in economic development in tourism is crucial, primarily to facilitate tourism development in West Sumatra. Widanta [10], the research focus aims to identify the condition of development in Bali Province from a macro aspect (finance system and investment), the problems of what still be faced, and what paid attention to to improve the quality of regional development.

Based on this brief description, there is a clear difference between the focus of the research study and the previous related research. This paper focuses on developing an accessible and integrated investment permit system (SI-IMUT application) specifically in Semarang.

2 Research Methods

Legal research can be divided into two, namely: doctrinal legal research and non-doctrinal legal research. This research uses doctrinal legal research supported by non-doctrinal legal research. This research uses a regulatory approach by using secondary data related to doctrinal legal research [11]. In the regulatory (statutory) approach, an analysis is carried out on the 1945 Constitution of the Republic of Indonesia, the Investment Law, Gov. Reg. No. 24 of 2018, and Semarang Mayor Regulation No. 70 of 2019. Regarding non-doctrinal legal research using a qualitative approach.

Data and materials were collected through the literature study method (secondary data), interviews, and observations (for primary data). Interviews were conducted on Semarang Local Government Officials (2 persons) and the community (5 persons) as subjects and objects of the application. The research location is in the Semarang City Investment Service and One-Stop Services (DPMPTSP). Analysis of the data and materials was carried out qualitatively. Withdrawal of conclusions is made inductively. Inductive reasoning is a way of thinking to conclude from observations of particular things into general or universal symptoms [12].

3 Results and Discussion

3.1 The Urgency of Electronic Good Governance Based Investment License System Policy in Semarang City

The development of technology, information, the internet, and communication is very fast, bringing significant changes to all aspects of human life. Slowly but surely, the world is changing from the analog era to the digital era. Technically, digitization is the process of changing all forms of information (numbers, words, images, sound, data, and motion) encoded into bits (binary digits) so that data manipulation and transformation (bit streaming) is possible, including multiplication, reduction, and addition [13].

In the current digital era, permits can be processed online from previously offline ones. This system change is expected to improve the quality of public services, especially investment licensing services, to be more optimal. Classic problems related to licensing services, such as
slow or convoluted service, services that ask for many requirements, services that cost much money, services that do not have clarity regarding the time of the permit, and other problems; should not appear again in the digital era. Digitalization in the investment permit system, especially in Semarang, is expected to realize licensing services that are fast, easy, simple, open, and low cost.

Semarang City Government policy to realize investment licensing services electronically and digitally begins with the launch of the SI-IMUT application on May 2, 2018. The application can be accessed via the page: https://izin.semarangkota.go.id/siimut. The SI-IMUT application is a development of the SINAKES (Health Information System) application launched by the Semarang City DPMPTSP: a system that integrates three health agencies for licensing health workers.

The SI-IMUT application is an Online Single Submission (OSS) system created by the Semarang City Government to make it easier for business people to take care of their business licenses. Almost all business and investment licenses in various business sectors must be administered and issued through the OSS (SI-IMUT Application).

The operation of the application is an application of the principles of good governance in electronic form. The principles of good governance still underlie the implementation of licensing even though it has been carried out digitally. The implementation of public services in the licensing sector is based on the principles of good governance. Implementing public services is not solely based on the government or state. However, it must involve all private (private or corporate) components and the community itself [1].

The quality of public services that are not yet optimal, as expected by the community, will reduce the essence of the government’s (state) goal of realizing social welfare for all Indonesian people [1]. Furthermore, Wibawa [1] stated that: for this reason, one of the efforts that must be done immediately in realizing good and prime public services is optimizing the openness of public information in the delivery of public services. Based on this, the SI-IMUT application is still based on the principles of good governance.

It is in line with Article 4 letter h of Law No. 25 of 2009 concerning Public Services (Public Law), which emphasizes that one of the principles in implementing public services is the principle of openness. Furthermore, in the elucidation of Article 4 letter h of the Public Service Law, every service recipient can easily access and obtain information about the desired service.

Applying the principles of good governance in the delivery of public services, especially electronically (digitally) in the field of investment licensing, will keep away from the cultural practices of corruption and the illegal levy mafia. E-government is one-way developing countries can focus on developing good governance and strengthening civil society to improve the quality of government and motivate citizens to participate in the political process [14]. E-government is applying and utilizing information communication technologies (ICT) in the public sector for its effective delivery of operations and services while enhancing transparency and accountability of informational transactions within and among governments. The benefit of administering permits online: the public or business actors can take care of all kinds of things licensing in one place, cost and time efficiency. This condition will create a competitive and conducive investment environment. Apart from that, it also bridges the gap between citizens and their government and empowers and benefits citizens and businesses through access to and use of information [15][16][17].
3.2 Implementation of the SI-IMUT Application to Realize Easy and Integrated Investment Licensing Services in the City of Semarang

Mayor Hendrar Prihadi stated that four sectors are great opportunities for investment in Semarang City, namely:

a. Investment in light rail (LRT) construction, investment related to urban mass transportation connected to Ahmad Yani International Airport;

b. Underground development in the Simpang Lima area, where this project will connect between Pandanaran Road-Ahmad Yani Road and Pahlawan Road-Gajahmada Road;

c. Construction of the Semarang Expo Center and the waste power plant project in Jatibarang-Semarang [18]. Apart from these four projects, the Semarang City Government has also opened investment in various fields: tourism, education, health, and others.

The SI-IMUT application is present as an innovation of the Semarang City Government (DPMPTSP) because of these social phenomena. Based on Semarang Mayor Regulation No. 70 of 2019 concerning Delegation of Authorities for Signing Licensing and Non-Licensing to the Head of the Semarang City Investment and One-Stop Integrated Services Service, 174 types of licensing and non-licensing services can be accessed through the SI-IMUT application. Public service innovation in the investment licensing sector, in the form of the SI-IMUT application at DPMPTSP Semarang City, is one of the actualizations of applying the principles of good governance.

The SI-IMUT application as a new application in licensing management in Semarang City is still constrained by several problems, including:

a. There are still problems with the unstable internet network so that service users are still complicated to access the SI-IMUT application. The causes of the unstable network are inadequate internet capacity and internet network traffic. In addition, the government is slow in accelerating digital infrastructure;

b. The SI-IMUT service application is still not perfect. It can be seen from the features that must be completed;

c. Less than optimal understanding regarding the types of licensing services served through the SI-IMUT application;

d. Limited infrastructure and qualified human resources to undergo the SI-IMUT application. Government employees who handle the SI-IMUT application are over 45 years old. They are still lacking in mastery of technology.

Responding to this, Semarang City DPMPTSP, as the institution authorized to manage to license, has made several efforts to minimize problems that arise, including:

a. Submission of budgets related to increasing the server capacity of the SI-IMUT application as well as increasing network capacity at DPMPTSP, making it easier for employees and service users to access the SI-IMUT application;

b. Enhancing features in the SI-IMUT application by forming a special team related to the field of information technology;

c. Organizing workshops and training for employees in the Semarang City DPMPTSP environment related to information technology, especially SI-IMUT application services;

d. Addition of qualified personnel to handle licensing services electronically or digitally;

e. Procurement of goods complements public service infrastructure advice, such as laptops, computers, monitors, etc. Completeness of facilities and infrastructure, work equipment, and
other support, including the provision of telecommunications and information technology facilities, is critical in realizing satisfactory service quality;
f. Conducting outreach for the public, especially users of licensing services, aims to more and more people understand the procedures and requirements for applying for investment permits or business permits electronically (through the SI-IMUT application).

4 Conclusion

Based on this description, the conclusions that can be drawn are: the development of digitalization requires changes to the management of investment licensing. Digital-based licensing services must be implemented to realize open, easy, simple, and inexpensive public services. The implementation of electronic-based services still has to pay attention to the principles of good governance. Applying the principles of good governance in public services will improve service quality.
The SI-IMUT application is an innovation of the Semarang City Government in providing public services in the licensing sector. Although the SI-IMUT application still has many shortcomings, this application is the beginning of the movement of electronic or digital-based services in the city of Semarang. Improving applications and being supported by other factors outside the application will gradually realize e-government and smart government in government management in the city of Semarang.

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Reconception of Information Commission Arrangements as a Response to the Digitalization Development of Public Information in Indonesia

Kadek Cahya Susila Wibawa¹, Irma Cahyaningtyas², Adya Paramita Prabandari³
{kadekwibawa@lecturer.undip.ac.id¹, irmafjr83@gmail.com², apprabandari@gmail.com³}

Universitas Diponegoro, Indonesia¹, ², ³

Abstract. This paper aims to analyze the existing conditions of the Information Commission (KI) from the perspective of the institution and authority, which will lead to a reconception regarding the arrangement of the Information Commission as a response to the development of digitalization of public information in Indonesia. Digitalization of information is changing information from analog to digital format and the development of the digitalization of information has positively and negatively impacted Indonesia. As a state auxiliary organ in charge of public information, the Information Commission needs to conduct a self-evaluation that will produce a progressive and responsive Information Commission. The results of this study indicate that the Information Commission is institutionally not independent, and in terms of authority, there is an overlapping authority in resolving public information disputes with the administrative court. There is a dualism in the process of resolving public information disputes. A reconception is also needed regarding selecting and recruiting candidates for the Information Commission Commissioner. It is time for the Information Commission to be filled with young people with excellent capabilities. The Information Commission also needs to be filled with a progressive and responsive commissioner.

Keywords: Information Commission, Digitization of Information, Public Information

1 Introduction

One of the main principles of implementing good governance in governance is the principle of transparency and openness of public information [1]. It is complicated for the government not to meet the demands of information disclosure from the public in an atmosphere of advancing technology and information [2]. It is done based on the premise that the government which runs the government openly has democratic values and the principles of good governance. Cangara [3] further stated that: “The government must be able to reform itself and read the signs of the times about the growing demands of society for transparency on policies that concern the interests of many people”. Therefore, it is right for the public to know public information. The right to information is a derogable right (one of the human rights) [4]. Golwal and Kalbande [5] stated that “right to know is also closely linked with other basic rights such as the right to good health facilities, right to education, right to freedom of speech and expression, right to a decent job, etc.”. There are all attributes of freedom.

The advancement of information technology has provided a comprehensive source of information and communication from what humans already have [6]. The advances in...
information technology are the beginning of the development of e-government, which has promoted increased digital connectivity in organizational, private, and public life [7].

The development of digitalization of information has forced the Indonesian nation to enter the industrial era 4.0, marked by interconnectivity, a combination of intelligent system development and automation (unifying the real world and the virtual world). As institutions that manage public information, government institutions must respond to developments in the digitalization of information. The digitalization of public information in its development will also cause various problems: legal, social, cultural, ethical, and so on.

Requests for digital public information will often lead to disputes between the applicant, and the public information manager results of the conflict are not predetermined [8]. Kurniati [8] stated that: "A conflict changes or develops into a dispute when the aggrieved party has expressed dissatisfaction or concern, either directly to the party that is considered to be the cause of the loss or to another party".

Based on point 5 Article 1 of the Act Number 14 of 2008 concerning the Public Information Openness Act/PIO Act, it states that public information disputes are disputes between users of public information and public bodies relating to the right to obtain and use information based on legislation. Disputes of public information may occur due to: a) refusal of requests for public information; b) periodic information is not provided; c) requests for information are not responded to by officials or public bodies; d) requests for information are not responded adequately to; e) requests for public information are not fulfilled; f) imposition of an unreasonable fee; g) and/or delivery of information that exceeds the time set in the act (vide Article 35 PIO Act).

Paragraph (1) letter (a) Article 26 of PIO Act regulates the main tasks of the Indonesian Public Information Commission (KI), namely: 1) receiving, examining, and deciding requests for resolution of Public Information Disputes through Mediation and/or non-litigation Adjudication submitted by every Public Information Applicant based on the reasons referred to in the Public Information Openness Act; 2) establish general policies for public information services; and 3) stipulating implementation instructions and technical instructions. The KI is assigned by law as a public information dispute resolution institution in Indonesia.

Based on reports of the Information Commission (2010-2019), the KI notes that it has received 2928 requests for the resolution of public information disputes [9]. There were 682 requests of public information dispute (2018) that had not been solved KI. In 2019, the number of unsolved cases increased by 63 cases. So that the total number of unsolved cases in 2019 are 745 cases [9].

Empirically, public information dispute resolution through the KI has not been effective. The respondent refuses to attend or sends representatives to participate in the hearing at the KI even though the commissioner wants to speak directly with the decision-maker of a public body [10]. The Information Commission should have the authority to execute in resolving public information disputes so that its decisions will be far more effective and obeyed by the parties. Another problem in the Information Commission institution is related to the institution’s independence as the front guard in overseeing the openness of public information and the resolution of public information disputes and the weak position and nature of the relationship between the Information Commission. It can be seen from the role of the Regional Information Commission (KPID), which is still under the regional government offices or agencies.

The growing digitization of information demands that the Information Commission be more responsive and progressive in dealing with public information disputes. It is necessary to re-conceptualize the Information Commission institution to optimize the duties, roles, and powers of the Information Commission and strengthen the institution’s position. This paper will outline
the reconception of the Information Commission’s arrangements as a response to the development of the digitalization of public information in Indonesia.

2 Research Method

This research uses two types of legal research: doctrinal legal research supported by non-doctrinal legal research. The combination of the two studies is to get a more comprehensive result. Doctrinal legal research uses a statutory approach and a conceptual approach. Doctrinal (normative) law research is carried out by searching and analyzing legal materials, primary legal materials, and secondary legal materials. In the statutory approach, an analysis is carried out on UUD NRI 1945, PIO Act, and Information Commission Regulation (PerKI) Number 1 of 2013. This research relies on the constructivism paradigm related to non-doctrinal legal research [9].

A constructivist philosophical paradigm is an efficient tool that can yield many benefits when implemented in the carrying out of research in a diverse field of study and in undertaking teaching and learning activities at any educational level [11].

This research uses a constructive qualitative approach in analyzing research results. Qualitative research is research used to describe, explain, investigate, and then discover the quality or social influence’s features that cannot be measured, defined by a quantitative approach [12]. Constructive in this research means that the analysis is not only a description but also at the interpretive stage and ultimately reconstructs related to the settlement of public information disputes in Indonesia [9].

3 Results and Discussion

3.1 Existing Conditions Weak Position and Authority of the KI in Indonesia

Public information disclosure in Indonesia has not been effective and efficient. One of the reasons for this was the weak position and authority of the KI in Indonesia. The Indonesia KI is a mandate of the PIO Act where the functions, duties, and powers are specified in law enforcement in the field of public information disclosure [13]. As a state auxiliary organ, the Information Commission includes a mixed domain of an executive function, quasi-judicial function, and quasi-legislative function [13].

Paragraph (1) Article 24 of the PIO Act states that the KI consists of the Central Information Commission (KIP), the Provincial Information Commission (KID-Province), and if needed, the Regency/City Information Commission (KID-Regency/City). The PIO Act does not regulate the nature of the institutional relationship between the KI and the KID Province/Regency/City [2]. Furthermore, Article 26 paragraph (2) letter b and paragraph (3) of the PIO Act also has weaknesses related to the non-regulation of duties and authority to disseminate information on the implementation of public information disclosure both at the central and regional levels [2]. It has also contributed to the weak position and authority of the KI in Indonesia.

The weak position and nature of the relationship of the KI can be seen from the role of the KID that is still under the service or regional government agencies. Even though Article 23 of the PIO Act states: The KI is an independent institution whose function is to implement this act and its implementing regulations establish technical guidelines for public information service
standards and resolve public information disputes by mediation and/or non-litigation adjudication [9].

The overlapping of authority within the KI is also seen like the working relationship between the KIP and the KI in provinces and districts/cities, which is not hierarchical, so empirically what happens is that the KIP also carries out activities to receive, examine and decide disputes information that occurs in the province and district/city.

There is a dualism of information dispute settlement routes regarding information dispute resolution. In Indonesia, the settlement of public information disputes can be solved in two ways, namely: the KI and State Administrative Court (PTUN); it is based on the Act Number 30 the Year 2014 concerning Government Administration (GA Act) and the PIO Act [9]. Wibawa & Putrijanti [9] further stated that no explicit regulation in the IPO Act causes the dualism of settlement of public information disputes. The objections and dispute resolution in Public Information Openness are prerequisites for filing legal remedies through PTUN (in adjudicating public information disputes involving state public bodies). This inconsistency is a natural thing considering that the GA Act was passed after the PIO Act. Thus, the legislators of the Public Information Openness Act may not take into account that real actions of state public bodies can be subjected to claims in PTUN (vide Article 1 Number 18 of the GA Act).

3.2 New Concept of Regulating the Position and Authority of the KI in Indonesia

In Indonesia, the settlement of public information disputes can be solved in two ways, namely: the KI and State Administrative Court (PTUN); it is based on the Act Number 30 the Year 2014 concerning Government Administration (GA Act) and the PIO Act [9]. Wibawa & Putrijanti [9] further stated that no explicit regulation in the IPO Act causes the dualism of settlement of public information disputes. The objections and dispute resolution in Public Information Openness are prerequisites for filing legal remedies through PTUN (in adjudicating public information disputes involving state public bodies). This inconsistency is a natural thing considering that the GA Act was passed after the PIO Act. Thus, the legislators of the Public Information Openness Act may not take into account that real actions of state public bodies can be subjected to claims in PTUN (vide Article 1 Number 18 of the GA Act).

Concerning the Information Commission institution in Indonesia, a new concept is needed to regulate the position and authority of the KI by strengthening the Information Commission institution. The first thing that can be done is the independence of the Information Commission, both at the central and regional levels, which must be made to strengthen the implementation of public information disclosure. A fundamental change needs to be made, namely by changing the pattern of relations between the KIP and KID, which should be hierarchical [2]. Ideally, the parties to the conflict (in the context of public information disputes) must first seek a solution through administrative-legal measures (objections and administrative appeals) [9]. Hermanto & Sudiarawan [16] stated that the Complaints can be submitted to the agency that issued the decision or to a higher institution vertically. The synchronization of PIO Act and Related Laws and Regulations, such as; PTUN Act, GA Act, Judicial Power Act, and the Supreme Court Act. This condition must be solved as fast as possible [9].
3.3 Increasing the Capability of Information Commission Commissioners that is Progressive and Responsive to the Digitalization Development of Public Information in Indonesia

The development of digitizing information cannot be separated from the development of information technology. The urgency of the role of technology in the process of accelerating information occurs when the results of technology can help change communication patterns and structures that are limited by time and space into an unlimited pattern of information communication [17]. Technology and digital media can spur the creation of new networks and acceleration. The growth rate and development of information are exponential [17]. It means that information received by the public or by everyone can constitute a flood of information.

The digitization of information can have both positive and negative impacts in all areas of people’s lives. The positive effects of the development of digitalization of information include: a) Easy and fast access to information; b) developing innovations based and oriented towards digital technology; c) The development of digital-based mass media; d) The development of applications in various sectors, such as: in the education sector, the emergence of online libraries, online learning, the emergence of e-marketplaces, e-commerce, etc. Meanwhile, the negative impacts of the development of digitalization of information include: a) The number of violations of Intellectual Property Rights (IPR) is increasing, this is due to the ease of data access that makes it easier to plagiarize a work; b) The development of cyber-crime; etc.

Seeing the challenges in the development of digitalization of information, in addition to institutional strengthening, there should also be efforts to increase the capability of the Information Commission to respond to these challenges. Capability is the ability to carry out tasks and functions, consisting of 3 (three) interrelated elements: the authority, capacity, and competence of Human Resources (HR) that the apparatus must have to carry out its role effectively [18]. Furthermore, Eldyani & Wardoyo [19] stated that: “the success of an institution or organization in achieving its objectives, one of which is influenced by the human resources possessed by the institution or organization. Therefore, these institutions or organizations need talented human resources.

Capability and competency development are related to increasing the knowledge of intellectual or emotional abilities needed to do a better job. Human resource development rests on the fact that the apparatus requires ever-developing knowledge, expertise, and abilities [20]. This increase can be obtained in several ways, such as: through education, training, seminars, etc.

Based on this, the Commissioner of the Information Commission, both at the central and regional levels, is obliged to improve their capabilities and competencies through various short training, attending seminars, webinars, focus group discussions, and education. The ability of the Information Commission Commissioner must continually be updated and upgraded to follow the development of information in the digital era. Regarding the progress and responsiveness of Information Commission Commissioners, it can be pursued by reorganizing the selection and recruitment system for Information Commission Commissioners. The recruitment system for the Commissioner of Information can also be rearranged by, for example, accepting candidates for commissioners who are young but have high performance and have taken a minimum master’s education. Regulations related to youth are needed because the digital era belongs to millennials. The current development will be complicated to follow for Commissioner candidates who still have an analog paradigm. The commissioners now required are commissioners who are progressive and responsive. It is necessary to accommodate Commissioner candidates who have progressive thoughts and are responsive to the changes and
developments of the times, especially the development of digitalization of information that is currently sweeping the entire world, including Indonesia.

4 Conclusion

The conclusions that can be drawn are: that the current condition of the Information Commission, it turns out that the position of the Information Commission is still weak. Its institutional authority is still not maximal, and there is an overlap with administrative court authority related to the resolution of public information disputes. The new concept is related to the position of the KI, the most important of which is to place the KI as an independent institution, which is given flexibility in financial management, institutional arrangements, and changes in accountability.

Reconception of the Information Commission’s arrangements can also be made by increasing the capability of the Information Commission Commissioner. The Information Commission needs commissioners capable, progressive, and responsive to changes in public information in the digital era.

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References


Prevention of Bureaucratic Corruption through Coordination and Supervision Programs in the Central Java Provincial Government

Muhammad Isa Thoriq Amrullah¹, Endang Larasati², Tri Yuniningsih³
{arrull@gmail.com¹, larasati57@ymail.com², triyuniningsih@yahoo.com³}

Universitas Diponegoro, Indonesia¹, 2, 3
Inspectorate of Central Java Province, Indonesia¹

Abstract. The bureaucracy has an important position in a country, with a good bureaucracy the government can carry out its duties for the welfare of the people. The pathology of the bureaucracy has led to the emergence of inequality that has damaged the condition of the country. One of the bureaucratic pathologies that is often seen is corruption. The bureaucratic corruption that occurs in the Central Government to the Regional Government seems to never stop. The KPK made a breakthrough to intervene in the implementation of clean government through the Prevention Coordination and Supervision program. This study aims to describe how the Prevention Coordination and Supervision program (Korsupgah) in the Central Java Provincial Government. This research uses a qualitative approach with a case study method, data collection is done through interviews and document studies. As a result, Korsupgah in Central Java Province was carried out by intervening in 8 strategic areas, followed by supervision and evaluation of the implementation of these interventions.

Keywords: Corruption, Bureaucracy, Prevention, Coordination, Supervision

1 Introduction

Bureaucracy in a government or a country has a role in realizing the implementation of power administratively so that it is in line with the will of the leader or people [1]. This means that bureaucracy is a set of systems that works to realize the goals of a country, a government will not run without the bureaucracy, as well as the goals of a country cannot be realized if the bureaucracy does not work.

Indeed, all government activities in carrying out their responsibilities and implementing political decisions are often associated with the bureaucracy [2]. In its history, the vital role of bureaucracy has caused the politicians or the ruler fighting over the bureaucracy as a means to realize their own political ambitions. This continuous process of struggle has resulted in the bureaucracy being seen as merely a political policy executing machine. Therefore, Weber in Thoha wants the bureaucracy not only seen as an executing machine but also has its own permanent strength.

In 1922, Weber came up with an idea called rational bureaucracy, a bureaucratic concept that establishes law authority as the basis of bureaucracy. In this concept, bureaucrats carry out their duties according to the law and the obedience of employees not to the leader but to the right law [3]. The concept of Weber’s bureaucracy continues to develop with various criticisms,
for example David Osborn and Ted Gaebler who propose the concept of Entrepreneurial Bureaucracy which emphasizes the spirit of innovation and creativity for the bureaucracy so that it is adaptable to the current development and provide excellent service to the community [4].

However, along with the development of the bureaucracy, various problems known as Bureaucratic Pathology emerged. Bozeman states that bureaucracy that does not function properly, and is free from service principles or does not work properly is often referred to bureaucratic pathology, some also call it Red Tape. This bureaucratic pathology causes the bureaucracy to be very annoying, slow, corrupt, and arbitrary. So that if we mention the word bureaucracy that appears in our association, it means bad things or is related to corruption [5].

The bureaucratic pathology in Indonesia is getting worse and complex because the bureaucracy is constrained by political power. Since Soeharto era until now, political power is still holding the bureaucracy hostage to smoothen the steps of politicians both at local and central level [6]. As result, bureaucratic politicization that damaged all governance structures or rules which led to bureaucratic dysfunction cannot be avoided.

Caiden identified 175 form of bureaucratic pathology, including corruption. The bureaucracy has enormous powers, and this power is often misused for personal or group interests. The lack of supervision and low accountability as well as low morale of the apparatus results in rampant corruption in the bureaucracy [7]. An overview of corruption in the bureaucracy can be seen in table I.

<table>
<thead>
<tr>
<th>Year</th>
<th>Civil servant</th>
<th>Private</th>
<th>State-owned/ district-owned enterprises</th>
<th>University/ School</th>
<th>Parliament</th>
<th>Village apparatus</th>
<th>Ministry</th>
<th>District Head</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>210</td>
<td>135</td>
<td>15</td>
<td>15</td>
<td>13</td>
<td>-</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>2016</td>
<td>217</td>
<td>150</td>
<td>34</td>
<td>17</td>
<td>39</td>
<td>-</td>
<td>8</td>
<td>32</td>
</tr>
<tr>
<td>2017</td>
<td>456</td>
<td>224</td>
<td>37</td>
<td>34</td>
<td>33</td>
<td>-</td>
<td>8</td>
<td>94</td>
</tr>
<tr>
<td>2018</td>
<td>319</td>
<td>242</td>
<td>27</td>
<td>34</td>
<td>53</td>
<td>158</td>
<td>52</td>
<td>28</td>
</tr>
<tr>
<td>2019</td>
<td>263</td>
<td>138</td>
<td>24</td>
<td>33</td>
<td>43</td>
<td>188</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>2020</td>
<td>321</td>
<td>286</td>
<td>47</td>
<td>45</td>
<td>33</td>
<td>330</td>
<td>39</td>
<td>10</td>
</tr>
</tbody>
</table>


From table I, it shows that the majority of corruption perpetrators come from bureaucrats. Political and private actors intertwine with bureaucrats in corruption. The reason is that there is still an assumption of a mutually beneficial relationship from the involvement of these actors in economic activities, which in turn, corruption is considered normal even though they know it violates provisions [5].

In order to deal with bureaucratic corruption, the government through the Corruption Eradication Commission (KPK) is obliged to prevent corruption in the bureaucracy through coordination and supervision. Based on the mandate of law Number 19 of 2019, the implementation of coordination and supervision by the KPK is carried out through an activity program called “Prevention Coordination and Supervision (Korsupgah)”. Based on the background above, this study aims to determine the description of Prevention Coordination and Supervision (Korsupgah), especially in the Central Java Provincial Government. The problem raised is how to implement Korsupgah in the Central Java Provincial Government.
2 Research Method

This research uses qualitative methods based on the philosophy of postpositivism, used to study the condition of natural objects. The researcher is the key instrument. The data collection technique is done by triangulation (combination). The data analysis is inductive/qualitative and the results of qualitative research emphasize on the meaning of understanding uniqueness, constructing phenomena and finding hypotheses [8].

Based on the type of research, this research is a descriptive study, which aims to provide a more detailed description of a symptom or phenomenon. According to Bungin [9] qualitative descriptive research focuses on one particular unit of various phenomena, thus the study can be carried out in depth.

The data sources used in this study are:

a. Primary Source
   Primary sources are data sources that directly provide data to data collectors [8], namely informants or research subjects. In this study, the researcher used purposive sampling procedure in determining informants. The researcher determined informants according to selected criteria that are relevant to a particular research problem. The number of informants who participate in the research depends on the available resources and time and the objectives of the research. The researcher also made limitation related to the number of the informants according to the saturation theory which means a point in data collection when new data no longer brings additional insights to the research question [9].

b. Secondary Sources
   Secondary sources are sources that do not directly provide data to data collectors, for example through other people or documents [8]. Data obtained from secondary or indirect sources were in the form of literature, performance reports, government regulations, governor regulations and implementation guidelines for Korsupgah as well as other documents which were relevant to the policy. This technique was carried out to complete obtained information in addition to support the other data collection technique that have been mentioned above.

3 Result and Discussion

3.1 Conceptual Framework

3.1.1 Corruption

Understanding corruption can be seen from various domains, all of which give negative meanings or bad deeds. In the realm of law it is referred to as a White Collar Crime and is classified as a criminal offense [10]. In the realm of economic and accounting, corruption is a part of fraud [11]. From the realm of sociology and culture, corruption is a pathology [12]. In the realm of religion, corruption means an act that is evil, bad and injustice [13].

Soemardjan in Klitgart [14] stated that corruption is a cancer that is contagious in the Government and society. Corruption gives enormous bad effects as Otusaya in Indiahono [15] stated that corruption has played a major role in causing serious damage to the economic and social landscape in developing countries. Burlian [16] said that corruption is a part of the social
pathology that can cause social rifts or incompatibilities, Siagian [12] also called corruption as a bureaucratic pathology.

In the Indonesian context, Freedman and Tiburzi [17] explained that corruption is a serious problem for several reasons: First, corruption erodes public trust in people in political institutions, which over time can undermine public support for the democratic process. Second, corruption has high economic and social welfare costs. Third, corruption can develop more power for the rich in the political process.

3.1.2 Prevention Coordination and Supervision Program

Efforts to eradicate corruption cannot run solely on the aspect of prosecution, because corruption that is deeply rooted in society requires preventive actions before it occurs. One of the prevention efforts was carried out in the form of Coordination and Supervision of the Prevention (Korsupgah) of corruption carried out by the Corruption Eradication Commission (KPK).

In accordance with article 6 of Constitution Number 30 of 2002 concerning the Corruption Eradication Commission as amended by Constitution Number 19 of 2019 concerning the Second Amendment to Constitution Number 30 of 2002 concerning the Corruption Eradication Commission, it is stated that the KPK is tasked to carry out:

- Preventive actions so that corruption does not occur;
- Coordination with both authorized agencies to carry out Corruption Eradication and agencies in charge of delivering services;
- Supervision of authorized agencies to carry out Corruption Eradication;
- Investigation, and prosecution of Corruption Crime;
- Actions to implement judges’ orders and court decisions that have permanent legal power.

To sum up, the duties of the KPK can be divided into two, namely Enforcement and Prevention. As stated in the definition of Corruption Eradication in article 1 number 4 of Constitution Number 30 of 2002 concerning the Corruption Eradication Commission that has been amended by Constitution Number 19 of 2019 concerning Second Amendment of Constitution Number 30 of 2002 that the meaning of the word eradicating corruption, is a series of activities to prevent and eradicate the occurrence of criminal acts of corruption through coordination, supervision, monitoring, investigation, prosecution, examination in court, with the participation of the community in accordance with the provisions of laws and regulations.

In terms of preventing corruption, the KPK has implemented many programs and activities, including Prevention Coordination and Supervision (Korsupgah). Through Korsupgah, the Corruption Eradication Commission (KPK) can take precautions by supervising predetermined areas. The results of the supervision are in the form of recommendations to be followed up by Ministries, Institutions or Local Governments. This is in accordance with a study conducted by Nana Darna which states that in carrying out corruption prevention it is not enough just to carry out anti-corruption education, but also control, mentoring, guidance and supervision [18].

Initially, the task of Coordination and Supervision of the KPK was only carried out in terms of prosecution. The KPK carried out the coordination and supervision, especially for cases at the Attorney General's Office and the Police that have received public attention. Later, in early 2010 the KPK began to focus on coordination and supervision in terms of prevention.

In the video released by the KPK regarding [19] it is explained that the steps taken by the Korsupgah Team are as follows:
a. Coordination
   1) The team will coordinate with the local government to do mapping and analysis problems in the local government.
   2) The team will collect data in the field by coordinating with the society and government.
   3) The team will propose a recommendations for system improvement according to the determined areas (E-planning, Procurement of Goods and Services, One Stop Integrated Service, Village Financial Management, Internal Control, Corruption Prevention Programs (Gratification, LHKPN), Additional Employee Income, Increased Transparency and Public Participation).

b. Supervision
   1) Guidance for local governments that will compile a system improvement action plan.
   2) Assistance for local governments that will carry out actions/follow up on recommendations.
   3) Monitoring the progress of the implementation of Korsupgah in the regions.
   4) Evaluation and assessment of the implementation of korsupgah in local governments.

From the review above, Prevention Coordination and Supervision is a KPK policy in the form of an activity program that examines the governance of ministries and local governments, especially in 8 areas, namely: Regional Budget (APBD) planning, procurement of goods and services, one-stop integrated services, government internal control apparatus, civil servant (ASN) management, optimization regional income, asset management and village fund management. This activity aims to provide input in order to minimize the occurrence of criminal acts of corruption.

3.2 Korsupgah Program in the Government of Central Java Province

Anti-corruption institutions in Indonesia adopt the Multi Purpose Agencies With Law Enforcement model, namely the anti-corruption agency model whose task is to repress and prevent corruption. In this model, anti-corruption institutions carry out policy analysis, assistance for corruption prevention (coordination, supervision), dissemination of information, monitoring and investigation, some also carry out prosecution tasks [20]. The function coordination and supervision is very important considering the KPK is the coordinator and trigger mechanism in eradicating corruption in Indonesia [21]. Ignoring the functions of coordination and supervision will lead to failure in eradicating corruption as reviewed by Jamil and Panday in their study of corruption eradication practices in Bangladesh.

Based on the mandate of Constitution Number 19 of 2019, the implementation of coordination and supervision by the KPK is carried out through an activity program called “Prevention Coordination and Supervision (Korsupgah)”. In KPK regulation Number 7 of 2020 concerning the Organization and Administration of the Corruption Eradication Commission, the Korsupgah program is under one department, namely the Deputy for Coordination and Supervision. Korsupgah program of the KPK was originated from a collaboration between the KPK and the Government Finance and Development Supervisory Agency (BPKP) in 2014.

This cooperation was agreed upon in a cooperation agreement letter between the KPK and BPKP Number SPJ 83/10/02/2014 and PRJ-01/D4/2014 dated February 19, 2014 concerning Coordination and Supervision of Corruption Prevention which includes monitoring evaluation of pro-people APBD management, and observation or testing of national interest [22].

Korsupgah is part of the prevention efforts undertaken by the KPK. Korsupgah is implemented by the regional coordination work unit (Korwil). Korwil’s authority is to carry out prevention and prosecution activities in an integrated, coordinated, and collaborative manner in
carrying out strategic functions in each region which is the responsibility of each Korwil [23]. The Korwil team is in charge of coordinating and supervising the regions which are its responsibility. According to Syarif in Kuswandi [23] conveying that the role of the Korwil team in the regions is very strategic. Korwil provides important input for the KPK leadership. The personnel of each korwil can find out in real time about any projects or areas that are widely reported by the community to the KPK and other law enforcers, carry out checks secretly and clandestinely, and submit their findings to the enforcement department for investigation.

Korsupgah is implemented in the Regional Government and several Ministries. The Central Java Provincial Government (Pemprov) is one of the provinces that has become the locus for the implementation of Korsupgah KPK since 2016. The implementation of Korsupgah in the Central Java Provincial Government is carried out by looking at various aspects which are considered as areas of intervention, namely Civil Servant (ASN) Management, Optimizing Regional Revenue, Regional Asset Management, Village Fund Management, Regional Budget (APBD) Planning and Budgeting, Procurement of Goods and Services, One Stop Services, and Government Internal Supervisory Apparatus (APIP) Capability.

The Corruption Eradication Commission has determined 8 strategic areas to intervene, the determination of these 8 areas comes from a study that has been carried out by the KPK based on the areas where corruption is most common. The study found that there are 7 areas where corruption is most common, while 1 area, namely the Internal Supervisory Apparatus (APIP), functions as internal control of the 7 areas, meaning that if internal control can be maximized, then corruption in 7 areas can be anticipated.

The description of the implementation of korsupgah in the Central Java Provincial Government will be divided into 3 discussions:

3.2.1 Structure of Korsupgah

In accordance with the Regulation of the Corruption Eradication Commission of the Republic of Indonesia Number 7 of 2020 concerning the Organization and Work Procedure of the Corruption Eradication Commission of Korsupgah, the KPK is under the Deputy for Coordination and Supervision which consists of several directorates according to regional strategies and needs. Coordination and Supervision functions are broadly divided into two, namely Action and Prevention. Deputy for Coordination and Supervision is engaged in the scope of prosecution and prevention, both of which are managed by the Directorate which is determined based on the region.

In terms of preventing corruption, the Deputy for Coordination and Supervision has the function of formulating technical policies in the coordination division on the implementation of state governance, including in the study of the regional government administration management system. So that the KPK makes a Prevention Coordination and Supervision program (Korsupgah) for local governments to carry out corruption prevention.

The Provincial Governments of Central Java and other provinces such as DIY, East Java, Central Kalimantan, West Kalimantan and South Kalimantan are under Directorate III. Directorate III is authorized and responsible for the implementation of Korsupgah in the areas mentioned above. Each directorate is led by a director who is in charge of members who will carry out the tasks according to the predetermined division.

In implementation, Directorate III has a Regional Coordinator (Korwil) on duty in each province, this regional coordinator who communicates to local governments and monitors the implementation of Korsupgah.
3.2.2 Scope of Korsupgah

Korsupgah has a scope in 8 areas, covering APBD Planning and Budgeting, Goods and Services Procurement, Licensing, APIP Supervision, ASN Management, Regional Tax Optimization, Regional Asset Management, and Village Funds. Especially regarding village funds, it only applies to Regency or City Governments. The Korsupgah team periodically measures, evaluates and provides input related to the 8 mentioned areas.

The areas determined are derived from the results of the analysis by the KPK and related Ministries regarding the areas most prone to corruption. From the handling of these 8 areas, it is hoped that it can prevent corruption through the Korsupgah system, although in each area it already has a system that minimizes the occurrence of corruption, Korsupgah coordinates the existing system and supervises its implementation.

There are 7 areas that are intervened in the Central Java Provincial Government, 6 areas consist of Budgeting, Procurement of Goods/Services, Licensing, ASN Management, Regional Assets and Revenue, while 1 area as internal control is Supervision (Inspectorate). Interventions in these 7 areas can prevent acts of corruption, such as bribes to get positions, bribes in budgeting between the executive and legislative, bribes or illegal levies in licensing, mark-ups and fraud in procurement of goods, misuse of assets and leakage in revenue.

3.2.3 The Korsupgah Mechanism

Korsupgah begins with mapping the problems in the 8 areas that will be intervened, then the team will submit indicators in each area to the Regional Government through the Inspectorate as can be seen in table 2. The inspectorate as the leading sector then socializes these indicators to the relevant agencies. These indicators are things that must be reported to the Korsupgah Team periodically (per trimester) in the form of document. Progress or reporting achievements are always monitored through the website www.jaga.id.

**Table 2. Intervened Areas and Indicators of Achievement**

<table>
<thead>
<tr>
<th>No.</th>
<th>Intervened Area</th>
<th>Indicator</th>
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<tbody>
<tr>
<td>1</td>
<td>APBD Planning and Budgeting</td>
<td>Standard unit price (SSH)</td>
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<td></td>
<td></td>
<td>Analysis of Standard Cost (ASB) and Unit Cost of Main Activity (HSPK)</td>
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<tr>
<td></td>
<td></td>
<td>APBD Budgeting</td>
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<td></td>
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<td>Control and Supervision</td>
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<td></td>
<td></td>
<td>SDM UKPBJ</td>
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<td></td>
<td></td>
<td>Tupoksi Implementation</td>
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<td></td>
<td>Support Device</td>
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<td></td>
<td>SIRUP Broadcast</td>
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<td></td>
<td></td>
<td>Control and Supervision</td>
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<td>2</td>
<td>Goods and Services Procurement</td>
<td>Regulation</td>
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<td></td>
<td></td>
<td>Infrastructure Licensing</td>
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<td>Licensing Process</td>
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<td></td>
<td></td>
<td>Control and Supervision</td>
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<tr>
<td>3</td>
<td>Licensing</td>
<td>APIP Capability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Whistleblower System (WBS) Management</td>
</tr>
</tbody>
</table>
The indicators that have been determined by the KPK are then given to the Regional Apparatus Organizations (OPD) in accordance with the tasks they are assigned. For example, the Regional Civil Service Agency (BKD) has the task of completing the ASN Management indicators. Each OPD then completes the documents required and requested by the KPK, this document as evidence that the implementation of corruption prevention on the specified indicators has been running. The inspectorate has an important role in implementing korsupgah in the form of facilitating and helping communication between the Korsupgah team (Korwil) and related agencies. This includes delivering the progress of reporting from agencies to the Korsupgah team.

At the beginning of the year the Korsupgah Team communicated with the Inspectorate about the Korsupgah program in the current year. Then the Inspectorate delivers to the Regional Head or Regional Secretary about the preparations for the implementation of Korsupgah. Then, the Inspectorate will coordinate with relevant agencies to fulfill the report according to Korsupgah indicators. The relevant agencies will periodically report the fulfillment of the indicators to the Inspectorate and then report it to the Korsupgah Team.

The Korsupgah team then makes an assessment of the documents that have been reported, from time to time the team will check the field, whether the reported documents match the reality or not. The documents that must be fulfilled by the relevant agencies are continuously monitored by the Korsupgah Team and the Inspectorate.

Regarding special problems that have major obstacles, while the authority and power of the agencies are limited, the Korsupgah team will help to coordinate with the related parties. For example, regarding problem assets, there are many land ownership without certificates or asset abuse, in solving this problem, the Korsupgah Team will coordinate with the National Land Agency and several parties.

The main focus of Korsupgah is to take precautions through the system, when the chances of corruption in the system have been closed or minimized, it is hoped that corruption will not occur anymore. In addition, efforts to increase regional income were also carried out so that it
had an impact on development and as a system for additional income for the apparatus. A mitigated system and increased regional income will reduce corrupt behavior in the bureaucracy.

3.2.4 Evaluation and Reporting

Government agencies related to Korsupgah report the achievement of activities through the fulfillment of documents submitted to the Inspectorate. Then the Inspectorate uploads it to the website www.jaga.id and coordinates with the KPK. The inspectorate continues to communicate with the relevant agencies to follow up if there are difficulties in fulfilling documents or anticipating delays in reporting.

The Korsupgah team will verify the documents online. Documents which are not suitable will be returned and asked to make corrections. Each document fulfillment for each indicator will be assessed by a percentage. Achievements of 100% will be given to agencies that have met all the indicators that have been set.

Korsupgah achievements will be submitted periodically (trimester) and at the end of the year will be recapitulated nationally. The award will be given to local governments with the highest korsupgah achievements. Each region will compete to improve the achievements of Korsupgah because this is a measure of success in efforts to prevent corruption. Regions that have low corruption achievement are presumably not having good faith in preventing corruption.

4 Conclusion

Korsupgah takes a systems approach to prevent corruption in the bureaucracy. Analyzing and evaluating the system in the bureaucracy and taking action for changes periodically will be able to eliminate the chance for corruption. Although the majority of corruption occurs outside the system or the system might be manipulated, creating a tight system is a strategic step that must be taken. If the system in the bureaucracy is ignored without supervision, it will increase the opportunities for corruption.

4.1 Suggestions

Suggestions for the implementation of Korsupgah are:

a. Determining more specific and sharper indicators so that it can reach the doors where the corruption is possibly occurs in the government bureaucracy.
b. Increase the intensity of field checks on documentary evidence that has been reported, so that outcomes are not limited to document reporting.
c. Analyzing the achievements of Korsupgah with improvement of regional welfare and anti-corruption behavior in a region.

References


Urgency of Changes in Structure and Governance in the Downstream Oil and Gas (BPH MIGAS) Regulatory Agency as an Independent Institution

Paramita Prananingtyas¹, Irawati², Normalita Destyarini³, Alifah Nur Fitriana Naridha⁴

¹pptyas@live.undip.ac.id

Universitas Diponegoro, Indonesia¹, ², ³, ⁴

Abstract. BPH Migas as the Agency that has the authority to regulate the downstream oil and gas business in Indonesia, in its implementation there are obstacles both in terms of conducting supervision and the internal organizational structure of BPH Migas. Obstacles in carrying out supervision in the form of technical and resources. As well as problems in the form of position as an independent institution in supervising downstream oil and gas business. This study aims to determine the independence of BPH Migas in regulating Indonesia's downstream businesses. Through an empirical juridical approach, this empirical legal research concludes that, The independence of BPH Migas has not been implemented as mandated by Law Number 21 of 2011 as an independent body, as emphasized in the provisions of Article 2 paragraph (2) of Government Regulation Number 67 of 2002 which states that the regulatory agency is formed to regulate and supervise the supply and distribution of Oil and Gas Fuel through pipelines in Downstream Business Activities which is a government institution that carries out its functions, duties and authorities independently and is not influenced or separated from the influence and power of the government as well as other parties. This is evidenced by the decision making by the Head of the Governing Body, the committee must make decisions by agreement with the Committee Members, so that GCG implementation is needed in the form of transparency in the decision-making process for the Committee Chair, Director at the Directorate and Secretary to the Governing Body. Therefore, there is a need for a decision instrument that has separate rules for the Directorate in carrying out its duties and has regulatory guidelines not derived from the discretion of the Committee's decisions.

Keywords: BPH Migas, Independence, Downstream Business

1 Introduction

Global developments and challenges in the future, oil and gas business activities in Indonesia are required to enhance further their capabilities in supporting the continuity of national development to increase the prosperity and welfare of the people. The oil and gas industry is an industry that is capitalized (high cost), technology-intensive (high technology), risk intensive (high risk) [1][2][3]. Oil and natural gas are strategic non-renewable natural resources controlled by the state and are vital commodities that play a vital role in supplying industrial raw materials, meeting domestic energy needs, and an important source of foreign exchange. It requires optimal processing so that it can be used for the greatest prosperity and welfare of the people.
The importance of oil and gas policies in managing hydrocarbon resources is based on the awareness that: a). The amount of oil and gas reserves is minimal; b). Oil and gas are non-renewable resources; c). The existence of hydrocarbon reserves on earth is uneven; d). Environmental disturbance; e). Oil and gas are one of the most important energy sources in the world; f). Oil and gas are foreign exchange sources [1].

Based on the provisions of Law Number 20 of 2001, Oil and Gas are strategic non-renewable natural resources in the Indonesian Legal Mining Territory. They are national assets controlled by the state. The Government holds control by the state as the Mining Authority holder. In Law Number 22 of 2001, the government divides Indonesia’s energy sector’s management into two parts: the upstream and downstream sectors. The upstream sector deals with exploration and exploitation, while the downstream sector regulates the oil and gas trade (Law 22 of 2001, article 5) [4].

The production sector in the national oil and gas industry is referred to by Law Number 22 of 2001 as the “upstream sector”, including the exploration and exploitation processes. The oil and gas industry has been the mainstay of state income since the ‘oil boom’ era of the 1970s. Post-reform, Indonesia regulated the Oil and Gas industry with Law Number 22 of 2001 on Oil and Natural Gas. This law later became the legal umbrella for implementing the Oil and Gas industry in Indonesia. With the enactment of Law Number 22 of 2001, the implementation of oil and natural gas business activities from a philosophical aspect underwent a fundamental change. The Government was the policyholder in the oil and natural gas sector. In this connection, for downstream business activities, the government considers it necessary that in order to guarantee the interests of the government, investors, producers, and consumers in certain activities, namely the supply and distribution of Oil Fuel and the transportation of Natural Gas through pipes, a Regulatory Agency for the Supply and Distribution of Oil Fuel and Business Activities is established. According to Nurtjahjo [5], the objective of establishing this independent state institution was due to two things, namely: Due to increasingly complex state tasks that require sufficient independence for their operations and efforts to empower existing state institutions’ tasks by forming new, more specific institutions. Also mentioned in the provisions of Article 8 paragraph (1) Government Regulation Number 67 of 2002 states that the Regulatory Body is responsible to the President and Article 8 paragraph (2) states that the Head of the Regulatory Agency is obliged to provide a report to the President through the Minister regarding the results of his work periodically every 6 (six) months and/or if necessary.

The task of BPH oil and gas is to ensure the availability and smooth distribution of Oil Fuel as a vital commodity and to control the lives of many people in the Republic of Indonesia, to regulate and determine and supervise the availability, distribution, reserves of Oil Fuel nationally and to regulate and supervise the implementation. The supply and distribution of Oil Fuel and the transportation of natural gas by pipeline are conducted by a business entity that has obtained a permit from the Minister. With Presidential Decree Number 86 of 202, then BPH Migas as the implementer, can carry out the regulation’s objectives through concrete actions. With a vision that is in the form of the realization of the supply and distribution of BBM throughout Indonesia and an increase in the use of Natural Gas in the country through fair, healthy, and transparent business competition for the prosperity of the people. BPH Migas’s mission is to realize its vision in the form of independent and transparent regulation and supervision of the implementation of business activities for supplying and distributing BBM and increasing the use of Natural Gas in the country.

The constraints experienced by BPH Migas related to independence in carrying out its duties have made the author examine the independence of BPH Migas in overseeing
downstream business activities and the organizational structure required by BPH Migas in supporting the implementation of its duties and functions.

2 Research Methods

This article’s approach method is juridical empirical, emphasizing the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society with the research specification in the form of descriptive-analytical. The type of data in this article uses qualitative data obtained based on primary data sources collected through interviews, namely a conversation, a question and answer session between the researcher and the respondent who sits physically facing each other and is directed to a particular problem [6][5][7]. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. This article’s data collection method is carried out through field studies conducted by interviewing sources at BPH Migas, especially in the Legal and Public Relations section who can provide all information related to the functions and duties of BPH Migas in downstream business activities. Furthermore, the data were analyzed using qualitative analysis methods.

3 Results and Discussion

3.1 Independence of BPH Migas in Regulating the Downstream Oil and Gas Agency

The current independence of BPH Migas as a regulatory body is a technical regulator because the technical policy regulator at the Directorate General of Oil and Gas regulates from upstream and downstream to implementing fuel quality specification standards. The task as a supervisory body still requires adequate organizational structure support, employees who have the status of ASN as employees under the Ministry of Energy and Mineral Resources, related to decisions must be strengthened by regulatory instruments to carry out their duties. However, in practice, there is more discretion in committee decisions. The changes required for BPH Migas professionally and independently are carried out by responding to the influence of the external environment and the internal environment to direct changes following the organization’s vision. The underperformance of BPH Migas is due to the law’s authority due to the absence of a Special Directorate in charge of supervising and facilitating law enforcement and centralized supervision of BPH Migas without a regional representative office.

According to Greiner [8], each evolutionary period is characterized by a dominant management style, and each revolution is characterized by a dominant management problem that must be resolved if the organization is to continue to grow. One of which is Growth through direction leading to a crisis of autonomy: During the second phase of growth, organizations often differentiate activities and develop a functional organizational structure, along with a clear hierarchy, more formal communication systems, and more sophisticated accounting, inventory and manufacturing systems. Although this new level of order and direction delivers efficiencies, as the organization continues to grow, it eventually becomes less effective; for example, long
communication chains delay decision making and set procedures prevent competent people taking initiatives. This leads to demands for greater autonomy [9].

As an independent institution, the Regulatory Body needs to apply the principles of Good Corporate Governance (GCG). As a company that must have good governance, healthy management can emerge. In general, GCG can be understood as a corporate governance system that contains a system of rules regarding good and correct corporate governance. This GCG principle is also felt to apply to the Downstream Oil and Gas Regulatory Agency.

Sedarmayanti [10] defines corporate governance as a system, process, and set of regulations that regulate the relationship between various interested parties, especially in the narrow sense, the relationship between shareholders, the board of commissioners, and the board of directors for the achievement of organizational goals. More narrowly, the term corporate governance is used to describe the board of directors’ roles and practices. In other words, company management is related to the relationship between company managers and shareholders, which is based on the view that the board of directors is an agent of shareholders to ensure a company is well managed for the benefit of the company [11]. GCG is the principle that underlies the company’s management, prevents significant corporate strategy errors, and ensures that errors that occur can be immediately corrected [10]. The management principle of this company can be applied to the Downstream Oil and Gas Regulatory Body to support the institution’s independence.

Basically, the most essential of Good Corporate Governance is a system or device that regulates the relationship between all parties involved in an organization [10]. In contrast to Corporate Governance, which only emphasizes corporate governance, the implementation of which is the keyword for creating a healthy company. However, its implementation requires a problematic effort.

The principles of GCG according to Article 3 Copy of the Regulation of the Minister of State for State-Owned Enterprises Number per-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises include (1) transparency as openness in carrying out decision making and in presenting material and relevant information [12][13], (2) accountability is a principle whereby managers are obliged to develop an effective accounting system to produce reliable financial statements [14], independence and fairness.

Furthermore, in the GCG discussion, there are 2 (two) main theories that become references in building good corporate governance that can be applied to the Oil and Gas Downstream Regulatory Body. The first theory is the stewardship theory, built on the assumption that humans are basically people who can be trusted, have integrity, act according to the owner’s interests, and are responsible. So that in its position as an independent institution in implementing accountability, transparency, and responsibility in the future, it can expand democracy [15][16]. Agency theory views that company management basically acts as an agent for shareholders. An agent’s concept can be understood as a person who is given the power by another person (the principal) to enter into an agreement with a third party on behalf of the principal [17]. It can be said that the actions of the company management are carried out with full awareness of the interests of shareholders. However, agency theory has also produced an important way of explaining manager’s and owners’ conflicting interests, which is a hindrance [15].

3.2 Organizational structure governance of BPH in regulating downstream businesses in Indonesia

The Downstream Oil and Gas Regulatory Body is an independent institution with an organizational structure consisting of committees and directorates. Where that the directorates
consist of directorates and secretaries of regulatory BODIES. The Committee has a vital role in the Governing Body. Because the committee has multiple roles, the Committee Chairman, who is also the Head of the Governing Body to make decisions, must still be done collegially. It is stated in Article 27 of Government Regulation Number 49 of 2012. As the Head of the Regulatory Body, the Committee cannot immediately make decisions without the Committee Members’ agreement. The Chairman of the Committee’s decision as Head of the Governing Body depends on the majority votes of the members present. So that transparency is needed in the decision-making process for the Committee Chair. Director at the Directorate and Secretary of the Regulatory Body is filled with structural positions at echelon IIa, Head of Sub-directorate and Head of Section are echelon III.a while Head of Section and Head of Subdivision are structural positions at echelon IV.a. Regulation of the Minister of Energy and Mineral Resources Number 25 of 2012 concerning the Organization and Work Procedure of the Secretariat and Directorate at the Regulatory Agency for the Supply and Distribution of Oil Fuel and Business Activities of Transportation of Natural Gas by Pipe is a mandate of Article 15A of Presidential Decree Number 86 of 2002 concerning the Establishment of a Regulatory Agency for the Supply and Distribution of Materials Oil Fuel and Natural Gas Transportation Business Activities by Pipes as amended by Presidential Regulation Number 45 of 2012. The Secretariat and Directorate’s organization and working procedures in this Regulatory Body shall be determined by the Minister of Energy and Mineral Resources after obtaining written approval from the Minister in charge of government affairs. In the field of empowering the state apparatus and reforming the bureaucracy. So, it can be seen that the organizational structure contained in the Regulatory Body is still departing from the ESDM Ministerial Regulation.

The implementation of the duties and powers of the Head of the Regulatory Body by conducting regulatory body meetings as contained in Article 8 of the BPH Migas Regulation, the types of meetings that are held are: a) Committee meeting; b) Committee Session; c) Public Hearing; and d) Committee Council Meeting.

The decision-making mechanism is carried out when a committee meeting is held as the highest committee meeting chaired by the Committee Chair can be carried out openly or privately. It is the highest forum in making Committee decisions in regulating, stipulating, and monitoring the duties and functions of the Governing Body, attended by Committee members, Secretariat and Directorate at committee meetings if necessary. Decisions are made collegially, which is endeavored by deliberation to reach consensus; decisions are made based on the Committee Members’ majority votes who are present if consensus is not reached. If the majority vote is not achieved, the session’s agenda is rescheduled. Decisions of the Committee Session are decisions of the regulatory body that must be signed by the Head of the Agency, who is concurrently the Chair of the Committee. It is stated in Article 10 of BPH Migas Regulation Number 5 of 2015 concerning Procedures for Implementing Duties and Authorities of the Committee for the Downstream Oil and Gas Regulatory Body. Decision instruments must be strengthened with regulatory instruments. In simple terms, the Directorate General institutions, each section or sub-directorate, are expected to have their own rules to carry out their duties, to carry out their business processes. However, nowadays, the Committee is more concerned with discretionary decisions.
4 Conclusion

The independence of BPH Migas in regulating downstream oil and gas bodies is contained in Law Number 21 of 2011, which mandates that it is an independent body by emphasizing the provisions of Article 2 paragraph (2) of Government Regulation Number 67 of 2002, which states that the regulatory body is formed to regulate and Supervision of the supply and distribution of Oil and Gas Fuel through pipelines in the Downstream Business Activities, which is a government institution that carries out its functions, duties, and authorities independently, not influenced or separated from the influence and power of the government and other parties. The organizational structure consists of Committees and Areas referred to in Article 47 paragraph (3) Law Number 22 of 2001 j.o. Article 11 paragraph (2) PP Number 67 of 2002 that the Chairperson and Committee Members are appointed and dismissed by the President after obtaining the DPR’s approval based on the minister’s proposal. The use of the term Independent State Institutions in Indonesia does not yet have a juridical justification, compared to the United States, which calls independent State institutions Independent Regulatory Agencies (IRAs). The indicators used in analyzing the phenomenon of IRAs in England, France, Germany, and Italy are the extent to which there is politicization in determining the IRAs’ leadership, dismissal of IRAs members before the end of their term of office. The longer their tenure, the greater their independence from elected officials, independence in finance and management. The resources and use of power to override decisions/policies issued by the IRAs. Therefore, as an independent institution, it is necessary to apply Good Corporate Governance (GCG) principles as corporate governance that contains excellent and correct corporate governance patterns. It is considered applicable in the Downstream Oil and Gas Regulatory Agency.

GCG principles according to Article 3 Copy of the Regulation of the Minister of State for State-Owned Enterprises per-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises with Transparency, Accountability, Accountability, Independence, Fairness. As independence bodies responsible defining roles and responsible their policy.

The Downstream Oil and Gas Regulatory Body, which in its organizational structure consists of committees and fields, each of which consists of directorates and a secretary of the regulatory body. The role of the committee as Head of the Governing Body in making decisions collegially based on Article 27 of Government Regulation Number 49 of 2012 as Head of the Governing Body the committee must make decisions with an agreement with Committee Members, it is necessary to implement GCG in the form of transparency in the decision-making process for the Committee Chair, Director. At the Directorate and Secretary of the Regulatory Agency. Decisions are made when the committee meeting is held as the highest committee meeting; it may be possible for them to be held openly or privately. Decisions are made collegially, which is sought by deliberation to seek consensus based on the majority vote of Committee Members. Therefore, it is necessary to have a decision instrument that makes separate rules for the Directorate in executing its duties and has guidelines for the rules not derived from the discretionary decisions of the Committee.
Acknowledgements

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References

Local Government Policy to Realize Integrity and Governance to Tackle Corruption Crimes: A Study of Recruitment Patterns of Regional Institution Officers in Batang Regency and Pekalongan City

Pujiyono¹, Rahmi Dwi Sutanti², Aista Wisnu Putra³, Nissa Dayu Suryaningsih⁴

{pujiyono@lecturer.undip.ac.id¹}

Universitas Diponegoro, Indonesia¹, ², ³, ⁴

Abstract. The object of the regional head’s policies varies according to the region’s needs and the objectives of the regional government. The object of the regional head is affected by the issuance of the regional head’s policy. This study aims to describe regional head policies in realizing governmental apparatus with integrity to prevent corruption crimes by studying recruitment patterns of regional agency officials. Therefore, this paper aims to identify and analyze the policies taken by the Regional Heads in realizing government officials with integrity to tackle corruption by knowing and analyzing the pattern of recruitment of regional agency officials as an effort to tackle corruption. According to this juridical sociological research with comparative approach, some policies in Batang Regency and Pekalongan City have some problems. The results showed that the policy of the Regional Head in realizing government apparatus with integrity as an effort to tackle criminal acts of corruption. It can take the form of policies in education that require anti-corruption education for prospective employees of regional agencies. It is reflected in Governor Regulation No. 10 of 2019 concerning the implementation of Anti-Corruption Education in Central Java.

Keywords: Political Appointment, Governance, Integrity, Corruption, Indonesia

1 Introduction

Government apparatus with integrity is one of the critical things for regional agency officials in carrying out their duties, including the importance of being owned by Regional Heads and Regional Agency Officials. However, portraits of regional heads and regional agency officials who have committed acts of corruption are not rare in Indonesia. Data shows, as long as the KPK was established from 2002 to 2019, there were 21 Governors and 122 Regional Heads (Mayor/Regent and Deputy) who committed criminal acts of corruption. Meanwhile, 230 Echelon I, II, and III officials committed criminal acts of corruption [1].

One of the portraits of the criminal act of corruption committed by the regional head in Central Java is the case that befell the inactive Klaten Regent, Sri Hartini, in 2016. Sri Hartini was sentenced to 11 years in prison and a fine of 900 million rupiahs by the Corruption Criminal Court (Tipikor) Semarang based on bribery and gratification. The former Klaten Regent received gratuities and a bribe of Rp. 12,800,000,000 [2]. Then the Inactive Kudus Regent, M. Tamzil, was also convicted of a corruption case related to the sale and purchase of positions.
Tamzil was found guilty by the court for receiving gratuities and bribes from the Acting Task Force (Plt.) Secretary of the Kudus Regency Revenue, Financial Management and Asset Service (DPPKAD) named Akhmad Shofian. Bribes were given so that Akhmad Shofian and his wife Rini Kartika could get a new position at the echelon III level. The corruption case committed by two Regional Heads, apart from contradicting the ASN Law, Sri Hartini and M. Tamzil, also injured the vision/tagline of the Central Java Governor, Ganjar Pranowo, namely “Mboten Korupsi lan Mboten Ngapusi” [3].

This phenomenon encourages curiosity about the policies possessed by regional heads in realizing government apparatus with integrity and the pattern of recruitment of officials from regional agencies to tackle corruption. It is the background of the research entitled “Local Government Policies in Realizing Governmental Apparatus with Integrity as Efforts to Prevent Corruption Crimes (Study of Recruitment Patterns of Regional Agency Officials in Batang Regency and Pekalongan City)”. Therefore, this paper aims to identify and analyze the policies taken by the Regional Heads in realizing government officials with integrity as an effort to tackle corruption. It was knowing and analyzing the pattern of recruitment of regional agency officials to tackle corruption.

2 Research Question

Based on introduction above, several research questions have been formulated. First, how the legal policy of regional agency officials in Pekalongan City. Second, how the legal policy of Regional Agency Officials in Batang Regency.

3 Theoretical Framework

3.1 Local Government Policy

Policy terminology in this paper is the action of government officials in carrying out government duties according to their authority in the form of legal instruments. Local government policy in this paper is refer to Indonesian local government leader in City or Regency. Included in the legal form of regional head policies are mayor regulation, mayor decree and all regulation issued by local governmental institutions.

3.2 Integrity of Governmental Apparatus

Integrity come form latin language integer which mean complete or intact. Integrity in practice defined as consistency between thoughts, feelings, and actions against applicable values or rules. Governmental apparatus integrity which mean in integrity owned by person who serve and work to government. Government apparatus obliged to carry out the function of service to the community (civil services). Permatasari [4] and Kirana [5] suggested to person to work with integrity to have significant positive influence in work performance. This meant that integrity is very important in person work including governmental apparatus who served community in public service.
3.3 Corruption Crimes Prevention

Corruption crimes in Indonesia regulated law number 31 of 1999 in conjunction with law number 20 of 2002. Overall, corruption is a crime that is detrimental to state finances. In Indonesia prevention of corruption crimes divided into three types of prevention. The types of prevention are education, law enforcement, and system improvement.

3.4 Recruitment Patterns of Regional Government Apparatus in Indonesia

Recruitment defined as activities to find people needed to do something. Pattern of Indonesian regional government apparatus recruitment affected by law and policy that ruled government apparatus. The first pattern in 2014 imposed a legal basis that high-ranking regional officials were directly elected by the regional head (Governor, Mayor, or Regent). After that, laws and implementing regulations governing open selection were issued, namely First Article 108, Article 109, Article 110, Article 116, Article 117, Article 118 and Article 120 of Law Number 5 of 2014 concerning State Civil Apparatus. Second, Article 205, Article 208, Article 233, Article 234 and Article 235 of Law no. 23 of 2014 concerning Regional Government. Third, Law No. 10 of 2015 Article 71, concerning the second amendment to Law No. 1 of 2015 concerning the stipulation of Perpu No. 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law. Fourth, Regulation of the Minister of Utilization of the State Apparatus and Bureaucratic Reform (PANRB) Number 13 of 2014 concerning Procedures for Filling the Position of Primary High Leaders through Open Selection in Government Agencies.

4 Methodology

This research used juridical sociological method with comparative approach. Juridical sociological method is a suitable method for this research, because the object under study is the law that applies in a particular area and its legal applications. Each region certainly has different legal policies and implementations regarding the selection of regional agency officials. Comparative approach is used in this research to analyze the differences of the legal policies for selecting regional agency officials in Batang Regency and Pekalongan City. Each region each region has a different legal policy that is adapted to the characteristics and needs of the region. The implementation of legal policies in each region also has different problems and advantages according to the social, political, and cultural dynamics adopted by the community.

5 Results and Discussion

5.1 Good Governance and Legal Basis in Integrity of Regional Government Apparatus

A government with integrity is closely related to governance, namely, a mechanism for managing economic and social resources that involve the influence of the state sector and the non-government sector in a collective activity [6]. Meanwhile, good governance is
etymologically translated into good management or good governance [7]. According to Toha [8], good governance is concluded as open, clean, authoritative, transparent, and responsible.

The characteristics of Good Governance, according to the United Nations Development Program [9], are:

a. Participatory, good governance is a government with an active participation system from the party being governed (people/society).
b. Transparent, all information that the public should know can be accessed easily.
c. Accountable, every government action is accountable in accordance with the initial planning.
d. Effective, government action should have a good effect and be effective for the community.
e. Equitable, the government views every citizen fairly and equally in government.
f. Promoting the rule of law, promoting that the law is the commander who leads the country, not just power.

As for public policy based on the Big Indonesian Dictionary, a policy is a series of concepts and principles that form the outline and basis of a plan to implement a job in achieving goals or objectives. Etymologically, the term policy comes from Greek, namely, polis, which means “city-state”, and Sanskrit is called pur, which means “city”, and in Latin, it is called politia, which means state [10].

Dunn [11] defining Public Policy is a guideline that contains values and norms that have the authority to support government actions in its jurisdiction. Based on this understanding, it can be understood that public policy is a direction of action taken by the government which has the authority to achieve specific goals and overcomes a problem in which there are obstacles and opportunities to create a good impact on the Public.

Arief [12] revealed the development of criminal objectives, namely as follows:

a. Seen from the aspect of protection against crime, the goal of crime is the prevention of crime.
b. Viewed from the aspect of protection of the perpetrator, the purpose of the crime is to improve the perpetrator (change behavior).
c. Viewed from the Protection against Abuse of Sanctions/Reactions, the purpose of the crime is to regulate/limit the arbitrariness of the authorities and citizens of society.
d. Viewed from the aspect of protection of the disturbed balance of interests/values, the purpose of the crime is to maintain/restore the balance of society.

The authority of a regional head is often referred to as a policy issued by a regional head with a specific purpose to carry out regional government functions. It can be concluded that the form of legal policy is in the form of regulations where the regional head interferes, namely Regional Regulations, Regional Head Regulations, Regional Head Decrees, and other policies required by regions and the community in accordance with the provisions of statutory regulations.

The object of the regional head’s policies varies according to the region's needs and the objectives of the regional government. The object of the regional head is affected by the issuance of the regional head’s policy. One example of the regional head’s policy object is the regional government apparatus as the party led by the regional head in carrying out the wheels of regional government.

Regional head policies towards regional apparatus must also have specific objectives. The policy objectives for these officials must also be in line with the objectives of the regional government. One of the regional head’s policy objectives towards regional government officials is to improve the capacity of the regional government apparatus for the better. These policies
are included in the class of policies with the aim of increasing the capacity of the human resources (HR) of the government. One of the crucial capacities to be improved for state apparatus in the regions is increasing the capacity of human resources to become more integrity.

Therefore, it is crucial as a regional head to make public policies in realizing government apparatus with integrity as an effort to tackle corruption. Based on the research that has been done, several regional policies in the context of realizing government apparatus with integrity as an effort to tackle the criminal act of corruption, namely Governor Regulation No. 10 of 2019 concerning the implementation of Anti-Corruption Education in Central Java.

The regulation contains Anti-Corruption Education in the State Civil Apparatus (ASN) implemented in the Training Program (Technical Training, Training for Functional Positions, Managerial Training, Training for Regional Apparatus Leaders, Basic Training for Prospective Civil Servants (Latsar CPNS), and other Development Training in accordance with the provisions of the legislation). Anti-Corruption Education materials are included in every ASN Education training curriculum.

As for several policies that the government has carried out in efforts to combat corruption crimes related to the selection of high-ranking regional officials, among others:

a. Law No. 5 of 2014 concerning State Civil Servants, among other things, mandates that filling high leadership positions be carried out openly and competitively.

b. Law No. 23 of 2014 concerning Regional Government as amended several times, most recently by Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government.


d. Government Regulation No. 18 of 2016 concerning Regional Apparatus as amended by Government Regulation No. 72 of 2019 concerning Amendments to Government Regulation No. 18 of 2016 concerning Regional Apparatus.

e. Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia No. 15 of 2019 concerning Filling of High Leadership Positions Openly and Competitively in Government Agencies.


### 5.2 Legal Government Policy of Recruitment Local Government Apparatus in Pekalongan City

As for what has explicitly been issued by the regional head (Pekalongan Mayor) in the administrative area of Pekalongan City, Central Java Province, among others:

a. Pekalongan City Regional Regulation No. 5 of 2016 concerning the Formation and Composition of Regional Apparatus for the City of Pekalongan as amended by Regional Regulation of the City of Pekalongan No. 3 of 2020 concerning Amendments to the Regional Regulation of the City of Pekalongan No. 5 of 2016 concerning the Formation and Composition of Regional Apparatus for the City of Pekalongan.

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1 Interview with Miji Rustanti, Head Staff of the Pekalongan City Civil Service Agency, 26 November 2020.
b. Pekalongan Mayor Regulation No. 102 of 2016 concerning Duties. Functions and Job Descriptions of Structural Positions for Regional Apparatus of Pekalongan City.

c. Decree of the Mayor of Pekalongan No. 800/830 of 2019 concerning Competency Standards for Primary High Leaders in the Pekalongan City Government.

The implementation of the policy is carried out in several activities, including:

a. Organizing the Pekalongan Municipal Government ASN Work Assessment Team Meeting, where the results become the Mayor’s consideration for the inauguration of structural officials’ transfer/promotion.

b. Pekalongan City Government ASN Competency Assessment/Test

c. The implementation of open selection and rotation selection for the Filling of the Positions of the Senior High Leaders of the Pekalongan City Government.

As for the policies/legal basis/legal rules of the Mayor of Pekalongan in the recruitment of officials from regional agencies, namely:


The pattern of recruitment of regional agency officials as an effort to tackle corruption is reflected in the Implementation and Method of Open Selection/Rotation of Primary High Position, namely:

a. Selection Announcement Stage
Announcement of Selection is disseminated through print and online media, accessed by people in the province of Central Java for 5 (five) calendar days.

b. Administrative Selection Stage
It aims to determine the selection participants who meet the administrative requirements and are entitled to participate in the next selection stage.

c. Competency Test Stage
It aims to filter participants based on their ability from a managerial perspective. Rating Weight: 25%.

d. Track Record Tracing Stage
It aims to obtain more information about the qualifications and qualities of candidates. It is done by tracing the track record information of participants from their work environment. Rating Weight: 20%.

e. Written Idea Test and Interview Phase
It aims to filter participants based on field competencies and assess the ability of participants to understand the socio-cultural conditions in Pekalongan City through writing papers and interviews. The weighted assessment is 20% for the Written Idea Test and 35% for the interview.

f. Stage of Announcement and Submission of Selection Results to the Civil Service Officer (PPK), namely the Mayor of Pekalongan.
5.3 Legal Government Policy of Recruitment Local Government Apparatus in Batang Regency

The administrative area of the Batang Regency government has the same organic legal basis as the selection in Pekalongan. As for those specifically regulating in the Batang Regency area, namely:

a. Announcement No. 01/Pansel.JPTP.Sekda.BTG/XI/2020
b. Announcement No. 02/Pansel.JPTP.Sekda.BTG/XI/2020
c. Announcement No. 03/Pansel.JPTP.Sekda.BTG/XI/2020
d. Announcement No. 04/Pansel.JPTP.Sekda.BTG/XI/2020

Selection is carried out by forming a selection committee consisting of high-ranking regional government officials, inspectorates, and elements outside the government, such as academics and community leaders who are considered influential.

The selection results determine the three-best people with the highest score based on the selection committee’s assessment. The best names are submitted to the Regional Head (Governor/Regent/Mayor) to be elected. Regional Heads are free to choose who is elected from the names proposed, not from the best score or first rank. Other considerations for the regional head to choose other than rank are the alignment of the candidate’s program targets with the regional head’s vision and mission, manners, etc.

As for the obstacles that arise in recruiting local agency officials, namely applicants lacking/not meeting the quota, the solution is that the Mayor of Pekalongan City issues a Mayor’s circular for officials who meet the requirements to participate in applying for the selection.

6 Conclusion

The policy of the Regional Head in realizing government apparatus with integrity as an effort to tackle criminal acts of corruption. It can take the form of policies in education that require anti-corruption education for prospective employees of regional agencies. It is reflected in Governor Regulation No. 10 of 2019 concerning the implementation of Anti-Corruption Education in Central Java.

The pattern of recruitment of officials from regional agencies to combat corruption. This recruitment uses an open selection method called the job auction. This method allows the civil service agency to hold an open selection for vacant positions in the regency/municipality areas to be filled with civil servants in that city or surrounding areas within the same province. The selection process is carried out by a selection committee consisting of local government and non-regional government elements such as academics and community leaders. Selection components, namely managerial competence, psychology, and program presentation, solve problems according to the position. The selection results are submitted to the regional head to be elected.

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2 Interview with the secretary of the Regional Civil Service Agency (BKD) Batang Regency, 27 November 2020.
References

Digital Transformation in Bank Perkreditan Rakyat in Encouraging Efficiency and Answering the Challenges of the New Era of Industry 4.0

Amne Gumilar Carlie Mudia¹, Angelicha Aminah Zairuni Ussu², Atika Mitzalina³
{amne.206032@mhs.its.ac.id¹, angelicha.206032@mhs.its.ac.id², mitzialina.206032@mhs.its.ac.id³}

Institut Teknologi Sepuluh Nopember, Indonesia¹, ², ³

Abstract. Bank Perkreditan Rakyat (BPR) is a bank that carries out business activities conventionally and Financial Technology (Fintech) is a term with a sense related to the field of technology as well as the field economics (OJK, 2021). In 2020, the world was shocked by a deadly virus outbreak. This virus is a new type of virus called Coronavirus (SARS-CoV-2). The spread of the Covid-19 pandemic and Government policies also affect the banking industries, especially Bank Perkreditan Rakyat. Bank Perkreditan Rakyat has limitation in digital innovations, which is currently required to minimize direct contact. There are several factors influencing BPRs in digital innovations. This study aims to formulate the strategy through SWOT analysis on the conditions of Bank Perkreditan Rakyat in Indonesia. The research method used in this study was qualitative descriptive and SWOT analysis. The results of this study are 10 strategies with the main priorities of improving BPR services with digital including digitization of information access, digitization of services to customers, and digitization of BPR business processes and also, we make comparison with financial technology. The strategies obtained from this study are expected to be a suggestion for BPR and other related stakeholders.

Keywords: Bank Perkreditan Rakyat, Financial Technology, Electronic Banking

1 Introduction

In 2020, the world was shocked by a deadly virus outbreak. This virus is a new type of virus called Coronavirus (SARS-CoV-2). This virus can result in a disease called Coronavirus Disease 2019 (Covid-19). It is known that the origin of this virus is from Wuhan, China. Until this time, 223 countries have been exposed by Covid-19, one of which is Indonesia [1]. Coronavirus has several modes of transmission. Coronavirus transmission can be through droplets, air, contaminated surfaces, and fecal-oral or human waste. Based on the modes of transmission, some places are prone to the spread of Coronavirus. Places prone to the spread of Coronavirus are crowded places, narrow places, and confined and closed places.

Indonesia is recently in 20th place with a total of 1,662,868 confirmed cases with a mortality rate of 45,334 [2]. The government issued policies limiting the community activities as an attempt for handling Covid-19, including the Government Regulation of the Republic of Indonesia Number 21 of 2020 regarding the Large-Scale Social Restrictions for Accelerating the Handling of Coronavirus Disease 2019 (Covid-19) [3]. In the regulation is explained that Large-Scale Social Restrictions at least include closing the schools and workplaces, restrictions on religious activities, and/or the restrictions of activities in public places or facilities. These
policies have many impacts on changes in community lifestyles, mainly the Mobility/Community Movements. Trends in data mobility/community movements are divided into Retail and Recreation occurring during pandemic until this time. Based on Our World In Data, the community movements in retail and recreation fields, such as the visitors of restaurant, cafe, shopping center, cinema, and others, have decreased up to -50% (April 30, 2020), and until April 17, 2021, the community movements still have decreased up to -20%. In public transportation sectors, such as the passengers of the bus, train, plane, and others, have also decreased up to -65% (April 30, 2020) and until this time still have decreased in -30% (April 17, 2021). The park and open space sectors have decreased up to -45% (April 20, 2020). However, until this time still has decreased by -20%. In the workplaces, mobility sector/community movements decreased up to -50% on April 30, 2020, and until this time, April 17, 2021, has decreased by -25%. This occurred due to the impact of Work From Home and Work Termination [4].

The spread of the Covid-19 pandemic and Government policies also affect the banking industries, especially Bank Perkreditan Rakyat. Bank Perkreditan Rakyat, hereinafter abbreviated as BPR, is a bank implementing conventional business activities, where its activities do not provide services in payment traffic. The growth of BPR in 5 years can be seen in the following data.

<table>
<thead>
<tr>
<th>Table 1. BPR growth in the last 5 years [5]</th>
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<tbody>
<tr>
<td><strong>Data</strong></td>
</tr>
<tr>
<td>Total Credits</td>
</tr>
<tr>
<td>Total Assets</td>
</tr>
<tr>
<td>Non-Performing Loan Ratio</td>
</tr>
<tr>
<td>Return of Assets</td>
</tr>
<tr>
<td>DPK</td>
</tr>
</tbody>
</table>

The business activities that can be implemented by BPR are fundraising in the form of time deposits, savings and loans received, distribution of funds, placement of funds, foreign exchange business activities, and other activities to support the business activities as an officeless financial service provider and agent for financial inclusions, and electronic banking services. In the Financial Services Authority Regulation Number 12/Pojk.03/2016 regarding the Business Activities and Office Network Areas of Bank Perkreditan Rakyat Based on Primary Capital, the business activities of BPR are in accordance with the BPRKU group enacted in Article 5 paragraph 2, where the provision of electronic banking is only available at BPRKU 3. Electronic banking includes phone banking, SMS banking, mobile banking, and internet banking. This means limiting other BPR innovations in developing digitalization in its services [6].

On the other hand, the growth of Fintech is increasing in Indonesia. There are 148 Fintech Companies registered in Otoritas Jasa Keuangan (OJK). The total assets of fintech organizers in Indonesia in 2020 reached IDR 3.71 trillion (increase in 22.23% YoY) [7]. From the data, it can be interpreted that in 2020 during the Covid-19 pandemic, the presence of Fintech is more facilitating people to borrow capital. The results of statistics stated that 67.19% who use fintech lending are people 19-34 years old. Currently, the total population of Indonesia is 260.20 million, with the compositions dominated by millennials of 25.87% and gen z of 27.94%. Residents of that age are people who understand technology.
This study aims to formulate the strategies through the external or internal weaknesses and financial factors with SWOT analysis in the Bank Perkreditan Rakyat (BPR) in Indonesia so that BPR can maintain its existence in the middle of the digital era.

2 Methodology

The methodology in the study was qualitative descriptive analysis and SWOT analysis. Qualitative descriptive analysis in the study is currently useful for exploring the conditions of digitalization in Bank Perkreditan Rakyat from internal or external factors. On the other hand, according to Rangkuti [8], SWOT analysis is an analysis based on the logic that can maximize the Strength and Opportunities but simultaneously can minimize the Weakness and Threats. Therefore, in this study, SWOT analysis was carried out to obtain recommendations in the digital transformation of Bank Perkreditan Rakyat (BPR).

<table>
<thead>
<tr>
<th>Strength (S)</th>
<th>Weakness (W)</th>
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<tbody>
<tr>
<td><strong>Opportunity (O)</strong></td>
<td>Strategies to take advantage of opportunities to harness power (S-O Strategy)</td>
</tr>
<tr>
<td><strong>Threats (T)</strong></td>
<td>Strategies to solve threats by using force (S-T Strategy)</td>
</tr>
</tbody>
</table>

Fig. 1. Matrix SWOT (Lukmanul Almamalik, 2010).

The type of data used in this study was qualitative data obtained from secondary data sources. The steps in the study carried out were:

b. Formulate recommendations for the digital transformation of BPR with SWOT.

3 Result

3.1 Fintech

Fintech or Financial Technology is a term with a sense related to the field of technology as well as the field of economics. Fintech aims to increase funding/finance by going through the online transaction process. It can be said that fintech is a merger between technology and the financial system [7].

Fintech regulation in Indonesia is directly supervised by the Otoritas Jasa Keuangan (OJK) and regulated by Bank Indonesia (BI). In Indonesia itself, several law foundations can be used related to fintech. There is a Circular Letter by Bank Indonesia with Number 18/22/DKSP concerning the Implementation of Digital Financial Services. Then there is also Bank Indonesia Regulation Number 18/40/PBI/2016 concerning The Implementation of Payment Transaction Processing. And Bank Indonesia Regulation Number 18/17/PBI/2016 on Electronic Money.

The existence of a valid legal basis regarding fintech in Indonesia provides convenience for fintech providers and users. Where the Otoritas Jasa Keuangan and Bank Indonesia have ensured the security and confidentiality of the data belonging to providers and users. According
to the Otoritas Jasa Keuangan, fintech is also in line with the concept of the Master Plan of the Indonesian Financial Services Sector (MPJKI), thus fintech can synergize with the financial industry to be able to provide multi-benefits to the community [9].

Fintech in Indonesia has so far registered as many as 149 companies. In the last three years from 2018 to 2020, the accumulation of national loans has always increased. Until now, the accumulation of national loans amounted to Rp. 155.90 trillion with an increase of 91.30% [7].

### 3.2 Fintech Activities in Indonesia

Fintech has its activity in financial services in Indonesia that can be classified into five categories, namely:

a. Payments, transfers, clearing, and settlements

   This activity has a close relationship with the digital payment process used by both banks and non-banks. Then there are electronic wallets, distributed ledger reporting, and electronic currencies. This model aims to increase financial inclusion and ensure the proper functioning of the payment system.

b. Deposits, borrowings, and capital additions

   This activity is closely related to financial intermediation, its innovation in this field is the most common namely crowdfunding and Peer-to-Peer (P2P) Lending online lending platforms. There are also cryptocurrencies as well as Distributed Ledger Technology (DLT).

c. Risk Management

   Risk management pays attention to the commitment and registration of guarantees and guarantees in credit operations. Fintech that participate in the insurance sector have a major influence on underwriting and risk pricing and settlement claims. And also affects the marketing and distribution of insurance.

d. Market Support

   In this activity, access and contestability of information is an important issue. Where fintech can provide more effective processes such as e-aggregators, big data, digital ID verification, digital data storage and processing, or it can also be like the execution of orders through smart contracts.

e. Investment Management

   This activity has a scope on e-trading platforms that can allow consumers to invest directly through digital electronic devices on every type of asset, smart contracts, and also on fintech innovations that can provide advice on financial services such as investment management and portfolio [10].

### 3.3 Efforts of the Otoritas Jasa Keuangan

Otoritas Jasa Keuangan efforts are divided into two, namely:

a. Issuance of Terms

   1) Regulatory Sandbox

      The issuance of POJK Number 77/POJK.01/2016 concerning Direct or Peer-to-Peer Lending (P2P) Lending services.

   2) Further preparation from the OJK on crowdfunding, and digital banking.

b. Establishment of Fintech Innovation Hub at the OJK:

   1) Coordination between Ministries and Institutions.

   2) Development of fintech industry in accordance with the needs of the community.

   3) Sandbox development for more potential fintech business models.
4) The existence of means of communication between regulators and fintech in the industry such as fintech websites [11].

3.4 Bank Perkreditan Rakyat

Bank Perkreditan Rakyat (BPR) is a bank that carries out business activities conventionally or based on sharia principles, which in its activities does not provide services in payment traffic. BPR activities are much narrower when compared to the activities of commercial banks because BPR is prohibited from accepting giro deposits, foreign exchange activities, and insurance. Referring to the Law on banking Number 10 of 1998 (article 1), it is clearly said that commercial banks are banks that carry out business activities in conventional ways and or based on sharia principles that in their activities provide services in payment traffic. While Bank Perkreditan Rakyat (BPR) is a bank that carries out business activities conventionally or based on the principle of sharia which in its activities does not provide services in payment traffic.

3.5 Types of BPR

a. The type of BPR based on its ownership, BPR is divided into two includes:
   1) Owned by BPR is the Government (generally Level II Local Government).
   2) Privately Owned by BPR.

b. Types of BPR based on its management, the BPR is divided into two includes:
   1) Conventional BPR (BPR).
   2) BPR Syariah (BPRS).

c. While if viewed from the type, then BPR can be classified into three namely:
   1) BPR Badan Kredit Desa (BKD). BKD is a financial institution operating in rural areas. However, in 1992, through the Banking Law, BKD was given status as BPR but with unique characteristics. Bank Desa and Lumbung Desa are examples of the type of BPR BKD.
   2) BPR Is Not a Village Credit Agency. Examples are BPR ex LDKP (Lembaga Dana Kredit Pedesaan), Bank, BKPD (bank karya produksi desa), and Bank Pegawai. The third type is LDKP (Lembaga dana dan kredit pedesaan). This LDKP can be in the form of perusahaan daerah (PD), cooperatives, limited perseroan terbatas (PT), and other forms stipulated by government regulations.

3.6 BPR Services

a. Bank Perkreditan Rakyat Savings
   In The Bank Perkreditan Rakyat savings account, customers are not charged an administration fee at the time of opening or closing the account. The initial deposit fee is fairly light. That is the range of Rp10,000-Rp100,000. The customer can also take the funds at any time, except for the type of term savings. Interest on BPR savings is in the range of 2%-6% per month. Unlike BPR Syariah, which only knows the revenue sharing system around 75:25 or if converted into interest then the value is about 5%.

b. Bank Perkreditan Rakyat Deposits
   While deposit products offered by BPR are relatively the same as those offered by commercial banks. For example, the interest on BPR deposits offered on average is at 6% every year. the deposit period provided starts from 1, 3, 6, to 12 months. There is one
interesting thing offered by some BPR related to its deposit products, namely the provision that customers can withdraw their funds at any time without any penalty.

c. Bank Perkreditan Rakyat

When it comes to the most iconic BPR products, of course, credit or loans. For credit products, arguably what BPR offers is quite diverse. All-access data banking services in large sizes and can be accessed app anywhere and anywhere. Depending on the innovation of each BPR. In general, the credit facilities offered by BPR are: 1) Business Credit, 2) Home Ownership Credit, 3) Small Business Credit, 4) Land Ownership Credit, 5) Multipurpose Credit. The terms of BPR credit are not much different from the society imposed by commercial banks. It is recognized that the presence of BPR in Indonesia can not be separated from the Usaha Mikro Kecil Menengah enterprises (UMKM). On the other hand, the needs of rural communities that have not been touched by commercial banks make BPR business opportunities wide open. The presence of BPR is certainly a fresh wind as well as a positive solution for rural communities to avoid the trap of loan sharks in gaining access to business credit. Because in principle, BPR serves the needs of capital with a relatively easy and fast crediting procedure. This is one of the advantages of BPR over commercial banks [12].

In the explanation of Fintech and BPR above, it can be seen that the main difference is in the operation of banking services. Operasional of Fintech in a modern way by implementing digital banking, while Operational of BPR in a traditionally way/non-digital that it is easily accessible to rural communities. On other Side, the Operational of Fintech and BPR services is equally bound to the Peraturan Otoritas Jasa Keuangan (POJK) that provide service limits in providing loans.

3.7 Identification of Strength, Weakness, Opportunities and Threat of conditions BPR

a. Strength

1) If seen from the total credits for the last three years, which continues to increase, Indonesians still need Bank Penkreditan Rakyat.
2) The BPR services are easy to be reached by people in rural areas.
3) The development of fintech can pose a threat termination of employment in Banking Industry.

b. Weakness

1) In the Regulation of Financial Service Authority number 12 /Pojk.03/2016, only BPRKU 3 can have electronic banking.
2) Compared to other banks, BPRKU 1 and BPRKU 2 have much less primary capital, so that they are not effective if digitalization is applied.
3) BPR services are not effective because they are still traditional.
4) The lack of digital knowledge on human resources of BPR in remote areas.
5) Not all people know the existence of BPR.
6) Public awareness began to grow in save and borrow financial needs through banking services.
7) The presence of Fintech will encourage banking to digitize and automate so that can make service easier practical.

c. Opportunity

1) The Covid-19 pandemic has made people less having interaction, so electronic banking services are required.
2) By digitalization, BPR coverage will be evenly distributed both in urban and rural areas.
3) The use of Fintech can lead to online crime, so that it can cause the customers to doubt making a transaction using Fintech.
4) The information technology infrastructure has not yet evenly throughout Indonesia causing inequality of access banking services.
5) The knowledge of people about fintech still relatively low.
6) Internet connection network is still lacking support for fintech access.

**d. Threats**

1) There is a BPR competitor currently, a fintech that facilitates the services with digital.
2) The development of Fintech in the last three years increases.
3) There is a Regulation of OJK No.77/POJK.01/2016 regarding Peer-to-Peer (P2P) Lending that makes it.
4) Fintech in Indonesia is already directly supervised by the Otoritas Jasa Keuangan (OJK) and regulated by Bank Indonesia (BI).
5) The Otoritas Jasa Keuangan and Bank Indonesia have ensured the security and confidentiality of the data belonging to providers and users of Fintech.
6) Fintech can help people who have not been able to serve by traditional finance industry.

### 3.8 Formulated recommendations for the digital transformation of BPR with SWOT

In strategy formulation, SWOT (Strength, Weakness, Opportunity, and Threat) analysis technique was carried out. Based on what has been done in target 1, the first thing to do was making groups based on internal and external factors, where internal factors are strength and weakness. Meanwhile, the external factors are opportunities and threats. Then, the analysis was conducted to formulate strategies by seeing the relationship between strength and weakness owned by Kampung Genteng and the threat or opportunities from external factors. Thus, it gave several strategies with four crossings, SO Strategy (Strength-Opportunities), WO Strategy (Weakness-Opportunities), ST Strategy (Strength-Threat), and WT Strategy (Weakness-Threat).

<table>
<thead>
<tr>
<th>Strength (S)</th>
<th>Weakness (W)</th>
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<tr>
<td>4. The lack of digital knowledge on human</td>
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5. Not all people know the existence of BPR.
6. Public awareness began to grow in save and borrow financial needs through banking services.
7. The presence of Fintech will encourage banking to digitize and automate so that can make service easier practical.

<table>
<thead>
<tr>
<th>Opportunity (O)</th>
<th>SO Strategy</th>
<th>WO Strategy</th>
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<tbody>
<tr>
<td>1. The Covid-19 pandemic has made people less having interaction, so electronic banking services are required.</td>
<td>1. The improvement of BPR digital services include digitalization of information access, digitalization of services for costumers, and digitalization of BPR business process (S1, S3, O1, O2, O4, O6, O7).</td>
<td>1. Seeing the needs of the electronic bank currently, especially during the covid-19 pandemic, the regulations of electronic banking restrictions on BPR should be updated by OJK (W1, W6, W7, O1, O3).</td>
</tr>
<tr>
<td>2. By digitalization, BPR coverage will be evenly distributed both in urban and rural areas.</td>
<td>2. Principle-based provisions and regulations in the digital transformation of Bank Penkreditan Rakyat (BPR) are required in all areas (S2, O2, O3, O5).</td>
<td>2. The BPR human resource training in information technology is to face the digital transformation throughout Indonesia (W3, O2, O4, O5).</td>
</tr>
<tr>
<td>3. The use of Fintech can lead to online crime, so that it can cause the customers to doubt making a transaction using Fintech.</td>
<td></td>
<td>3. The acceleration of the increase in capital for all types of BPR so that all types of BPR can have digital innovations (W2, O2).</td>
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<tr>
<td>4. The information technology infrastructure has not yet evenly throughout Indonesia causing inequality of access banking services.</td>
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<tr>
<td>5. The knowledge of people about fintech still relatively low.</td>
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<td>6. Internet connection network is still lacking support for fintech access.</td>
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<tr>
<th>Threats (T)</th>
<th>Strategy ST</th>
<th>WT Strategy</th>
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</thead>
<tbody>
<tr>
<td>1. There is a BPR competitor currently, a fintech that facilitates the services with digital.</td>
<td>1. Increasing innovations that can be accepted by society through digitalization (S2, S3, T1, T2, T4, T5).</td>
<td>1. Conducting socialization related to the existence of BPR in MSMEs throughout Indonesia (W5, T2).</td>
</tr>
<tr>
<td>2. The development of Fintech in the last three years increases.</td>
<td>2. Increasing the services that facilitate people in</td>
<td>2. Providing information system in the form of the</td>
</tr>
</tbody>
</table>
3. There is a Regulation of OJK No.77/POJK.01/2016 regarding Peer-to-Peer (P2P) Lending that makes it.

4. Fintech in Indonesia is already directly supervised by the Otoritas Jasa Keuangan (OJK) and regulated by Bank Indonesia (B1).

5. The Otoritas Jasa Keuangan and Bank Indonesia have ensured the security and confidentiality of the data belonging to providers and users of Fintech.

6. Fintech can help people who have not been able to serve by traditional finance industry.

| registering credit in BPR (S2, T3, T6). | website of the application containing all information related to BPR in Indonesia (W4, W5, W6, T3, T4, T6). | 3. Establishing an organization that can reach all BPR in Indonesia for the equalization of capital, human resources, and services (W1, W2, W3, W7, T2, T5, T6). |
---|---|---|

### 4 Conclusion

From the results of the study above, several strategies obtained were:

a. The improvement of BPR digital services include digitalization of information access, digitalization of services for costumers, and digitalization of BPR business process (S1, O1, O2).

b. Principle-based provisions and regulations in the digital transformation of Bank Penkreditan Rakyat (BPR) are required in all areas (S2, O2, O3).

c. Seeing the needs of the electronic bank currently, especially during the covid-19 pandemic, the regulations of electronic banking restrictions on BPR should be updated by OJK (W1, O1, O3).

d. The BPR human resource training in information technology is to face the digital transformation throughout Indonesia (W3, O2).

e. The acceleration of the increase in capital for all types of BPR so that all types of BPR can have digital innovations (W2, O2).

f. Increasing innovations that can be accepted by society through digitalization (S2, T1, T2).

g. Increasing the services that facilitate people in registering credit in BPR (S2, T3).

h. Conducting socialization related to the existence of BPR in MSMEs throughout Indonesia (W5, T2).

i. Providing information system in the form of the website of the application containing all information related to BPR in Indonesia (W4, W5, T3).

j. Establishing an organization that can reach all BPR in Indonesia for the equalization of capital, human resources, and services (W1, W2, W3, T2).
From those strategies, the main strategy is to improve BPR services by digital, including digitalization of information access, digitalization of services for the customers, and digitalization of the BPR business process. Moreover, those strategies are the most related strategy to the current conditions, Covid-19 pandemic condition, by minimizing the direct contact from an individual. Therefore, the strategies obtained are expected to be a suggestion for BPR and other related stakeholders.

References

Disharmonize of the Provision of Electricity and the Impact on the Business

Ningrum Natasya Sirait¹, Agusmidah², Rosmalinda³, Joiverdia Arifiyanto⁴
{ningrum@usu.ac.id¹, agusmidah@usu.ac.id², rosmalinda@usu.ac.id³, j.arifiyanto@gmail.com⁴}

Universitas Sumatera Utara, Indonesia¹, ², ³, ⁴

Abstract. Electricity is very important for the business. Indonesia’s state-owned power company, Perusahaan Listrik Negara (PLN) is not sufficient and even disrupted in electricity supply. There are regulations on electricity to ensure the supply of electricity. It also regulated the roles of business actors in providing electricity both at the national and regional levels. As an impact, there is disharmony on regulation concerning electricity for business as occurs in North Sumatra Province. This research raised a research question, how disharmony in the arrangement of electricity has an impact on the business world? This study reviewed 5 regulations covering national and provincial level regulations concerning electricity supply. This study conducted FGDs with 10 stakeholders including local governments. The research found that the Regulation of the Governor of North Sumatra Province which known as Pergubsu No. 28/2019 concerning the implementing Instructions of Perda No. 2/2018 concerning Electricity is disharmony with Ministerial regulation of Energy and Mineral Resources (ESDM-Energi dan Sumber Daya Mineral). It shown in terms of the size or capacity of a power plant which need an operating permit and an operation-worthy certificate. It affected the business condition in particular the legal uncertainty in licensing. As suggestion, province government needs to change and adjust its regulation concerning electricity supply with the updated regulation namely Law No. 11/2020 concerning Job Creation (Omnibus Law) and PP No. 25/2021 concerning the Implementation of the Sector of Energy and Mineral Resources.

Keywords: Disharmonized, Electricity, Business Sector

1 Introduction

Electricity having an important role in achieving the national development goal. It is needed to support production in various sectors especially business. Therefore, the electricity supply must be procured in order to ensure its function to achieve the main strategy of the national economy [1]. In Indonesia, Electricity demand is calculated for industrial, household, business, general and other sectors in 22 PLN marketing areas [2]. Due to this important function, electricity claimed as a branch of production that controls the lives of many people as stated in Article 33 of UUD 1945. Sumatra Island is divided into eight PLN electricity marketing areas namely Aceh, North Sumatra, Riau, West Sumatra, South Sumatra, Jambi, Bengkulu, Bangka Belitung, Lampung, and Batam [2]. According to the Ministry of Energy and Mineral Resources, it estimated that the total national electricity demand in 2025 could reach 450,101 GWh. Meanwhile, the total power generation capacity in Indonesia is currently 25,218 MW consisting of 21,768 MW (86.3%) owned by PLN and 3,450 MW (13.7%) belong to the private sector. Refer to the electricity demand growth in Indonesia during the last 10 years which shown...
an average of 6-9%, it indicated that would be a gap between supply and demand in the electricity sector [3].

In 2020, PLN has been improved and able to store 1,346 Megawatts (MW) of reserve power. In March, PLN of North Sumatra Province has a total capable power capacity of 3,056 MW [4]. The peak load reaches 1,831 MW, with a power of 143 MW sent to Aceh. Furthermore, PLN continues to increase the total supply of 6,229 MW until 2028. Most of the electricity supply from New and Renewable Energy (EBT) sources [4]. There is a total of 6,229 MW gradually until 2028. 6229 MW of it consists of several commercially operated generators (COD) in 2020. They are: (1) PLTA-Pembangkit Listrik Tenaga Air (Hydro Power Plant) Hasang 13 MW, (2) PLTMG-Pembangkit Listrik Tenaga Mesin Gas (Gas Engine Power Plant) Sumbagut 2 Peaker 240 MW, (3) PLTP-Pembangkit Listrik Tenaga Panas Bumi (Geothermal Power Plant) Sorik Merapi Unit 2 with a capacity of 45 MW [4]. The construction of this electricity supply infrastructure shows that the availability of electricity by PLN is insufficient and often disrupted [5]. To ensure the electricity supply, Indonesia has regulations concerning Electricity. Law concerning electricity states the need of electricity being part of living for many people. Therefore the development of electricity infrastructure is a must and conform to some principles namely benefit, equitable efficiency, sustainability, economic optimization in the use of energy resources, relying on one's own abilities, the rules of healthy business, security and safety, preservation of environmental functions, and regional autonomy [6].

Law No. 30/2009 concerning electricity mentions the role of local governments and communities in increasing electricity supply both capital and technology intensive. North Sumatra is the fourth province with the largest population in Indonesia after West Java, East Java and Central Java. There are 14,799,361 people as of in September 2020 [7]. Electricity supply is very important in business operating in North Sumatra. It is required to move facilities and infrastructure either directly or indirectly in production. Ensuring the supply of electricity is priority. There are many business actors who work on this to ensure the availability of electricity from PLN especially when it is disrupted. In North Sumatera Province, efforts made by the business group in the form to ensure the electricity supply for their own need known as generator sets or Genset. Based on the interviews and FGDs found that there is a licensing problem for the business of supplying electricity for its own need [8]. It can be seen from the disharmony of existing regulations at the provincial level. This paper will discuss a research question, namely what is the disharmony in the regulation concerning electricity supply related with business sector in North Sumatra Province?

2 Research Method

This research was conducted with an empirical legal approach. There are five regulations were reviewed both national and provincial levels; namely (1) Law No. 30/2009 concerning Electricity (2) Law No. 11/2020 concerning Job Creation. (3) PP No. 25/2021 concerning the Implementation of the Sector of Energy and Mineral Resources which is an arrangement regarding the implementation of electricity supply business for public interest and for its own interests. (4) Regulation of the Minister of Energy and Mineral Resources (ESDM) Number 38/2018 concerning procedures for accreditation and certification of electricity, (5) Regional Regulation of the province of North Sumatra No. 2/2018 concerning Electricity; and (5) Pergubsu No. 28/2019 concerning Guidelines for Implementing Perda No. 2 of 2018
concerning Electricity. Furthermore, this study also conducted interviews and FGDs with 10 stakeholders regarding electricity in North Sumatra Province.

3 Results and Discussion

Law No. 12/2011 concerning the Formation of Legislations explains the position of local regulation in Indonesia legislation. Article 7 paragraph (1) states that it is as one of the legal sources. Furthermore, Article 1 paragraph (3) of UUD 1945 which also described in the explanation of Law No. 12/2011 shows that local government is given the authority to make policies. The regulations in the context of implementing regional autonomy and assistance tasks as well as accommodating special regional conditions and/or further elaboration of higher laws and regulations. Furthermore, Law No. 23/2014 concerning Regional Government as amended several times, the latest is Law No. 9/2015. It explains that local government is the administration of government affairs both the executive and local People's Representative Council due to the principle of autonomy.

3.1 Regional Authority in Electricity Supply Business for Own Interest

Article 33 paragraph (2) of the 1945 Constitution states “Production branches which are important for the state and which control the livelihoods of the public shall be controlled by the state”, moreover Article 33 paragraph (3) of the 1945 Constitution states “contained therein controlled by the state and used for the greatest prosperity of the people”. It explain further that these articles mean that the economy is based on economic democracy, prosperity for all people. Therefore the production branches which are important to the state and which control the lives of the people must be controlled by the state. Otherwise, the reins of production will fall into the hands of those in power and the people are oppressed by many. Companies could operate a production process which does not control the lives of many people. Even, it can be in someone’s. The land, water and the natural resources contained in the earth are the main points of the people's prosperity. Therefore, it must be controlled by the state and used for the greatest prosperity of the people. Based on Article 33 of the 1945 Constitution, electricity is one of the livelihoods of many people, therefore Law No. 30/2009 concerning Electricity states that the electricity supply business is controlled by the state and implemented by the Government and local Governments [9].

Granting the widest possible autonomy to the regions is directed at accelerating the realization of community welfare by improving services, empowerment, and community participation and the formation of local regulations. The government provides ample opportunity for every citizen to fight for their rights collectively, and to achieve the ideals of the nation's struggle, to create a just and prosperous society [10]. The development of a region can be done by making a policy that specifically regulates something in the region. This policy can be in the form of a Local Regulation or a Governor Regulation aimed at the interests of the region without giving special benefits to either party [11].

In 2020, the Indonesian Government legalized Law No. 11/2020 concerning Job Creation then PP No. 25/2021 concerning the implementation on Energy and Mineral Resources. These both regulation change and remove several articles which stated in Law No. 30/2009 concerning Electricity. The consideration states that as an effort to fulfill the rights of citizens to work and a decent living for humanity through Job Creation [12]. One effort made by the Indonesian
government is the adjustment of various regulatory aspects related to the convenience, protection and empowerment of cooperatives and micro, small and medium enterprises, enhancing the investment ecosystem, and accelerating national strategic projects, including improving the protection and welfare of workers. Adjustment of the settings means here is having improvement. Efforts to change regulations aim to support the realization of synchronization in guaranteeing the acceleration of Job Creation in the form of a comprehensive unification [12].

Article 3 of Law No. 11/2020 concerning Job Creation states that changes to the existing arrangements in Law No. 30/2009 become: (1) The supply of electricity is controlled by the state, the implementation of which is carried out by the National and local Government based on the principle of local autonomy in accordance with the norms, standards, procedures and criteria stipulated by the National Government. (2) For the provision of electricity as stated on the previous paragraph, both National and Local Governments in accordance with their respective authorities shall determine policies, regulate, supervise and carry out electricity supply businesses. The existence of Article 3 of Law No. 11 of 2021 provides a basis for local governments to make further arrangements related to electricity.

Table 1. The authority of the Local (Provincial) Government in the Electricity sector before and after the legalized of Law No 11/2020 concerning Job Creation

<table>
<thead>
<tr>
<th>Law No. 30/2009 Article 5</th>
<th>Law No. 11/2020 concerning Job Creation Article 42 point 4</th>
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<tbody>
<tr>
<td>a. Stipulation of provincial regulations in the electricity sector;</td>
<td>a. Stipulation of provincial regulations in the electricity sector;</td>
</tr>
<tr>
<td>b. Establishment of a general provincial electricity plan;</td>
<td>b. Establishment of a general provincial electricity plan;</td>
</tr>
<tr>
<td>c. Stipulating the electricity supply business license for business entities whose business areas are cross regencies/municipalities;</td>
<td>c. Guidance and supervision of business entities in the electricity sector whose Business Licenses are stipulated by the Provincial Government in accordance with the norms, standards, procedures and criteria stipulated by the National Government;</td>
</tr>
<tr>
<td>d. Stipulating operating permits whose installation facilities cover cross-regencies/municipalities;</td>
<td>d. The appointment of electricity inspectors for provinces; and</td>
</tr>
<tr>
<td>e. Determination of electricity tariffs for consumers from the electricity supply business license holder stipulated by the Provincial Government;</td>
<td>e. Stipulation of administrative sanctions to business entities whose Business Licenses are stipulated by the provincial Local Government in accordance with the norms, standards, procedures and criteria stipulated by the National Government;</td>
</tr>
<tr>
<td>f. Stipulation of approval for the sale price of electricity and lease of electricity networks for business entities that sell electricity and/or lease electricity networks to business entities whose licenses are stipulated by the Provincial Government;</td>
<td></td>
</tr>
<tr>
<td>g. Stipulation of approval for the sale of excess electricity from the holder of an operating license whose license is stipulated by the Provincial Government;</td>
<td></td>
</tr>
<tr>
<td>h. Stipulating permits for the use of electric power networks for the purposes of telecommunications, multimedia, and</td>
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information technology on networks owned by electricity supply business license holders or operating licenses stipulated by the Provincial Government;

i. Guidance and supervision of business entities in the electricity sector whose license is stipulated by the Provincial Government;

j. The appointment of electricity inspectors for provinces; and

k. To impose administrative sanctions on business entities whose licenses are stipulated by the Provincial Government.

l. The authority of the district/city Government in the electricity sector includes:
   1. Stipulating district/city regional regulations in the electricity sector;
   2. Establishment of a general plan for electrification of the regency/municipality area;
   3. Stipulating the electricity supply business license for a business entity whose business area is in a regency/city;
   4. Stipulation of an operating license whose installation facilities are within the district/city;
   5. Determination of the electricity tariff for consumers from the electricity supply business license holder stipulated by the district/city government;
   6. Stipulation of approval for the sale price of electricity and lease of electricity networks for business entities that sell electricity and/or lease electricity networks to business entities whose licenses are stipulated by the district/city government;
   7. Stipulation of electricity support services business license for business entities whose majority of shares are owned by domestic investors;
   8. The stipulation of the approval for the sale of excess electricity from the operating permit holder whose license
is stipulated by the regency/city government;
9. Stipulating permits for the use of electric power networks for the purposes of telecommunications, multimedia, and information technology on networks owned by electricity supply business license holders or operating licenses stipulated by district/city governments;
10. Guidance and supervision of business entities in the electricity sector whose licenses are stipulated by the regency/city government;
11. The appointment of electricity inspectors for districts/cities; and
12. To impose administrative sanctions on business entities whose licenses are stipulated by the local government.

3.2 Disharmony of Electricity Arrangements in North Sumatra and its Impact

North Sumatra province is the fourth most populous province in Indonesia after West Java, East Java and Central Java. According to the statistic in 2020 via Population Census, the state population on September 2020 was 14,799,361 people. Meanwhile, the previous population census in 2010 reached 12,982,204 people. The population density in 2010 was 177 people per km², then in 2020 it increased to 203 people per km². The population growth rate during the 2000-2010 period was 1.22 percent per year, and in 2010-2020 it was 1.28 percent per year. Based on data from the Central Statistics Agency in North Sumatra Province, it is stated that the number of large and medium industries is 1,256 companies and 140,608 small macro industries [7].

Furthermore, in 2018, the number of large and medium-sized industrial businesses in North Sumatra was recorded at 1,256 companies, which means that it has decreased by 204 companies or around 13.97 percent when compared to in 2017, amounting to 1,460 companies [7]. The largest number of companies is in Deli Serdang, Medan and Asahan districts. In 2018, the output value of large and medium industries reached IDR 271.23 trillion with added value based on market prices of IDR 89.61 trillion. The biggest added value in 2018 was in the food, beverage and tobacco industry, namely IDR 47.95 trillion and the basic metal industry of IDR 16.62 trillion. The smallest added value in the same year was in the textile, apparel and leather industry, amounting to IDR 741.59 billion, and metal goods, machinery and equipment of IDR 1.47 trillion. In 2018, the number of micro and small industrial businesses in North Sumatera there are as many as 140,608 companies [7]. The largest number of companies are in Medan, Deli Serdang, and Langkat districts. As consequences, there is an increased demand for electrical supply in North Sumatra to operate the productions. There will have an impact on various areas of life including conflicts of interest in the future. It needs a regulation concerning the electricity supply for business sectors in North Sumatra Province.

There is a study which examines the effect of periodic blackouts and the use of Gensets on micro-business activities in one sub-district in Medan City. It shows that partially periodic
blackouts have a significant negative effect on the income of micro and small businesses in Medan Baru sub-district. Furthermore, the use of generators has an effect on the income of micro and small businesses in Medan Baru sub-district. This study uses a partial test to show whether all the independent variables (periodic blackouts and use of generators) that are included in the model have a joint influence on the dependent variable (micro-business activities) [13].

Regulations regarding the business of supplying electricity for its own needs are still needed, without diminishing the role of PLN which continues to improve in providing energy needs by continuing to make electricity innovations. Electricity demand in Indonesia is calculated per sector in 22 PLN electricity marketing areas, namely the industrial, household, business, general, and other sectors. Sumatra Island is divided into eight PLN electricity marketing areas which include Aceh, North Sumatra, Riau, West Sumatra, South Sumatra, Jambi, Bengkulu, Bangka Belitung, Lampung, and Batam [2]. In the midst of the problem of limited supply of electrical energy and other problems that can cause power outages at any time, people can use electricity supply business instruments for their own interests as regulated in the Electricity Law [8].

Law No. 30/2009 regulates the affirmation that Electricity development aims to ensure the availability of electricity in sufficient quantity, good quality, and at a reasonable price in order to improve people's welfare and prosperity in a just and equitable manner and to realize sustainable development. To fulfill this, it is then emphasized regarding the control and exploitation carried out by the government and local governments based on the principle of local autonomy. In terms of exploitation, private enterprises, cooperatives, and non-governmental organizations can participate in the electricity supply business. Furthermore, it regulates the electricity supply business, which is the provision of electricity, which includes generation, transmission, distribution, and sale of electricity to consumers. The electricity supply business is then classified for public interest and self-interest. In terms of providing electricity for its own purposes, it includes: a) electric power generation; b) electric power generation and distribution of electric power; or c) electric power generation, electric power transmission, and electric power distribution [14].

The electricity supply business can be carried out after obtaining a license in the form of: Electricity supply business license; and operating permits issued by the government or local governments in accordance with their respective authorities. Regarding the mandatory operating license for power plants with a certain capacity as regulated by a ministerial regulation. In the implementation of every electricity business activity, it is obligatory to comply with the provisions of electricity safety. One of them is related to electric power installations that operate must have an operation-worthy certificate.

Based on the above, Law No. 30/2009 on Electricity is one of the bases in electricity regulation, which includes a division of authority with local governments, one of which is to issue business and operating licenses for electricity supply business activities which are then regulated by local regulations. In its development, then Law No 30/2009 was amended by Law No. 11/2020 concerning Job Creation and must be synchronized by the regulations before it.

There are problems faced by the industrial community regarding licensing for the business of supplying electricity for their own interests, namely the disharmony of the regulations between the Governor Regulation of North Sumatra province namely Pergub No. 28/2019 with the Minister of Energy and Mineral Resources Regulation No. 12/2019, especially regarding the capacity required to have a certificate of operation-worthy (SLO-Sertifikat Laik Operasi). Before the removal of the operating permit provisions in Law No. 30/2009, between Governor...
Regulation No. 28/2019 and Regulation from the Minister of Energy and Mineral Resources No. 12/2019 had several impacts.

First, for businesses to supply electricity for their own interests with a power generation capacity above 200 kVA, installation facilities in the provincial area can be implemented after obtaining an operating permit (Article 13 paragraph (1) Pergub Sumut No. 28/2019), while in a Ministerial Regulation ESDM No. 12/2019 stipulates that an operating license is only required for businesses to supply electricity for their own interests with a total power generation capacity of more than 500 kVA in one electric power installation system (Article 2 paragraph (1)). This ESDM Ministerial Regulation confirms that an operating license is not required for the business of supplying electricity for its own interests if the total power generation capacity is up to 500 kVA in 1 electrical installation system, which is required to only submit a report once to the minister through the Director General or the governor before doing business. The provision of electricity for its own interests (vide Article 13 paragraph (1) of the Minister of Energy and Mineral Resources Regulation No. 12/2019). This has changed since the abolition of the Operating Permit through Law No. 11/2020 concerning Job Creation.

Second, there is legal confusion that arises because Article 15 of North Sumatra Governor Regulation No. 2018 requires the completeness of data in the form of a business license, in other words, both are mutually conditional.

Third, it violates the principle of legal certainty, so that in practice it can lead to collusion, gratification, bribery, and other criminal acts due to changes in nomenclature to Business Licensing. The practice of corruption is prone to occur in the licensing service sector [15]. The anti-corruption agency, the Corruption Eradication Commission (KPK-Komisi Pemberantasan Korupsi) aims at the integrity of the private sector in North Sumatra, in this case transparency and public accountability, particularly in one-stop integrated services, and strengthening corporate integrity at the sub-national level. One of the challenges identified was the issue related to licensing regarding the business of providing electricity for self-interest which is known as the popular language is the generator set (generator). The bureaucracy in business licensing that is not conducive and makes it difficult for the public is feared that it will have an impact on corruption [16].

KPK concerns to the sector of Licensing and Commerce, because it has direct contact with the community. KPK encourages improvements in licensing and trading systems in order to obtain benefits: first, ease of licensing in doing business and investment. Second, increasing employment and economic growth, and third, the emphasis on economic costs on basic commodities. The government, including local governments, must evaluate the licensing sector as a barrier to investment.

There are some substantial point regulated in Pergub No. 28/2019 concerning implementation of electricity supply which does not suit with the latest situation. Now, Indonesia has Law No. 11/2020 on Job Creation which has changed some points in Law No. 30/2009 [12]. First, Article 1 point 11 is abolished, point 11 initially defines an Operating Permit: “An operating license is a permit to supply electricity for one's own interests” (abolished). Article 19 which regulates Operating Permits in terms of supplying electricity for self-interest is also amended. It related with the changing of Business Licensing nomenclature. Second, Article 22 undergoes an amendment which essentially states that the Business License to supply electricity for its own interests is required for power plants with a certain capacity, this capacity will be regulated in a Government Regulation (PP-Peraturan Pemerintah). PP No. 25/2021, Article 27 states that the Electricity Supply Business for its own interests with a total power generation capacity of more than 500 kW. Changed from previously using units of kVA (kilo Volt Ampere) to kW (kilo Watt). 1kVA is 0.8 KW, so if the old regulations say, for
example, 500 kVA means the same as 400 KW (500 x 0.8 = 400). Five hundred kilowatts connected in 1 (one) Electric Power Installation system are required to obtain an Electricity Supply Business Permit for its own use. Third, changes related to Electricity Safety (K2), Certificate of Acceptability for Operations, and administrative sanctions, criminal sanctions, and additional sanctions in the form of fines. All of these changes must be accommodated so that there is harmonization between laws and regulations from the national to local levels so as to reduce adverse impacts on the development goals of the Indonesian government.

4 Conclusion

Implementing Perda No. 2/2018 concerning Electricity is currently disharmony with the Regulation of the Minister of Energy and Mineral Resources in terms of the size or capacity of power plants that are required to have an operating permit, and an operation-worthy certificate. Furthermore, after the enactment of Law No 11/2020 concerning Job Creation, namely the regulation in article 42 which states that there is a change in Law No. 30/2009 concerning Electricity. Furthermore, several articles of this amendment have been regulated in PP No. 25/2021 concerning the Implementation of the Energy and Mineral Resources Sector. The disharmony of the existing regulations is Perda No. 2 of 2018 concerning Electricity with the Regulation of the Minister of Energy and Mineral Resources which has an impact on the business world regarding legal uncertainty in licensing Pergub No. 28/2019 as the Implementing Instructions of Perda No. 2/2018 concerning Electricity is disharmony with the Minister of Energy and Mineral Resources Regulation in terms of the size or capacity of power plants that are required to have an operating permit, and an operation-worthy certificate.

The research suggestion is that the North Sumatra Governor Regulation must be amended and adjusted to the latest regulations including Law No. 11/2020 concerning Job Creation so that it provides benefits and legal certainty for the community.

Acknowledgements

Thanks go to the Research Team on the Provision of Electric Power for their own needs in North Sumatra Province.

References


Assessing Industrial Customer’s Willingness to Pay to Support Natural Gas Pricing Policy in Indonesia

Novi Muharam¹, Widodo Wahyu Purwanto¹
{novi.muharam81@ui.ac.id¹, widodo@che.ui.ac.id²}

Universitas Indonesia, Indonesia¹, ²

Abstract. The price of natural gas has always been controversial; there are always different points of view between producer and consumer because of its determination. However, in reality, it is not easy to reach prices in equilibrium conditions. On the other side, the Indonesian government has capped gas prices for some industries to increase the competitiveness of the industrial sectors. This study aims to assess the willingness to pay industrial gas users and to compare it with the current gas price policy. Willingness to pay off gas users is determined by netback value from the final product. The study shows that the willingness to pay is 11.41, 10.10, 9.13, and 3.78 $/MMBtu for ceramic, glass, cooking oil, and steel industries, respectively. The willingness to pay for ceramic, glass, and cooking-oil industries are higher than the current gas price (6 $/MMBtu), except the steel industry is lower. The current gas price includes a government subsidy by reducing the share of the government takes of the upstream sector. Therefore, the government needs to sort out which industries deserve the special gas price by considering willingness to pay in the future.

Keywords: Gas Price, Willingness to Pay, Industrial Sector, Netback, Indonesia

1 Introduction

The industrial sector is highly dependent on an energy supply in natural gas, which is used as raw material and energy sources in the production process. The most significant issues in the current industrial sector are that gas prices are still relatively high. Industrial gas price in Indonesia currently is as much as 8–10 $/MMBtu [1]. The critical issues of the price for those industries that use gas comprise approximately 15-30% of total production costs [2]. Therefore, an increase in gas price would cause the cost of production to balloon and reduce a company's overall performance. In addition, it will directly impact Indonesia's national industries concerning international markets by reducing competitiveness [3][4].

To solve the gas price problem, earlier this year, the government had implemented a Presidential Regulation (Perpres) No. 40 of 2016 as amended by Presidential Regulation No. 121 of 2020 to determine natural gas prices to cut domestic gas prices to help industry sectors spur economic growth and improve the competitiveness of the domestic industry. A presidential regulation set a price cap of 6 $/MMBtu below the market price average of 8-10 $/MMBtu. The gas price is intended for seven industries: fertilizer, petrochemical, oleochemical, steel, ceramics, glass, and rubber gloves, besides the seven industrial sectors using the market price. To adjust the price of 6 $/MMBtu, the gas price at the producer level reduced as well, taking into the cost of transportation and distribution costs reduced between 1-1.5 $/MMBtu.
According to Ministry Energy decree No.8/2020, the cut in the gas price at the producer level not affects the revenue of gas production contractors in the upstream business due to it is compensated by government revenue under the production sharing contract scheme. The willingness to pay (WTP) denotes the maximum amount a consumer is willing to pay a given quantity of an item [5]. Measuring WTP is essential for price transparency between the customer and producer [6]. A few studies on energy policy have focused on the consumer’s WTP. Many studies on WTP have used the contingent valuation (CV) method such as developed to measure WTP for solar energy development in Myanmar [7], energy reliability versus fuel type in Vietnam [8], renewable in electricity mix [9], improved of electricity supply in Nepal [10], measuring WTP for electricity generated from renewable energy sources [11] and reliable natural gas supply in Korea [12]. Some studies on WTP have also carried out with the other methods. For example, Bhandari (2020) assessed a WTP for rural electrification in Africa with a comparative analysis method [13], Hotaling (2021) had been developed measuring WTP for microgrid used mixed logit model [14]. The main methods found in the literature for analyzing preference and calculating WTP estimates are CV, comparative analysis (CA) and experimental auction [15].

This study aims to estimate the willingness to pay using netback value from the final product of industrial gas users and compare it with the current gas price policy.

2 Methodology

2.1 Willingness to Pay

There are two formula for calculating WTP for gas users [16]. First, using the opportunity cost approach where the WTP of gas used is compared with other alternative energy uses. Second, WTP calculation formula is based on the price of the final product. The price received by the gas supplier is a function of the WTP of the buyer (netback from final product) [17].

Hermawan [18], in his study of netback value price in the fertilizer industry. The netback is calculated based on the revenue minus processing cost. The annual processing cost is expressed in equation (1):

\[ PC_{tc} = (I \times CRF)_{tc} + OM_{tc} + FS_{tc} + LC_{tc} \]  

(1)

\( PC_{tc} \) represents annual processing without utility cost in year \( i \) for industry \( c \) ($/year). \( I_{tc} \) is the annual investment cost ($/year), \( CRF \) is the capital recovery factor, \( OM_{tc} \) is the fixed operations and maintenance (OM) ($/year). \( FS_{tc} \) is annual feedstock cost ($/year). \( LC_{tc} \) is annual the logistic cost ($/year). Total revenue for each industry is represented by the equation (2).

\[ RV_{tc} = PP_{tc} \times PT_{tc} \]  

(2)

\( RV_{tc} \) denotes the total revenue in year \( t \) for industry \( c \) ($/year), \( PP_{tc} \) is the final product price in year \( t \) for industry \( c \) ($/unit of product), and \( PT_{tc} \) is production capacity in year \( t \) for industry \( c \) (unit of product/year).
The annual gas consumption is expressed by equation (3):

\[ Q_{tc} = P_{tc} \times R_{tc} \]  
\[ (3) \]

\( R_{Gtc} \) is the gas fuel to product ratio in year \( t \) for industry \( c \) (MMBtu/unit of product).

The total cost of gas is obtained by equation (4):

\[ G_{tc} = (R_{Vtc} - P_{Gtc}) \times G_{Rtc} \]  
\[ (4) \]

\( G_{Gc} \) is the gas cost in year \( t \) for industry \( c \) ($/year), \( G_{Rc} \) is the ratio of gas to utility cost in year \( t \) for industry \( c \).

Thus, the netback value of gas is calculated by equation (5):

\[ NBG_{tc} = \frac{G_{tc}}{Q_{tc}} \]  
\[ (5) \]

\( NBG_{Gc} \) is the netback value of gas representing WTP in year \( t \) for industry \( c \) in $/MMBtu.

### 2.2 Data Input

The input data of four industrial sectors can be seen in Table 1. The fixed costs and variable costs are obtained from literatures [19-24].

<table>
<thead>
<tr>
<th>Sector</th>
<th>Capacity</th>
<th>Fuel Gas Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ceramic</td>
<td>61,370,000 m²/year</td>
<td>0.0584 MMBtu/m²</td>
</tr>
<tr>
<td>Glass</td>
<td>854,730 Ton/year</td>
<td>8.4 MMBtu/Ton</td>
</tr>
<tr>
<td>Steel</td>
<td>3,150,000 Ton/year</td>
<td>22.75 MMBtu/Ton</td>
</tr>
<tr>
<td>Cooking-oil</td>
<td>1,700,000 Ton/year</td>
<td>7.78 MMBtu/Ton</td>
</tr>
</tbody>
</table>

Fixed cost consist of investment and fixed OM, and the variable costs are raw materials and utilities including gas. In the metal industry, the raw materials used are iron ore in pellets, and scrob, for ceramic industry uses feldspar, ball clay, quartz sand, and silica sand, soda ash, and iron oxide for the glass industry. Meanwhile, crude palm oil (CPO) is the primary raw material for the cooking-oil industry. The other cost classified as variable cost are logistics cost. One ton of crude palm oil can produce 73% cooking-oil (olein), 21% stearin, 5% PFAD (Palm Fatty Acid Distillate), and 0.5% waste.

### 2.3 Product Demand Projection

The projection of product demand for the ceramic, glass, cooking oil, and steel industries are calculated using the econometric method [32][33]. The data used in the projection is GDP growth of -2.19% in 2020 due to Covid-19 and the average GDP growth from 2020 to 2030 is 4.94% [34][35] and an elasticity of industrial growth to GDP is 0.91. Figure 1 shows that production in 2030 is increased with an average growth rate of 5.19% per year for each sector.
2.4 Final Product Price

The final product price is assumed depend on the projection of oil and gas prices [36][37]. The correlation between oil and gas prices and final product prices each industrial sector are based on industries product price historical data and author’s calculation [19][22][23][24][36][37][38]. The whole final products prices are illustrated in Figure 2. The ceramic prices in Indonesia tends to stagnate for the last five years. The final product price of ceramics was 2.58 $/m² in 2020, it will grow by 4.12% in 2030 became 2.68 $/m², with an average annual growth rate (CAGR) of 0.40%. The selling price of glass products in 2020 is 364 $/ton and it will increase slightly to 377 $/ton in 2030 with a CAGR of 0.32%. The cooking oil price in 2020 is 775 $/ton and the projection price in 2030 is 944 $/ton with a CAGR of 1.99%. The steel price in 2020 is 464 $/ton and it will increase to 608 $/ton in 2030 with a CAGR of 2.74%.

Fig. 1. Product Projection for Ceramic, Glass, Cooking-oil, and Steel Industries.

Fig. 2. Final Product Price Projection for Ceramic, Glass, Cooking-oil, and Steel.
3 Result and Discussion

3.1 Processing Cost

The projected processing costs are shown in Figure 3. It shows that the processing cost of ceramic, glass, cooking oil, and steel are increased with a CAGR of 2.79%, 3.28%, 7.03%, and 2.70%, respectively.

![Fig. 3. Processing Cost Projection for Ceramic, Glass, Cooking-oil and Steel Industries.](image)

3.2 Revenue

Figure 4 shows the revenue projections for ceramic, glass, cooking-oil, and steel industries. The revenue increase with the increasing the final price of products. The income of ceramic industry in 2020 is $152 million and increases to $263 million in 2030 with a CAGR of 5.7%. Similar trends of revenue with ceramic industry are observed for glass and steel industries. Higher growth of revenue in cooking oil industry compared to the other industrial sectors with a CAGR of 7.4%.

![Fig. 4. Revenue Projection for Ceramic, Glass, Cooking-oil and Steel Industries.](image)
3.3 Netback Value Gas

The netback gas prices of ceramic, glass, cooking oil and steel industries compared to regulated gas price are illustrated in Figure 5. The willingness to pay for ceramic, glass, and cooking-oil industries are higher than the current gas price (6 $/MMBtu), except the steel industry below than. It can be seen that WTP of ceramics is higher than glass, both of them increase linearly from 2020 to 2030. The ceramic industry gives higher WTP than the glass industry due to the different of revenue and processing cost values and trends. The WTP fluctuations in cooking oil industry is influenced by volatility of CPO price, Higher WTP since CPO prices is lower, and vice versa. In steel industry, lower values of WTP in 2020 to 2026 are caused by lower utilization capacity of the plant of 28%. It increases to 40% in 2027 giving impact on increasing WTP to higher than 6 $/MMBtu in 2027 to 2030.

Fig. 5. Comparison of Netback Gas Price for Ceramic, Glass, Cooking-oil, and Steel Industries.

The ceramic industry has WTP of 11.41 $/MMBtu in 2020 that above regulated gas price. It increases by 3.41 % per year in 2030 to 16.44 $/MMBtu. Previously, the gas price in the ceramic sector was 9.16 $/MMBtu [39], which means capping gas price at 6 $/MMBtu, the government provided a subsidy of 3.16 $/MMBtu and 5.41 $/MMBtu for WTP of 11.41 $/MMbtu. However, gas cost only contributes 24% of the total production cost in the ceramic industry and the largest portion, 32%, is raw materials [39]. Therefore, gas cost is not the dominant driver of whole cost structure in the ceramic industry.

In the glass industry, WTP values ranging from 10.10 to 14.10 $/MMBtu with an annual growth rate is 2.71% from 2020 to 2030. Previously the gas price in the glass industry is 9.16 $/MMBtu [39]. This study shows that WTP in 2020 is 10.10 $/MMBtu, compared to regulated prices, the government provides indirectly subsidized by 5.10 $/MMBtu. The share of gas costs in the glass industry's cost structure is only of 16%, lower than the raw material cost of 27% [39]. The increasing of glass production costs per year has an impact on the lowering of the amount of domestic production then reduces exports. Nevertheless, the Central Statistics Agency (BPS) recorded that the export performance of flat glass in 2020 was still - 8.84 % on an annual basis. Furthermore, amid the issue of imported glass products, the utilization factor of the glass industry in 2020 was 57.5%, lower than in 2019, which reached 69% [35].

WTP of cooking oil industry is 9.31 $/MMBtu with a CAGR of 3.44%, and reaches 12.8 $/MMBtu in 2030. It is caused by the increasing of revenue and processing cost per year are
7.2% and 7.0%, respectively. The netback value is still higher due to higher final product prices and load factor. The cost structure of cooking oil production comprises 57% raw materials and 5% gas cost [39].

For steel industry, WTP in 2020 is 3.75 $/MMBtu, it increases to 6.59 $/MMBtu in 2030 with a CAGR of 5.79%. In 2020, WTP steel industry is 3.75 $/MMBtu thus the steel industry can’t able to pay gas at 6 $/MMBtu. The lower WTP due to the lower load factor of plant and higher share gas cost component (23%), so the government needs to support the steel industry.

3.4 Policy Analysis

The industries complaint about domestic gas price due to it is higher compared to other countries (Malaysia and Thailand) and it has been responded by the government by implementation of regulated gas price of 6 $/MMBtu. Based on the netback value assessment of industrial sector, it showed that some industries have WTP higher than regulated price, those no need to subsidize if they cannot produce more added values. Current gas price policy is an ad hoc basis and heavy regulated with limited transparency of price signal. The transparency of price signal is very role in gas price policy to keep a balance between WTP of users and minimum value of gas for producers. In addition, an inefficiency of industries is not only caused by gas price as fuel gas or feedstock but also by low load factor, inefficiency of equipment. Therefore, the government needs to look at more detail on specific energy consumption of each industrial sector compares to other countries and by estimating the WTP so it can be seen whether the complaints from the industry are caused by gas prices or other factor.

4 Conclusion

This study aims to assess the willingness to pay of various industrial gas users which consist of: ceramic, glass, cooking-oil and steel, and to compare their WTP with the current gas price policy. Based on the calculation, the WTP value of gas users which depends on netback value of the final product for the ceramic, glass and cooking-oil and steel sectors are 11.41, 10.10, 9.13, and 3.78 $/MMBtu, respectively. In addition, the WTP value for ceramic, glass, and cooking-oil industries are higher than the current gas price (6 $/MMBtu), except the steel industry. The current gas price is imposed by government subsidy due to the reduction of the share of the government in the upstream sector. Therefore, the government should have to arrange willingness to pay which can be earned by each of industrial gas users in the future.

References


Comparison of the Application of Corporate Social Responsibility in Indonesia and United Kingdom

Paulus Aluk Fadjar Dwi Santo¹, Muhammad Farhan Akmal²
{paulus.afds@binus.edu¹, muhammad.akmal@binus.ac.id²}

Binus University, Indonesia¹, ²

Abstract. This study uses the comparative law method, Indonesia Law Number 40 of 2007 and United Kingdom Companies Act 2006 as the main studies. The aim of the study is to show the implementation of CSR in Indonesia compared to UK. From the research, it can be concluded that awareness of the importance of CSR must be built in Indonesia, so the CSR becomes effective, on target, and beneficial. The application can be learned from the UK, which has made private companies aware of the importance of CSR as they believe CSR can bring benefits in the future.

Keywords: Corporate Social Responsibility, Indonesia, UK, Indonesian Limited Liability Companies Law, Companies Act 2006

1 Introduction

The concept of CSR was formed around the world to be precise more than 60 years ago [1]. CSR thinking is that business companies have a responsibility to society in addition to aiming for profit [2]. According to the United Nations Industrial Development Organization, CSR is management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders [3]. In the development of CSR, the European Community Commission states that there are 4 factors that encourage the development of CSR, namely the existence of new concerns and hopes in the context of globalization and large-scale industry, social influence in making decisions in terms of investment, concern for environmental damage due to economic activity, development of communication technology in business activities [4].

Therefore, the concept of CSR has the potential and can be a useful tool to empower the community. Then, companies as private parties can aid the government as state administrators to increase the quality of human resources and protect the natural resources around them. In fact, CSR activities can prevent a crisis for a corporation if they are conducted with professionalism, sincerity, sustainability, and good management [4]. However, CSR will become a new potential problem or even have a negative impact on the surrounding community and the environment if its implementation fails the target. Therefore, here the researchers try to examine the implementation of CSR in Indonesia and the UK to compare the ecosystem and the implementation of CSR in both countries, which will later aim to provide suggestions on how to implement CSR, especially in Indonesia.
2 Research Methods

Method as an approach to this writing uses comparative laws. This is necessary to understand the origin of the idea of CSR and how this value is developed and practiced in Indonesia. Furthermore, the main principle is to compare the regulations covering CSR practices in the two countries. According to Tahir Tungadi, as quoted by Soeroso, legal comparisons can be used for:

1) Descriptive Comparative Law, which provides a descriptive illustration of how a legal rule is regulated in various legal systems without any further analysis.
2) Applied Comparative Law, which uses the results of descriptive legal comparisons to choose which of the legal institutions under study is the best and suitable to be applied. This method is used for the benefit of legislative institutions for drafting bills, by lawyers and notaries for contract drafting, by judges to make appropriate decisions, or by governments to make fair decisions.
3) Comparative History of Law related to the history of sociology of law, anthropology of law and philosophy of law.
4) Modern legal comparisons have used critical, realistic and undogmatic methods. Critical means do not only concern on the differences or similarities of various legal systems, realistically means that legal comparisons are not only examining legislation, court decisions or doctrines, not meaningful dogmatically because legal comparisons do not want to be confined in the rigidity of dogmas as is often the case in every legal system [5]. The purpose is to provide knowledge about the similarities and differences between various fields and legal systems, as well as the understanding and basis of the legal system. With this understanding, it will be easy to carry out unification, legal certainty, and legal simplification. The results of comparative law will be useful for the application of law in society, especially to find out which areas of law can be unified and which fields must be regulated by law between legal systems [6].

From the four models above, the authors mostly use modern legal comparison methods to answer problems related to the reconceptualization of CSR in Indonesia.

3 Discussion

3.1 CSR in UK

3.1.1 Terms of Implementation of CSR in UK

Corporate Social Responsibility (CSR) is an integration of environmental, social, economic into business strategy and practice [7]. CSR was discussed more than half a century ago, and emerged after the Industrial Revolution by visionary business leaders in Great Britain in the 19th century [8]. Business leaders at that time realized that business has a responsibility to the society, as seen by the existence of factory towns such as Bourneville and Port Sunlight which were aimed at facilitating workers and their families [8]. The understanding of CSR is based on the fact that business activities are the basis of society, which presents a challenge for organizations to clearly demonstrate the company's business ethics, and recognize the desires of business leaders and combine them to make a beneficial contribution to society [9]. In the UK, the history
of CSR began in 1600 when the English East India Company was founded in the UK, until it was developed to the modern CSR concept that exists today [10]. Although in the UK there are no specific regulations governing CSR, there are regulations that give the company the responsibility to carry out CSR [11]. One of the provisions regarding CSR in the UK can be seen through the Company Act 2006 as follows:

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Duty to promote the success of the company
(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:
(a) the likely consequences of any decision in the long term;
(b) the interests of the company’s employees;
(c) the need to foster the company’s business relationships with suppliers, customers and others;
(d) the impact of the company’s operations on the community and the environment;
(e) the desirability of the company maintaining a reputation for high standards of business conduct; and
(f) the need to act fairly as between members of the company.
(2) Where or to the extent that the purposes of the company consist of or include other purposes than the benefits of its members, subsection (1) has effect as if the reference to promote the success of the company for the benefits of its members were to achieve those purposes.
(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

If we look at the article above, the emphasis on CSR is given to companies to run the company in good faith by paying attention to the interests of employees and the company’s operations must have a positive impact on the surrounding community and the environment.

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Civil Consequences of breach of general duties
(1) The consequences of breach (or threatened breach) of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied.
(2) The duties in those sections (with the exception of section 174 (duty to exercise reasonable care, skill and diligence)) are, accordingly, enforceable in the same way as any other fiduciary duty owed to a company by its directors.

Based on the article above related to legal consequences or civil sanctions, it is also applied if CSR provisions are not carried out with reference to the principles of balance and fairness.

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Contents of directors’ report: business review
(1) Unless the company is subject to the small companies ’regime, the directors’ report must contain a business review.
The purpose of the business review is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company).

The business review must contain—
(a) a fair review of the company’s business; and
(b) a description of the principal risks and uncertainties facing the company.

The review required is a balanced and comprehensive analysis of—
(a) the development and performance of the company’s business during the financial year; and
(b) the position of the company’s business at the end of that year, consistent with the size and complexity of the business.

In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include:
(a) the main trends and factors likely to affect the future development, performance and position of the company’s business; and
(b) information about;
   (i) environmental matters (including the impact of the company’s business on the environment);
   (ii) the company’s employees; and
   (iii) social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies.
(c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company. If the review does not contain information of each kind mentioned in paragraphs (b) (i), (ii) and (iii) and (c), it must state which of those kinds of information it does not contain.

The review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include:
(a) analysis using financial key performance indicators; and
(b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters. “Key performance indicators” means factors by reference to which the development, performance or position of the company's business can be measured effectively.

Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the directors’ report for the year need not comply with the requirements of subsection (6) so far as they relate to non-financial information.

The article above reflects that the Board of Directors must create a good business action report and it must cover environmental problems (including the impact of the company's business on the environment), company employees, and social and community issues.

### 3.1.2 CSR Implementation in the UK

There are previous studies examining the implementation of CSR in the UK, although this study does not represent companies in the UK as a whole, it can provide an overview of the practices of several companies in the UK. Research shows that in the UK CSR is not part of the
vision and mission of companies, where the vision and mission of their company focuses on the basic value of their efforts to satisfy shareholders [12]. However, they continue their activities as agents of economic and social development because of their concern and awareness of the importance of CSR [12]. The reasons for companies in the UK to carry out CSR are more than just required by law, namely because of the awareness to uphold ethics, and they believe that CSR can provide economic benefits in the future [12]. It is reasonable to say because in the UK there are companies that try to give a different approach in the market, and make CSR a means to promote their brands so that they get recognition in the community [12]. CSR provides other benefits such as providing positive reactions from clients, new business opportunities, dedication, loyalty and respect from workers in the company [12].

In the UK, in general, the application of CSR has a focus on business projects in the financial sector, such as through the distribution of investment funds [1]. In addition, information related to CSR includes weekly publications and information, which make CSR implementation transparent [1]. Government involvement in CSR development is manifested by the government's pro-active role in creating partnerships with stakeholders [1].

3.2 CSR in Indonesia

3.2.1 CSR Provisions in Indonesia

CSR are regulated normatively through Law No. 40 of 2007 on Limited Liability Companies, Law No. 25 of 2007 on Investment, and other laws and regulations as follows:

<table>
<thead>
<tr>
<th>Table 1. CSR Regulations in Indonesia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law No. 40 of 2007 concerning Limited Liability Companies</td>
</tr>
<tr>
<td><strong>Article 1 point 3:</strong> Social and Environmental Responsibility shall be a commitment of Corporation to take parts in sustainable economic development in order to develop life quality and beneficial environment either for a Corporation itself or site community or public.</td>
</tr>
<tr>
<td><strong>Article 74</strong></td>
</tr>
<tr>
<td>(1) A Corporation operating business activity in the field and/or related with natural resources shall be obliged to implement social and environmental responsibilities;</td>
</tr>
<tr>
<td>(2) Social and environmental responsibilities as referred to in paragraph (1) shall be obligation of Corporation that is budgeted and calculated as expenses of Corporation that its implementation is conducted by considering compliance and regularity;</td>
</tr>
<tr>
<td>(3) A Corporation that does not implement its obligation as referred to in paragraph (1) shall be imposed with sanction in accordance with prevailing laws and regulation;</td>
</tr>
<tr>
<td>(4) Further provision on Social and Environmental Responsibilities shall be governed in Government Regulation.</td>
</tr>
<tr>
<td>Law No. 25 of 2007 on Investment</td>
</tr>
<tr>
<td><strong>Article 15</strong></td>
</tr>
<tr>
<td>Every investor shall have obligations:</td>
</tr>
<tr>
<td>a. to apply the principle of good corporate governance;</td>
</tr>
<tr>
<td>b. to implement corporate social responsibility;</td>
</tr>
</tbody>
</table>
Article 17
Investors engaged in a nonrenewable natural resource business must allocate funds by progressive stages for location recovery in compliance with the standard environmental feasibility, the implementation of which shall be regulated in accordance with provisions of laws and regulations.

Government Regulation No. 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies

Article 2
Every company as a legal subject has social and environmental responsibilities.

Article 3
(1) The social and environmental responsibility as referred to in Article 2 shall become the obligation of a Company which carries activities in the fields and/or related to natural resources in accordance to the Law;
(2) The obligations as referred to in paragraph (1) are carried out both inside and outside the Company's environment.

Article 7
Companies as referred to in Article 3 that do not carry out social and environmental responsibility are subject to sanctions in accordance with the provisions of laws and regulations.

Law No. 11 of 2020 on Job Creation

Article 102
The Central Government, Local Governments and the Business Sector provide assistance to increase the capacity of Micro, Small and Medium Enterprises so they are able to access:
a. alternative financing for start-up Micro, Small and Medium Enterprises;
b. financing from partnership funds;c. government grant assistance;d. revolving fund; and
e. corporate social responsibility.

Based on the above explanation, it illustrates that there are obligations to concern and conduct CSR activities aimed at companies in Indonesia. Moreover, companies which do not implement CSR properly will be sanctioned in accordance with the applicable laws. However, CSR is only strictly required in the law only for companies related to foreign investment, companies related to natural resources, and companies that are specifically regulated by
ministerial regulations. So that there is no obligation for companies that are outside the categories as stated in the law to concern or conduct CSR activities.

3.2.2 CSR Implementation in Indonesia

In Indonesia, CSR implementation has various problems to be fixed related to CSR activities. The concept of CSR in Indonesia depends on the company itself and is not integrated into broad development plans and tends to fail on target [13]. In fact, the concept of implementing CSR itself is based on the pro-actively partnership responsibility of all stakeholders [14]. This is different from the concept of corporate philanthropy which does not involve a socially responsible corporate partnership [14]. The implementation of CSR in Indonesia prioritizes fulfilling the desires of the community rather than the needs of the community, this is because companies do not understand the importance of implementing CSR properly [13]. As a result, CSR at this time creates a new problem, namely forming the personality of the society to become dependent on the companies [13]. The issue of CSR that was not on target was revealed by the Minister of Women Empowerment and Child Protection in 2015, Yohana Yembise, who said that the estimated CSR funds in Indonesia which reached Rp 12 trillion a year had not been properly optimized for community empowerment [15]. Therefore, according to the researchers’ opinion, socialization and comprehensively regulation related CSR are needed, especially related to forms of CSR that must be carried out by companies so the goals of CSR are achievable.

Then in the implementation of CSR also has various problems especially from social disparities between business actors and the society, corruption, and the company’s failure to understand the needs of the surrounding community which triggers conflict [15]. Especially if the company is a foreign company whose country of origin is identical to a certain religion, potentially it can shape the society’s sentiments and perspectives [16]. The existence of this social problem actually supports the opinion of Raharjo, which states that society is not just an economic entity but must be seen sociologically [16]. Thus, to make CSR activities on target and companies get social recognition, it needs the ability to understand society comprehensively and not only have or give an economic impact. Moreover, Indonesia is consisting of various ethnicities, cultures, religions, races and languages which makes each region have different characteristics of society. According to the BPS’ data (Indonesian Central Bureau of Statistics) in 2010, Indonesia has more than 300 ethnic groups, more precisely there are 1,340 ethnic groups in the country [17].

3.2.3 Comparison of CSR Implementation in Indonesia and UK

Based on the above examination and explanation, it can be concluded that firstly, public awareness of CSR in the UK is superior than in Indonesia. Awareness and knowledge of the positive impact of CSR which can provide benefits both economically and socially makes companies in the UK not need to be obligated to carry out CSR, the reason is because there are community values that uphold ethics and a sense of volunteerism. Legal regulations in the UK are only a means of ensuring CSR implementation. The UK government itself makes efforts and approaches to increase public awareness of the importance of CSR which can be emulated or imitated in Indonesia. In Indonesia implementation of CSR in Indonesia has various problems ranging from corruption, horizontal conflicts, social disparities, fails to achieve the target and so on. CSR practices in Indonesia are deemed to have failed on target and instead make people dependent on a company and become not empowered. In contrast to the UK, which has carried
out CSR which can empower people in the form of access to capital and have stronger partnerships between stakeholders. Then, the Companies Act 2006 in the UK covers all existing companies while Indonesian regulations emphasize CSR obligations only to companies that have activities related to natural resources, investment, and companies which are governed by minister regulations. Therefore, it requires the role of all stakeholders in Indonesia to collaborate to build awareness and work together as social beings to have a positive impact on the environment and surrounding communities. Reminding that CSR not only has a positive impact on society and the environment, but also has a positive impact for the corporation itself.

4 Conclusion

The Indonesian government can learn from the UK in terms of creating a CSR ecosystem which is conducted through a partnership, transparently and on target, and by good management. The main focus is to pro-actively create partnerships and embrace all stakeholders, conduct socialization or make regulations regarding forms of CSR so that the community becomes empowered and not dependent on the company. CSR regulations must be changed and not only emphasized for certain related companies, but reach out to all companies. This is in purpose to increase the number of companies participating in integrated CSR programs so they can contribute to national development properly. Moreover it can make companies in Indonesia harmonize with the surrounding community so that business activities can perfectly going fine.

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