ICSTIAMI 2019

Proceedings of the 1st International Conference on Science and Technology in Administration and Management Information

Jakarta, Indonesia
17-18 July 2019

EDITORS
Tulus Suryanto
Ferry Jie
Abdul Talib Bon
Yulianto Yulianto
Resista Vikaliana
Proceedings of the 1st International Conference on Science and Technology in Administration and Management Information

17-18 July 2019, Jakarta, Indonesia

ICSTIAMI 2019

General Chairs
Professor Tulus Suryanto (Universitas Islam Negeri Raden Intan, Bandar Lampung, Indonesia)
Prof Ferry Jie (School of Business and Law, Edith Cowan University, Australia)
Prof Talib bin Bon (Universiti Tun Hussein Onn Malaysia-UTHM, Malaysia)

Technical Programme Chairs
Resista Vikaliana (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)
Dr. Maya Puspita Dewi (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta Indonesia)
Dr. Daryanto Hestiwibowo (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)
Baby Purnomo (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)
Dr. Ade Tuti Turistiati (Universitas Amikom, Purwokerto, Indonesia)
Zakia (Universitas Indonesia, Jakarta, Indonesia)
Munir Saputra (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)
Roviuddin (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)
Preface

Assalamualaikum wr. wb.

We are delighted to introduce the proceedings of the first edition of the International Conference on Science and Technology in Administration and Management Information (ICSTIAMI). This conference has brought researchers, developers and practitioners around the world who are leveraging and developing smart grid technology for a smarter and more resilient grid. The theme of ICSTIAMI 2019 was “Sustainable Development: From Research to Actions”.

The technical program of ICSTIAMI have received 186 papers submissions. Finally, 119 papers presented in this conference. The conference tracks were: Track 1 – Public Sector Management; Track 2 – Business, Accounting, and Management, Track 3: Communication, Tourism and Track 4: Social Humaniora, Law and Policy.

A side from the high quality technical paper presentations, the technical program also featured one keynote speech and some invited speakers. The keynote speech was Prof. Dr.rer.publ. Eko Prasolo, Mag.rer.publ from Faculty of Administration Science-Fakultas Ilmu Administrasi, Universitas Indonesia, Indonesia. Some invited speakers in the plenary sessions were presented by Prof. Jan Siska from Charles University, Prague, Czech Republic, Prof Myrna Batino from Technological University of Philippines, Philippines, Prof Talib bin Bon from Universiti Tun Hussein Onn Malaysia, Malaysia, Dr. Jonathan Rante Carreon Huachiew Chalermprakiet University, Thailand, Associate Prof Ferry Jie, Ph.D. from School of Business and Law, Edith Cowan University, Australia and Dr. Uzair from GIFT University, Gujranwala, Pakistan.

Coordination with the steering chairs and also General Chair was essential for the success of the conference. We sincerely appreciate their constant support and guidance. It was also a great pleasure to work with such an excellent organizing committee team for their hard work in organizing and supporting the conference. In particular, the Technical Program Committee, led by our TPC Chair, Resista Vikaliana who have completed the peer-review process of technical papers and made a high-quality technical program.

We strongly believe that ICSTIAMI conference provides a good forum for all researcher, developers and practitioners to discuss all science and technology aspects that are relevant to smart grids. We also expect that the future ICSTIAMI conference will be as successful and stimulating, as indicated by the contributions presented in this volume.

Wassalamualaikum wr. wb.

Prof. Tulus Suryanto
Conference Organization

Steering Committee
Dr. Panji Hendrarso
Dr. Yulianto
Associate Prof Ferry Jie (School of Business and Law, Edith Cowan University, Australia)
Prof Talib bin Bon (Universiti Tun Hussein Onn Malaysia-UTHM, Malaysia)

Organizing Committee

General Chair
Professor Tulus Suryanto (Universitas Islam Negeri Raden Intan, Bandar Lampung, Indonesia)

General Co-Chairs
Professor I Nyoman Pujawan (Institut Teknologi Sepuluh November, Surabaya, Indonesia)

TPC Chair and Co-Chair
Resista Vikaliana (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)
Dr. Ade Tuti Turistiati (Universitas Amikom Purwokerto, Indonesia)

Sponsorship and Exhibit Chair
Dr. Maya Puspita Dewi (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)

Local Chair
Baby Poernomo (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)

Publicity & Social Media Chair
Dr. Daryanto Hesti Wibowo (Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia)

Publications Chair
1. Prof. Ferry Jie (Business School of Business and Law Edith Cowan University, Australia)
2. Prof. Dr. Tulus Suryanto (Universitas Islam Negeri Raden Intan Bandar Lampung, Indonesia)
3. Prof. Dr. Nyoman Pujawan (Institut Teknologi Sepuluh November, Indonesia)
4. Prof. Dr. Nor Fariza Binti Moh Nor (Universiti Kebangsaan Malaysia, Malaysia)
5. Prof. Dr. Radja Zuraidah RM Razi (Universiti Tun Hussein Onn Malaysia, Malaysia)
6. Prof. Dr. Bet El Sislisna Lagarense (Politeknik Negeri Manado, Indonesia)
7. Prof. Dr. Myrna R. Batino (Technological University of Philippines, Philippines)
8. Prof. Dr. Normi B. Santos (Technological University of Philippines, Philippines)
9. Prof. Dr. Haula Rosdiana (Universitas Indonesia, Indonesia)
10. Dr. Jonathan Rante Carreon (Huachiew Chalermprakiet University, Thailand)
11. Dr. Arief Daryanto (Bogor Agricultural University, Indonesia)
12. Prof. Yandra Akerman (Bogor Agricultural University, Indonesia)
13. Dr. Ade Tuti Turistiati (Institut Ilmu Sosial dan Manajemen Stiami, Indonesia)
14. Dr. Irwan Trinugroho (Universitas Sebelas Maret, Indonesia)
15. Dr. Bambang Irawan (Institut Ilmu Sosial dan Manajemen Stiami, Indonesia)
16. Prayudi Ahmad, MA, PhD (UPN “Veteran” Yogyakarta, Indonesia)
17. Bambang Sumintono, PhD (Universitas Malaya, Malaysia)
18. Yogi Suprayogi Sugandi, S Sos., MA, PhD (Universitas Padjadjaran, Indonesia)
19. Prof. Dr. Jan Siska (Faculty Of Education Charles University Prague, Czech Republic).
20. Prof. Dr. Uzair Bazi (Center for Islamic Economics & Finance (CIEF), Superior University, Lahore, Pakistan)
21. Dr. Hamzah, SH, MH. (Universitas Lampung, Indonesia)
Web Chair
Roviudin  
Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia

Panels Chair
Zakia  
Universitas Indonesia, Jakarta, Indonesia
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information and Communication Technology in Public Sector Management in Kenya: Huduma Programme from The Perspective of Person with Disabilities</td>
<td>1</td>
</tr>
<tr>
<td>by Charles M. Omboto, Lydia W. Chege</td>
<td></td>
</tr>
<tr>
<td>How Can Find Similarities And Measure The Urgency Of Tax Reform?</td>
<td>7</td>
</tr>
<tr>
<td>by Abdul Rahman</td>
<td></td>
</tr>
<tr>
<td>Financial Technology And Financial Inclusions In Indonesia</td>
<td>21</td>
</tr>
<tr>
<td>by Basrowi Basrowi, H. Noviarita, M. Hayati</td>
<td></td>
</tr>
<tr>
<td>Application Of School And Community Cooperation Models In Improving Student Learning Achievement Based On Local Knowledge</td>
<td>29</td>
</tr>
<tr>
<td>by Helmuth Y. Bunu, Yunike Wati, Endang Purwaningsih</td>
<td></td>
</tr>
<tr>
<td>The Partnership of Tourism Stakeholders in Increasing Tourism</td>
<td>40</td>
</tr>
<tr>
<td>Competitiveness in Bantul District</td>
<td></td>
</tr>
<tr>
<td>by Oktiva Anggraini</td>
<td></td>
</tr>
<tr>
<td>Minimum Services Standard Model For Infrastructure, Facilities and Utilities of Simple Rental Flats in Surabaya City</td>
<td>49</td>
</tr>
<tr>
<td>by Bambang Irawan</td>
<td></td>
</tr>
<tr>
<td>How to Reduce The Number of Domestic Violence Through Capacity Building of Organization</td>
<td>56</td>
</tr>
<tr>
<td>by Maya Puspita Dewi, Indah Wahyu Maesarini, Anita Maulina</td>
<td></td>
</tr>
<tr>
<td>Implementation of District’s Integrated Administration Service Policy (PATEN) in Gunung Putri District Bogor Regency</td>
<td>62</td>
</tr>
<tr>
<td>by Munir Saputra, A. H. Rahadian</td>
<td></td>
</tr>
<tr>
<td>Analysis of Implementation of DKI Jakarta’s OK OCE Program Period of 2017-2018</td>
<td>70</td>
</tr>
<tr>
<td>by Khikmatul Islah, Zakia Zakia, Istianah Setyaningsih</td>
<td></td>
</tr>
<tr>
<td>Evaluation of Tax Regulations About Debt Equity Ratio Instrument to Prevent Thin Capitalization in Relation to Investment and Tax Revenue Policy in Indonesia</td>
<td>78</td>
</tr>
<tr>
<td>by Chairil Anwar Pohan, Karina Duwanty, Pebriana Arimbhi</td>
<td></td>
</tr>
<tr>
<td>The Implementation of The Cybercrime Prevention Policy at The Metro Jaya Police Station in Central Jakarta</td>
<td>98</td>
</tr>
<tr>
<td>by Dian Damayanti, Mary Ismowati</td>
<td></td>
</tr>
<tr>
<td>A Comparative Analysis of Open Government Data in Practices and Facing Problems</td>
<td>111</td>
</tr>
<tr>
<td>by Amirudin Syarif, Mohammad Aizi bin Salamat, Rusmin Syafari</td>
<td></td>
</tr>
<tr>
<td>Strengthening Fisheries Institutions for Overcoming Poverty in Bantul Regency</td>
<td>121</td>
</tr>
<tr>
<td>by Supriyanta Supriyanta, Oktiva Anggraini</td>
<td></td>
</tr>
</tbody>
</table>
Effect of Tax Paying Awareness, Knowledge and Understanding of Taxation Regulations and Service Quality on the Willingness to Pay Tax Mandatory Individual

*Ratih Kumala, Renisya Ayu*

An Analysis of Public Participation in E-Musrenbang (Planning Development Discussion) As An Effort to Support The Successful Performance of Tanjung Priok District Jakarta

*Mary Ismowati, Hendra Brajanegara, Murni Sianturi, Yuliyanto Yuliyanto*

Performance Value of Services in Service Organizations in Applying One-Stop Integrated Services

*Fino Wahyudi Abdul, Wahidin Septa Zahran, Diana Prihadini, Dony Hendrartho*

Strategy to Realize E-Government As The Public Transparency to Preventive Government of Corruption

*Irawati Irawati, Syahrul Reza*

Influence of Internal and External Factors of Implementation of Government Regulation on MSME Taxpayer Compliance

*Endro Andayani, Novianita Rulandari, Aji Prasetyo*

---

**Business, Accounting and Management**

Financing Management: An Alternative for Increasing The Profitability of Islamic Bank

*Irma Setyawati, Siti Mardiyah*

The Influence of Corporate Social Responsibility Disclosure, Profitability and Leverage on Informative Profit with Environmental Performance as Moderating Variables

*Dedi Putra, Rhiska Gustiana*

The Role of Audit Regulation on The Relationship between Audit Quality, Corporate Governance and Firm Value

*Bambang Prayogo, Meco Sitardja*

Analysis of Maklon Service Raw Material Control Using EOQ (Economic Order Quality) Method Based on Big Logistic Data to Support Industry 4.0

*Dina Eka Shofiana, Moh Imsin*

Effect of Resources on Competitive Strategies Through Unique Capability in Chicken Distributor Companies in Dki Jakarta Province

*Siti Mariam, Abdul Haeba Ramli*

The Strategies Competitiveness for Yogyakarta Tourism Industry

*Jumadi Jumadi, Cahya Purnama Asri, Bahri Bahri*

Performance Analysis of Rural Banks and Sharia Rural Banks in Indonesia

*Pandoyo Pandoyo, Mohammad Sofyan*

The Effect of Profitability and Company Size on Equity Structure of Pharmaceutical Company Listed on Idx Period 2012 -2017

*Agung Fajar Ilmiyono, Mutiara Puspa Widyowati*

The Role of External Green Supply Chain management on Green Marketing Mix toward Sustainability of Petrochemical Industry in Indonesia

*Yuary Farradia, Abdul Talib Bon, Hari Muharam*
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Influence of Human Capital, Structural Capital and Relational Capital toward Bank Service Performance and Customer Satisfaction</td>
<td>257</td>
</tr>
<tr>
<td>Usup Riassy Christa, Tresia Kristiana</td>
<td></td>
</tr>
<tr>
<td>Purchase Order Analysis Imported Goods in PT. XYZ</td>
<td>273</td>
</tr>
<tr>
<td>Darno Darno, Khadijah Binti MD Ariffin, Hariyati Hariyati, Dewi Agustya Ningrum, Siti Mahmudah</td>
<td></td>
</tr>
<tr>
<td>Policy Strategy for Halal Logistics Development in Indonesia</td>
<td>282</td>
</tr>
<tr>
<td>Sutandi Sutandi</td>
<td></td>
</tr>
<tr>
<td>Effective and Efficient Food Commodity Distribution Strategy at The Indonesia Logistics Bureau (BULOG)</td>
<td>294</td>
</tr>
<tr>
<td>Yusup Rachmat Hidayat, Yuli Evitha</td>
<td></td>
</tr>
<tr>
<td>Modeling The Green Marketing and Green Supply Chain Management in The Context of Supply Chain Risk Management Toward Sustainability</td>
<td>303</td>
</tr>
<tr>
<td>Yuary Farradia, Abdul Talib Bon</td>
<td></td>
</tr>
<tr>
<td>Dior’s $146 Straws: How Sustainability Becomes Fashion’s Business Drive</td>
<td>311</td>
</tr>
<tr>
<td>Manuel Gultom</td>
<td></td>
</tr>
<tr>
<td>Communication, Tourism, and Social Humaniora</td>
<td></td>
</tr>
<tr>
<td>‘i want to go to school but ...’ The case of the Penan and Orang Asli Children of Malaysia</td>
<td>317</td>
</tr>
<tr>
<td>Ong Puay Liu, Ong Puay Tee, Ng Kum Loy, Ong Puay Hoon</td>
<td></td>
</tr>
<tr>
<td>Persuasive Communication in Pluralistic Communities in The Perspective of Islam</td>
<td>338</td>
</tr>
<tr>
<td>M. Nasor</td>
<td></td>
</tr>
<tr>
<td>Communicating Digital Disruption by An Online Newspaper in Thailand</td>
<td>345</td>
</tr>
<tr>
<td>Jonathan Rante Carreon, Wenwen Tian</td>
<td></td>
</tr>
<tr>
<td>Promoting Intercultural Communication Competence in the 21st Century: A Case Study in Thai Academic and Social Contexts of Learning and Using EFL</td>
<td>355</td>
</tr>
<tr>
<td>Noparat Tananuraksakul, Suthida Soontornwipat</td>
<td></td>
</tr>
<tr>
<td>Malay Rejection on Elimination of All Forms of Racial Discrimination</td>
<td>367</td>
</tr>
<tr>
<td>Suyatno Ladiqi, Aizatul Anis binti Zuhari</td>
<td></td>
</tr>
<tr>
<td>The Katingan Conservation Program for Borneo as A Sustainable Development Strategy at Katingan Regency, Central Kalimantan</td>
<td>375</td>
</tr>
<tr>
<td>Syamsuri Syamsuri</td>
<td></td>
</tr>
<tr>
<td>Understanding and Promoting The Student Support Program in International School, Doha, Qatar</td>
<td>381</td>
</tr>
<tr>
<td>Sarita Kumari Singh</td>
<td></td>
</tr>
<tr>
<td>Role of Peer-Group in Selective Exposure About Pornography through Internet Among Teenagers of Modern Islamic Boarding School in Tangerang City</td>
<td>391</td>
</tr>
<tr>
<td>Her Sanyoto, Inge Hutagalung</td>
<td></td>
</tr>
<tr>
<td>The Role of Authentic Green Bureaucracy in Green Village Innovation Plan in Yogyakarta Special Region (Daerah Istimewa Yogyakarta)</td>
<td>401</td>
</tr>
<tr>
<td>A. T. Sulistiyani, Sutarno Sutarno, Prabang Setyono, R. D. Wahyuningsih</td>
<td></td>
</tr>
</tbody>
</table>
Reality Construction of Gamers in Online Media (Case Study : Kompas.Com)  
_Hafizh Faikar Ramadhan, Euis Komalawati_  
412

Innovation Adoption and Communication Strategies in Implementing The Smart Governance Program (Case Study of Simpus Utilization at Bogor City Community Health Center)  
_Ade Tuti Turistiasi, Wulan Furrie Lenggana_  
421

Local Social Capital for Community Empowerment Poor Rural (PNPM-MD) in Kalumpang District Mamuju Regency  
_Umi Farida_  
430

Resistance and Acceptance on the Diffusion of Global Norms of Child Participation in Indonesia  
_Fuat Albayumi, M. Fahri Priambudi, Abubakar Eby Hara_  
439

The Implication of School Based Management Towards Head Master Performance in District Level  
_Deti Rostini, Ricky Yoseprty, Lili Dianah_  
446

Conservation Models for Sayur Babanci as A Potential Culinary Tourism of Betawi  
_Lila Muliani, Munir Saputra_  
455

The Utility of Information on Selective Exposure of Pornographic Information through Internet on Student of Islamic Boarding School in Tangerang City  
_Rio Pambudi Dalimunte, Inge Hutagalung_  
464

Efforts to Reduce Production Costs Bag Recycling on Waste Bank (Case Studies in Rw 01 Kecamatan Mekarsari Cimanggis Depok)  
_Erni Prasetyani, Martina Safitry, Ai Nety Sumidartini_  
475

Potential of Pindang Bandeng as The Betawi-Tionghoa Acculturation Food Iconic Product  
_Rustini Rustini, Lila Muliani_  
481

Enhancing The Added Value of Akar Kelape Snack: An Effort to Improve Marketing Performance  
_Aagus Cholik, Resista Vikaliana_  
492

Perspective of Historical and Contemporary on Betawi Tribe’s Drink Selendang Mayang  
_Firman Syah, Resista Vikaliana_  
501

**Law and Policy**

The Implementation of Women Empowerment Policy on Prevention of Violence in Household in Kampar  
_Emilda Firdaus_  
507

The Enforcement of Administrative Law to Violation of Building Construction Permit Requirements for Business Activity  
_Enny Agustina_  
518

Application of Government’s Responsibility in Compliance of Community Rights in The Food Area in The District TTS Province Nusa Tenggara Timur  
_Jeane Neltje Saly_  
525
Construction of Pre Judges Through Judicial Reconstruction Commissioners and Representatives of Protected Rights
Joko Sriwidodo

Cut Memi

Application of Law Number 2 Year 2012 Regarding Land Procurement for Development For General Interest in The Protection of Human Rights to Victims of Searching (Case Study Procurement of Land Related to Sodetan Inlet River Ciliwung, Bidara Cina, East Jakarta)
Dwi Andayani Budisetyowati

Protection of Women’s Political Rights Based on Islamic Point of View
Palmawati Taher, Rena Yulia

Rights and Obligations of Human Rights in Islam Perspective
Zainal Arifin Hoesein

The Lack of Legal Aid Accessed by The Poor Society in West Kalimantan Province
Rini Setiawati, Sri Ayu Septinawati, Charlyna S. Purba

The Law As The Instrument of Right Protection on The Body Integrity of Woman As The Victim of Not Fulfilled Promise to Marry
Lusiana M. Tijow, Fence Wantu

Legal Protection of the Communal Rights to Geographical Indications in the Perspectives of Human Rights in Indonesia
Almusawir Almusawir

The Protection of Debtor Rights on the Stage of Household Credit Agreement Implementation
Marwah Marwah

Legal Protection of Fishing Rights By Fishermen on Fishery Resource Conservation Activities in Indonesia
Yulia Yulia

Law Enforcement Through The Restorative Justice Approach Reviewed From The Perspective Of Human Rights
Henny Saida Flora

Regional Governance Based on the Value of Local Wisdom (Study of Ternate Empire)
Nam Rumkel, Tri Syafari, Yahya Yunus

The Countermeasure Effort of Child Delinquency Not to A Legal Case in Criminology Perspective
Abnan Pancasilawati

Analysis of Implementation of State Householder State Housing (Case Study at Country Household Storage House of State Class 1 Samarinda)
Marwiah Johansyah
Legal Protection of Patients as Victims of Sexual Harassment in Indonesian Health Service
Siska Elvandari

Suryaningsi Suryaningsi

Assessing the Indonesian General Election 2019: Election and Human Rights Relations
Tri Sulistyowati, Zulkifli Aspan

The Legal Liability of Dead Children Drowns in Coal Mine Pit on Human Rights Perspective
Haris Retno Susmiyati

The Role of the State Against the Fulfillment of Human Rights of Person with Disabilities in Indonesia
Yohanes Suhardin, AL. Sentot Sudarwanto

State Protection to Human Right Because of Crime
Muhammad Helmi, Nyoman Serikat Putra Jaya, RB. Sularto

Providing Legal Protection for Victims of Child Trafficking and Women (Case Study: North Sumatera, West Sumatera and South Sumatera)
Mety Rahmawati

Protection of Children as Victims of Terrorism Crimes
Vience Ratna Multiwijaya

Professional Performance of The First Middle School Teacher in School Head Master Management
Deti Rostini, Otto Fajarianto, Umi Fatonah, Mesra Betty Yel

The Use of Mobile Learning to Improve Students' Cognitive Development
Leni Pebriantika, Oktariyana Oktariyana, Aminah Aminah, Henni Kusumastuti, Otto Fajarianto

Duties and Authority of Fisheries in the State Fisheries Management Region of the Republic of Indonesia
Al Azhiim Tranggono, Amalia Diamantina, Sekar Anggun Gading P.

Improvement of Fisheries Management by Marine and Fisheries of Semarang City
Astrid Priscillia, Amiek Soemarmi, Amalia Diamantina

Implementation of Law Protection of Work Safety for Workers: PTPN IX Persero
Galih Arif Pramana, Sonhaji Sonhaji, Nabitatus Sa’adah

Debt Collection of Financial Technology Lending
Gika Asdina Firanda, Paramita Prananingtyas, Sartika Nanda Lestari

United States Policy on China Steel Products Viewed From GATT/WTO
Hilmi Prabowo, Nanik Trihastuti, Darminto Hartono

Implementation of Good Governance Ombudsman Recommendations
Iga Sukma Devi, F. C. Susila Adiyanta, Nabitatus Sa’adah
Analysis of Capital Market Dual Listing in ASEAN Countries
Kevin Situmorang, Budiarto Budiarto, Paramita Prananingtyas

Accountability of Business Actors against Expired Imported Products
Khosy Lathifah, Siti Mahmudah, Hendro Saptono

Google AdSense Publisher Taxation Obligation
Mirza Ramadhan, F.C. Susila Adiyanta, Nabitatus Sa’adah

Legal Protection of Special Facilities for Woman Labors in Socio-Legal Perspectives
M. Sayyid Abyan, Dyah Wijaningsih, Budiarto Budiyanto

The Role of Sharia National Financial Committee in the Development of Sharia Banking Law in Indonesia
M. Chairul Ismail, Ro’fah Setyowati, Muhyidin Muhyidin

E-Catch-Fisheries Logbook Application Based on Regulation of the Minister of Marine and Fisheries of the Republic of Indonesia
Nur Afin Trionawan, Amalia Diamantina, Sekar Anggun Gading Pinililih

Responsibilities for Platform Providers on Alcohol Beverage Sales through E-Commerce
Rilla Raisha, Hendro Saptono, Siti Mahmudah

Criminal Liability for the disseminator of Eigenrichting through Social Media : Law Number 11 of 2008 Concerning Electronic Information and Transactions
R. M. Egidius Yuriestha, Eko Soponyono, Umi Rozah

The Role of Semarang City Wage Board in Protecting the Workers/ Laborers
Triani Fatika Hasri, Sonhaji Sonhaji, Suhartoyo Suhartoyo

Quality Examination of Fisheries as an Implementation of Fisheries Products
Vindy Sulistyo Vardhani, Amiek Soemarmi, Sekar Anggun Gading Pinililih

Violation of Good Corporate Governance (GCG) Principles in the Delivery of 2018 Financial Statements
Martin Batara Tambunan, Budiarto Budiarto, Sartika Nanda Lestari

Juridical Review of Validity of the Gross Split Sharing Contract Agreement in Oil and Gold Business Activities
M. Nabil Widhiantono, Achmad Busro, Ery Agus Priyono

Predatory Pricing in Business Activities in the Telecommunication Field
Desy Putri Utami, Budi Santoso, Rinitami Njatrijani

The Provincial Government’s Authority Regarding the Post-Mining Activities
Alfi Soka Hananti, F. C. Susila Adiyanta, Muhamad Azhar

The Utilization of GSO by Indonesia as a Subjacent State Based on Space Treaty 1967
Richo Wembi Rajanun Nafis, M. Kabul Supriyadhie, Adya Paramita P.

Supervision of the Imported Soil Beans Containing Insects by Semarang Agricultural Quarantine
Dentata Gama Ashari, Rinitami Njatrijani, Edy Sismarwoto
Corporate Criminal Liability Practice in Criminal Action of Living Environment  
*Artur Pande Simbolon, Pujiyono Pujiyono, Purwoto Purwoto*

Proportional Principles in Kumon Franchise Cooperation Agreement  
*Shafira Inan Zahid, Ery Agus Priyono, Dewi Hendrawati*

Choosing Structural Legal Assistance: a Paradigmatic Study on the Effort of Justice  
*Fahmi Baiquni, Erlyn Indarti, Aditya Yuli Sulistyawan*

Policy to Eradicate Crime Funding of Terrorism as Transnational Organized Crime  
*Ardken Fisabillah, Pujiyono Pujiyono, Umi Rozah*

Legal Protection for Copyrighted Song Holders for Songs Used by Other Parties Illegally  
*Berthania Pitaloka Puspaasri, Budiharto Budiharto, Ro’fah Setyowati*

Implementation of Land Redistribution as an Effort to Increase Community Economic Revenue  
*Diah Ayu Kholivia Zulfa, Nur Adhim, Ana Silviana*

Legal Protection of Breeder Rights and Farmer Rights concerning Protection of Plant Varieties  
*Elsya Lucia Gracella, Budi Santoso, Edy Sismarwoto*

Implementation of Online Auction (E-Auction) in the State and Auction Service Office  
*Nabila Noviandra, Marjo Marjo, Kartika Widya Utama*

Protection Efforts for Small Fishermen in Jakarta Bay Due to Reclamation  
*Irsa Adinda Arnesia, Amiek Soemarmi, Untung Sri Hardjanto*

Famous Brand Criteria and Protection of the Law Based on the Decision of the Court of RI Number 32 PK/Pdt.Sus-HKI/2018  
*Alya Nuzulul Qurniasari, Budi Santoso, Sartika Nanda Lestari*

Law Protection in Contract Agreement: PT. Telkom with IndiHome Cable Television Customer Service  
*Dio Prakoso, Budi Santoso, Rinitami Njatrijani*

Copyright Legal Protection of Writing Work on the Site of omgjakarta.com: Law Number 28 of 2014  
*Emia Alemina, Budi Santoso, Sukirno Sukirno*

The Arrangement of the Space Billboard: Semarang City  
*Firman Aji Saputra, Untung Dwi Hananto, Ratna Herawati*

Final Properties Factices and Binding Constitutional Court Decisions by Adding Judicial Order Law Instruments in Testing the Law of the Basic Law  
*Salsabila Akbar, Retno Saraswati, Fifiana Wisnaeni*

Overview of the Release of Sanction for Workers Withdrawing the Self before the End of the Contract  
*Venia Miranda Dewi Hascaryo, Solechan Solechan, Nabitatus Sa’adah*
Protection of Indigenous Legal Rights towards Traditional Knowledge Used by Foreign Parties According to International Law Perspective
Billy Panjaitan, Kolis Roisah

The Urgency of Smart City Regulations to Accelerate Sustainable Development in Indonesia
Anggita Doramia Lumbanraja
Information and Communication Technology in Public Sector Management in Kenya: Huduma Programme from The Perspective of Person with Disabilities

Charles M. Omboto¹,  Lydia W. Chege²
{ombotoc@kise.ac.ke¹, chegel@kise.ac.ke²}

Kenya Institute of Special Education, Nairobi, Kenya, Kenya Institute of Special Education, Nairobi, Kenya

Abstract. According to World Health Organization (WHO,2011) 15 per cent of the world population consists of Persons Living with Disabilities (PLWDs) of which 80% live in developing countries. Kenya National Bureau of Statistics survey 2009 (KNBS) show that an estimated 1.3 million Kenyans live with vision, hearing, mobility, cognitive disabilities or some form of disability (KNBS,2009). In 2013, the Kenya government initiated Huduma centre programme which is a single point of access to public services. This centres leverage on electronic services and information offered by different public agencies countrywide. This is the government initiative to access public service with ease through technology to her citizens. Therefore, the government Huduma programme will go a long way in providing a very good platform to achieve access, equity, and quality services especially Persons with disabilities. However, the concerns are whether PWD are accessing e-government services or not at these centres. With increasing recognition of rights for disadvantaged and vulnerable groups such as PWDS in Kenya, there is need for government to ensure that the e- services are accessible to all. This paper, therefore, seeks to establish the extent to which PWD access e-government services offered at these centres, highlighting issues PWDS face in accessing the services, drawing lessons. The paper further suggests the way forward in access to quality services for PWDS.

Keywords: E-government, Accessibility ICT, Persons Living with Disability, Huduma centres.

1 Introduction

According to WHO and World Bank (2011) More than a billion people live with some form of disability and 80% of them live in developing countries. Disability is both a cause and a consequence of poverty: poor people are more likely to become disabled, and people with disabilities (PWDs) are among the poorest and most vulnerable populations in the world. Individuals may experience different types of disability, including visual, hearing, speech, mobility, cognitive, and psychosocial disabilities, and others may also experience the onset of disability as they age. (World Bank, 2016).Kenya National Bureau of Statistics survey 2009 (KNBS) show that an estimated 1.3 million Kenyans live with vision, hearing, mobility, cognitive disabilities or some form of disability (KNBS,2009).

In 2008, the Convention on the Rights of Persons with Disabilities (CRPWD) took effect. This Convention is a commitment of the international community to include the perspective of disabilities and persons with disabilities in all aspects of development. This was strengthened
by the UN General Assembly which attempted to discuss disability issues related to inclusion and integration of the rights, welfare and perspectives of persons with disabilities in the efforts of the Sustainable Development Goals (SDGs) at the national, regional and international levels.

Some organizations such as Broadband Commission for Digital Development, Global Initiative for Inclusive Information and Communication Technology (G3ICT), the International Disability Alliance (IDA), International Telecommunication Union (ITU), Microsoft, Telecentre.org Foundation and the United Nations Educational, Scientific and Cultural Organization (UNESCO) have a document known as ICT Opportunities for a Framework for Inclusive Development for Disabilities.

The government plays a key role in the introduction of ICT-based solutions tailored to the needs of persons with disabilities (PWD), increasing the availability and accessibility of ICT; and promoting the affordability of assistive technology in all settings. This can be achieved through the promotion of e-government systems, as well as encouraging public-private collaboration, as well as the development and dissemination of knowledge, accessible products and content, and supporting technology (UNESCO, 2011).

ICTs for a Disability Inclusive Development Framework contribute to accelerating the social and economic inclusion of persons with disabilities. The availability of access and easy reach of ICT enables persons with disabilities to access education, skills training and employment, as well as opportunities to participate in the economic, cultural and social life of the community. Supporting facilities for the application of ICT is concrete action for stakeholders including the national government, the private sector, and civil and international organizations. This is in line with UNESCO’s vision of inclusive development.

The Kenya government in 2013, initiated Huduma programme which is a single point of access to public services including electronic services and information offered by different public agencies countrywide. The government believes that everyone should have access to public service with ease through technology. Therefore, the government Huduma programme will go a long way in providing the best platform to achieve access, equity, and quality services Persons with disabilities. However, the concerns are whether PWD are accessing e-government services or not at these centres. With increasing recognition for the rights for disadvantaged groups such as PWDS in Kenya, there is need for governments to ensure that e-government services are accessible to all. In light of the above, this paper seeks to establish the extent to which PWD access e-government services offered at these centres, highlighting issues PWDS face in accessing the services, drawing lessons. The paper further suggests the way forward in access to quality services for PWDS.

2 Extent to Which PWD Access E-Government Services Offered at Huduma Centres

Improving E-governance services through the transition of government services, records, and documents to digital format can promote an independent and autonomous interface with government services and offices, greatly assisting persons with disabilities. In addition, government websites, social media, and crowdsourcing platforms are important sources of information for persons with disabilities (Bricout and Baker 2012; Infocomm Development Authority of Singapore 2013; Suomi and Krebs 2012). The application of digital services to government services (SMS, mobile applications, accessible web-based forms, and web portals
and others) can meet the needs of persons with disabilities and facilitate interaction between the government and persons with disabilities. ICT referred to here are all information and communication devices or applications and their contents.

A report by Sumbwanyambe, Nel & Clarke (2011) shows that most developing and developed countries are adopting universal service policies commonly known as One Stop Shop/ Citizens’ Service Centres Models to reduce the digital divide among the country’s information "haves" and "have-nots". Similarly, Abdalla (2016) report that the concept of citizen service centres is meant to facilitate clients to access information, service and transactions in one location. Countries continue to take different approaches to delivering online services such as self-service through internet or a hybrid of automated and manual processes at designated public accessible points.

In Kenya, the Huduma centres bring together various government services from different government bodies under one roof and an adoption of a mixed model with some services already automated while others are manual. Abdalla et al. (2016) note that the establishment of the centres was geared towards enhancing public service delivery to the citizens and businesses. Statistics from Huduma Kenya website show that these centers have become popular with Kenyans with approximately 15,500 Kenyans accessing services through the various centres across the country by 2013. This number has gone up by five time by this year 2019. Despite the perceived progress in Huduma Kenya Programme, the success of such initiatives depends on how citizens accept these services. As AlAwadhi & Morris (2009) postulate government decision makers need an understanding of the factors that would encourage use of ICT rather than the old common delivery methods.

According to Jaeger & Matteson (2009) for ICTs to be considered accessible they should be allowing access to all users and be compatible with assistive devices and technologies that PWD may use. Therefore, it should meet accessibility standards for ICT products and services that measure accessibility through a checklist attributes such as the Web Content Accessibility Guidelines (WCAG 2.0). However, for most ICT products or services, there is still no set of internationally agreed standards although there are several attempts by various stakeholders to implement them.

The ICT opportunity for persons with disabilities can be better assessed by analysing how each type of technology contribute to the different dimensions involved in the social and economic inclusion of persons with disabilities.

3 Issues PWDs Face in Accessing Government Services

Based on the latest 2013 G3ict CRPD ICT Accessibility Progress Report, it found that the majority of 76 participating countries do not have accessible government websites (55 percent), accessible public electronic kiosks, or country-based ATMs (61 percent), or programs available to facilitate the use of telephones by persons with disabilities (74 percent) (G3ict & Disabled Peoples’ International 2013). The study assessed the adoption rate of the ICT accessibility provisions in the CRPD to be 50 percent for certain ICT products and services, 47 percent for accessible features for computers, and 37 percent for accessible telecommunication and media services. The application of ICT has entered into the fabric of society and plays an important role for social progress and inclusive economic growth. Although there has been significant advancement in the ICT, PWD continue to face challenges
in accessing e-government services in all if not most of all the huduma centres. These challenges include but not limited to:

1) Absence of assistive technology including training of staff on how to use them inaccessible IT products and services
2) Lack of appropriate devices or assistive technology, skills and design of system affect the general usage of e-government services by citizens but especially for citizens with disabilities
3) Inadequate policies governing use accessible ICTs and absence of proper implementation strategies
4) Stakeholder awareness, knowledge, and capacity. In low and middle income countries, many persons with disabilities or their families and disability service providers, do not yet know the reach of ICT available and its use (Samant, Matter, and Harniss 2012).
5) Persons with disabilities lack awareness of what ICTs can do to facilitate their socio-economic inclusion
6) There is very little documentation on participation by PWD in the design and development of E-government systems
7) The Huduma portal/website/systems have not been designed as per the required guidelines and standards for use by PWD
8) The current E-government services do not consider or address attributes of PWD.

4 Lessons Learnt

In 2008, the Government of Kenya has ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD). After the promulgation of the new Constitution in 2010, the Government is committed to ensuring and prioritizing fundamental freedoms and human rights without discrimination for persons with disabilities. If it is in accordance with the environment, according to WHO (2011), technology can increase participation and independence for persons with disabilities. They will become more communicative, mobile, and participate more in learning activities. This will have an impact on the self-image and self-esteem of persons with disabilities and will improve their quality of life.

Further, Assistive technology reduces costs for PWDs by supporting independent functioning and access to healthcare in lieu of personal support services, and independent community living in lieu of institutionalization.

Educated persons with a disability supported by assistive technology will have better opportunities in accessing employment (whether self-employment or waged) and reduces the link between disability and poverty.

Therefore, ICT4IE should be part and parcel of any government agenda and development strategy and a major concern for especially Kenya Government in its aspiration of delivering services to its public as well as promoting the disability welfare.

Internet and ICT can facilitate participation of PWDs in social, economic, and civic life. The use of multiple ICT channels to deliver services. The multiple formats for the content delivered can allow persons with different disabilities to access information and communication in the manner in which they prefer, comprehend and hence act.
5 Way Forward in Access to Quality Services for PWDs

There is a need to build stakeholder capacity on how ICT may benefit persons with disabilities also on the large number of affordable and inexpensive accessibility solutions available. This also applies to many persons with disabilities, their families, and disability service providers, especially in low and middle income countries. The adoption and use of accessible ICT for inclusion is dependent on many actors in the ecosystem including government e-service providers, educators, employers, development practitioners, and the ICT industry in general.

However, both the international community and the Kenya government must address the existing barriers in order to fully leverage on the potential of ICT in the lives of persons with disabilities. This paper suggests the following recommendations that will assist in mainstreaming of disability in Kenya.

1. Improving legislation and policy.
2. Technical assistance and awareness creation.
4. ICT Authority, Huduma Kenya programme to work together to ensure accessibility to all e-government services provided at the centres through provision of devices and assistive technology.
5. Strengthening research and development to facilitate growth of new ICT-enabled solutions for persons with disabilities as well as incorporating accessibility requirements in procurement policies.
6. The government to give other forms of assistance, support services and facilities at the Huduma Centres to make it easy for PWD to access these services.
7. ICT Authority and other stakeholder to develop and implement ICT accessibility guidelines which can be adopted by other government departments and agencies. This will ensure that PWDs get the correct and timely services at these centres.

References

How Can Find Similarities and Measure the Urgency of Tax Reform?

Abdul Rahman
{rhnoke@gmail.com}
Politeknik STIA LAN, Bandung, Indonesia

Abstract. In general, reforms in a country conducted according to politics and economic situations. Tax reform is an important change performed to increase the independence and developing a country in which the application differences suitable with characteristics of country. Based on the comparing tax reforms, this paper offers a model and an equation that can be used to compare tax reforms between or among countries based on the aspect of elements affecting, expectancy, and element of reform and to measure the urgency of tax reform. According to the model, the similarities of tax reform can be founded and the percentage of urgency of further tax reform can be predicted (by simulation).

Keywords: reform in taxation, flow of reform, factors affecting reform, expectancy of reform, component of reform

1 Introduction

As a part of the public administration reform, tax reform is a basic improvement of all tax aspects to gain a good tax system, in which equity, efficiency, and simplicity take place (Asprey et.al, 1975, Alm, 1996, Australian Government, 2015). To achieve it, tax reform requires a shift to a new paradigm by considering ideally changes in all fields of life including political, economic and social. Theoretically, improvements expected through tax reform are namely modernizing tax administration, formulating transparent and stable tax laws by involving all stakeholders, conducting law enforcement, enhancing government credibility by using tax for public interest, and having political will and commitment in formulating and implementing tax reform (Burgess and Stern, 1993).

The existence of public administration reform drives countries worldwide to conduct tax reforms. A recent World Bank report said countries are continuing to reform their tax systems, although a global economic perspective remains uncertain. In addition, the report also indicates that the number of countries involved in reform fell from 35 years ago to 31 countries. However, these countries continue to place special emphasis on reducing the burden of tax administration, for example by introducing better online systems to improve tax compliance (World Bank, 2013). The development of the tax regime in a country usually reflects the socio-economic characteristics of the country, therefore tax reform requires fundamental changes in all aspects of taxation, including, at the very least, improving the quality of human resources, tax regulation and tax information. A system to achieve an optimal tax system where simplicity, efficiency, voluntary compliance and tax revenue have increased significantly (Alm, 1996).
In the real condition, tax reform movements in developed, developing, and transition countries are performed based on the characteristic of each country. Therefore, to get the whole picture, this study offers the model to find the similarities of tax reforms among countries in the side of driving factors of reforms, expectations toward reforms, and elements of reforms. This model also provides an equation to predict the urgency of further tax reform.

Mobile learning can overcome teacher problems regarding time management and increase student independence to understand learning material.

2 Method

2.1 Building a model

The introduction of tax reforms in countries around the world during the same period suggested that there were general incentives for tax reform. The current context of globalization is a good example of this statement. On the one hand, globalization has a positive impact, especially in the aspect of trade, on the other hand, when the economic crisis breaks out in unusual and disturbing ways, its impact on public finances is felt in almost every country in the world. This condition forces the state to carry out financial reforms, including taxation. While the implementation of reforms in this sector varies according to the characteristics of each country, general factors can be considered. Based on these assumptions, a framework is systematically built to facilitate comparative analysis of tax reform, as shown below:

![Diagram of tax reform framework]

Figure 1. General framework of tax reform

This framework indicates that, in general, the journey of tax reform follows three stages. The first step is driving factors. It may be true that tax reforms are conducted because of the previous conditions influencing them. These factors then bring out expectations toward reforms as the second stage. Finally, these expectations are realized...
by many programs or elements of reforms that become driving factors for the further reforms.

Referring the general framework, then this study develops schematically a model for comparison that involves common conditions, problems faced and administrative weaknesses as aspects of the volume of driving factors, as shown in the following figure:

**Figure 2.** Model for comparison of tax reforms by driving factors, expectations, and elements

Figure 2 explores more detail figure 2, in which the existence of driving factors of tax reforms is caused by conditions of tax system in general and tax problems perceived including the weakness of administration as an important factor that affects the tax performance. By using this framework, expectedly this study can summarize all information to find out similarities of the implementation of tax reforms between countries or among countries.

Furthermore, by using this model, this study formulates an equation, namely:

\[
 f(tr) = x(df) + y(ex) + z(el)
\]

where:

- \( f(tr) \) = function of tax reform
This equation means that the function of tax reform will run if there are factors driving the reform, expectations (goal) toward the reform, and elements (programs) to solve driving factors and to achieve expectations. By using this equation, this study can predict the urgency of the further tax reform.

Furthermore, this study built the stages of COM-ME (Comparison and Measure) by combining the model and the equation that can be elaborated as following below:

Stage 1: Using the model to compare the current tax reforms worldwide. In this stage, the result of comparison in term of similarities of driving factors become points of driving factors 1 of formula or $x(df)_1$. Then, the similarities of expectations and elements become points of expectations 1 of formula or $y(ex)_1$:

Stage 2: Using Strength, Weakness, Opportunity, and Threat (SWOT) Analysis to map conditions our country. According to Rangkuti (2006), the matrix that describes systematically the analysis is as follows:

<table>
<thead>
<tr>
<th>Strength</th>
<th>Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Opportunity</th>
<th>Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Threats</th>
<th>Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The combination points of weakness and threats become points of driving factors 2 of formula or $x(df)_2$, and then the combination points of strength and opportunity become points of expectation 2 of formula or $y(ex)_2$.

Stage 3: Based on the using model and SWOT analysis, the study then formulates potential elements appropriate with characteristics and economy conditions of our country. Points resulted become points of elements of formula or $z(el)$.

Stage 4: Determining the formula to predict the urgency of further tax reform as illustrated below:
The result of formula is first to be identified as 100 percent. It means the value of urgency of further tax reform proposed to government is started in 100 percent. The urgency in percentage is to be reduced if there are improvements from the government.

2.2. Implementation of model

To apply this model, this study researched documents on the application of tax reform in transition countries, developed countries, and developing countries. The countries with a gap follow the IMF classification, in which the countries of the world are divided into developing countries⁵, then developed countries⁶ and countries with economies in transition⁷ (Martinez, et. Al, 1997). In addition, in their development, all countries of the world are divided by income per capita, namely (1) countries with a low-income level with a per capita income of no more than USD 975, (2) countries with a lower middle-income level with a per capita income population from USD 976 to USD 3855, (3) middle and high-income countries by per capita income from USD 3856 to USD 11905, and (4) high income countries by per capita income more than 11,906 dollars. The World Bank classifies all low-and middle-income countries as developing countries (World Bank, 2010).

The literature review is carried out by using Scopus, web of science, and Google scholar databases. This study finds 40 articles in the period of 1987 until 2014 by keywords of public administration, tax administration, and tax reform either transition, developed, or developing countries that contain information about driving factors, expectation, and elements of reforms. The study looked at this period because the tax reforms in the large scale have conducted since 1983.

3 Result and Discussions

This study presents the result based on the Stages of COM-ME that can be elaborated as follow:

Result of Stage 1

Data from the study of documents are analyzed and be highlighted by following the framework of comparison. The findings are then presented in each group of countries based on driving factors, expectations, and elements of reforms to facilitate in seeking the similarities among countries associated with tax reform in the global context, as shown below:

Driving factors

The results from the driving factor aspect for each category of countries:
**Transition countries**

**Common conditions**
The introduction of taxation in transition countries follows the model of a centralized economy in which the role of the state in controlling the economy plays an important role. Taxes are becoming the main government instrument for economic development, with corporate income tax, sales tax and payroll tax being the main types of taxes. The government is focused on collecting taxes from state-owned companies and a small individual income tax that does not have much corporate dominance and taxes on the private sector and property. Therefore, it is not surprising that almost 50% of the income is used to subsidize state-owned companies and households and that the corporate tax in this case in Western countries is more than four times higher than them.

**Problem occurred**
Prior to tax reform, transitional economies had problems with low voluntary compliance due to a lack of public trust in the government, which was prone to corruption, and a lack of public awareness of the need to pay taxes, which continues to be a burden. Low compliance results in high rates of tax fraud and tax arrears. This condition is exacerbated by the absence of tax audits that do not use modern audit methods and a lack of law enforcement. Uncertain and unstable tax systems emerged simultaneously due to excessive government influence due to the dualism of owner and operator duties, fluctuating tax rates, and a lack of coding and database systems. This condition led to low tax revenues and a financial crisis.

**Weakness of tax administration**
In area of tax administration, transitional economies face challenges related to computerized information systems for tax filing and collection, including weak tax audit technical standards for corporate standards and accounting that are incompatible with modern accounting standards. Bad opportunities for tax officers due to lack of training and low salaries lead to dishonest civil servants' behavior, including poor service to taxpayers.
**General conditions**

The introduction of taxation in developed countries has a fundamentally strong democratic tradition in which taxpayers are fully viewed as a society with equal rights and responsibilities and public participation in political decisions aimed at solving problems, including tax ones. The public also knows what taxpayer dollars can be spent on. The tax system is run by strict law enforcement agencies, no tax evasion, customer focus, efficiency and supervised regulation. In these circumstances, it is generally accepted that voluntary compliance is high with income tax as the largest tax revenue, accounting for about 36% or about two-thirds of tax revenue and about 31.2% of GDP. The use of state revenues for public purposes is also quite large: state funding for social security and health care exceeds 31%.

**Problems**

High levels of corruption in developed countries have led to a decline in public confidence in government. This condition was aggravated by the global economic crisis, which led to the state's financial crisis. This situation has resulted in lower tax sentiment and high rates of tax evasion, tax evasion and incomplete reporting. In addition, high tax rates and tax compliance costs caused by law enforcement are other factors that cause taxpayer non-compliance.

**Tax administration**

The high dependence of the tax administration on computer technology leads to a lack of relations between taxpayers and tax officials. The lack of honesty of the tax administrator is supported by the constant high influence of political power on the implementation of tax administration.
Developing countries

**General circumstances**
The tax role towards state revenue is extremely large due to the high demand of country after independence from colonialism, financing war and reconstruction, public necessity for development, and government operations for the public service. Surprisingly, one of the first things to note is that almost 80% of state revenues depend on tax revenue. This dependence is also supported by lack of involvement of non-tax revenue sector. In term of tax type, it is noted that two thirds of tax revenue come from indirect taxes such as foreign trade taxes and customs. The existence of country's dependence on foreign loans leads to the quite large role and influence of international organizations and some developed countries in decisions relating to fiscal and economic.

**Problem perceived**
It is interesting to see that problems in developing countries occur because of the complex tax system, narrow tax base, high tax compliance cost, injustice such as loopholes and exceptions, and high government intervention. The existence of state finance deficit due to the high debt, inflation, banking crisis and global economic crisis leads an impartial tax policy such as high tax rates and complex administrative procedures. Furthermore, the economic inequality, lack of tax education and knowledge, large tax burden, and inequity service led to the high rate of non-compliance such as tax evasion and tax avoidance. In addition, the lack of integrity due to poor salary structure and law enforcement brings to moral hazard behaviors that tend to corrupt.

**Weakness of tax administration**
The weak infrastructure of tax administration leads to the fact that tax administration services are not maximized. Tax administration implementation tends to be unstable and ineffective due to the high cost of tax administration. The low role of personal income tax is due to the fact that the tax administration system is not yet supported, while the government remains focused on enforcing tariffs and improving tax legislation.
Expectations and elements of tax reforms

From the expectation and component of reform aspect, this study resulted:

**Transition countries**

*Expectancy*
At the government level, it is noticeable that the transition countries are expecting an improvement and modernization of the tax administration and are gradually starting to introduce Western accounting systems for the application of taxes. In addition, oversee tax collection and improve VAT compliance by integrating VAT administration and corporate tax. The increase in tax revenue is expected through four main taxes, namely consumption tax, wage tax, profit tax and duty, which then strengthen the tax reduction mechanism, use tax taxes as the basis for the introduction of unmeasured and monitored taxes, create limits on non-taxable income and reduce income volatility, by not depending on a source of income. With regard to taxpayers, tax reform is expected to strengthen the implementation of self-assessment, capacity and independence of administrators so that services to taxpayers are maximized and there is a close relationship between tax administrators and taxpayers in the context of customer satisfaction.

*Components of reform*
In order to realize these expectations, the elements of the tax reform carried out in the transition economies mainly consist in the development of a tax system that introduces a modern administrative system in Western and European countries by adding the right IT system to regulate tax collection, reduce export and import taxes. to increase the proceeds are used. On the commercial side, establishing tax breaks for pensions, grants, social security insurance reimbursements, expanding the tax base, introducing new taxes, final taxes, and changing tax rates to increase tax revenue.
Developed countries

**Hopefulness**
It is widely recognized by the government that the expectations of developed countries are to increase tax revenues to weather the economic crisis, improve tax compliance, and raise taxpayers' morale to avoid tax behavior such as tax evasion and tax evasion. In addition, the government hopes that the honesty of administrators will be increased to prevent corruption. From the taxpayer's point of view, there is particular hope for fair regulation and enforcement, particularly in relation to the private sector. It is also expected that services to taxpayers will increase through modern tax administration without disrupting human relationships.

**Element of reform**
To meet these expectations, industrialized countries are implementing various elements of tax reform, in which the definition of taxation is based on a market economy and tax services based on customer satisfaction with one service, and organizations are built depending on their functions. As a result, the modernization of the tax administration continued with the development of information technology to combat fraud. Subsequently, the government passed a number of decrees that enhance the role of VAT on goods and services, including simplifying the structure of the income tax by standardizing tax rates and expanding the tax base. In addition, the role of the tax system has been strengthened by simplifying tax laws, providing taxpayers with tax education and information, reducing tax amnesty, and tax audit programs based on a risk pyramid approach to tax segmentation. The Tax Integrity and Good Governance program is also conducted to build trust between government and taxpayers, including strengthening social norms.
Developing countries

*Expectations*

On the part of the government as a whole, it is correct to say that developing countries hope to simplify the tax system by expanding the tax base and simplifying tax laws according to economic conditions. In addition, they expect a gradual liberalization of the economy and the financial system in accordance with the instructions of international organizations within the framework of state integration within the framework of globalization and the market economy. In addition, tax revenue is expected to increase through the introduction of new tax products, maximizing income tax increases, increasing the role of VAT and changing tax rates to eliminate the role of seigniorance (money printing) and external debt. In addition, tax compliance is expected to improve through a stronger role in self-esteem and strong enforcement of tax evasion and corruption. From the taxpayer's point of view, with simple tax administration and improved services, the modernization of tax administration is expected to improve the integrity of tax administrators and the introduction of taxpayers' money on public goods.

*Elements*

It is interesting to note that the elements of tax reform in developing countries are mainly related to improved tax administration and revenue. In detail, the elements are separated: modernization of tax administration, simplification of tax legislation, creation of a function-based organizational structure, rationalization of tax rates taking into account inflation and the global economic crisis, definition of a progressive income tax rate, accomplishing the efficiency and assessment program based on performance for tax administration, enlarging the indirect tax role such as the VAT by determining more precise and single tariff. Moreover, program of intensifying tax revenue is carried out by introducing the self-assessment system and some new taxes, improving control functions, reducing loopholes, exemptions, various allowances, and changing tax tariffs. In addition, law enforcement program by improving tax sanction is directed to find a good balance between preventive measures that promote voluntary compliance & corrective measure and to fight against tax fraud and tax evasion. The government also conducted actively integrity improvement program to grow public trust so that voluntary compliance increased positively.

Tax reform is, in fact, the price that the countries of the world must pay by taxing the population in order to achieve improvements in any sector and achieve an optimal tax system in a comprehensive manner. The globalization framework is likely to allow several countries to carry out tax reforms simultaneously, taking into account the same factors. The results of documentary studies using comparative flows show similarities in tax reform implementation in terms of driving forces, expectations and
elements in transitional, industrialized and developing countries.

As for the driving forces behind the reforms, they agreed that the economic crisis, financial crisis and high inflation were empirically the main driving forces. In this context, it is not surprising that taxation is one of the main sources of government revenue. Despite political instability, a complex and unstable tax system, weak enforcement and volatile tax rates. Ineffective tax administration, poor integrity and incompetence of tax administrators, and poor professional relations between taxpayers and tax administrators, including non-tax behavior such as tax evasion, tax evasion and tax corruption, are expected to increase tax revenues. Essential by using a simple tax system in regulatory and tax administration processes that improves morale and integrity of tax officials and reduces violations. To achieve this, various innovations or elements have been introduced through the development of information technology-based tax infrastructure, the introduction of new taxes such as VAT and sales tax, and changes in tax rates. In addition, the tax reform implemented the simplification of tax laws and regulations separately, improved the income tax system, imposed harsh and severe penalties for non-compliance, implemented programs to improve integrity and morality, controlled tax collection through an audit process, and integrated direct and indirect taxes. Reducing exemptions, incentives and loopholes that can lead to violations, and improving services for taxpayers as participants in the tax system.

According to these results, then this study summarized them, in which the similarities of driving factors become points of driving factors 1 of formula or x(df)1 and the similarities of expectations and elements become points of expectations 1 of formula or y(ex)1. As simulation, after more discussions for instances, the study determined the same driving factors of study as x(df)1 with 10 points and the expectations and elements of study as y(ex)1 by 20 points. Afterward, this study continued the process with stage 2.

Result of Stage 2

This study uses SWOT analysis to map conditions of our country to obtain x(df2) and y(ex)2, as shown in the following table:

Table 2 Matrix Strength, Weakness, Opportunity, and Threat (SWOT) Analysis

<table>
<thead>
<tr>
<th></th>
<th>Strength</th>
<th>Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Point 1</td>
<td>Point 1</td>
</tr>
<tr>
<td></td>
<td>Point 2</td>
<td>Point 2</td>
</tr>
<tr>
<td></td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Opportunity</th>
<th>As simulation, this study determines that points of strength + points of opportunity are 10 points for y(ex)2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As simulation, this study determines that points of strength + points of opportunity are 10 points for x(df)2</td>
</tr>
</tbody>
</table>

As simulation, this study determines that points of strength + points of opportunity are 10 points for x(df)2

According to this table, the study obtains that the combination of weakness and threat
points are 10 points or \( x(df)2 = 10 \) points and the combination of strength and opportunity points are 10 points or \( x(df)2 = 10 \) points.

**Result of Stage 3**

This study obtains the driving factors \([x(df)1 + x(df)2]\) and expectations \([y(ex)1 + y(ex)2]\) for further tax reform. Based on result of stage 1 and stage 2, then the study formulates potential elements appropriate with characteristics and economy conditions of our country. As simulation, the study determines the number of elements is 20 or \( z(el) = 20 \) points.

**Result of Stage 4**

This study inputs data to the formula, as shown below:

\[
[x(df)1 + x(df)2] + [y(ex)1 + y(ex)2] + z(el)
\]

Referring the formula \( f(tr) = \) in which

\[
\frac{[x(df)1 + x(df)2] + [y(ex)1 + y(ex)2] + z(el)}{3}
\]

\[
x(df) = [x(df)1 + x(df)2] = 10 + 10 = 20 \text{ points (100%)}
\]

\[
y(ex) = [y(ex)1 + y(ex)2] = 20 + 10 = 30 \text{ points (100%)}
\]

\[
z(el) = 20 \text{ points (100%).}
\]

Then

\[
f(tr) = \frac{100\% + 100\% + 100\%}{3} = 100\%
\]

It means the urgency of further tax reform of \( f(tr) \) is **100 percent**. This is a maximal point of urgency of the further tax reform that this study proposed to the government based on the result of similarities of tax reform worldwide and the current conditions of tax system in the country.

If, in the journey, the government makes changes because of many considerations, in which points of \( y(ex) \) become 15 points from 30 points and points of \( z(el) \) become 10 points of 20 points as showed in the following equations:

\[
x(df) = [x(df)1 + x(df)2] = 20 \text{ point (100%)}
\]

\[
y(ex) = [y(ex)1 + y(ex)2] = 15 \text{ (50%), and}
\]

\[
z(el) = 10 \text{ points (50%)}
\]

And then, the calculation becomes:

\[
f(tr) = \frac{100\% + 50\% + 50\%}{3} = 66.67\%
\]

By this result, the study can assume that the urgency of further tax reform in the side of government is around 66%.
4 Conclusion

This model proves that there is sameness of tax reforms worldwide in the aspect of elements affecting of reforms (elaborated with general circumstances, problems perceived, and weakness of tax administration), expectations toward reforms, and elements or programs of reforms. It can be concluded that this model can be used and facilitate in finding the similarities of tax reforms between countries or among countries. The results obtained can be used to create a tax reform plan in the future appropriate with characteristics and conditions of a country.

Following the COM-ME Stages (comparison and measure stages), this study can determine an equation to measure the urgency of further tax reforms. The result started with the point assumption of 100 percent as a maximal urgency for further tax reform. The percent of urgency will change if there are modifications from the government or stakeholder.

References

Financial Technology And Financial Inclusions In Indonesia

1st Basrowi1, 2nd Noviarita, H2, 3rd Hayati, M3
{basrowi2018@gmail.com1}

Postgraduate Student of Universitas Islam Negeri Raden Intan Lampung, Indonesia1, Faculty of Islamic Business Economics, Universitas Islam Negeri Raden Intan, Lampung, Indonesia2, Postgraduate Lecturer of Universitas Islam Negeri Raden Intan Lampung, Indonesia3

Abstract. The purpose of this study is to describe the influence of the development of financial technology and financial literacy on the development of financial inclusion both partially and simultaneously. The research method used is quantitative. Data is obtained from documentation data that has been available at the central statistics agency, Bank Indonesia, the Financial Services Authority, and the Ministry of Finance of the Republic of Indonesia since 2013-2019, which can be downloaded online. Data were analyzed using multiple regression. Based on the results of data analysis it can be concluded that there is a significant influence between financial technology and financial literacy on financial inclusion both partially and simultaneously.

Keywords: Financial, Inclusion, Literation, Start Up, Technology.

1 Introduction

At present, fifty percent of the world's population has not been touched by bank services. In 2018, Global Findex World Bank, the number of Indonesian adults who already have accounts in financial institutions (banked people) has only reached 36% of the total adult population (OJK, 2016a). Various reasons for the community cannot relate to financial institutions, one of them is because it is far from banking infrastructure, both the banking service office and the independent platform machine (Member-Board-Governor-BI, 2018).

Table 1. Number of commercial bank infrastructure

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial banks</td>
<td>119</td>
<td>118</td>
<td>116</td>
<td>115</td>
<td>115</td>
<td>115</td>
</tr>
<tr>
<td>Rural bank</td>
<td>1.643</td>
<td>1.636</td>
<td>1.633</td>
<td>1.619</td>
<td>1.597</td>
<td>1.593</td>
</tr>
<tr>
<td>Total Bank Offices</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial banks</td>
<td>32.739</td>
<td>32.949</td>
<td>32.730</td>
<td>32.285</td>
<td>31.618</td>
<td>31.676</td>
</tr>
<tr>
<td>Rural bank</td>
<td>4.895</td>
<td>5.982</td>
<td>6.075</td>
<td>6.192</td>
<td>6.273</td>
<td>6.014</td>
</tr>
</tbody>
</table>

Source: (OJK, 2017)
The table above provides an understanding that, as of 2019 there are 115 commercial banks in Indonesia, as many as 1,593 rural banks. While the number of public bank offices is 31,676 units, and the number of public credit bank offices is 6,014 units.

Table 2. Amount of Islamic bank infrastructure

<table>
<thead>
<tr>
<th>Indicator</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sharia commercial bank and business unit</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total number of offices</td>
<td>2,201</td>
<td>2,169</td>
<td>2,229</td>
<td>2,260</td>
</tr>
<tr>
<td>Total number of ATMs/ADM</td>
<td>3,259</td>
<td>2,728</td>
<td>2,962</td>
<td>2,958</td>
</tr>
<tr>
<td>Sharia Rural bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Banks</td>
<td>166</td>
<td>167</td>
<td>167</td>
<td>165</td>
</tr>
<tr>
<td>Number of offices</td>
<td>453</td>
<td>441</td>
<td>495</td>
<td>469</td>
</tr>
</tbody>
</table>

Source: (OJK, 2017)

Looking at the data above, the number of Islamic banks in Indonesia is still very small, not comparable with the number of cities and districts in Indonesia. In 2016-2017, there were only 13 Islamic banks, and in 2018-2019 the number of Islamic banks increased by one to 14 Islamic banks. The number of offices until 2019 is 2,260 sharia bank offices. The number of ATMs / SDMs until 2019 is that there are only 2,958 units. Sharia Rural Bank until 2019 there are 165 banks, with a total of Sharia Rural Bank offices until 2019, which are 269 units.

By looking at both the infrastructure of both commercial banks and Islamic commercial banks, the number of banks available is still very small. So it is natural that financial services to the community are still exclusive, not yet exclusive. Banking services are still exclusive, because they can only be enjoyed by certain people, have not been able to reach all Indonesian people.

The results of the National Survey on Financial Literacy in 2016 showed that the level of financial inclusion of people in Indonesia was only 67.82 percent which was dominated by banking products, while the literacy rate of financial products was only 29.66 percent of finance in Indonesia which was still dominated by the banking sector as seen in Table 3. (OJK, 2016b).

Table 3. Types of inclusion facilities and percentages

<table>
<thead>
<tr>
<th>No</th>
<th>Types of inclusion facilities</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Banking</td>
<td>74</td>
</tr>
<tr>
<td>2</td>
<td>Insurance</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>Pension fund</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>Mutual funds</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>Non-banking</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Securities company</td>
<td>1</td>
</tr>
<tr>
<td>7</td>
<td>Finance company</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: (OJK, 2016b)

Currently, there is a fin-tech startup that will transform financial services from exclusive to inclusive, which can reach all Indonesian people, both those living in urban, rural and rural areas. Given that so far, the majority of conventional and sharia commercial bank services are
mostly located in urban areas and urban suburbs, they have not been able to reach remote areas and remote areas.

The fundamental question of this research is that the fintech startup is able to change the condition of financial services that were initially exclusive, shifting into inclusion which is characterized by growing and increasing numbers of people who receive financial services from both bank and non-bank financial institutions. The originality of this research lies in the benefits of fintech in facilitating exclusive financial services to be inclusive so that people who have not been touched by financial institution services have been served.

2 Theoretical Review

There is a lot of research, for example by Prawirasasstra, which states that financial technology is a combination of the terms of financial services and information technology (Prawirasasra, 2018). "Today, the financial technologies industry (fintech) is rapidly developing around the world. Under the finance-tech, the Basel Committee on Banking Supervision (BCBN) understands "financial innovations that can lead to the creation of new business models, applications, processes or products that will subsequently affect the financial markets, institutions or the production of financial services "(Kolesova & Girzheva, 2018).

Furthermore, it was explained that, "The number of people around the world, who are not willing to use traditional banking services, contributes to the development of technology which offers the same services, but is faster, cheaper and more profitable than banks "(Svetlana Saksonova & Irina Kazmina-Merlino, 2017)

Also explain that, "Financial technology, or FinTech, involves the design and delivery of financial products and services through technology. It affects financial institutions, regulators, customers and merchants across a wide range of industries. Pervasive "(Leong, Tan, Xiao, Tan, & Sun, 2017)

The findings (Leong et al., 2017) regarding the rapid development of fintech occur because of public dissatisfaction with the types of bank services that have never moved to use technology, while fintech services are able to penetrate various weaknesses in bank services. Fintech also does not need physical infrastructure such as banking services, which until now are very limited in number, especially in villages.

According to Kolesova and Girzheva, the existing lending fintech seized various banking functions, so that it was felt very troubling to develop. The positive impact is that many people are being served by financial institutions. In other words, financial services to the community are more inclusive (Kolesova & Girzheva, 2018)

The study conducted by (Clusters, 2016) concluded that fintech is a form of refinancing traditional financial services. Fintech is able to present new financial markets that are in line with the development of information technology. With the presence of fintech startups, the number of remote communities that receive financial services has increased significantly.

Galvin and his colleagues' study concluded that fintech as the most successful startup in defeating the role of the bank, while being able to increase the number of people using financial services both banks and non-banks. (Galvin et al., 2018).

Micu's findings relating to innovations produced by Fintech's financial service providers have been able to increase the number of micro, small and medium business actors. More than 68% of MSMEs have been offered by Fintech to borrow available funds in order to advance
MSMEs. At that time, the banks were very disturbed by the presence of fintech that was able to win the hearts of users of financial services, eventually the number of customers of banks became drastically reduced (Micu, 2016).

The study conducted by He, et.al. also concluded that, fintech as the fastest solution in financial services, because in addition to being able to change the currency according to the target country’s exchange rate, it was also able to maintain financial stability internationally. In other words, fintech is able to answer various weaknesses possessed by conventional banks (He et al., 2017).

Financial literacy is a financial awareness and knowledge of financial products, financial institutions and concepts regarding financial management skills (Xu and Zia 2012).

3 Method

This study uses quantitative research methods specifically descriptive verification. Secondary data was collected from four sources of government institutions, namely the Ministry of Finance of the Republic of Indonesia, Bank Indonesia, the Deposit Insurance Corporation, and the Financial Services Authority. Data is taken from the official website of the four institutions that can be accessed online. Data accessed in 2013-2019 data. Data that has been collected is analyzed using multiple linear regression analysis (Sekaran, 2016). The results of this analysis are used to answer the research problem formulation.

4 Research result

In testing multiple linear regression models used two independent variables namely financial and financial literacy technology, and one dependent variable is financial inclusion. The following is a linear regression test

<table>
<thead>
<tr>
<th>Model</th>
<th>Unstandardized Coefficients</th>
<th>Standardized Coefficients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>SE</td>
</tr>
<tr>
<td>1 (Constant)</td>
<td>-3.778</td>
<td>1.261</td>
</tr>
<tr>
<td>utilization Fintech (X1)</td>
<td>1.017</td>
<td>.039</td>
</tr>
<tr>
<td>Literacy level (X2)</td>
<td>.119</td>
<td>.091</td>
</tr>
</tbody>
</table>

Source: Results of the 2019 Analysis

From the Unstandardized Coefficients values in the table above, a regression equation can be formed as follows.

\[ Y = -3.778 + 1.017X1 + 0.119X2 \]

The results of the first hypothesis test are obtained by the determinant coefficient (R2) to calculate the part of the diversity of the total dependent variables Y which can be explained by the diversity of the independent variables X.
Table 5. Summary of the Results of the Determination Coefficient

<table>
<thead>
<tr>
<th>Model</th>
<th>R</th>
<th>R Square</th>
<th>Adj. R Square</th>
<th>SEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>.96a</td>
<td>.993</td>
<td>.992</td>
<td>2.57656</td>
</tr>
</tbody>
</table>

Source: Results of the 2019 Analysis

Based on the adjusted R² value obtained at 0.993, which means that 99.2% of the diversity of the dependent variable can be explained by the model, the remaining 0.8% is explained by other variables outside the model. Next is the F test to find out the real effect of the independent variable on the dependent variable as a whole. The test uses a real level of 0.05 (5%).

Table 6. Summary of F Test Results

<table>
<thead>
<tr>
<th>Model</th>
<th>SS</th>
<th>df</th>
<th>Mean Square</th>
<th>F</th>
<th>Sig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regression</td>
<td>13708.668</td>
<td>2</td>
<td>6854.334</td>
<td>1.032E3</td>
<td>.000b</td>
</tr>
<tr>
<td>Residual</td>
<td>99.580</td>
<td>15</td>
<td>6.639</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>13808.248</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Results of the 2019 Analysis

Based on the results of the F test in the table above, a significant value of 0.00 is less than 0.05, so Ho is rejected and H1 is accepted. Means, there is at least one independent variable that affects the dependent variable. This shows that financial literacy and financial technology simultaneously have a significant effect on financial inclusion.

**Fintech's role in encouraging financial inclusion**

The financial literacy variable obtained by t coefficient of 5.627 has a significant value of 0.00 less than 0.05, so Ho is rejected and H1 is accepted. That is, financial technology has a positive and significant effect on financial inclusion. This means that the higher the people who use digital-based financial services, the higher the form of support for financial inclusion.

Table 7. Financial Tests for Financial Inclusion

<table>
<thead>
<tr>
<th>Model</th>
<th>Unstandardized Coefficients</th>
<th>SC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Std. Error</td>
</tr>
<tr>
<td>1</td>
<td>(Constant)</td>
<td>-5.464</td>
</tr>
<tr>
<td>Fin-Tech</td>
<td>2.026</td>
<td>.360</td>
</tr>
</tbody>
</table>

Source: Results of the 2019 Analysis

The results of this study also confirmed the results of research conducted by Kolesova & Girzheva who concluded that, fintech had an impact on the occurrence of social change, because many people were touched by fintech services with artificial intelligence created by the developers. (Kolesova & Girzheva, 2018).
The results of this study also corroborate the findings of Leong et al., Who said that, fintech has been able to improve the community that serves the services provided. The number of customers has increased in accordance with the development of information and technology. This technology has significantly been able to increase the number of bank customers, the number of fintech users and the number of people interested in using fintech. (Leong et al., 2017).

With various marketing strategies possessed by Fin-tech and fintech legality, it turns out that it can also increase financial inclusion through financial markets (He et al., 2017). Other researchers also believe that fin-tech impact can significantly increase financial inclusion and stability (Ozili, 2018).

The following researchers also strengthened this research because it concluded that financial technology services were able to increase public interest in conducting online transactions, so that it would make it easier for people to get financial services (Joju, Shanmugam, & P K, 2017).

So, what is predicted (Chiu & Iris, 2016) explains that, financial technology will be able to increase public financial inclusion but also can lead to technological distortions in the field of development.

**Effects of Financial Literacy on Financial Inclusion**

The financial literacy variable obtained by t coefficient of 44.446 has a significant value of 0.00 less than 0.05 so Ho is rejected and Hi is accepted. That is, financial literacy has a positive and significant effect on financial inclusion. This means that the higher the financial knowledge the higher the level of financial inclusion.

<table>
<thead>
<tr>
<th>Model</th>
<th>SC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 8. Financial Test t for Financial Inclusion

<table>
<thead>
<tr>
<th>Unstandardized Coefficients</th>
<th>SC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>(Constant)</td>
<td></td>
</tr>
<tr>
<td>Literasi (X2)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Results of the 2019 Analysis

The results of this study are in accordance with the findings of Odelius et al., Who stated that in Kenya, the number of people who received banking services increased dramatically after the M-Pesa, which was able to provide money transfer services via SMS banking. This is very much needed by people in rural areas that are far from banks and automated teller machines. (Odelius, Traynor, Mehigan, Wasike, & Caldwell, 2017)

The findings of this study are also in line with the findings of Muzdalifa et al., Who said that fintech was proven to be able to increase the number of people who received financial services from both financial and non-banking financial institutions. The millennial community prefers conventional fintech services. In other words, fintech services are able to touch all circles (Muzdalifa, Rahma, & Novalia, 2018).

Financial literacy has been able to increase the level of public financial inclusion, especially people who always use fintech services (Carmona et al., 2018). Financial literacy has also been able to increase the index of fintech utilization in the world (Gulamhuseinwala, 2017).
In the field of sharia, it is also explained that Islamic financial literacy is also able to increase the inclusion of Islamic finance (Grais & Pellegrini, 2006). Thus, Islamic financial literacy and utilization of sharia technology finance are able to improve Islamic financial inclusion (Arno Maierbrugger, 2018)

5 Conclusion

Reading the entire description above, it can be concluded: first, that simultaneously there is an influence between financial technology and financial literacy on financial inclusion with a R2 coefficient of 0.992, or 99.2% variation in financial inclusion is determined by financial technology and financial literacy variables. The remainder of the calculation of 1.6% is determined by other variables not included in this study. Secondly, partially there is a significant influence between financial technology on financial inclusion. Likewise, there is a significant influence between financial literacy on financial inclusion.

Acknowledgment

Thank you for being delivered to the Islamic Economics Postgraduate Program, UIN Radin Intan Lampung Indonesia, starting from the leadership element to the executive staff including all student colleagues, who have contributed both to the academic and non-academic levels, all of which are able to provide less motivation, so that various scientific work in the field of Islamic economics can be realized.

References


[16]. OJK. (2016a). Financial Services Authority Regulation Number 77 /POJK.01/2016 concerning on Information Technology-Based Money Lending and Borrowing Services (pp. 1–21). https://doi.org/10.12988/ref.2018.818


Abstract. The purpose of this study was to determine the effectiveness of the implementation of school and community collaboration models in improving student learning achievement based on local knowledge. The method used in this study is action research with a participatory qualitative approach. Based on the results of the second year study, it can be concluded that: 1) the application of the model is carried out with active participation of the community and schools and the alignment of related institutions such as the neighborhood association (RT), the neighborhood association (RW), the village head (Lurah), the head of the sub-district (Camat), and local government, as well as parties from the campus is very important for increasing parents' awareness of education children according to the model produced in the first year. 2) in the implementation of the model (second year) there are still obstacles, including lack of assistance from the sub-district and city districts. Regarding the motivation (and mindset) of the community to send their children to school is higher than when they do not have an understanding of the meaning of education for children.

Keywords: School, Community, Models, Improving Student Learning Achievement, Local Knowledge.

1 Introduction

Based on the results of the research in the first stage, the following problems can be identified: 1) the people who live in very slum and densely populated villages in Pahandut Village, Pahandut Sub-District, Palangkaraya City, Central Kalimantan are in very poor condition; 2) the motivation of children to study both in the evening and at night is very low, as evidenced by the large number of children playing outside the home; 3) the rate of transition to junior high school is very low at only 35% so that the remaining 65% do not continue to junior high school, the transitional number going to high school is only 20% so the remaining 80% do not continue to high school level, and the transition to college is only 2% and the remaining 98% are not in college.

In the afternoons and evenings, children always chase, dress naked, swim in the slum swamps under their houses, children ride motorcycles in narrow alleys, play rummy, play
ding-dong coins, playing games on-line with hand phone, and “carambol games” betting Rp 2,000.00/game.

It is not uncommon for children to play from day to night interspersed with the habit of sucking glue (gluing), smoking, playing guitar, drinking hard, staying up late, “sing a song Dangdut”, and other non-beneficial activities until late at night even into the morning.

There is absolutely no parent and community who care about children's education at home and in the social environment. All parents are busy with their respective livelihoods without regard to children's education. The majority of them make a living looking for fish in rivers and lakes, raising fish in “karamba”, trading small-scale, selling fish in the market, becoming parking attendants, drivers, opening small grocery stalls on the porch of the house, opening snacks, drinks and snacks, and work in other informal sectors.

The entire community of Pahandut Village, Pahandut Subdistrict, Palangkaraya City, which numbered more than 2000 families and the majority lived on the banks of the Kahayan River with very poor economic conditions, the condition of the majority of the houses was very poor, the distance between one house and the other was very tight, no social space that can be used by children and the community to play freely, slums physical environment, under the house is always flooded with swamp water does not flow with a water depth of 1 to 3 meters, with very dirty and brownish water conditions even many which is black.

Their settlements are really in a dense condition with very narrow alley conditions, under their houses full of garbage, hot, barren atmosphere, no plants at all except swamp plants, or just one two potted plants planted in front of community houses in untreated conditions and trails are full of junk and garbage.

All of the above problems indicate that: 1) the learning interest of children in Pahandut Sub-district, Palangkaraya City is very low, 2) parental participation in children's learning is very low, 3) participation of community leaders, religious leaders, youth leaders, traditional leaders, and figures others also paid little attention to the level of education of children, and 4) Kelurahan Social Institutions (LKK), supra village institutions, NGOs, PKK, youth groups, and other institutions also paid little attention to the level of education of children.

2 Theoretical basis

Local wisdom comes from two words, wisdom, and local. In general, local wisdom can be understood as local (local) ideas that are wise, full of wisdom, good value, embedded and followed by members of the community. As Sartini (2006; Qodariyah and Armiyati, 2013, 2013) wrote, that the function of local wisdom is (1) conservation and preservation of natural resources; (2) human resource development; (3) the development of culture and science; (4) advice, trust, literature and abstinence; (5) social meaning such as communal / kinship integration ceremonies; (6) means ethics and morals; (7) meaning politically, for example the bowl bowing ceremony and Atmodjo's patron client power (1986: 37), local wisdom is the ability to absorb foreign culture that comes selectively, meaning that it is adapted to local circumstances and conditions. (Qodariyah and Armiyati, 2013).

The results of research conducted by Zaremba et al (2014) show that 1) the values of Sasak local wisdom as a living guide for the people in Lingsar Village are categorized in the political, social, economic, trade, agricultural and cultural preservation fields; 2) the values of multicultural-minded “Sasak” local wisdom focus on the social field.
Every society has traditional knowledge and technology called "knowledge of rural people". Traditional knowledge and technology, if handed down from generation to generation into tradition. A tradition is very broad in scope, one of which is traditional wisdom. Keraf (2006: 4) suggests that traditional wisdom is not only related to knowledge, understanding and customs about humans, nature and how good relations between people, but also concerning knowledge, understanding, and customs about humans, nature, and how relations among all residents of the ecological community.

The end of this sedimentation of local wisdom will become a tradition or religion. In our society, local wisdom can be found in songs, proverbs, advice, slogans, and ancient books that are inherent in everyday behavior. Local wisdom is usually reflected in people's longstanding life habits.

The collective picture is part of the content of the collective consciousness, an entity that exists between the metaphysical group mind and the more prosaic reality of public opinion. Collective awareness contains all the ideas shared by individual members of society and which are collective goals and intentions (Campbell, 1994: 179-180).

Mechanical solidarity is based on a "collective consciousness (conscience), which refers to" the totality of shared beliefs and sentiments which on average exist in the same community. It is a solidarity that depends on individuals which has the same characteristics and adheres to the same beliefs and normative patterns. Therefore, individuality does not develop, individuality is constantly paralyzed by immense pressure for confirmation (Soerjono Soekanto, 1985: 4-9).

According to the theory of rationality, humans are assumed to be rational beings. That is, humans always adhere to the principle of efficiency and effectiveness in carrying out each action (Basrowi and Sukidin, 2003; Mustain, 2007). In connection with that, every human individual in the life of society has an awareness of the benefits that can be gained through his actions (Yunita, 1986: 68 -69). Likewise, selective incentive theory assumes that a person's rational participation in an activity is influenced by the type, form, and content of expectations that will be beneficial.

Local wisdom has six dimensions, namely:
1. Dimensions of local knowledge. Every community where they are located always has local knowledge related to their environment.
2. Dimensions of local values. To regulate the life between citizens, every community has rules or values that are adhered to and kicked by the same members by all members.
3. Dimensions of local skills. Local skills for each community are used as an ability to survive. Local skills are usually only sufficient and able to meet the needs of their respective families or referred to as a subsistence economy.
4. Dimensions of local resources. Local resources in general are natural resources. The community will use local resources according to their needs and will not exploit on a large scale or be commercialized. This local resource has been divided into uses such as forests, gardens, water sources, agricultural land and settlements. This ownership of local power is usually collective.
5. Dimensions of local decision-making mechanisms. Every society basically has its own local government or is called a tribal government. Tribe is a legal entity that governs its citizens to act as citizens. Each community has a different decision-making mechanism.
6. Dimension of local group solidarity. People have media to bind their citizens that can be done through religious rituals or other traditional ceremonies and ceremonies. Each member gives and receives each other in accordance with their respective fields of
function such as in solidarity processing morning plants, community service and mutual cooperation.

The forms of local wisdom in society according to Aulia and Dharmawan (2010) can be in the form of values, norms, beliefs, and special rules. These various forms result in various functions of local wisdom. The functions of local wisdom include: (1) conservation and preservation of natural resources; (2) developing human resources; (3) the development of culture and science; and (4) instructions on advice, trust, literature, and abstinence. In addition, added by Sartini (2004) who expressed the functions and meanings of local wisdom including: (1) functioning for the conservation and preservation of natural resources; (2) function for the development of human resources for example relating to life cycle ceremonies, the concept of a rate pat; (3) function for the development of culture and science, for example in the “Saraswati” ceremony, belief and worship at the Panji temple; (4) function as advice, trust, literature, and abstinence; (5) social meaning, such as communal / kinship integration ceremonies; (6) meaning ethics and morals, which are manifested in the “Ngaben” ceremony and purification of ancestral spirits; and (7) meaning politically, for example the bowl bowing ceremony and patron client power. (Maridi, 2015).

3 Research Methods

This research is the second study (continued). This research is an action implementation model, with a research approach that is qualitative descriptive analysis to describe and analyze participatory approaches (PRA), and sociological-educative approaches in order to achieve the research objectives. In phase 1, Need assessment was carried out on profiles and aspirations, making a model for increasing public awareness of children's education.

In the second year, there were: 1) applying the model, 3) monitoring and accompanying the process of increasing public awareness of children's education, 4) increasing education participation rates, 5) discussing with the community, 6) drafting books, 7) networking expected to have occurred and expanded with entrepreneurs, 8) Focus Group Discussions, and 9) international seminars.

4 Results and Discussion

Nowadays human civilization is so advanced, as evidenced by the emerging modern cultures that have filled the dimensions of human life ranging from domestic life to the advancement of industrial technology and information. Likewise, the world of education today is far different from the educational models of ancient times. This indicates that the community has enjoyed the results of creativity, taste, and initiative in the form of modern cultural results. Various changes that occur in Indonesia are not only related to the socio-economic life system, also politics, language and culture. Language contact results in cultural contact or otherwise cultural contact results in language contact (Suryani, 2014).

This happened because of the effects of the global world in the era of globalization. All distance and space feels close because of technological advances. In the midst of such advances, of course we cannot forget the existing cultural roots because those cultures contain very noble values that need to be preserved. That is the local wisdom that needs to be explored
in addition to still enjoying modern culture. Escape from the existing local wisdom means denying the existence of high-value ancestors' cultural heritage (Suryani, 2014).

The model that has been produced in the first year research, and will be applied in the second year is as follows.

**Results of Providing Facilitation to the Community (year II)**

The purpose of facilitation to the community is that the community is willing to pay attention to children's education at home, whether doing homework, getting up in the morning, taking a shower, preparing breakfast, and textbooks, monitoring children's learning hours, the effectiveness of community learning hours (JBM), and various things relating to education enrollment rates, the transition rate of children's education to junior high school / MTs or to high school / vocational school / MA, or even the transition rate of education to tertiary education. The criteria for this research model are successful, if:

1. The level of awareness of parents about the meaning of children's education increases;
2. Dropout rate decreases;

![Figure 1. Model of Increasing Public Awareness of Children's Education](image-url)
3. The level of awareness of parents to accompany children learning increases;
4. Number of children playing during community learning hours decreases;
5. The presence of group learning children increases;
6. The average value of children's report cards increases;
7. Ranking of student grade report cards increased;
8. The transition rate of children to SMP / MTs increases;
9. The transition rate of children to SMA / SMK / MA increases;
10. The transition rate of children to universities is increasing;
11. The level of awareness of parents in continuing children's education increases;
12. Attention of all education stakeholders from the principal, teacher, to the education office.

Based on the results of the study, all aspects mentioned above have increased significantly, so that the application of the model proposed in the research can be said to be successful, and can be applied to the wider community who have similar characteristics. Even though at first there were some components that had not yet improved, various components that had not yet improved were improved, and had been re-treated so that all the components that had been determined could increase significantly. When viewed differences before the research and after the research can be described as follows.

<table>
<thead>
<tr>
<th>No</th>
<th>Before there is awareness</th>
<th>After awareness</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>There were no visible or audible children studying at home both in the afternoon and in the afternoon, there were only many children watching TV, snacks outside the house, and hanging around playing outside the house, there were also children playing cards, playing karambol with money, chases, motorbikes, swimming in swamps and rivers, cycling, smoking, and other games that spend time studying.</td>
<td>During study hours, the majority of children are already seen and heard learning at home. During study hours, there are no children and parents watching TV, hanging around and playing outdoors. During the study hours, there were no children playing cards, playing karambol, running chasing, racing and riding bicycles and motorbikes, smoking, and other games. During school hours all children study at home.</td>
</tr>
<tr>
<td>2</td>
<td>There do not appear to be parents who care about children's education. There were no parents accompanying children to study, no parents told their children to learn, no parents looking for their children to study, no community to turn off TV during children's learning hours, and no concern from the community for children's learning motivation.</td>
<td>All parents care about children's education. The majority of parents accompany children learning, telling their children to learn. If the child is not at home, parents look for their children to go home and study, the community turns off the TV during children's learning hours, and the majority of people already care about children's learning motivation.</td>
</tr>
<tr>
<td>3</td>
<td>The majority of parents are reluctant to send their children to junior high, high school, especially to universities. They are psychic, afraid of shadows, and afraid to stop in the middle of the road.</td>
<td>The majority of people have unanimous determination and deep conviction that they can afford to pay for their children's education if they only enter junior high or high school, although they still have to lose their psychology, they must continue to college (lecture).</td>
</tr>
<tr>
<td>4</td>
<td>With the economic condition of the community which is very concerning, there is no time and energy to pay attention to</td>
<td>With any conditions, parents still take the time to pay attention to children's education and learning.</td>
</tr>
</tbody>
</table>
Before there is awareness | After awareness
---|---
5 | In the afternoon to night, children are always seen playing interspersed with the habit of smoking, playing guitar, staying up late, and other non-benefit activities until late at night, even if at night there are also staying up until morning. There are no more elementary and middle school-aged children who smoke in the home environment. There are also no elementary and junior high school age children who play gambling using game tools. It's no longer a guitar that sounds when learning hours and sounds above 21:00. They will only send their children to elementary or junior high school.
6 | The community considers that education does not have any meaning, is unable to provide certainty for the future of children, and is unable to improve children's welfare in the future. They will only send their children to elementary or junior high school. They assume that education is valuable, useful, and able to improve the dignity of children and parents in the future.

Source: results of 2017 data analysis

All reality after the implementation of the model as described above, indicates that:
1) the learning interest of children in the Pahandut District of Palangkaraya City has increased,
2) parental participation in children's learning has increased,
3) the participation of community leaders, religious leaders, youth leaders, traditional leaders, and other figures on the level of children's education has increased,
4) Parental awareness of children's education has increased,
5) awareness of parents to continue their education to high school / vocational high school / MA has increased, and
6) PKK Community Institutions, youth organizations, “dasa wisma”, “Posyandu” groups, “pengajian” groups, “arisan” groups, and other institutions in paying attention to the level of education of children have also increased.

Implementation of the Model

1. Formation of study groups at home by teachers in schools based on the closeness of the place of residence. The goal is that, children can learn groups with their classmates while at home. Thus, children's play time is not reduced, because their group learning activities are carried out together with playing to be reduced. Benefits gained: (1) children's ability to socialize with their peers increases, (2) Child Learning motivation increases; (3) Child Learning Achievement Increases
2. Counseling the Importance of Education for Children to Parents. This activity was first carried out on May 28, 2018 followed by 40 parents of student guardians, located in the class V study room of SDN 1 Pahandut. The second period, held on June 7, 2018 was attended by 42 parents of student guardians (with participants who were different from the first period participants), taking place in the V Classroom of Pahandut 1 Elementary School. This activity aims to increase parental awareness of children's education. Expected impact Child Education Levels Increases
3. Establishment of Community Learning Hours (JBM). This activity was formed at the RW level which was followed up at the RT level. The activity continued with making a 60 x 40 cm banner containing JBM. This mini banner is installed in public places that are easy to read such as in the mouth of the alley, in RT houses, in the alleys, and in the gathering place of children. This activity aims to get children to concentrate on learning
at 6:00 p.m. 8:00 p.m. at that time all children in the Pahandut village were in the house, and all parents turned off the TV, did not play cellphones, and other activities that could interfere with their learning children. When there is a house with an open door, turning on the TV aloud, the RT head comes to the house to close his house, turn off the TV, and accompany his child to study. When during study hours, there are school-age children, parents, caring communities, the RT head will send their children home and study.

4. Learning Assistance Training for Parents. The objectives to be achieved are Supervision and Control of Learning Discipline of Children in Class 1 s.d 4 Elementary School can be increased and Supervision and Control of Class 5 Children's Learning Discipline until 6 elementary school and 7th grader 9 junior high school increases. This activity was held in the neighborhood association (RW) 26 on May 21, 2018 at 6:00 p.m. 20. In this activity, parents are trained in how to accompany their children who are still in grade 1-4 elementary school. Parents are briefed on how to assist children in learning and how to motivate children to learn more diligently.

5. Teacher Visit. The steps taken are the teacher spontaneously, periodically and not scheduled to visit the Child Study Group. This activity has been scheduled by the principal of the state basic school (SD Negeri) 1 to visit their students who are studying groups both evening and night. The schedule is confidential, so no one student knows that the study group will get a visit from the teacher. Every teacher starts class 1 teacher. Class VI including teachers of Christian and Islamic education visited 3-4 groups in 1 week. When the teacher visits the children's study group, the children can directly ask about various difficulties that the child experiences while learning, or ask for other knowledge that is still related to the subject. This aims, so that children feel they get supervision from the teacher even though they are studying at home. Thus, children's enthusiasm for group learning at home is increasing, and children's learning achievement is also increasing.

Evaluation of Model Implementation

After all stages in the model are implemented, the next step is evaluating the implementation of the model. In this evaluation phase, there are various weaknesses of the model that must be addressed immediately, so that the model that has been built can be implemented as well as possible. There are several advantages and disadvantages of implementing the model as follows.

<table>
<thead>
<tr>
<th>No</th>
<th>Aspect</th>
<th>Excess</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>during the socialization of the importance of education for children</td>
<td>Many parents understand the Importance of education for children</td>
<td>There are some parents who were not present in the socialization of the importance of education for children.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Many parents become open-minded, the meaning of education for the future of children in the face of increasingly difficult life competition</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Many people become aware</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>2</td>
<td>at the time of the formation of study groups</td>
<td>Many students are happy with group learning so that their entire homework (PR) is not a personal burden but can be discussed in group learning.</td>
<td>Many students are far from their homes, so they feel objected, Students who have not done the assignments or just imitated their friends have become more active in their work.</td>
</tr>
<tr>
<td>3</td>
<td>Implementation of Community Learning Hours</td>
<td>Society becomes concerned about children's learning time, the community becomes aware of children's learning time, so they do not turn on the TV during study hours; Children learn hard at home during study hours and do not play outdoors.</td>
<td>There are some community members who do not care about children who are still out of the house during study hours, There are some parents who turn on the TV during study hours; Some children only play cellphones during study hours.</td>
</tr>
<tr>
<td>4</td>
<td>when studying in groups</td>
<td>Children become active group learning Children's learning spirit increases,. The enthusiasm for the teacher increases especially when the teacher visits his group,.</td>
<td>There are some children who do not come in group study schedules When it comes to group learning, there are some children who only play cellphones not to study seriously, There are children who come to the place of study only to get a good assessment from their teacher. So when at school, the teacher asks, anyone who is diligent in participating in group learning, the name of the child is mentioned by other group members.</td>
</tr>
<tr>
<td>5</td>
<td>Learning Assistance Training</td>
<td>Parents become aware of how to accompany correct learning The motivation of parents to Accompany children in learning increases Parents know various difficulties faced by children Parents know the various advantages that children have</td>
<td>There are some parents who did not attend the Learning Assistance Training for Parents There are some parents who are not serious in participating in training, There were some parents who left the event even though the event was not finished There are some parents who keep on playing HP ever.</td>
</tr>
</tbody>
</table>
The teacher knows the family background of their students. There are some teachers who only come to the group learning location to just fulfill the duties of the headmaster. The teacher knows the spirit of learning the child in the study group. There are some teachers who only briefly look at group learning without taking the time to receive questions from students or answer student questions. The teacher knows the support or participation of parents in paying attention to the seriousness of children's learning. The frequency of teachers visiting student study groups for too long, causing many students who are disappointed because they want to ask various difficulties to the teacher.

Source: results of data analysis.

Follow Up on Model Implementation Evaluation Results

1. The steps taken by researchers are to discuss with the actors to improve all activities that are felt by researchers. In this case the researcher conducted discussions with stakeholders:
2. RT will try to increase public awareness through various appeals and cooperation, especially when many school-age children are still outside the house during Community Learning Hours (18:00 - 20:00)
3. Discuss with the teacher, to increase the intensity of conducting study group visits, so that it is expected to be able to pump up children's learning spirit;
4. Discuss with community leaders, to increase their awareness in supervising the implementation of community learning hours, so that the implementation of community learning hours can be effective.
5. Discuss with youth leaders, to help parents in supervising elementary and middle school-aged children, so that they can use their learning time well.
6. Discuss with religious leaders, to always monitor children's learning both at the mosque, mosque, and at their homes.

5 Conclusion

1) The implementation of the model is carried out by active participation of the community and schools and the alignment of related institutions such as the neighborhood association (RT), the neighborhood association (RW), the village head (Lurah), the head of the sub-district (Camat), and local government, as well as parties from the campus is very important for increasing parents' awareness of children's education according to the model produced in first years.
2) in the implementation of the model (year 2) there are still obstacles, including assistance from the sub-district and city districts is still lacking. Regarding the motivation (and mindset) of the community to send their children to school is higher than when they do not have an understanding of the meaning of education for children.
Based on the conclusion, it can be suggested:

1. Local governments should be more pro-active in working together to increase parents' awareness of children's education.

2. The neighborhood association (RT), the neighborhood association (RW), the village head (Lurah), the head of the sub-district (Camat), should also play an active role in increasing the rate of continuing school, and lowering the achievement of drop out.

Reference


The Partnership of Tourism Stakeholders in Increasing Tourism Competitiveness in Bantul District

1ª Oktiva Anggraini 1
{oktivabiyan@yahoo.co.id 1}

Faculty of Social Political University of Widya Mataram Ndalem Mangkubumen KT III/237
Yogyakarta

Abstract. This study aims to examine the manifestation of stakeholders’ partnership in empowering community and the stages of actuating stakeholder ecotourism partnership in Dlingo district of Bantul regency. The study applied qualitative descriptive research design, focusing on primary data collected through structured interviews, questionnaires and direct observation in addition to secondary data. The research results demonstrate that tourism stakeholder partnership is a collaboration of government officials, universities, and CSR. The pioneering collaboration has given birth to various tourism management trainings and art exhibitions. The study reveals that adequate and applicable planning is needed to develop tourist objects and attractions. The slow implementation of various policies concerning tourist area development is inseparable from the dearth of authority possessed by RPH and Dishubun over forest management which is a national asset, resulting in procedures that seem convoluted. The research results also recommend the improvement of partnership involving various parties, especially in increasing the number and types of tourism and culinary trainings. The pattern of communication and coordination between pertinent institutions and tourism stakeholders should be intensified in solving problems in the field. Universities can contribute to scientific contributions in bridging the difficulties of the local village government in managing tourism in preserved forests.

Keywords: Partnership, Tourism Stakeholders, Ecotourism.

1 Introduction

Sustainable tourism is one of the most effective ways to provide economic opportunities and employment for local people while protecting natural resources in the world, one of which is ecotourism. It has been growing at over 20 percent per year, two to three times faster than the tourism industry as a whole. Even important to raise awareness of the contribution of sustainable tourism to development among private and public sector decision makers was the fact that the 70th UN General Assembly was stipulated in 2017 as the International Year of Sustainable Tourism for Development. This effort is simultaneously aimed to mobilize all stakeholders in the world to work together in making tourism a catalyst for positive change.

The five aspects targeted from ecotourism development include (1) inclusive and sustainable economic growth (2) social inclusiveness, employment and poverty reduction (3) resource efficiency, environmental protection and climate change (4) cultural values, diversity and cultural heritage (5) mutual understanding, peace and security (UNWTO, 2016) (CIFOR, 2017).
In line with the rapid development of the global tourism industry, the development of the Indonesian tourism industry has also experienced remarkable developments. Tourism contributes to 10% of national GDP and the highest in Asia, contributing fourth place to foreign exchange at 9.3% and contributing labor to 9.8 million jobs (UNWTO 2016). The government determination to develop tourist villages as a generator driving the village economy can be seen from the revolving fund of Rp. 123,25 billion through the Ministry of Tourism and Creative Economy. Furthermore, economic activities not only move in urban areas, but also take place in rural areas. Movement and economic growth in tourist areas will create jobs, which can reduce the movement of labor to the city while reducing poverty in rural areas (Putra and Pitana, 2010).

Considering the development target of tourism villages involves tangible and intangible elements so that inevitably the involvement of local communities is absolutely necessary. A number of studies show that rural tourism development cannot be separated from local economic development (Anggraini, 2016; Zhong, 2017; Nengah, 2006). Conflicts of interest in ecotourism development tend to emerge along with local economic development. Partnership (collaboration) in turn becomes a method to accommodate various interests around preserved areas (Suporahardjo, 2005). This method is a form of conflict resolution that accommodates high cooperative and assertive attitudes. Collaboration becomes conflict resolution which results in a "win-win" situation (Tadjudin, 2009). The collaborative approach includes three main stages namely, (1) preparing partnership, (2) developing agreements, and (3) implementing and reviewing agreements.

The level of community involvement is very diverse as manifested in 1) leasing land for tourist attractions along with land use supervision, 2) working as full or part time employees; 3) providing services such as catering, transportation, shops etc. or 4) establishing joint venture management of tourist areas between local government, private sector and the community as pointed out by Anggraini (2016) and Nengah (2006). The empowerment in tourist villages is inextricably related to the role of community leaders who are able to convince citizens, that is concerned with ensuring changes that must be jointly carried out to organize infrastructure that meets the qualifications and requests of visitors. The novelty of this research focuses on the role of cooperatives in managing local wisdom-based ecotourism.

In the midst of competition for tourist destinations in Indonesia, one of the destinations developed by the government of the Special Region of Yogyakarta is tourist villages in Dlingo district, Bantul regency. This area has preserved forest area with an area of 1,041.20 ha under the auspices of RPH (Forest Guiding Resort) of Mangunan. This area was initially managed as a production forest producing pine resin for the basic ingredients of turpentine and Gondorukem.

In the management of tourist villages, a number of problems come under the spotlight, namely the lack of infrastructure for tourist destinations, the lack of organized and applicable tourist destination planning models. Departing from this issue, the study is projected to examine the form of stakeholder partnership in empowering the community and the stages of implementing partnership in the research site.
2 Research Method

This study applied a descriptive qualitative design. Primary data collection included structured interviews, questionnaires and direct observation. The key informants were determined by purposive sampling, namely Chairman of RPH (Forest Management Resort), Forest Service of Special Region of Yogyakarta, chairman, members and Notowono cooperatives, management of farmer groups, community leaders, residents of research sites; officials from the Bantul Regency Education department, and Culture and Tourism Office. Field survey was done by distributing questionnaires to record the process of tourism village empowerment, response of visitors to tourist destinations and citizen involvement in the management of tourist villages. Secondary data collection was investigated through analyzing documents to analyze community empowerment regulations at the research site and map potential research areas. To ensure data validity, data source triangulation was done by collecting similar data from several different data sources. Data sources were developed and stored so that at any time they can be traced back when verification was deemed necessary.

3 Result

1. Description of the Research Site

Administratively, natural pine forests are located in Terong village, Dlingo district, Bantul regency, in Special Region of Yogyakarta. Nature tourism Pine forests are located at an altitude of 325-350 meters above sea level with an average temperature ranging from 24° C-27° C.

With the spirit of Sapta Pesona (safe, orderly, clean, cool, beautiful, friendly and memorable), the natural tourism area continues to improve. To support the function of the forest as a natural tourist attraction and culture, a number of facilities were underway, which included parking lots, levy counters, toilets, prayer rooms, restaurants, gazebos, viewing posts, theater venues and a number of forest-themed photo spots.

The management of tourist destinations in this tourist attraction was under the control of Notowono Cooperative, namely Mount Pengger, Becici Peak, Dahromo Valley, Lintang Sewu, Pinus Asri, Pinussari, Seribu Batu, Panguk hill, and Mojo hill.

2. Partnership Map of Tourism Stakeholders in Tourism Village Development

The identification of stakeholders and their interests was done by field observations and interviews with purposive sampling. Stakeholder classification was done by interpreting the matrix of stakeholders' interests and influence on the development of ecotourism at the research site. The results of stakeholder identification indicated that stakeholders came from government agencies, communities, universities and the private sector. Stakeholders from central government elements became important party in ecotourism management. The role followed the protection of natural resources in the forest area, community empowerment,
provision of ecotourism services, provision of data and information on ecotourism. Stakeholders from local and district government elements played a role in empowering local communities and informants to gain information on ecotourism at the research sites.

Stakeholders from the community elements consisted of community groups in Dlingo district, the lives of the surrounding community depended on nature and cultural richness. Stakeholders from the community elements played a role as tourism service providers, tour guides, cooks, parking service providers and homestay owners. Stakeholders from non-governmental organizations (NGOs) namely the World Wildlife Fund (WWF) are non-profit institutions in the field of natural conservation. Stakeholders from tertiary institutions in Yogyakarta were responsible for conducting environmental education and increasing people's insight and understanding of the preservation of forest ecosystems. Stakeholders from the private sector include travel tour entrepreneurs, transportation entrepreneurs, and event organizers. This private group had a role in providing employment opportunities for local people and the provision of tourism services (restaurant accommodation, food industry and other facilities) required by visitors.

3. The Stages of Ecotourism Stakeholder Partnership

The stage of ecotourism stakeholder partnership began with preparation, making commitments between community leaders and the government, which is pertinent to Grand Design Wana Budaya Wisata Mataram by the Forestry and DIY Plantation Service with CV Enkorp. It was agreed that the concept developed was a two-way concept namely forest development and forest stakeholders. The concept of forest development was management in the forest area itself. The development of forest stakeholders was more directed at empowering communities around the forest by developing the Kaki Langit village or Dewi Kalang. Dewi Kalang was the name chosen as the branding for the development of tourist villages around the preserved forest of Dlingo district.

In contrast to the ecotourism management in other areas that relied on groups taking care of tourism, the driving center in Dlingo district was cooperatives. Notowono cooperative was a legal entity formed by local youth leaders named Purwoharsono, consisting of Pesanggem farmers (forest cultivators) and surrounding communities. Based on local wisdom shared among local communities, cooperative management was considered to better facilitate communication clogging and chaotic interests in the forest and its protection.

The initial challenge of managing tourism villages was to change the mindset of village communities from the livelihoods of farmers to service managers, especially natural environmental services. Mr. Purwoharsono in tandem with Notowono Cooperative applied a Sapta-based tourism standard of charm that was quite strict especially in terms of cleanliness. Services for visitors, for example in product prices, had received close supervision because they included tourism images from Mangunan preserved forests, in particular, and Special Region of Yogyakarta, in general.

Since its establishment, it had 243 people. Mangunan RPH had an area of 573.7 ha, with an area of utilization block, 411 ha. The Notowono Cooperative proposed an area of management of natural tourism covering an area of 41 ha or 10% of the utilization block but
only 29.4 ha was approved by the KPH (a unit of forest management). The agreed area stretched from the northern part of the forest area to the south from Pengger, Becici, Lintang Sewu, Pinus Sari, Seribu Batu, Mojo and Panguk. The area includes three villages.

Strengthening rural tourism institutions was very dependent on enforcement of the rules. Therefore, rules are agreed upon by members of the Cooperative group. Rules included agreements and commitments about sanctions given if the rules were violated. Sanctions covered business activities, such as stalls, which was given when the manager or operator received three complaints from visitors. In the process of assisting the village community, Ki Hajar Dewantoro’s principle, Ing Ngarso sung tulodho was in place, which meant that the companion had to provide a direct example in carrying out the activities; Ing Madyo mangu karso, the assistant had to work in the midst of the community; Tut wuri handayani meaning that the facilitator had to be able to encourage and encourage so that activities can continue.

Notowono cooperative coordinated group units as natural tourism operators for each place. The division of these units was based on farmer groups that had specifications in the concept of tourism they develop. For example, in the Pinus Pengger destination, the concept he developed was in the form of a unique building, Hand Praying, City Gate, and a selfie concept framed with a panoramic view of the city. In Becici, the concept of sunrise and sunset panorama was developed.

Becici Asri Peak area covered an area of 4.4 ha, including the Mount Cilik, Muntuk village, and Dlingo district, while Pinus Pengger covered the Terong block with the Sendangsari, Terong, and Dlingo Bantul areas covering 3.8 hectares. Compared to the extent, the coverage area of the management of Becici Park was responsible for managing land greater than Pinus Pengger. Of the operators' management areas, the Pinusasri area was the largest, 9.3 ha with the location of the Mangunan village, Mangunan village, Dlingo Bantul district.

Based on the above explanation, it appeared that the mapping of the abattoir potential, Notowono Cooperative and Dishutbun was based on local wisdom. The initial stage of the stakeholder partnership was marked by awareness of the community about the potential that had been running for a long time. The limitations of education and the skills of the residents had resulted in the rich natural resources in the region not being optimally presented as attractive tourism objects. In the arts sector, for example, it was necessary to design appropriate arts packages to make them attractive part of tourism potential. Traditional arts groups needed more intensive coaching.

The next thing to ponder was the stage of developing a partnership agreement. The implementation of stakeholder partnership in research site was based on a number of regulations. From the juridical side, Special Region of Yogyakarta’s Governor Regulation no. 5 of 2018 concerning Collaboration on Utilization of Production Forests and Preserved Forests as well as Collaboration and Licensing for Utilization of Forest Parks was found sufficient to protect parties including Pokdarwis/Forest Operator Operators. As stipulated in the Governor’s regulation, the object of cooperation included:
1) Utilization of Production Forests.
2) Activities for Utilizing Production Forests
3) Utilization of the Area through various businesses
4) Use of Environmental Services through business activities:
5) Utilization of Timber Forest Products
6) Utilization of Non-Timber Forest Products
7) Collection of Non-Timber Forest Products

The Cooperation Object in the Utilization of Preserved Forests

The Governor Regulation reinforces the previous cooperation agreement on the utilization of Protection Forest in Mangunan RPH, BDH Kulon Progo, KPH Hall between the Forestry and Plantation Office of Special Region of Yogyakarta with Notowono Cooperative number 525/00909/number 003/NW/MNG/1/2/017 signed on 31 January 2017. The core of this cooperation was the Utilization of Preserved Forests in the Mangunan Forest Management Resort (RPH), Part of the Forest Area (BDH) Kulon Progo Bantul, the mutually beneficial Yogyakarta Forest Management Unit (Balai KPH). The scope of cooperation included utilization of Protection Forests covering business areas and types of businesses.

Cooperation between the parties was carried out by keeping the status and function of the forest intact. The implementation of forest utilization activities involved the local community. Community groups as referred to in paragraph (3) were community groups belonging to Pinussari, Becici Asri, Bukit Lintang Sewu, Gunung Pengger, Seribu Batu, Mount Mojo and Bukit Panguk groups. With the wide area of the object of business cooperation, the utilization of natural tourism environmental services covering an area of 29.4 ha consisted of:

a. Pinussari (Sudimoro II and III): 9.3 Ha
b. Becici Peak (Sudimoro I): 4.4 Ha
c. Bukit Lintang Sewu (Sudimoro II): 4.7 Ha
d. Gunung Pengger (Terong Block): 3.8 Ha
e. Seribu Batu (Sudimoro III): 2.2 Ha
f. Bukit Mojo (Gumelem): 1.7 Ha
g. Bukit Panguk (Kediwung): 3.3 Ha

In the agreement, it was arranged so that the construction of the form of natural tourism facilities in the form of semi-permanent buildings or in accordance with planning documents and their forms adapted to the local cultural architecture. Natural tourism facilities can be facilitated by the government, Noto Wono cooperatives and other non-binding parties. The cost of maintaining natural tourism facilities can be sourced from the government, the Noto Wono Cooperative and other non-binding parties. Cooperation was carried out in a profit-sharing consent according to the agreement of both parties. The share stated 25% for the Regional government and 75% for the Noto Wono Cooperative. The Cooperative Noto Wono was able to collaborate with other parties with KPH permits. Based on the description above, it appeared that the cooperation between tourism stakeholders was preserved by a number of strict regulations, seemingly inflexible. The cooperatives and community members found it hard to cooperate, except through selection from the Dishutbun and KPH parties. Both of these agencies had strong reasons to remember that every person or party who gained profits on state land was under the supervision of the two agencies.
The slow implementation of tourism area development policies was driven by the lack of authority possessed by RPH and Dishutbun, forest management which was a national asset, resulting in procedures that seemed convoluted. Many parties were involved in tourism development such as the Tourism Office and Bantul regency government. The high sectoral ego resulted in a pattern of coordination and cooperation that was not as simple as expected. This was a challenge for tourism stakeholders because the needs of each tourist destination and the demands of visitors varied.

The final step of the partnership was the review stage. At this stage, the activity of assessing partnership achievements, accommodating feedback and improving follow-up actions were put under analysis. Collaboration on environmental services between Notowono Cooperative and KPH Mangunan officially was commenced on January 31, 2017. Based on the agreement, there were thirteen natural environment services that can be developed as sources of income in the management of natural tourism. But at the moment, only two items have resulted in entrance fee to the location and parking fees.

With an average visitor of 200 people per day, the Cooperative was able to earn revenue from only two items. The total income was approximately 5.15 billion in the last eight months. According to the agreement, 25% of the revenue, which was 1.2 billion, had been deposited into the treasury of the DIY province.

Based on data from the Notowono Cooperative (2017), the largest number of visitors from nine destination regions in Dlingo district reached 800,642,000. Next position was Becici Peak Park 427,885,000. The average number of visitors increased during school holidays, like December. Becici Peak park, which in November 2017 reached 29,038, increased in December to 62,218. Becici Peak in November numbered 34,641, December increased to 75,963. Pinus Asri, which in November was marked with 5,163 visitors, reached 15,545 people in December. Visitors to Pinus Sari from the nine most regions, in November 42,992, while in December it increased to 108,248. Seribu Batu in November gained 24,504 visitors and 64,950 people in December. In Bukit Panguk, there were 3,665 visitors in November, reaching to 9,489 people in December.

The high interest of tourists in preserved forest tourism areas attracted investors to invest. With the stronghold of village regulation (Perdes) and local wisdom, the Cooperative administrators reacted with caution. The investor's interest in establishing a hotel must be prevented and directed to the development of a home stay so that the community was more empowered. The community was still able to receive benefits directly. Thus, the village regulation was to ensure that the existence of this investment not counter-productive to the community welfare. The hope was that in the future, people will not become helpers in their own homes (interview with Purwoharsono, March, 2018).

The resort construction was a consequence of the development of Mangunan tourism. Currently there were 25 homestays built in Mangunan. The management was targeting 105 homestays in the Mangunan area. The benchmark was that half of the heads of households (HHs) had a home stay. Thus, residents were expected to enjoy the development of tourist villages.

A number of residents, as found in the interview, revealed that economic changes were quite satisfactory after the flow of tourists into the location of Pinus Pengger and Becici Park.
"In the past, many unemployed youth who did not have jobs after farming can now manage parking or move in other tourism services", interview with Jumar Head of Pinus Pengger Operator (February 2018). Many left their work as farmers, switching to managing tourism services because they were considered more profitable. This was in accordance with the expectations of the development of the tourism village itself, as a generator of regional development and reducing unemployment because it was considered capable of creating jobs. Each operator area in turn was developed by the local village community, to develop the local area in order to help widows, the poor and orphans.

Cooperative management agreement with the village was concerned with the strict rules for hotel investment in tourist areas. The ownership of all homestays was still in the hand of Mangunan residents. When there were investors having resorts or homestays, the village was liberated to intervene in the management. Observations showed that village tourism facilities and facilities were still minimal in number. In the provision of mosques, for example, the manager was trying to coordinate with the village to establish it. However, regulations do not allow the construction of permanent mosques to be erected in the middle of the forest. Construction of toilets is felt to be increasingly urgent as the number of tourists increases sharply. The quantity of toilet is not sufficient in quantity. The actual construction was longer than desired, considering that the budgeting authority depended on the central government. The management of preserved forests as a national asset was dependent on the budget allocation of the central government. Based on existing regulations, the supervision of forest use was carried out by the Forestry Utilization Unit by working with communities or residents around the forest. Thus, tourism activities and their use would not damage natural resources and so that future generations could benefit from them or, in other words, these resources would have an acceptable impact.

4 Conclusion

The partnership of tourism stakeholders established at the research site is a collaboration involving government officials, Notowono Cooperatives, universities and CSR. The collaboration initiative has given birth to various tourism management trainings and art exhibitions. The rapid increase in the number of visitors and the increasing demand for services and tourism services require creativity, innovation, cooperation, promotion, good coordination and marketing. The slow implementation of various policies in tourism area development is inseparable from the lack of authority owned by RPH and Dishutbun over forest management as a national asset. As a corollary, this has resulted in convoluted procedures.

Suggestion

To actualize a comfortable, beautiful and memorable tourist destination for visitors, partnership with various parties should be improved, especially in increasing the number and types of tourism and culinary training. The pattern of communication and coordination
between pertinent institutions and tourism stakeholders should be intensified in solving problems in the field. Universities can contribute to scientific contributions in bridging the difficulties of the local village government in managing tourism, particularly preserved forests.

Reference


[7]. www.jorae.cn.

[8]. CIFOR, 2017, Membangun Bentang alam Berkelanjutan, mengurai dan memperkuat Kebijakan, Bogor, Indonesia: Pusat Penelitian Kehutanan Internasional (CIFOR)

Minimum Services Standard Model For Infrastructure, Facilities and Utilities of Simple Rental Flats in Surabaya City

1st Bambang Irawan
{bbgirw7980@gmail.com 1}

Department of Public Administration, Administrative Science Faculty, Institute of Social Sciences and Management STIAMl

Abstract. The purpose of this study was to identify the standard forms of minimum services for Infrastructure, Facilities and Utilities of Simple Rental Flats, and to find a minimum services standart model for Infrastructure, Facilities and Utilities for Simple Rental Flats in Surabaya City. This research was conducted using a qualitative approach, using normative juridical and sociological normative methods. Primary data were analyzed from direct data sources through interviews, especially those relating to behavioral aspects, perceptions and attitudes in understanding the provisions are simple and the extent to which the provisions can fulfill the needs of residents of simple rental flats, and also some secondary data. The study results show that the forms of services for The Facilities of Simple Flats Houses consist of health, worship, shopping, open fields and shared spaces inside. For The Utilities for Simple Rental Flats is the Electricity Network that include the Indonesian National Standard (SNI), environmental health and safety standards. The service model of the Minimum Service Standard for Infrastructure, Facilities and Utilities of Simple Rental Flats is determined by several factors (low income groups, infrastructure, facilities and utilities for simple rental flats, the opportunity to carry out social and religious activities).

Keywords: Minimum Services Standart, Infrastructure, Facilities and Utilities, Simple Rental Flats.

1 Introduction

The effort in providing decent and affordable housing, especially for Low-Income Communities (MBR) in urban areas that have not been able to fulfill their needs in living places, is by providing simple rental flats. The construction of flat towers that are close to workplaces besides being able to improve the quality of life is also expected to increase the productivity of residents because it can be more efficient in time, reduce congestion and fuel consumption.

On the other hand, since 2012, the Ministry of Public Housing has encouraged for design changes in the construction of simple rental flats, mainly from the number of floors built in one building. The previous design, simple rental flats was built with 4 to 5 floors in one building and was equivalent to a number of units of around 96 units. This design then changes to only 2 to 3 floors in one tower due to the evaluation of the previous construction on floors 4 and 5 not all units are occupied. This change certainly results in a reduction in the number of
units between 45 to 71 units. This is far from the figures detected by the government, considering that from 2010 to 2014, the total number of simple rental flats that have been built is 843 tower blocks with 18,216 units with a capacity of 143,072 people (Ministry of Public Works, 2015).

To realize a flat that is capable of responding to housing needs, a standard for service is needed which is formulated in the Minimum Service Standards related to Infrastructure, Facilities and Utilities of Flats as a complete physical basis for the environment that enables a residential environment, supporting facilities that function and develop life and supporting facilities for environmental services. However, until now no reference standard has been found that can be used as a minimum service standard related to Infrastructure, Facilities and Utilities of Flats, especially for Simple Rental Flats.

The implementation of public services is closely related to the authority or function carried out by the Regional Government. Regional capacity in identifying regional authority will greatly influence the ability of Regional Governments to develop Minimum Service Standards in accordance with existing areas of government authority. As a reference in minimal fulfillment (Haryati, 2014), Infrastructure, Facilities, and Utilities are one of the components of the Minimum Service Standard stipulated in Law Number 25 of 2009 concerning Public Services. Article 21 describes the Service Standard Components, one of its are Infrastructure, Facilities, and Utilities.

In Law Number 23 of 2014 concerning Local Governments it has classified Government Affairs into two types, namely absolute government affairs, concurrent government affairs, and general government affairs. Public Housing Affairs and Settlement Area is one of several concurrent government affairs which are under the authority of the Local Government in the case of other Mandatory Government Affairs include Education; Health; Public Works and Spatial Planning; Peace of Public Order, and Community Protection; and Social. For this reason, the central government must make a minimum service standards as references for the local government (Khairi, 2015). The purposes of this study are to identify the forms of minimum service standards for Infrastructure, Facilities and Utilities of Simple Rental Flats, and to find a minimum service standards model for Infrastructure, Facilities and Utilities of Simple Rental Flats in the Surabaya City.

As an important instrument in life, housing must have a strong conceptual foundation and cover various dimensions in economic, environmental and social, including ownership, affordability, facilities in residential areas such as public transport (Tufaila, Magribi, and Muljabar, 2014). Infrastructure, Facilities and Utilities are references for prospective residents to choose the type of housing to be occupied. The main factors related to the satisfaction of residents include public infrastructure such as roads, drainage systems, and basic utilities that exist in residential areas (Widiastomo and Yuliastuti, 2013).

Rapoport (1969) stated that a house is an energy created for various complex purposes, and the area used to build a house is a cultural phenomenon, so the shape of the house and its settings are strongly influenced by the culture of the environment in which the building is located. This concept explains that the shape of the house is a picture or symbol of the culture that is owned by a group of people who inhabit the building, in the form of the number of families, social classes and association with neighbors. Roske (1983) explained that the concept of home is a means to realize family members' togetherness, as a personal identity for other families, as a place of refuge from the outside world, where life takes place and as a place where residents can express themselves in carrying out all activities.

Flats are a form of vertical housing development considered to be one of the best alternatives for now, this is due to increasing land values in urban areas, rapid population
growth, and scarcity of housing in cities (Nurdiani, 2009). Rental flats are also expected to function as one of the best stimuli in solving slum regional development problems in urban areas, in addition to being part of the urban renewal itself (Hardiman, 2009). The main reason for the construction of flats is the efficiency of land use to produce a more regular and better residential pattern (Rika, 2009).

There are several results of previous studies related to the evaluation of Minimum Service Standards for Infrastructure, Facilities and Utilities. The results of Adimasistra and Pigawati (2016) research explain that the availability of facilities and infrastructure have not fully fulfilled the provisions stipulated in the Indonesian National Standard (SNI). Of the 37 types of facilities and infrastructure based on SNI, only 23 types of facilities and infrastructure were available and 69% of them did not meet the standards. Of the 23 types of facilities and infrastructure 70% of the conditions can be said to be good but based on user perceptions, as many as 92% of users stated that the condition was good. This is influenced by the characteristics of users who have high mobility because they work and not a few users who have low educational characteristics and are over 60 years old. The characteristics of users with these criteria do not understand the function and cannot use the available facilities and infrastructure properly. Research conducted by Khairi (2015) explained that based on data collected by the Directorate General of Regional Autonomy of the Ministry of Home Affairs in 2013, the criteria for achieving environmental health and safety related to Infrastructure, Facilities and Utilities were still below the specified target. From the existing Minimum Service Standards, only 60.18% of the 100% target is in accordance with environmental health and safety that supports Infrastructure and Housing Utilities.

2 Methods

This research was conducted using a qualitative approach. Moleong (2005) explain that qualitative research is research that uses natural settings, with the intention of interpreting phenomena that occur and are carried out by involving various existing methods. This study also uses the normative juridical and sociological normative method. Normative juridical research begins with an inventory of positive legal regulations regarding the theme under study. Then, to find out the extent to which the positive law is adequate and meet the needs of the community, sociological normative methods are also carried out by using non-legal data (Zaini, 2011).

The data analyzed in the study includes secondary and primary data. The research uses secondary data as the basic material of research conducted by conducting a search of the regulations and the literature relating to the problems of the minimum service standards of Infrastructure, Facilities and Utilities of simple rental flats that were studied. Data collections for secondary data, carried out with an inventory of regulations and literature relating to the minimum service standards for infrastructure, facilities and utilities of simple rental flats and study them in detail. Primary data collections obtained from direct or first-hand data sources, especially those relating to behavioral aspects, perceptions and attitudes in understanding the provisions of minimum service standards for extent Infrastructure, Facilities and Utilities of simple rental flats and how the provisions can meet the needs of residents simple rental flats. Interviews on primary data were carried out with indeept interviews to data sources by involving stakeholders such as managers and residents of Simple Flats Rent Grudo and Jambangan as Simple Rental Flats that have the best Infrastructure, Facilities and Utilities in
The study uses qualitative analysis, this is because the data to be collected is mostly qualitative data and produces qualitative data and cannot be categorized statistically. Qualitative analysis used is to review the minimum service standard criteria for Infrastructure, Facilities and Utilities of simple rental flats as the object of research and projected to the reference standards and applicable laws and regulations and then adjusted to the conditions and needs in the field research to generalized as a ideal minimum service standard.

3 Result and Discussion

1. Identifying the Forms of Minimum Service Standards for Infrastructure, Facilities and Utilities of Simple Rental Flats

There are several rules that become a reference in the provision of Infrastructure, Facilities and Utilities of Flats, including Government Regulation Number 4 of 1998 concerning Flats, Regulation of the Minister of Public Works No. 60 / PRT / 1992 Concerning the Technical Requirements for the Construction of Flats, Minister of Public Works Regulation Number: 05 / Prt / M / 2007 concerning Technical Guidelines for the Construction of High-Level Simple Flats, Regulation of the Minister of Public Housing Number 10 of 2007 concerning Guidelines for Infrastructure Stimulant Assistance, Public Facilities and Utilities for Housing and Settlements, as well as Minister of Public Housing Regulation Number 21 of 2011 concerning Guidelines for Assistance in Flats Aids in classifying references in the provision of Infrastructure, Facilities and Utilities.

In normative juridical terms, some of the standards mentioned above can be described by several standards which must be a reference in the provision for Infrastructure, Facilities and Utilities of Simple Rental Flats. Viewed from a regulatory point of view, there are still differences in setting minimum service standards related to the provision of Infrastructure, Facilities and Utilities of Simple Rental Flats. This is due to the absence of a policy reference in establishing minimum service standards for Infrastructure, Facilities and Utilities for Local Government in building Simple Rental Flats. On the other hand, with the division of authority between the Central Government and Local Governments (Provinces and Municipalities/Cities), it creates ambiguity in carrying out the obligation to provide services. For consideration, the following is a review of five regulations that are used as references in establishing minimum service standards for Infrastructure, Facilities and Utilities of Simple Rental Flats (Table 1).

The results of the review of the regulations are then confirmed by observing the Infrastructure, Facilities and Utilities of Simple Rental Flats to get an overview of the application of regulations in Simple Rental Flats. The results of these observations were continued with interviews with the managers and residents of the Simple Rental Flats in the City of Surabaya, the Surabaya City Building and Land Management Office and the Housing Expert of the Ministry of Public Works specially Directorate of Housing Provision. From the results of the interview obtained criteria that will be analyzed more comprehensively to produce thirteen Minimum Service Standards for Infrastructure, Facilities and Utilities of Simple Rental Flats. Infrastructure of Simple Flats Rental includes Environmental Roads, Footpaths, Parking Lots, Drainage), Sanitation, Clean Water and Temporary Landfills. However, the facilities of a Simple Flats for Rent are Health, Religious Services, Shopping,不予输出。
Open Fields and Shared Space Inside. Whereas the Utilization of Simple Rental Flats is the Electricity Network.

2. Minimum Service Standard Service Model for Infrastructure, Facilities and Utilities of Simple Rental Flats

The conditions of the Simple Rental Flats residents are Low-Income Communities that have not sufficient economic capacity to own their own houses must be taken into consideration in determining rental prices and the location of flats that are easily accessible from the place of work. In addition, the existence of adequate Infrastructure, Facilities and Utilities facilities make Simple Rental Flats the best alternative for these Low Income Communities with income as a Regional Minimum Wage. This is in line with the concept of Magribi and Muljabar (2014), and Widiastomo and Yuliastuti (2013) which further explain the logical consequences of the level of income of the community with the Infrastructure, Facilities and Utilities available in Simple Rent Flats.

The majority of residents who live in Simple Rent Flats in the Surabaya city are Javanese and most of them are Moslem, so the pattern of social life of the people is still dominantly influenced by Javanese culture and Islamic views. The shared space facilities in carrying out routine activities together such as the gathering of the residents’ association also colored the life in the Flats. As for the mosque as a place of worship, it is widely used for routine activities such as prayer in congregation, commemorating religious holidays and other religious activities such as tahliilan, kenduri and so on. This empirical analysis is in accordance with the concept put forward by Roske (1983) related to the concept of housing which is a medium that expresses itself in carrying out social activities.

Thirteen types of Infrastructure, Facilities and Utilities available in Simple Rent Flats are Minimum Service Standards that must be available to residents. In observation examined, six of thirteen Minimum Service Standards do not yet have the Indonesian National Standard (SNI). This problem should be a concern of the government as a regulator of the establishment of national standards related to environmental health and safety factors. Research by Adimasistra and Pigawati (2016) and Khairi (2015) that the achievement of the Minimum Service Standards for Infrastructure, Facilities and Utilities is still below 70%, and still needs to be improved in the future.

From the analysis above, the author tries to design a Minimum Service Standards Model for Infrastructure, Facilities and Utilities of Simple Rental Flats as shown in the following figure:

Figure 1.

Minimum Service Standards Model for Infrastructure, Facilities and Utilities of Simple Rental
4 Conclusion

The analysis carried out to identify the forms of service for the Minimum Service Standards for Infrastructure, Facilities and Utilities for Simple Rental Flats includes Sederhana Flat Housing Infrastructure covering Environmental Roads, Pathways, Parking Lots, Drainage, Sanitation, Water Clean and Temporary Landfill. Facilities of Simple Flats Houses consist of Health, worship, shopping, open fields and shared spaces inside. The Utilities for Simple Rental Flats is the Electricity Network.

The service model for Minimum Service Standards for Infrastructure, Facilities and Utilities for Simple Flats is determined by a number of factors, including low income communities, sufficient infrastructure, facilities and utilities of simple rental flats, opportunities for social and religious activities, infrastructure, facilities and utilities Simple Rental Flats that have the Indonesian National Standard (SNI), and fulfillment of environmental health and safety standards.

Acknowledgement

This research was funded by the Institute of Social Sciences and Management STIAMI with the Internal Competition Research Scheme in 2018.

References


[2]. Hardiman, Gagoek, 2009, The Positive Impact of Walkup Flat Building to Improve the Quality of Slum Area, International Conference and Meeteng on Informal Settlements and Affordable


<table>
<thead>
<tr>
<th>Regulations related to Infrastructure, Facilities and Utilities</th>
<th>Regulations of the Minister of Public Works Regulation Number 05 / PRT / 1992</th>
<th>Regulations of the Minister of Public Works Regulation Number 05 / PRT / 1992</th>
<th>Regulations of the Minister of Public Works Regulation Number 05 / PRT / 1992</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. clean water network</td>
<td>1. building transportation equipment.</td>
<td>1. road network and public utilities.</td>
<td>1. environmental road and sidewalk.</td>
</tr>
<tr>
<td>2. electricity network</td>
<td>2. fire extinguishing network.</td>
<td>2. drainage system.</td>
<td>2. public street lighting.</td>
</tr>
<tr>
<td>3. gas</td>
<td>3. communication.</td>
<td>3. public street lighting.</td>
<td>3. temporary buses.</td>
</tr>
<tr>
<td>4. rain water drains</td>
<td>4. emergency doors and stairs.</td>
<td>4. garbage disposal.</td>
<td>4. two-wheeled vehicle parking facilities.</td>
</tr>
<tr>
<td>5. waste water drain</td>
<td>5. fire exits of doors and windows.</td>
<td>5. garbage disposal.</td>
<td>5. clean water network.</td>
</tr>
<tr>
<td>6. channels and / or landfills</td>
<td>6. ventilation.</td>
<td>6. drainage system.</td>
<td>6. electricity network.</td>
</tr>
<tr>
<td>7. place telephone networks and communication devices.</td>
<td>7. sewage drainage.</td>
<td>7. drainage system.</td>
<td>7. public street lighting.</td>
</tr>
<tr>
<td>8. transportation equipment</td>
<td>8. garbage collection system.</td>
<td>8. public street lighting.</td>
<td>8. temporary buses.</td>
</tr>
<tr>
<td>9. fire emergency doors and stairs</td>
<td>9. smoke-proof doors and certain distances.</td>
<td>9. drainage system.</td>
<td>9. two-wheeled vehicle parking facilities.</td>
</tr>
<tr>
<td>10. electrical generator</td>
<td>10. water network and public utilities.</td>
<td>10. drainage system.</td>
<td>10. clean water network.</td>
</tr>
<tr>
<td>11. fire extinguishers</td>
<td>11. electrical network.</td>
<td>11. garbage disposal.</td>
<td>11. electricity network.</td>
</tr>
<tr>
<td>15. electrical generator</td>
<td>15. electric generator.</td>
<td>15. drainage system.</td>
<td>15. clean water network.</td>
</tr>
<tr>
<td></td>
<td>16. drainage system.</td>
<td>16. drainage system.</td>
<td>16. electricity network.</td>
</tr>
<tr>
<td></td>
<td>17. drainage system.</td>
<td>17. drainage system.</td>
<td>17. public street lighting.</td>
</tr>
<tr>
<td></td>
<td>18. drainage system.</td>
<td>18. drainage system.</td>
<td>18. temporary buses.</td>
</tr>
</tbody>
</table>

---

Tabel 1

<table>
<thead>
<tr>
<th>Regulations of the Minister of Public Works Regulation Number 05 / PRT / 1992</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. road network and public utilities.</td>
</tr>
<tr>
<td>2. drainage system.</td>
</tr>
<tr>
<td>3. garbage disposal.</td>
</tr>
<tr>
<td>4. public street lighting.</td>
</tr>
<tr>
<td>5. temporary buses.</td>
</tr>
<tr>
<td>6. two-wheeled vehicle parking facilities.</td>
</tr>
<tr>
<td>7. clean water network.</td>
</tr>
<tr>
<td>8. electricity network.</td>
</tr>
<tr>
<td>9. public street lighting.</td>
</tr>
<tr>
<td>10. temporary buses.</td>
</tr>
<tr>
<td>11. two-wheeled vehicle parking facilities.</td>
</tr>
<tr>
<td>12. clean water network.</td>
</tr>
<tr>
<td>13. electricity network.</td>
</tr>
<tr>
<td>14. public street lighting.</td>
</tr>
<tr>
<td>15. temporary buses.</td>
</tr>
<tr>
<td>16. two-wheeled vehicle parking facilities.</td>
</tr>
<tr>
<td>17. clean water network.</td>
</tr>
<tr>
<td>18. electricity network.</td>
</tr>
</tbody>
</table>
How to Reduce The Number of Domestic Violence Through Capacity Building of Organization

1st Maya Puspita Dewi1, 2nd Indah Wahyu Maesarini2, 3rd Anita Maulina3

{maya.pd@stiami.ac.id1}

Institut Ilmu Sosial dan Manajemen Stiami1,2,3

Abstract. The issue of domestic violence is a serious social problem. Statistically the number of violence has escalated from year to year. In Indonesia the existence of an organization called the Integrated Services Center for Women and Children (P2TP2A) to support the elimination of domestic violence has not yet had a significant impact. The purpose of this study is to analyze the capacity building of organizational in an effort to reduce the number of domestic violence in Depok, West Java, Indonesia. This study used a qualitative case study method to describe the lack of capacity building of P2TP2A. The results of the study indicate that the high level of domestic violence is indeed caused by a lack of organizational capacity to respond to cases that occur. Hence, capacity building of organization can be a solution to reduce the number of domestic violence.

Keywords: Capacity Building, Organization, Domestic Violence.

1 Introduction

The issue of domestic violence has become a serious public issue, but still lacks an adequate response, both from the government, law enforcement officials, and the community at large. One reason is because fundamentally domestic violence is understood only as a matter of a domestic and personal nature. This case of violence is an iceberg phenomenon where actually reported cases are far less than cases that occur in the field (Ellsberg, 2006; Ortiz-Barreda, Vives-Cases, & Gil-González, 2011). The presence of Non Government Organizations (NGOs) as a form of support for efforts to eliminate domestic violence is very necessary (Ellsberg, 2006).

In their study (Gibbs, Hardison Walters, Lutnick, Miller, & Kluckman, 2015) evaluated several NGOs concerned with handling victims of human trafficking and sexual exploitation. The findings in the study were that there were obstacles from NGOs in providing services due to limited resources, and the absence of long-term programs to ensure the survival of the victims. Even though the victim/client really needs physical and mental protection.

Furthermore Duren Banks et.al. conducted a study of collaborative effort between child welfare agencies and domestic violence service providers who have the character "grass roots". The findings of the study were that there were improvements in the provision of advocacy and handling cases of violence against victims who were adults. But it depends on a more specific approach that is carried out by each community. In this case a more optimal collaboration strategy is needed (Banks, Hazen, Coben, Wang, & Griffith, 2009).

Chaskin, (2000) in his study highlighted efforts to build community capacity in urban neighborhoods that focused on several strategies. The findings in the study were that there
were obstacles in collaboration between community organizations that involved actors extensively in the process. Chaskin suggests several possible steps to build community capacity through several social changes.

In Indonesia, with the enactment of Law No. 23 of 2004 concerning the elimination of domestic violence has changed the problem domain which initially was in the private area, becoming a public area. The role of the community seems to be more active and responsive as evidenced by the establishment of a number of organizations at the central to the regional level who are concerned about the issue of domestic violence.

However, the existence of these organizations has not been able to reduce the number of domestic violence that is still high. On the other hand, it can also be interpreted as having more complex causes, so that the existence of these organizations is still too small compared to the magnitude of cases of violence that occurred (Bappenas, Australian Government, 2017). With the characteristics of volunteer-based that working at the grassroots level, the organization is actually considered to better understand the problems of the community (Łukaszczyk & Williamson, 2010). Hence, the capacity building of organization to carry out its functions effectively and efficiently is a problem in itself.

2 Method

This study used a qualitative case study method to analyze the capacity building of P2TP2A in Depok City, West Java, Indonesia. This method was chosen because of its function to describe, approve, and assist information (Seidman, 2006). The information collected is used as a basis for analyzing the phenomena that occur. The reason for choosing this model is because of case studies study of phenomena in the real world context (Yin, 2009). Case study research depends on various sources according to the data needed. The study was conducted through observations, interviews and study of related documents. Observations were carried out in P2TP2A Depok City regarding all activities related to efforts to deal with domestic violence. In-depth interviews conducted with stakeholders concerned to explore the depth of the problem, lasting approximately 40 minutes for each informant. Documentation studies are carried out by examining related documents to provide additional information. The case study lasted for 3 months in 2018. A total of seven informants consisting of two staffs of the organization, one officer of the Depok City Social Service, two volunteers, and two victims of domestic violence were selected purposively. Data analysis was carried out through three stages, namely reducing data, presenting data, and drawing conclusions / verification (Matthew B. Miles, A. Michael Huberman, 2013).

3 Result and Discussion

Much research has been conducted on the capacity building of organizational. Millar & Doherty (2016) studied the comprehensive model of developing capacity and relationships in it; Cairns, Harris, & Young (2005) analyzed the challenges for organizations to increase capacity while maintaining organizational distinctiveness and independence; (Irawan, 2016) who studied aspects of organizational development in responding to social services for homeless children. Almost the same study was conducted by (Chaskin, 2000; Clark & Petts, 1999; Harrow, 2010; Kaplan, 2000; M. Shahul Hameedu, 2014; Scottish Community
Development Centre, 2007; Twigg, 2001; Wing, 2004). The present research aims to analyze the capacity building of P2TP2A in an effort to reduce the number of domestic violence by focusing on human resource development, organizational strengthening and institutional reform.

The form and structure of P2TP2A is more a supplement and not a substitution from an institution that already exists in the government. The activities of this organization focus on 'informal' coordination and supervision efforts with relevant government institutions that have the task and function of empowerment (Bappenas, Australian Government, 2017). This organization is created by the government, but have characteristics such as NGOs, volunteer-based, who are exist to pay attention to more specific issues (M. Shahul Hameedu, 2014).

The National Committee on Violence Against Women in Indonesia has issued data on the following number of domestic violence reported on a national scale:

**Chart 1**

**VIOLENCE ACCORDING TO THE AREA OF OCCURRENCE (n=13,384)**

<table>
<thead>
<tr>
<th>Area</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Area</td>
<td>3526</td>
<td>26.1%</td>
</tr>
<tr>
<td>State Area</td>
<td>2447</td>
<td>18.2%</td>
</tr>
<tr>
<td>Private Area</td>
<td>9609</td>
<td>71.7%</td>
</tr>
</tbody>
</table>

**Chart 2**

**TYPE OF THE VIOLENCE IN THE PRIVATE AREA (n = 9609)**

<table>
<thead>
<tr>
<th>Type of Violence</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violence against wife</td>
<td>55367</td>
</tr>
<tr>
<td>Dating violence</td>
<td>1675</td>
</tr>
<tr>
<td>Violence against girls</td>
<td>2272</td>
</tr>
<tr>
<td>Violence by ex husband</td>
<td>155</td>
</tr>
<tr>
<td>Violence by ex boyfriend</td>
<td>44</td>
</tr>
<tr>
<td>Violence against domestic helper</td>
<td>540</td>
</tr>
<tr>
<td>etc</td>
<td>3</td>
</tr>
</tbody>
</table>
In Depok City, based on the reports from P2TP2A regarding the number of violence known as follows:

<table>
<thead>
<tr>
<th>Type of case</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical abuse</td>
<td>1</td>
<td>2</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Psychological violence</td>
<td>-</td>
<td>1</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Sexual violence</td>
<td>19</td>
<td>13</td>
<td>25</td>
<td>43</td>
</tr>
<tr>
<td>Exploitation</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Child custody</td>
<td>-</td>
<td>2</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>24</td>
<td>14</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>Trafficking</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>others</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5</td>
</tr>
</tbody>
</table>


The data above shows that the number of violence in the private area is still very high. Violence against wife is in the highest position, then followed by violence against girls on the second position. This means that even in the most private area, in a family, a wife and a daughter are still unsafe. Based on the result obtained during research, many factors caused this to occur, including due to the lack of capacity building of P2TP2A. The lack of professional human resources, budget issues, infrastructure and weak leadership and managerial factors make the performance of this organization not optimal in reducing the number of domestic violence. McKinsey & Company (2001) said that the key to the success of capacity building of an organization depends on the management process and the strength of the influence of organizational leadership. This is believed to be the key that can spur organization acceleration in carrying out its role.

In terms of regulation there is actually no serious problem regarding the existence of this organization even though it is considered to be structurally ambiguous and lacking in authority. The role and function played by this organization is considered unique and is a breakthrough from the institutional structure model in the government. The problems that arise actually come from the existing system in the organization, which shows that the capacity building of organization is still far from ideal conditions. As said that organizational capacity development is intended so that the organization can respond to changes in the surrounding environment and make the organization stronger (Dewi, Rahmatunnisa, Sumaryana, & Kristiadi, 2018) in order to be able to implement government policies and bring about the transformation of very important values in society (Besler & Sezerel, 2011).

As Wing (2004) said in order to develop the capacity of an organization must have a sufficient number of staff who have the necessary knowledge and skills, appropriate and adequate technical and management systems, appropriate remodeling of infrastructure, and adequate financial resources. Furthermore, Hilderbrand & Grindle (1997) said that the capacity building of an organization must focus on the dimensions of human resources development, dimensions of organizational strengthening and institutional reform.
4. Conclusion

Based on the discussion above, the capacity building of P2TP2A is still far from ideal conditions. Lack of professional human resources, budget problems, lack of adequate infrastructure, managerial that still needs to be improved, are the causes of the ineffective role played by P2TP2A to reduce the number of domestic violence. Hence, P2TP2A needs to develop its organizational capacity immediately by focusing on developing human resources, strengthening organizations and institutional reform. The big role of P2TP2A cannot be realized without building its capacity.

Acknowledgement

Many thanks to Institut Ilmu Sosial dan Manajemen Stiami for providing full funding in this research. Thank you also to the Dean of the Faculty of Administrative Sciences Institut Ilmu Sosial dan Manajemen Stiami and Head of the Study Program who have given endless support. Then I thank to Lembaga Penelitian dan Pengabdian Masyarakat Institut Ilmu Sosial dan Manajemen Stiami which has facilitated and assisted this research. Hopefully this research can contribute to the development of Public Administration, especially regarding the issue of capacity building of organizations.

References


Implementation of District’s Integrated Administration Service Policy (PATEN) in Gunung Putri District Bogor Regency

1st Munir Saputra1, 2nd A.H Rahadian2
{munir.saputra@stiami.ac.id1, rahadian.ah@gmail.com2}

Institut Ilmu Sosial dan Manajemen Stiami2

Abstract. The aim of research were analyzing the compliance degree of implementer toward the One-Stop Integrated Service policy, identifying the obstacles and problems found in the implementation of policy, and understanding the performance of output, outcome, benefit and impact of implementation of policy through the qualitative research approach by using the main theory proposed by Randall B. Repley and Grace A. Franklin (1986: 232-33). According to the research result, found that the compliance degree of implementer toward the regulation of laws was low because various Regent regulations concerning the implementation and determination of standard operational procedure not completely obeyed. Some problems were found such as in the aspect of Human Resources/Personnel, Budgeting, work facilities, computers and printer, regulations that consider to be changed frequently, and dependent organization of PATEN that caused the public principles services as stated in Laws No. 25 of 2009 not fully applied. The Performance of Services and the impact expected could not be measured because there was no document of work unit plan and complete LAKIP that accordance with the guidelines of report arrangement. From those three perspectives can be concluded that the implementation of PATEN policy in Gunung Putri District of Bogor Regency not work properly.

Keywords: Implementation of Policy, District’s Integrated Administration Service (PATEN).

1 Introduction

One of the government entities that provide direct or indirect service to the public is district and village. As the sub-system of government in Indonesia, district has strategic position and have functional role in the practice of service and administration of government, development and community (Wasistiono, Nurdin, and Fahrurozi, 2009 : 200). In other words, District is the spearhead and barometer of implementation of public service and also as the storefront of implementation of regional government.

Gunung Putri is a district in Bogor Regency of West Java Province, Indonesia. It is directly bordered with Bekasi City in the North, Citeureup in the South, Depok in the West, and Cileungsi in the East. The population number is 453,696 people (report of BPS Bogor Regency, May 2017) which put it as the district with highest population in Bogor Regency. The number of district in Bogor Regency is 40 districts with total population on May 2017 of 5,715,009 people.
The delegation of service in District level is started from the Laws No.32 of 2004 concerning the Regional Government which state that Camat (the Head of District) in carrying its duties, gained an abundance of authority from the Regent to handle some regional autonomy, thus District may become the spearhead as well as the barometer of service performance, including in Bogor Regency. According to the Laws then the Regulation of the Minister of Home Affairs Number 4 of 2010 concerning the Guidelines of District’s Integrated Administration Service (PATEN) and the Decision of Minister of Home Affairs Number 138-270 of 2010 Concerning the Technical Guideline of Integrated Administration Services (PATEN) are defined.

In the case improving the service quality, government has issued the laws No. 23 of 2014 concerning the Regional Government, but in Bogor Regency until the end of 2018 still use the Regulation of Minister of Home Affairs Number 4 of 2010 and the Decision of Minister of Home Affairs Number 138-270 of 2010, concerning the Integrated Administration Service (PATEN) as the reference.

The previous research about the implementation of PATEN in Bogor Regency and Gunung Putri District was conducted by Kosasih (2014) describing the service quality as less proper particularly concerning the poor implementer’s competence and inadequate source of funds, lack of Human Resources as the implementer and the tendency of people in utilizing the third party to communicate with the implementer of PATEN. In addition, the people complaint delivered in social media (adminnusa 10/07/2018) shows the existence of high cost should be paid in processing the investment permit due to the brokering.

According to the observation result on the implementation of One-Stop Integrated Service, the service of PATEN in Gunung Putri District was limited on the civil service (not licensing) while the licensing service was handled by other department in the District of Gunung Putri.

Ripley and Franklin (in Winarno, 2014: 148) said that implementation is what occurred after the laws defined in which provide the authority of program, policy, benefit, or as a type of tangible output. Implementation includes the actions by the actors, particularly the intended bureaucrats to design a running program. Grindle (in Winarno, 2014: 149) proposed his opinion about implementation by stating that in general, the duty of implementation is creating a linkage that facilitate the purposes of policy in order to be realized as the impact of an activity of government.

In the Policy of Implementation and Bureaucracy, Randall B. Repley and Grace A. Franklin (1986: 232-33) (in Alfatih, 2010:51-52), wrote about three conceptions relating to successful implementation and said:

“The nation of success in implementation has no single widely accepted definition. Different analysts and different actors have very different meanings in mind when they talk about or think about successful implementation. There are three dominant ways of thinking about successful implementation”

In the relation with three dominant ways of thinking about successful implementation then they said that there was an analyst and actor who argue that the success implementation of policy is measured first, using the compliance degree. However, second, there is who measure the smoothness of routines of function. Since Ripley and Franklin consider the two parameters “is too narrow and have limits political interest”, then they propose the third perspective that is the impact expected. They stated it by saying “we advance a third perspective which is that successful implementation leads to desire... impact from whatever program is being
analyzed.” So, there are three perspectives used to measure the success of implementation of policy.

Based on the problem and theoretical approaches described, the writer conduct a research entitles Implementation of District’s Integrated Administration Service (PATEN) in Gunung Putri District of Bogor Regency.

2 Research Methods

The research is conducted using qualitative approach. In this case the research is not aimed to measure the strength and the relationship among the variables but more intended to describe the situation, phenomenon (phenomenology), situation, and process. The approach in qualitative research is also called as investigation approach because the researcher collects the data by directly meet the people in research location (McMillan & Schumacher, 2003). Qualitative research also means as the research type where the findings not obtain through the statistical procedures or other calculation forms (Strauss & Corbin, 2003). The analysis is qualitative which emphasizing the meaning than generalization against the object observed.

The type of data used in this research consists of primary and secondary data. Secondary data is the types of permit which under the authority of PATEN in the level of Gunung Putri District, Bogor Regency. Beside the secondary data, this research specially uses the primary data for analysis of study. Primary data includes various informations about the policy of PATEN in Administration Department of Government of Bogor Regency, Gunung Putri District, and PATEN in Gunung Putri District obtained from the interview result with various interviewees (in-depth interview) or Focused Group Discussion (FGD).

The secondary data are documents, statistical data, and many others compiled from various authorized agencies. Using qualitative approach then the instrument is someone or the researcher himself (human instrument). To be the instrument then researcher should have large theoretical and knowledge, thus able to ask, analyze, and construct the observed social situation become clearer and more meaningful. Therefore, the primary data is obtained through two ways namely (1) in-depth interview and (2) focused-group discussion (FGD) and expert meeting.

In-depth interview is intensively conducted to investigate the interviewee’s perspective about PATEN in the level of Regency, District. This method is chosen because more suitable to investigate the information from every interviewees in more depth as well as flexible in carrying it. Although in-depth interview is focused to investigate about the licensing service implementation in Bogor Regency, but in its implementation it still provides discretion and space for the researcher and interviewees to explore the issue in the framework of interview guideline. The interview is conducted to the interviewees of Regional Government and the people, the service user; a). Regency Government of Bogor, they are the Head of Government Administration Division: Ujang Supendi, SH, MH., b). Capital Investment Department and One-Stop Integrated Service, that is Head of Data Processing: Judi Rachmat Sulaieli, S.Hut, MM., c). Gunung Putri District, that is Head of Gunung Putri District of Juanda Dimansyah, SE, MM and the Head of Service Division/PATEN :Drs. Ade Kosnia., d). the users of PATEN, they are Akbar Mahu, Santi Oktavia, Edih Pandih, Lindawati, Encim and Ujang Darkim

The data collection is also conducted through the method of focused-group discussion (FGD). The interaction among the participants and their activeness in delivering opinion are
important in order to obtain valid result. It is important in order to collect the information comprehensively from various points of view of stakeholders. FGD is focused for the topic of improvement of licensing service implementation through the reformation of PATEN organization.

Analysis technique used is descriptive analysis. It is used to explain or describe the data of observation result and interview with the interviewees. This analysis is aimed to collect the overview of District’s Integrated Administration service (PATEN) at present and in the future through various data and information from the main interviewees. The analysis result provides information as the basic of decision making related to the strategy of implementation and the improvement efforts of licensing service in Gunung Putri District of Bogor Regency.

3 Finding And Discussion

The Compliance toward the Regulation of Laws

Public Service Organization

The policy of Public Service in District level was based on the Regulation of Minister of Home Affairs Number 4 of 2010 concerning the Guideline of District’s Integrated Administration Service (PATEN) and the Decision of Minister of Home Affairs Number 138-270 of 2010 concerning the Technical Guideline of Integrated Administration Service (PATEN), thus the Head of District became the administrator in public service in his area whereas PATEN was the transformation of service division has existed during this time. Then, in its implementation, PATEN only provided service in civil affairs such as Identity Card, Family Card, birth and dead certificate and other things related to the civil affairs as well as the public service of licensing settled by the Government Division in District Office.

Meanwhile, the public service policy in District level had applied the policy of Laws Number 23 of 2014 concerning Regional Government that is Article 350 “Regional leader must establish One-Stop Integrated Service unit and in accordance with article 39 of Government Regulation Number 18 of 2016 about the function of One-Stop Integrated Service combined with the function of Capital Investment accommodated in Capital Investment and One-Stop Integrated Service Department which receive authority on licensing service determined by the Regional Government of Bogor Regency Number 12 of 2016 concerning the Capital Investment and One-stop Integrated Service.

Therefore in Bogor Regency, the implementation of Laws No. 23 of 2014, in the case of public service had not implemented in integrated and holistic. PATEN in District not has hierarchy relationship with the Department of Capital Investment – One-stop Integrated Service because it was under the coordination of Government Administration Division of Regional Secretary of Bogor Regency.

The implication of dualism of those policies, PATEN in district level completely followed the policy formulated by Government Administration Division including the determination of service standard, while the policies in the Department of Capital Investment – One-stop Integrated Service including the determination of service standard was only applied internally in that department and not applied in the District as stated by the Head of Government Administration Division (Ujang Supendi, SH, MH) below:
The service policy in District level organized by PATEN, until now the service standard is followed the standard formulated by the Government Administration Division of Bogor Regency, whereas the service standard of the Department of Capital Investment – One-Stop Integrated Service is only applied internally in the department/regency level.

**PATEN in Gunung Putri District**

The delegation transfer of authority of some government affairs to the Head of District based on the Regent Regulation of Bogor No. 66 of 2010 dated 22 November 2010 and the Regent Regulation of Bogor No. 51 of 2013. In addition was the Regent Regulation of Bogor No. 25 of 2014 dated 15 September 2014 determined the description of duties of PATEN personnel in Bogor Regency.

On those regulations the service standard non-licensing has been determined, that was the document which stated the legality given by regional government toward individual or legal entity based on the regulations of laws (letter of notification, recommendation, etc.). In the article 34 of Regent Regulation of Bogor No. 13 of 2014 concerning the Procedures Operational Standard of Licensing and Non Licensing in District determine the period of non licensing service not longer than 3 days since the document was confirmed as complete. According to the result of interview with the informant stated that all non licensing service has appropriated with the Procedure Operational Standard but the Electronic Identity Card service which the finishing time was unsure.

According to the Regulation of Minister of Home Affairs No. 19 of 2018 concerning the improvement of civil administration service quality, the process of issuing the civil document should be done in the period of 1-24 hours including the settlement of electronic Identity Card. However, in fact Electronic Identity Card needed much time even until 2 years. It was because the external problems including the procurement of form of Electronic Identity Card and the process of unity checking of data in the system of data center of Home Affairs Ministry.

The unimplemented standard operational procedures were including the monthly report regulated in article 80 of Regent Regulation of Bogor No.13 of 2014 and article 13 of Regent Regulation of Bogor No.51 of 2013, because the document were not found when the research was conducted.

According to Edward III (in Agustino 2008 : 153-158) that may improve the performance of implementation is Standard Operating Procedures (SOPs) which become the reference for the workers in conducting the daily activities. In the other hand, Ripley & Franklin, 1986:11 said that there were two perspective of compliance namely (1) many non bureaucratic factors affected but in fact were less considered, and (2) the program that improperly designed thus affected the implementation process.

Based on the research result, we known that SOP in the service not obeyed yet and may affect the performance of implementation. Moreover, the existence of non bureaucratic factors and improperly designed program will affect the implementation process.

**The Problems Found**

According to the interview result with Head of PATEN Service Division, Drs. Ade Kosnia said that various problems in implementation of PATEN in Gunung Putri District were; a). In the aspect of Human Resource/ Person nel, were only two workers with Civil Servant while the rest were job exempts without training initially, b). The budget was less even there was no budget for operational cost, c). The aspect of work facilities, there was no
lactation room and play ground for children while the parents waiting for the service, d). The computer and printer was less, thus it holds up the smoothness of duties, and e). For the officers, they considered that the regulation of PATEN was frequently change and the status of PATEN that dependent (not depend on the Head of District/ District) cause the principle of fast service may be obstructed, because most of the licensing service should be through and signed by the Head of District.

From the description stated by Head of Service Division of PATEN, it showed that Regional Government of Bogor Regency in realizing the vision of PATEN was: realizing the people satisfaction through the integrated service still need more support.

The Service Performance and the Impact Expected

The Performance Accountability System of Government Organization is the accountability practice in Indonesia that has been started since 1999. Through the Regulation of Ministry of Administrative and Bureaucratic Reform No. 29 of 2010 concerning the guidelines of preparation of performance determination and performance accountability report of Government Organization, is the obligation for every Work Unit of Regional Government and independent work unit. The policy is started by the arrangement of RPJMD that based on the article 64 of Regulation of Ministry of Home Affairs No.54 of 2010 and its operational of strategic plan of Work Unit of Regional Government and independent work unit, in this case is Gunung Putri District of Bogor Regency.

In this research the work unit plan of District of 2014-2019 could not be found and showed but referred to the report uploaded on 31 March 2018 the Performance Accountability Report of Government Organization of Gunung Putri District, Regency Government of Bogor 2017.

The Performance Accountability Report of Government Organization provided information below: a). the content was not in accordance with the Regulation of Ministry of Administration and Bureaucratic Reform No. 29 of 2010 concerning the Guideline of Preparation of Performance Determination and Performance Accountability Report of Government Organization, because not contained information expected in the guidelines for instance the comparison of achievement of performance indicator until the year run with 5 yearly performance target designed, b). PATEN activities during 5 years were not reported thus the Service Performance and the impact expected was unknown.

The implementation of service policy of PATEN in Gunung Putri District according to the theory proposed by Ripley & Franklin, 1986:11 the success of policy/program was reviewed based on the implementation process and result perspective. In the process perspective, government’s program in this case the public service is success if the implementation in accordance with the guidelines and the provisions designed by the program creator that include the implementation ways, agent, target group, and program benefits, while in the result perspective, the program is success if it gives the impact as expected.

According to the description given, if related to the theory proposed by Ripley & Franklin, it can be concluded that the success of PATEN program in Gunung Putri based on the implementation process and result perspective, the performance could not be measured thus the output, outcome, benefit and the impact could not be analyzed.
4 Conclusion And Suggestion

Conclusion

The compliance on the Regulation of Laws in the implementation of PATEN, can be confirmed that the compliance degree is low because various Regent Regulations about implementation and determination of standard operational procedures not completely implemented, b). found various problems for instance in the aspect of Human Resources/Personnel, Budgeting, work facilities, computer and printer, regulation that frequently change, and dependent organization of PATEN affect the principle of public service as regulated in the Laws No. 25 of 2009 not fully implemented, c). the service performance and impact expected, cannot be measured because there is no complete document of work unit plan design and Performance Accountability Report of Government Organization that in line with the guideline of report preparation. Those three perspective did not run smoothly and it means that the implementation of PATEN policy in Gunung Putri District of Bogor Regency not work properly.

Suggestion

The suggestion for the Regent of Bogor Regency are: a). according to the regulation of Laws No. 23 of 2014 concerning regional Government, to realize the establishment of One-Stop Integrated Service that has functional and operational relationship with the Department of Capital Investment and One-Stop Integrated Service of Bogor Regency, b). the duties and function of Head of District should refers to the PP No. 19 of 2008 article 15 concerning District and PP No. 41 of 2007, particularly support the people participation in development, community empowerment, and fostering the implementation of village governance, c). conducting technical training for all staff of One-Stop Integrated Service, in order they have same competency standard in every implementation unit, and d). to the implementation unit of PATEN that will transform into One-Stop Integrated Service, should do their duties based on the work plan/performance target, completing the service facilities based on the standard and providing the service based on the principles of service determined.

Acknowledgement

By saying Alhamdulillah, the writer has finished the research report entitles: Implementation of District’s Integrated Administration Service Policy in Gunung Putri District of Bogor Regency.

Finishing the present research cannot be separated from the support of some parties, namely:

1. Mr. Dr. Ir. Panji Hendrarso, MM, the Rector of Social Science and Management Institute of STIAMI who provided the fund facility that enables this research can be finished.
2. Mr. Dr. Yulianto, SE, MM, the deputy rector I of Academic Division, who gave the technical guidance start from the proposal arrangement until the report and reviewed the current research.
3. Regency Government of Bogor, particularly the Head of Kesbangpol, Head of Capital Investment and One-Stop Integrated Service Department and the head of Government Administration Division who provided the data and information required for this research.
4. The Head of District and Head of PATEN service division of Gunung Putri District who facilitated the research location and support the providing data and information required.

5. People of Gunung Putri District who contributed as the informant.

Therefore, we say thank you very much to them and highly respect to all their support and attention for the success of the current research. Hope Allah SWT always blesses us.

References


[14]. Undang-Undang No. 25 Tahun 2009 Tentang Pelayanan Publik Undang-Undang No. 23 Tahun 2014 Tentang Pemerintahan Daerah


[16]. Peraturan Menteri Dalam Negeri No. 4 Tahun 2010 Tentang Pedoman Pelayanan Administrasi Terpadu Kecamatan

[17]. Peraturan Bupati Bogor No. 66 Tahun 2010 Tentang Pelimpahan Kewenangan Penyelenggaraan Sebagian Pemerintahan Kepada Camat


[20]. Keputusan Bupati Bogor No. 137/779/Kpts/Per-UU/2013 Tentang Pembentukan Tim Teknis Pelayanan Administrasi Terpadu Kecamatan Di Kabupaten Bogor

[21]. Keputusan Bupati Bogor No. 138/780/Kpts/Per-UU/2013 Tentang Penetapan Kecamatan Sebagai Penyelenggara Pelayanan Administrasi Terpadu Kecamatan Di Kabupaten Bogor
Analysis of Implementation of DKI Jakarta’s OK OCE Program Period of 2017-2018

1st Khikmatul Islah1, 2nd Zakia2, 3rd Istianah Setyaningsih3
{islahzone@gmail.com1, ashzalyzackia@gmail.com2, istianahsetyaningsih609@gmail.com3}

Faculty of Administrative Science, Institut Ilmu Sosial dan Manajemen Stiami1,3
Faculty of Administrative Science, Universitas Indonesia2

Abstract. In the election of Governor and Deputy Governor of DKI Jakarta of 2017, OK OCE Program was introduced to the public. This program is carried out by Anies Baswedan and Sandiaga Uno. OK OCE program is an entrepreneurship-based program which will be centered in each sub-district of each region in Jakarta. In accordance with the program, OK OCE stands for One Sub-District One Center of Entrepreneurship. The program is motivated by the unemployment rate in Jakarta which is higher than the national unemployment rate with the concept of giving birth to 200,000 new entrepreneurs or businessmen. OK OCE Program has been implemented, including training for self-development. This implementation process is the study of this research, in terms of how effective the implementation of OK OCE program is. The long-term goal to be achieved by this research is to educate the public about the existence of OK OCE Program for them to participate actively in the program. The specific target to be achieved is to analyze the OK OCE Program implementation in DKI Jakarta. The method that will be used in this study is a qualitative descriptive research method. The data collection technique will be carried out by in-depth interviews.

Keywords: OK OCE, Entrepreneurship, Community Empowerment.

1 Introduction

Human empowerment is a top priority in development (Hidayat, 2017). The more individual empowerment increases, the more community empowerment as a collective increase. Increasing the ability of individuals and groups will lead to an increase in the general welfare of a region. The poverty alleviation program has become an important issue in the government's development program. The government's concern for overcoming unemployment and poverty is reflected in the Indonesian National Development Policy. This policy is reflected in the triple track development, i.e. pro-poor, pro-job, and pro-growth development programs (Sartika, 2019).

It seems that until now the challenges of poverty faced by Indonesia are still large, complex and even very complex. The government program that has been rolled out so far has not given significant results to poverty reduction especially in reducing the number of unemployed people in Indonesia both at the central and regional levels (Sisnita, 2017). As an example, in DKI Jakarta Province, based on the results of research the Central Statistics Agency, it shows that the unemployment rate in Jakarta is higher than the national unemployment rate. The unemployment rate in DKI Jakarta is 5.77%, greater than the national
unemployment rate of only 5.5%. The BPS data even stated that the Jakarta Open Unemployment Rate (TPT) in August 2017 reached 7.14%. (Source: http://sirusa.bps.go.id)

The high unemployment rate is the background for the birth of OK OCE Program carried out by Anies Baswedan and Sandiaga Uno in the election of the Governor of DKI Jakarta in 2017. OK OCE program stands for One Sub-District One Center of Entrepreneurship, which aims to reduce unemployment in Jakarta. Through this program, Anies Baswedan and Sandiaga Uno said that they would produce 200 thousand new entrepreneurs with the hope that unemployment in Jakarta would decrease and that more people would live independently without relying on others.

Table 1. Member of OK OCE in DKI Jakarta (10 November 2018)

<table>
<thead>
<tr>
<th>No.</th>
<th>Districts</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jakarta Barat</td>
<td>9,450</td>
</tr>
<tr>
<td>2</td>
<td>Jakarta Timur</td>
<td>9,357</td>
</tr>
<tr>
<td>3</td>
<td>Jakarta Selatan</td>
<td>8,487</td>
</tr>
<tr>
<td>4</td>
<td>Jakarta Utara</td>
<td>8,359</td>
</tr>
<tr>
<td>5</td>
<td>Jakarta Pusat</td>
<td>7,346</td>
</tr>
<tr>
<td>6</td>
<td>Kabupaten Adm. Kep. Seribu</td>
<td>1,512</td>
</tr>
</tbody>
</table>

(Source: https://okoce.me)

In connection with OK OCE program, Anies Baswedan and Sandiaga Uno must have a strategy in implementing OK OCE program in order to run according to expectations. One of the factors being conducted in this program is by empowering the community (Retno, 2019). For those who are unemployed, training will be given according to their choice of interests and talents, while those who have started a business will be given assistance. Based on that, the researcher intends to find out how effective OK OCE program is implementing in DKI Jakarta with the aim of providing benefits to the community.

2 Literature Review

The government is inseparable from the various complexities that are need great help and attention. In response to this question, the government issued policies that are used as a basis for government action in solving a problem (Rahadian, n.d.). This is similar with Anderson's opinion (2003: 6) which discusses public policy is "the action taken intentionally followed by an actor or series of actors in dealing with a problem or problem of concern". Policy is a step taken deliberately by an actor or a number of actors relating to existing or related problems. The stages of public policy according to Dunn (2003: 25) include the stage of preparing the agenda, the stage of policy formulation, the stage of policy adoption, the stage of policy implementation, and the stage of policy evaluation. The stage of implementing public policy is one of the most important activities and also the most difficult stage because at this stage various interests will be found (Pancari & Budi, 2014).

OK OCE Program is also a government program and seeks to provide aid for its people to be more empowered and engaged. This program also involves communities. Various communities are embraced to be active and the community itself can be active as an assistant or as a participant to jointly realize the goal to solve the problem of unemployment.

All these goals will be achieved if the implementation of the program can run effectively. According to Edwards III (1980) there are four factors which are the main requirements for
the success of the implementation process, these four factors function continuously and are related to each other to help and hinder policy implementation, so the ideal approach is to reflect this complexity by discussing all of these factors at once. These four factors include:
a. Communication.
b. Resources.
c. Disposition.
d. Bureaucratic structure.

3 Research Metodology

This study uses a post positivist approach. Based on research objectives, this type of research classified as descriptive research because it is research conducted in the context of making a picture of a particular situation or event. Based on data collection techniques, this study uses techniques qualitative data collection. Primary data collection in this study uses in-depth interviews and observation techniques, where then the primary data will be combined with secondary data obtained through literature study.

4 Discussion

The implementation of OK OCE Program in DKI Jakarta has been in operation since the election of Anies Baswedan and Sandiaga Uno as the Governor and Deputy Governor. Various collaborations have also been carried out by DKI Jakarta Provincial Government for the success of the program. Cooperation agreement between the OK OCE Movement Association (PGO) and the DKI Provincial Government was carried out since Anies Baswedan took office, of which OK OCE has become the flagship program since it was a campaign promise that must be implemented and realized. The realization came into being since he was inaugurated in October 2017. The following months of November and December, PGO conducted the socialization. In January, OK OCE Centers have been established in 44 sub-districts, and in February, the assistants were in effect.

The assistant is provided by the Provincial Government, PGO provides input on who can be an assistant by including the terms or criteria which has come into force in the Governor Regulation. PGO provides consultations, curriculum, and materials to be implemented by the government since the budget and area are the affairs of the DKI Jakarta Provincial Government. The government is also close to the community and can invite the community.

Based on the results of the research, the level of effectiveness of its implementation can be seen from the following 4 issues:

1. Communication

The OK OCE program implemented in DKI Jakarta Province is a government cooperation program with the OK OCE Movement Association (PGO). This collaboration is regulated in Governor Instruction Number 152 of 2017 (Jakarta, 2017) concerning Establishment and Development of Entrepreneurship and Governor Regulation Number 102 of 2018 concerning Integrated Entrepreneurship Development (Pamungkas & Yusuf, 2017). OK OCE is a brand that is used as an agreement between the Provincial Government and PGO for the success of
the Integrated Entrepreneurship Program. The implementing agencies of the OK OCE Program consists of:

1. DKI Jakarta Provincial Government, which consists of the Economic Sector, Economic SKPD, and sub-districts;
2. OK OCE Movement Association as a provider of mobilizers and aid in activities based on the needs of the Provincial Government;
3. Private, and
4. Communities as users.

a. Communication between implementing agencies
Communication is well established, this can be seen from the form of coordination that has been established between PGO and the Provincial Government in providing training and the 7-step PAS (Certain to Succeed) Activities. This includes in the selection of assistants who will be assigned by the Provincial Government, with prior coordination with PGO. Communication between the government and the community is carried out by providing OK OCE Center services located in 44 sub-districts in each sub-district office in DKI Jakarta Province. In addition to communication related to the OK OCE program, the public can access information from the OK OCE official website in regards to the implementation of the 7 PAS program.

b. Availability of Implementing Resources
The availability of implementing resources from DKI Jakarta Province is sufficient, where each OK OCE center in the sub-district has an assistant in charge of providing assistance from 7-step PAS to participants.

c. Attitude of Response of Policy implementers
The responsiveness of policy implementers is considered quite good, this can be seen from the continued use of the OK OCE brand in implementing policies, despite the official name of the program is integrated entrepreneurship program in accordance with DKI Governor Regulation 102/2018. This responsiveness is also related to the response given by the Provincial Government in determining the assistant with the criteria agreed upon with PGO. The good response from the implementers affected the success of the program, where as of the end of 2018 43,000 participants had registered on the OK OCE website.

d. Implementing Organizational Structure
The implementing organization in the OK OCE program in the DKI Jakarta Provincial Government consists of 3 elements, i.e. the community as beneficiaries, mobilizers (PGO), private sectors and the Provincial Government of DKI Jakarta.

2. Resources
In order to facilitate the analysis of resource indicators, analysis is classified based on a series of entrepreneurial capacity building program (7 PAS) in the implementation of the OK OCE program (Wati & Pamungkas, 2018), namely as follows:

✓ Step 1: Registration
The human resources of implementing the program at this stage involve Village Heads who play the role of helping to accelerate the implementation of the program by facilitating the registration of community groups through the application of Integrated Entrepreneurship
Development (PKT). In addition, the Village Heads are also responsible for providing information and disseminating information to citizens regarding the benefits of implementing the CCP through an entrepreneurial capacity building program. The community/target groups that have been registered as program participants are then required to take part in an interview by the DKI Jakarta Provincial Manpower Office. The decision regarding the qualification of the interview result will further be determined by the Decree of the Head of Regional Apparatus as the executor of the CCP. In addition to these parties, there are also sub-district facilitators who have the function to help smooth the implementation of the program in which the assistants are selected and chosen according to the predetermined criteria.

Supporting resources at this stage are technology-based registration systems called PKT applications, which are managed directly by the DKI Jakarta Provincial Manpower Office and regional apparatus in the field of communication and informatics in accordance with the developed SOP for governance of the PKT application.

✓ Step 2: Training

Training of human resources is related SKPD/UKPD apparatus in DKI Jakarta Province and communities of self-supporting mobilizers in the sub-district office. Special soft skills are provided by the KUKM and Trade Office, while hard skills are provided by other related offices such as the Office of Industry, Maritime and Fisheries Office, Manpower Office, Culture and Tourism Office, Women's Empowerment and Social Service Office. Sub-district facilitators are also involved at this stage. In conducting training, the regional apparatus as the executor of the PKT can involve information sources or experts who must meet the criteria.

Other supporting resources are curriculum or training materials provided to the community/target groups of the program. In order for the training stage to run effectively, the entrepreneurship training level is divided into two types, namely: (1) Basic level training, which is aimed at the target group of job seekers and novice entrepreneurs who want to start their business. For this level, the training materials that will be provided include motivation and entrepreneurship; business ideas and concepts; basic financial planning, management and reporting through the application. (2) Advanced level training, which is aimed at upscale entrepreneurs who want to develop their business. The training material given at this level is entrepreneurial development orientation; and increasing the ability of business specialization and business management.

✓ Step 3: Assistance

In business assistance, the resources involved are PKT implementing regional apparatus that can be assisted by:

1. Other Individual Service Providers (PJLP)
2. Business Assistant

Supporting resources in this stage are entrepreneurship clinics, which is a creative co-working space with the function as guidance, communication, information, interaction, and business promotion center. The provision of entrepreneurship clinic is the responsibility of regional apparatus in the field of cooperatives, small and medium business as well as trade (at least 5 urban areas and 1 district) for PKT Participants. In addition, OK OCE Centers have also been provided in 44 sub-districts to offer business assistance.

✓ Step 4: Licensing

In the framework of accelerating and prioritizing the process of entrepreneurship documents management for PKT participants, human resources that have been prepared to facilitate the licensing and non-licensing document are conducted collectively by regional
apparatus of implementing PKT in coordination with regional apparatus in the field of investment and PTSP. While the provision of supporting resources is OK OCE Global Office, which is a virtual office run by the mobilizer to assist in facilitating domicile rent service, licensing and legality in accordance with the needs of the members/program participants.

 ✓ Step 5: Marketing

Human resources involved at this stage are all PKT implementing apparatus such as the KUKM Office, Industry Office, Maritime and Fisheries Office, Manpower Office, Culture and Tourism Office, Women's Empowerment and Child Protection Office, Social Office. The PKT implementing regional apparatus is responsible for facilitating marketing activities at least once a month through bazaar and other activities. Whereas marketing conducted jointly by all PKT implementing regions is carried out at least every 3 months through entrepreneurial exhibitions either locally, nationally or internationally under the coordination of the Assistant Regional Secretary for Economic and Financial Affairs. In addition to coordinate these marketing activities, the Assistant Regional Secretary for Economics and Finance is also responsible for coordinating the formation of networks and markets along with each regional apparatus so that the DKI Jakarta Provincial Government can always prioritize the use of products from PKT participants for every work activity carried out from the process of procurement of goods/services in accordance with applicable rules.

Other supporting resources in addition to the joint market policy are the provision of marketing information systems managed by regional communication and informatics apparatus to integrate information systems for the implementation of PKT into the digital entrepreneurial ecosystem. In addition, marketing products/services for program members will also be assisted by the mechanism of Retailers, Franchises, Resellers, Development Location/Temporary Location, Online Stores, Bazaars/Exhibitions and Exports.

 ✓ Step 6: Financial Reporting

Participants who have obtained licensing documents and marketing facilities are then entitled to receive financial reporting training. In this stage, the community/target group of the program is trained to calculate turnover, profit and prepare financial reporting according to the standard accounting, which will be required as a supplementary condition for filing capital to other banks/capital institutions.

Preparation of business financial reporting in this program is application-based, facilitated by regional apparatus of implementing PKT. Some of the human resources involved in managing this application are, the PKT implementing regional apparatus that is authorized to make Standard Operational Procedures, and regional apparatus in the field of communication and informatics that are responsible for building, developing and integrating the application system. Regional apparatus in the field of communication and informatics may cooperate with information technology developers, such as Zahir who currently assists in the preparation of business financial reporting for the community/program target groups.

 ✓ Step 7: Capital

At this stage, the resources involved are regional apparatus in cooperatives, small and medium enterprises as well as trade that are responsible for facilitating easy access to capital for the community/target groups that have participated in the entire series of entrepreneurial capacity building programs. In order to support its function, cooperation with banking institutions or financial services institutions are implemented, such as the one currently in cooperation is Bank DKI.
In addition to human resources, supporting resources such as facilities and infrastructure for PKT participants to develop their business can be provided through optimizing the use of facilities and infrastructure that they already have, by providing assistance for facilities and infrastructure such as work tools and other supporting facilities by the mechanism of grants in the form of goods which the value is regulated in the Decree of the Governor.

Table 2. Status of 7 PAS in DKI Jakarta (10 November 2018)

<table>
<thead>
<tr>
<th>No.</th>
<th>Districts</th>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
<th>Step 5</th>
<th>Step 6</th>
<th>Step 7</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Jakarta Barat</td>
<td>241</td>
<td>55</td>
<td>9,237</td>
<td>5</td>
<td>16</td>
<td>67</td>
<td>9,621</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Jakarta Timur</td>
<td>88</td>
<td>9,287</td>
<td>46</td>
<td>36</td>
<td>13</td>
<td>61</td>
<td>9,351</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Jakarta Selatan</td>
<td>35</td>
<td>8,764</td>
<td>10</td>
<td>7</td>
<td>44</td>
<td>8,950</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Jakarta Utara</td>
<td>161</td>
<td>61</td>
<td>7,132</td>
<td>10</td>
<td>37</td>
<td>48</td>
<td>8,405</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Jakarta Pusat</td>
<td>1,811</td>
<td>29</td>
<td>1,842</td>
<td>1,842</td>
<td>1,842</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Source: https://okoce.me)

3. Disposition

In its implementation, capital is not a reference to the success of the program, because OK OCE DKI Jakarta runs through five materials obtained during training, namely mental changes or mindset, business projections, business selection and management. Prior to OK OCE there were several entrepreneurial programs, one of which was revolving fund where participants came, educated then received funds. But in reality, the funds obtained are not necessarily used for entrepreneurship. Therefore, in the first OK OCE training, participants were given material on mental changes and mindset. The training was conducted by using coaching method. Mental and mindset were trained first. Therefore, licensing is currently being used, because hitherto the benchmark success of OK OCE has only been seen from capital loans.

4. Bureaucratic structure

In the bureaucratic structure, many parties are involved in the implementation of OK OCE program. Based on the Regulation of the Governor of DKI Jakarta Province Number 102 of 2018, several related bureaucracies are: (a) Regional Secretary, (b) Mayor of DKI Jakarta Province, (c) Regent of Kepulauan Seribu, and (d) Head of Regional Equipment.

5 Conclusion

Basically, the OK OCE Program has been implemented by the Provincial Government of DKI Jakarta in accordance with the campaign promise of the elected Governor and Deputy Governor, Anies Baswedan and Sandiaga Uno. If viewed from the benchmark of achieving 200 thousand entrepreneurs, in accordance with the applicants of training program between the periods of 2017-2018, the target has reached 40 thousand participants. However, if viewed from 7 PAS where licensing step is present, the aforementioned target of 40 thousand participants of business licenses has not yet been reached. This is due to the need for licensing
process. Subsequently, this program can continue to be implemented in accordance with applicable regulations, and as for licensing, it is expected that the DKI Jakarta Provincial Government will provide convenience for OK OCE participants so that the target of achieving 200 thousand entrepreneurs within 5 years can be achieved.

Thank-You Note

The researchers would like to thank:
2. Institute of Social and Management Sciences of STIA MI.
3. LPPM Institute of Social and Management Sciences of STIAMI.
4. All parties who have assisted in completing this research.

References

Evaluation of Tax Regulations About Debt Equity Ratio Instrument to Prevent Thin Capitalization in Relation to Investment and Tax Revenue Policy in Indonesia

Chairil Anwar Pohan¹, Karina Duwanty², Pebriani Arimbhi³

{anwar_phn@yahoo.com¹, karinaduwanty@gmail.com², pebriana@stiami.ac.id ³}

Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia¹,²,³

Abstract. The government is aggressively preventing companies from tax evasion, one of which is by setting a debt to equity ratio. Many observers claim that such an arrangement is recognized as being able to counteract Thin Capitalization. However, if it is related to the investment policy in Indonesia, it seems that it is still not synergistic. This study aims to analyze the adequacy of the effectiveness of the application of taxation policies on the debt equity ratio instrument in counteracting the practice of thin capitalization in Indonesia and how the tax policy on the debt equity ratio instrument is linked to investment policies in Indonesia. This research approach is a qualitative approach with descriptive methods. The results of the study conclude that the application of taxation policies on the debt equity ratio instrument is quite effective in counteracting the practice of thin capitalization in Indonesia, the taxation policy on the debt equity ratio instrument indirectly affects investment policy in Indonesia, and there are still ratio constraints in implementing taxation policies on equity instruments. Efforts to be able to overcome the obstacles that occur with appropriate socialization, education, supervision and inspection of taxpayers so that tax revenues can be optimal.

Keywords: Debt Equity Ratio, Thin Capitalization, Investment Policy, Tax Revenue in Indonesia.

1 Introduction

The increasing development of information technology and the more open economy of a country will certainly provide opportunities for companies to develop their business by creating various innovations in goods and services. As a profit-oriented company, of course, a company will try to get as much profit as possible through various kinds of cost efficiency, including the efficiency of the tax burden. The government also made various efforts to attract foreign investors to be interested in investing in Indonesia by providing investment allowances and tax holidays and building infrastructure in various development sectors in urban and regional centers. In the context of international taxation, there are several modes commonly used by multinational companies to carry out tax avoidance or tax savings, namely with the scheme i. Transfer pricing, ii. Thin capitalization, iii. Treaty shopping, and iv. Controlled foreign corporation (CFC). (Pohan, 2018: 421).

Related to the above matters, namely the increasingly sophisticated financial transaction schemes that exist in the business world certainly will also create opportunities for companies to carry out tax avoidance transaction schemes in order to reduce their tax burden, especially if there is a vacuum of legislation - invitation to these tax avoidance schemes. For companies
that operate internationally (international companies) the opportunity to conduct tax avoidance is more open, namely by utilizing differences in a country's tax system (international tax avoidance). In international trade, multinational companies have a role of 60 percent of international transactions.

Regarding foreign direct investment [hereinafter referred to as FDI (PMA)] of multinational companies, in 2005 the investment realization from FDI (PMA) was estimated to reach US $ 8.68 billion or an increase of 88.69%, an increase of two times from the previous year of US $ 4.60 billion. Seeing the large amount of foreign investment entering Indonesia, government revenues derived from multinational corporate taxes should be high. However, we were shocked by the statement of the former Finance Minister Bambang Brodjonegoro that there were around 2,000 companies categorized as FDI (PMA), which had not paid taxes in the past 10 years. The company is divided into many sectors. The reason that is always conveyed to the Directorate General of Taxes (DGT) is that the company loses. But the reality is different from the results of the DGT calculation and examination, where according to tax calculations or checks, the company should pay an average of Rp. 25 billion a year. The FDI (PMA) is trying to avoid taxes or conduct tax evasion which is usually done by companies in Indonesia, with various modes such as transfer pricing through shareholder loans.

Increasing the domestic revenue target from the tax sector is reasonable, because logically the amount of tax payments from year to year is expected to increase in line with the increase in population and public welfare. In performing tax payment obligations, taxpayers must carry out tax planning. In planning the tax, companies utilize the regulations available to minimize their tax payments. This is done so that taxpayers can pay taxes as efficiently as possible in accordance with applicable provisions (Rimsky, 1999).

From the economic aspect, the Debt Equity Ratio (DER) shows the company's ability to finance its company with its own capital to fulfill all its obligations, besides being used to measure financial / economic health from the company's capital structure used by third parties, such as banks, investors/candidates investors to provide one of the considerations in the feasibility of providing bank credit, additional capital disbursement, but in terms of taxation, the determination of DER is used for tax calculation purposes, and this ratio provides opportunities which can be an effort to conduct tax avoidance in tax planning carried out by investors.

The debt equity ratio is used as a measure of thin capitalization. To measure to what extent the company's assets are financed by debt to show indications of the level of security of lenders (banks), the debt equity ratio (DER) is one measure of corporate financial leverage calculated by dividing total liabilities with stockholders equity, which indicates what proportion of equity and debt are used by companies to finance their assets. The use of this debt equity ratio in addition to taxation purposes can be used to maintain the condition of liquidity, solvency and profitability of the company.

The thin capitalization by increasing debt is an attempt to transform payments to investors for dividend income from equity income because of double taxation (income tax on profits and dividends), becoming interest income from loans that are only charged once. Debt financing practices provide more tax savings.

Basically thin capitalization is the engineering of the formation of a capital structure where the amount of debt is far greater than the number of shares. Why is this attractive thin capitalization raised to the surface at the level of tax assessment? First, because the new debt equity ratio rules related to thin capitalization will increase the burden of many taxpayers and can become an additional barrier for new investors in Indonesia. Secondly,
because there is a significant difference in the tax treatment between the withdrawal of debt and equity funds, where the provisions of taxation allow payment of interest on loans as a tax deduction, whereas payment of dividends on shares cannot be a tax deduction. As a result of the difference in tax treatment between interest and dividends, companies that increase their debt thus increase loan interest payments and will mean reducing the tax that must be paid. Third, it is suspected that there are many foreign investors in Indonesia, who finance the operations of their companies, preferring to prioritize loans (equity) due to the disparity in tax treatment that is more profitable interest (loan capital benefits) as a deduction from debtor taxable income than dividend (equity income), so that the thin capitalization action can reduce tax revenue.

In further development, the government through the Minister of Finance Decree number 1002 / KMK.04 / 1984 dated October 8, 1984 issued a decree concerning the determination of the ratio between debt and own capital for the purposes of income tax wherein Article 1 states that for the calculation of income tax the amount of comparison between debt and equity (debt equity ratio) set as high as three compared to one (3: 1). In article 2 paragraph (1) mentioning the debt referred to above is the average balance at the end of each month calculated from all debts, both long-term debt and short-term debt, in addition to trade payables. And article 2 paragraph (2) states that the capital as referred to in article 1 is the amount of paid-up capital at the end of the tax year including profits that are not and / or have not been distributed.

However, the debt equity ratio policy did not last long, because the government changed its regulations, on the basis that the determination of the ratio between debt and own capital for general and applicable Income Tax imposition was feared to hinder the development of the business world. implementation of Decree of the Minister of Finance of the Republic of Indonesia Number: 1002/KMK.04/1984 dated October 8, 1984 with the issuance of Decree of the Minister of Finance number 254/KMK.01/1985 dated March 8, 1985, suspended until the date determined later by the Minister of Finance.

Since then there has been a vacuum in tax regulations regarding the debt equity ratio until the issuance of the Minister of Finance regulation No.169/PMK.010/2015 dated 09 September 2015 (then abbreviated PMK-169/2015) concerning the determination of the ratio between debt and corporate capital for the purposes of calculating income tax, which came into force since 2016 tax. In the regulation it is stated that for the purposes of calculating Income Tax the amount of debt and capital is determined for taxpayers of entities established or domiciled in Indonesia whose capital is divided into shares. One thing that is considered logical and reasonable for foreign investors who always make every penny they invest in each business unit or subsidiary abroad at the level of the minimum subsidiary tax burden so that the profit contribution to its parent company abroad is maximal, so the parent company is more likely choose to give a loan rather than increase the deposit of capital. The new Minister of Finance policy has provided leeway for foreign investors to provide loans to their affiliated companies in Indonesia with a maximum DER limit of 4: 1. However, is the 4: 1 ratio specified in PMK-169/2015 appropriate? The answer is relative. When compared with the average in other countries, which is 3: 1, it looks like PMK-169/2015 provides concessions that provide taxpayers with room to have larger loans in their capital structure. It seems that the government wants to have provisions that also do not hamper business expansion, as it was once the reason for suspension of KMK-1002/1984. However, there is no certainty about valid reasons and considerations regarding this 4: 1 number.

According to B. Bawono Kristiadi of Dany Darussalam Tax Center (2015: 9), the absence of a quantitative study of the ratios deemed appropriate can have considerable implications
later on. Especially regarding the number of companies that are likely to exceed the 4:1 DER limit and the implications for financing their business expansion.

Table 1. Comparison of Capital Structure and Debt in Tbk Companies Registered on the Stock Exchange in 2012 Up to 2016

<table>
<thead>
<tr>
<th>No</th>
<th>Company</th>
<th>Ekuitas</th>
<th>Liabilities</th>
<th>Rasio DER</th>
<th>Tahun</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT. Argo pantes Tbk</td>
<td>439,121,274.00</td>
<td>4,107,964,851.00</td>
<td>9.35</td>
<td>2012-2016</td>
</tr>
<tr>
<td>2</td>
<td>PT. Century Textile Industry Tbk</td>
<td>10,692,409.00</td>
<td>146,226,367.00</td>
<td>13.68</td>
<td>2012-2016</td>
</tr>
<tr>
<td>3</td>
<td>PT. Ever Shine Tex Tbk</td>
<td>52,685,043.00</td>
<td>166,982,979.00</td>
<td>3.17</td>
<td>2014-2016</td>
</tr>
<tr>
<td>4</td>
<td>PT. Eratex Dja Tbk</td>
<td>8,989,240.00</td>
<td>35,831,330.00</td>
<td>3.99</td>
<td>2012</td>
</tr>
<tr>
<td>5</td>
<td>PT. Panasia Indo Resources Tbk</td>
<td>604,865,227.00</td>
<td>3,619,720,129.00</td>
<td>5.98</td>
<td>2014</td>
</tr>
<tr>
<td>6</td>
<td>PT. Ricky Putra Globalindo Tbk</td>
<td>390,263,218,936.00</td>
<td>781,749,249,068.00</td>
<td>2.00</td>
<td>2014</td>
</tr>
<tr>
<td>7</td>
<td>PT. Sunson Textile Manufacturer Tbk</td>
<td>258,131,240,475.00</td>
<td>515,532,106,459.00</td>
<td>2.00</td>
<td>2014</td>
</tr>
<tr>
<td>8</td>
<td>PT. Indo-Rama SyntheticsTbk</td>
<td>1,499,403,041.00</td>
<td>2,353,700,907.00</td>
<td>1.57</td>
<td>2012-2016</td>
</tr>
<tr>
<td>9</td>
<td>PT. Agung Podomoro Land Tbk</td>
<td>41,034,599,298.00</td>
<td>67,797,818,258.00</td>
<td>1.65</td>
<td>2012-2016</td>
</tr>
<tr>
<td>10</td>
<td>PT. Alam Sutera Realty Tbk</td>
<td>30,225,108,105.00</td>
<td>50,969,759,468.00</td>
<td>1.69</td>
<td>2012-2016</td>
</tr>
<tr>
<td>11</td>
<td>PT. Island Concepts Indonesia Tbk</td>
<td>22,337,691,875.00</td>
<td>61,025,761,986.00</td>
<td>2.73</td>
<td>2012</td>
</tr>
<tr>
<td>12</td>
<td>PT. Grahamas Wisata Tbk</td>
<td>7,010,712,514.00</td>
<td>32,828,298,602.00</td>
<td>4.68</td>
<td>2016</td>
</tr>
<tr>
<td>13</td>
<td>PT. Panorama Sentrawisata Tbk</td>
<td>413,248,542.00</td>
<td>1,332,732,675.00</td>
<td>3.23</td>
<td>2015</td>
</tr>
<tr>
<td>14</td>
<td>PT. Destinasi Tirta Nusantara Tbk</td>
<td>849,939,001,315.00</td>
<td>868,130,644,420.00</td>
<td>1.02</td>
<td>2012-2016</td>
</tr>
<tr>
<td>15</td>
<td>PT. Unilever Indonesia Tbk</td>
<td>4,704,258.00</td>
<td>12,041,437.00</td>
<td>2.56</td>
<td>2016</td>
</tr>
<tr>
<td>16</td>
<td>PT. Tri Bayan Tirta Tbk</td>
<td>542,329,398,166.00</td>
<td>960,189,991,593.00</td>
<td>1.77</td>
<td>2013</td>
</tr>
</tbody>
</table>

Source of data: www.idx.co.id

Based on Table 1., it is clear that quite a number of Tbk (go public) companies where the company's total debt is far greater than the amount of capital deposited and this indicates that the company has been aggressive in financing growth with debt. This can result in earnings volatility as a result of additional interest expenses. Conversely, if a lot of debt is used to finance operations (high debt to equity), the company has the potential to generate more income than that without external financing. If there is an increase in income with a larger amount than the cost of debt (interest), then the shareholders will get a profit as income distributed to the shareholders proportionally. However, this debt financing may be greater than the company's revenue generated from debt through investment and business activities and becomes too large for the company to carry the burden. This can lead to bankruptcy of the company, which will cause shareholders to get nothing.

The phenomenon that the authors raise in this study is that there is an indication that the country has the potential to experience losses from tax revenues on loans from foreign investors / creditors by providing concessions to the Debt Equity Ratio which in turn gives investors a wider scope for tax evasion. Meanwhile, the looseness of the debt equity ratio is indicated not in line with investment policies of the Investment Coordinating Board so that investors invest their capital in the form of stock investments rather than in loans.

This research will be focused on evaluating tax regulations regarding the Debt Equity Ratio instrument in practice, the ability of the DER instrument to counteract Thin Capitalization and how the DER instrument can be used to target the amount of investment as well as tax revenue in Indonesia.
The research objectives are: (1) To analyze the adequacy of the effectiveness of the implementation of tax policy on instruments of debt equity ratio in counteracting the practice of thin capitalization in Indonesia. (2) To analyze the extent to which tax policies on debt equity ratio instruments are in line with investment policies in Indonesia. (3) To analyze the inhibiting entities in implementing the debt equity ratio policy to counteract the practice of thin capitalization in Indonesia. (3) To analyze the driving entities in the implementation of the debt equity ratio policy to counteract the practice of thin capitalization in Indonesia.

Referring to the research objectives above, this research is expected to provide benefits, for improving services at BKPM and Jakarta Foreign Investment One Tax Office which of course have an impact on investors in fulfilling their tax obligations, and also expected to help the government to further evaluate the policies of the Minister of Finance Regulation No. 169/PMK.010/2015 on September 9, 2015 in terms of the flexibility of the Debt Equity Ratio.

Thinking Framework

Taxes for companies are considered a burden, so certain efforts or strategies are needed to reduce them. The strategy that is done is tax avoidance is an effort to reduce tax debt that is legal in nature by complying with existing rules. Thin capitalization is a way to engineer the formation of a capital structure where the amount of debt is far greater than the number of shares. because the new debt equity ratio rules related to thin capitalization will increase the burden of many taxpayers and can become an additional barrier for new investors in Indonesia.

In the discussion of thin capitalization the author uses the thin capitalization indicator from Larry Crumbley (1994: 306), namely (1) initial capitalization is made thin, (2) shareholders can provide loans to companies, (3) shareholders can borrow loans from outside. Based on the Income Tax Act Article 18 paragraph 1, it is stated that the Minister of Finance has the authority to issue a decision on the size of the ratio between debt and capital of the company that can be justified for the purposes of tax calculation. Determination of the size of the ratio between debt and own capital has been regulated as of October 8, 1984 with the enactment of the Minister of Finance Decree Number 1002/KMK.04/1984 concerning the Comparison of Debt and Own Capital for the Purposes of Income Tax Imposition set at a maximum of three compared to one (3: 1). However, only five months later, on March 8, 1985, a Decree of the Minister of Finance of the Republic of Indonesia (PMK) No. 254/KMK.01/1985 was issued which contained the suspension of the Decree of the Minister of Finance of the Republic of Indonesia Number: 1002/KMK.04/1984 on the grounds that the comparison between debt and own capital for general and general income tax imposition is feared to hinder the development of the business world. The deferral of the intention turned out to require a very long time, namely more than 10 years, precisely on 9 September 2015, the Regulation of the Minister of Finance of the Republic of Indonesia Number (PMK) No. 169/PMK.010/2015 was stipulated concerning Determination of the Comparison Between Debt and Company Capital for the Calculation of Income Tax Calculation the highest is four compared to one (4: 1) and applied since the 2016 tax year. Given the importance of the rules regarding the amount of the Debt Equity Ratio to prevent the practice of thin capitalization which is detrimental to state revenues from the tax sector, many countries regulate the size of the Debt Equity Ratio the provisions of thin capitalization rules in their country combined with ownership requirements. For example, Japan limits the 3: 1 DER with terms of ownership of more than 50%, Australia also limits the 3: 1 DER ratio but ownership is lower at 15 percent and Canada more tightly limits the 2: 1 DER ratio with terms of ownership up to 25 percent.
The practice of tax policy on debt equity ratio instruments is still considered to be unable to counteract the practice of tax avoidance in Indonesia because the explanation in the income tax law is still very simple, so it still provides loopholes for taxpayers not to comply with the law.

The tax policy on the instrument of debt equity ratio is also considered to be still less synergistic with investment policy in Indonesia because when compared to other countries that set the DER average of 3:1, PMK-169/2015 provides opportunities for investors to more choose to give a loan rather than investing their shares in Indonesia.

Figure 1. Flow Chart of Thinking Framework Picture-1
1. Ning Rahayu (2010: 61)
University of Indonesia

Research Title:
Regulatory Evaluation of Foreign Investment Tax Avoidance Practices

The data used in this study are primary data, namely data obtained from interviews and observations. The method used is a qualitative method.


The results of the study show that very common tax avoidance practices are carried out through transfer pricing schemes and thin capitalization. Both schemes have been used in such a way as to provide optimal benefits from loopholes in tax regulations. And, we identify the existence of government anti-tax avoidance regulations in terms of a good regulatory process that is far from perfect, in fact the prevailing regulations and regulations are still in anticipation of tax evasion efforts by taxpayers. For this reason, the Government cannot obtain optimal tax incomes from taxpayers. Furthermore, Indonesia's anti-tax avoidance policies still lag behind the latest issues of tax avoidance practices that are increasingly complex and difficult to detect.

2. Ning Rahayu (2010: 179)
University of Indonesia

Research Title:
Tax Avoidance Practices by Foreign Direct Investment in the Form of Foreign Investment Limited Liability Company

Research Method:
The research approach chosen in this study is a mixed approach combined to answer research questions that cannot be fully answered by qualitative or quantitative approaches. The data used in this study are primary data, namely data from the results of in-depth interviews.

The results showed that tax avoidance practices, which were generally carried out by the Foreign Direct Investment (FDI) in the form of subsidiary companies (PT. PMA) in Indonesia, were carried out through transfer pricing schemes, thin capitalization, Controlled Foreign Corporation (CFC), utilization of tax haven and treaty shopping countries. The most widely used tax avoidance schemes in Indonesia are transfer pricing schemes, thin capitalization and treaty shopping. Then, the practice of tax avoidance is carried out by utilizing the opportunities contained in the applicable tax provisions. This is also reinforced by the characteristics of the relationship between subsidiary companies in Indonesia with parent companies abroad which according to the tax perspective are considered as separate entities. Thus, between the subsidiary and the parent company, it can conduct inter-company transactions arranged in such a way that the subsidiary company in Indonesia suffers a loss, while the overall business other than in Indonesia is still profitable.
3. Richard Pardomuan Parulian Siahaan (2010: 100) University of Indonesia

Research Title:
Analysis of Anticipating Thin Capitalization Practices in Indonesia

Research Method:
The approach of this research is a qualitative approach. The type of research used in this study is descriptive analysis. Data collection methods used in this study are library studies and field studies.

Sources of thesis: Richard Pardomuan Parulian Siahaan, June 2010, Faculty of Social and Political Sciences, University of Indonesia, p. 100.

The results of this study are:

a. Tax Avoidance practices related to Thin Capitalization carried out by Taxpayers in Indonesia are borrowing from related parties abroad. The loan lending scheme is direct loan, parallel loan, and back-to-back loan. The most common practice is direct loan schemes. The practice of tax avoidance is mostly done because it is relatively simpler by taking advantage of the opportunities contained in the applicable tax provisions and utilizing the weak enforcement of the tax authorities;

b. Tax provisions that apply in Indonesia are related to the Thin Capitalization and the comparison with the provisions of the United States, Britain, Luxembourg, China, France, Belgium, Canada, Spain, Russia and Germany is the Anti Capitalization Avoidance Policy related to Static DER. in Article 18 paragraph (1) since the suspension of KMK. 1002 / KMK.04 / 1984 with KMK. 254 / KMK.04 / 1985 has not undergone changes even though this provision can provide legal certainty for the Tax Authority and Taxpayers. While the provisions of Article 18 paragraph (3) related to dynamic DER have also not been fully utilized by the tax authorities.

c. Efforts made by the Directorate General of Taxes in handling Thin Capitalization practices that attempt to reduce the tax burden are (i). DER policy formulation as stipulated in the provisions of Article 18 paragraph (1) of the Income Tax Law and (ii) increasing enforcement as stipulated in the provisions of Article 18 paragraph (3) of the Income Tax Law. The policy formulation regarding DER is still ongoing at the Directorate General of Taxes, especially the Directorate of Taxation Regulations II. The Sub-directorate of Corporate Income Tax Regulations and enforcement activities is being upgraded with
2 Research Methods

The data analysis method used in this study is descriptive analysis method by applying comparative research. While the research approach used is a qualitative approach. According to Creswell (2014: 4), "an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with word, detailed reporting of information and conducted in a natural setting." A qualitative approach applies a paradigm naturalistic, where research is carried out in natural settings. In this qualitative research method, the research method is used to examine natural object conditions, where the researcher is a key instrument, the technique of data collection is triangulated (combined), data analysis is inductive, and the results of qualitative research emphasize the meaning rather than generalization. The research dimension is a case study, in the sense of conducting a study of one social reality. In this study, researchers applied a case study that was examined from various aspects as well as strategies to obtain the data in question. Qualitative data is in the form of in-depth interviews, observations, literature studies and documentation, but it is also possible to use quantitative data as a complementary information on each research analysis question. Data Collection Techniques use: 1. Literature Study in the form of oil and gas statistical data, scientific publications in journals, papers and articles. 2. In-depth, opened ended interviews: to strengthen the results of analysis and discussion, the author also
conducted in-depth interviews with informants namely, Mr. August Andrian as Person in charge with Advance Pricing Agreement/Mutual Agreement Procedure Analyst of the Directorate General of Taxes as Informant 1; Mr. Yohanes Bambang Account Representative of the Service Office Tax One Foreign Investment as informant 2; Ms. Maria S. Rahardjo, the Head of the Secondary Sector Section -Deregulation Directorate at Investment Coordinating Board as informant 3; Mr. Ganda Christian Tobing., LL.M Int. Tax Senior Manager at Tax Advisory and Litigation Services of Danny Darussalam Tax Center as informant 4; Ms. Lisayanti Lie, Certified Tax Consultant as informant 5; Mr. Yustinus Prastowo, Director of Center For Indonesia Taxation Analysis as informant 6; Mr. Agus Budi Waluyo, Certified Tax Consultant and Taxation Lecturer as informant 7. Mr. B. Bawono Kristiaji, Tax Senior Manager of Danny Darussalam Tax Center as informant 8.

3 Research Result and Discussion

Results of interviews with few informants :

1. Evaluate the implementation of tax policies on instruments of debt equity ratio in counteracting the practice of thin capitalization in Indonesia

   The implementation of the tax policy on the instrument of debt equity ratio, which based on the Income Tax Act Article 18 paragraph 1 states that the Minister of Finance has the authority to issue a decision on the magnitude of the ratio between debt and company capital that can be justified for tax calculation purposes. Determination of the size of the ratio between debt and own capital has been regulated as of October 8, 1984 with the enactment of the Minister of Finance Decree Number 1002/KMK.04/1984 concerning the Comparison of Debt and Own Capital for the Purposes of Income Tax Imposition set at a maximum of three compared to one (3: 1). However, only five months later, on March 8, 1985, a Decree of the Minister of Finance of the Republic of Indonesia 254/KMK.01/1985 was issued which contained the suspension of the Decree of the Minister of Finance of the Republic of Indonesia Number: 1002/KMK.04/1984 on the grounds that the comparison between debt and own capital for general income tax imposition is feared to hinder the development of the business world. The deferral of the intention turned out to require a very long time, namely more than 30 years, precisely on 9 September 2015, PMK-169/2015 was stipulated concerning Determination of the Comparison Between Debt and Company Capital the highest of four compared to one (4: 1) and applied since the 2016 tax year. In evaluating the Implementation of Tax Policies About the Debt Equity Ratio Instrument in Counteracting Thin Capitalization In Indonesia, researchers studied using Thin Capitalization indicators from Larry Crumbley, namely: Debt Equity Ratio, Initial Capitalization Is Made Thin, Shareholders Can Provide Loans To Companies, Shareholders Can Guarantee External Loans, Foreign Direct Investment. Dimensions Evaluation of the implementation of tax policy on instrument debt equity ratio in counteracting the practice of thin capitalization can be described as follows:

   a. Debt Equity Ratio

   The author argues that the implementation of tax policy on debt equity ratio instruments is intended as an effort to counteract the practice of thin capitalization in Indonesia, where this provision has been quite effective considering the only
provisions used to counteract thin capitalization in Indonesia after a long time this regulation has been suspended and just returned to effect. Efforts made by the tax authorities through the dissemination of this policy are often carried out.

According to Mr. August Andrian (Informant 1), that previously in 1984 the policy of DER 3: 1 had been regulated but in 1985 a letter was issued to suspend the policy due to consideration of a business climate that did not support. Until 2015, the new DER 4: 1 policy was reissued, where if it is benchmarked to other countries this is a provision that is very familiar and generally applied. Highlighting countries that we do benchmarks still use fixed ratio basis DER. When viewed from benchmarks in other countries the provisions of the debt equity ratio are currently the most effective because only the only regulation to counteract thin capitalization is proven by its sustainability and the results may not necessarily be the same as new alternatives that exist later.

According to Mr. Yohanes Bambang (Informant 2), that it was quite effective in counteracting thin capitalization in Indonesia, tax policy on debt equity ratio instruments issued by the government through PMK-169/2015 concerning Determination of the ratio between Debt and Company Capital for the purposes of Income Tax Calculation, the amount of the ratio between debt and capital is set at a maximum of four to one (4: 1) and based on article 7 of this PMK-169/2015 comes into force since 2016 Tax Year. So for companies that still have a debt and capital ratio of more than 4: 1, it will have an impact on the positive correction of the loan interest charged.

According to Ms. Maria S. Rahardjo (Informant 3) that the implementation was still less effective in counteracting thin capitalization, because investors were also still hesitant to invest too much in Indonesia, especially when viewed from DER 4: 1 they definitely prefer to deposit their capital with the minimum and make a loan for the next.

According to Mr. Ganda Dua Christian Tobing (Informant 4), that in its implementation it was still not effective in counteracting thin capitalization, the practice of thin capitalization could be prevented by limiting the imposition of interest fees based on a certain percentage of EBITDA. Let's look more broadly at the horizon of thinking in the world of taxation globally. I refer to the Base Erosion and Profits Shifting (BEPS) Project which was initiated by countries that are members of the OECD and G20. Indonesia as a member of the G20 supports this BEPS Project. One of the Action Plans in the BEPS Project, namely the Action Plan 4 related to limitation of interest deduction, recommends that the practice of imposing excessive interest costs be prevented by rules in the form of restrictions based on a certain percentage of EBITDA. In many countries, such as Germany, the regulation on the imposition of interest charges adopted in its tax regulations is a certain percentage of EBITDA. Many countries have abandoned the use of the provisions of the debt equity ratio in an effort to counteract the practice of thin capitalization. The trend in taxation rules in many countries related to the limitation of charging interest is by applying a certain percentage of EBITDA.

According to Ms. Lisayanti Lie (Informant 5), that the provisions of the most effective Debt Equity Ratio to ward off thin capitalization, tax avoidance in subsidiaries of multinational companies ”, while Mr. Agus Budiwaluyo (Informant 7) stated that the provisions of Debt Equity The ratio has been effective to counteract thin capitalization.
b. Initial Capitalization Is Made Thin

According to the author that in order to invest in Indonesia, investors must follow the terms and conditions made by the Investment Coordinating Board (hereinafter refer to as BKPM) so that the investment submission process can be approved and does not violate existing provisions.

Based on the results of the interview, the researchers found similar opinions between informant 1, Informant 2, informant 3, informant 4, informant 5, and informant 6 regarding the minimum capital of investment for FDI (PMA), that FDI itself was regulated in Article 13 paragraph (3) BKPM Regulation 14/2015 for a total investment value of more than Rp.10,000,000,000.00 (ten billion rupiahs), excluding land and buildings and for the value of capital placed equal to paid up capital, at least Rp.2,500,000,000.00 (two billion five hundred million rupiah).

d. Shareholders Can Guarantee External Loans

According to the authors the ratio of debt and capital ratio 4: 1 does not guarantee that shareholders can guarantee external loans because investors see business prospects, while investors see dividend prospects. The DER 4: 1 policy is intended for companies that often charge loan interest fees with unreasonable limits to be covered while limiting the extreme interest costs, the policy as a government effort to increase the target and realization of tax revenues.

Based on the results of the interview, the researchers found similar opinions between informant 1, Informant 2, informant 3, informant 4, informant 5, and informant 6 and 8, that although shareholders could guarantee external loans, DER 4: 1 did not guarantee investors could obtain loans from overseas.

e. Foreign Direct Investment

According to the author, the tax policy on debt equity ratio instruments is not able to attract foreign investors to invest in Indonesia due to the concession provided by the Minister of Finance regarding the ratio of debt and capital which is a little more loose namely 4: 1, giving investors more loans than deposits capital. And taxation policies on debt equity ratio instruments have an effect on investment but indirectly. This author's opinion was published by Mr. August Andrian (Informant 1), Mr. Yohanes Bambang (Informant 2), Ms. Maria S. Rahardjo (Informant 3) and Mr. Agus Budiwaluyo (informant 7), they explained that "If viewed regionally it might be one factor to attract investors, but this provision is not possible. When viewed from DER 4: 1, which is looser than other countries, he is sure to go to Indonesia."
The same opinion was expressed by Mr. Ganda Christian Tobing (Informant 4) and Ms. Lisayanti Lie (Informant 5) who explained that "Investment decisions are not only influenced by tax factors. There are still many other factors that influence the decision to invest."

2. Analysis of Tax Policy About Debt Equity Ratio Instruments in Relation to Investment Policies in Indonesia

According to the author, the tax policy on debt equity ratio instruments has a direct influence on investment in Indonesia, recalling that the size of the ratio between debt and capital is looser, namely 4:1, making investors prefer loans rather than additional capital deposits where the real treatment of differences between debt and capital.

In applying tax policy on debt equity ratio instruments according to informant 1, informant 2, informant 3, informant 4, informant 5, and informant 6 there is an association with investment policy in Indonesia but indirectly and this DER provision seeks not to close investors to invest in Indonesia.

3. Inhibiting Entities in the Implementation of the Debt Equity Ratio Policy to Prevent Thin Capitalization Practices in Indonesia

The author argues that in the implementation of the debt equity ratio policy to ward off thin capitalization in Indonesia there are internal and external obstacles faced by the Directorate General of Taxes based on interviews, namely internal barriers are questions regarding PMK-169/2015 why set at 4:1 or more loose from the previous regulations and why this regulation after a long time has been re-established, and the socialization has not been carried out optimally so that it needs more education about this regulation.

According to Mr. August Andrian (Informant 1) that the internal constraints were in the form of questions related to PMK-169/2015 why not smaller or so, why should it be 4:1 because later deductible costs are greater etc. Communication constraints as to why this change occurred and why is it only now, it needs socialization as well where the stages of introducing the new regulations need more education. As for external obstacles are education and knowledge of taxpayers to report debt and capital positions, and how they complain.

According to Mr. Ganda Christian Tobing (Informant 4) that the current debt-equity ratio policy is not in accordance with the objectives of the regulation. In practice, it is easy to determine taxpayers who must apply the rules of debt-to-equity ratio so that it tends to be easier for authorities to withdraw tax deposits, while it is unfair for taxpayers if the size used is a debt-to-equity ratio and besides high compliance costs indicated by the obligation to report debt-to-equity ratio and reporting of foreign debt to the tax authority.

According to Ms. Lisayanti Lie (informant 5), that the constraints for companies are small (small) PTs whose micro and small-scale enterprises (MSMEs) rely on bank loans and finance companies for their business activities. Added by Mr. Agus Budiwalyuo (Informant 7) that the obstacles must be seen from most companies in Indonesia “If you want to apply this DER scheme to all businesses there may be many companies that object because most companies in Indonesia are MSMEs. Even though MSMEs must get protection, including, of course, from tax payments that are not burdensome, because if you apply this regulation the interest costs will decrease and of course taxes will increase”.

From the results of the interview above the authors conclude that the obstacle in implementing the debt equity ratio policy to counteract the practice of thin capitalization in Indonesia is the socialization of tax authorities, education, and the implementation of the current debt-equity ratio policy that is not in accordance with the objectives of its regulation.

4. Driving Entities in the Implementation of the Debt Equity Ratio Policy to Prevent Thin Capitalization Practices in Indonesia

According to the author, the implementation of tax policy on instrument debt equity ratio to ward off thin capitalization in Indonesia will run smoothly and in accordance with its objectives if it is supported by honesty from taxpayers, good supervision, extensive socialization, and good cooperation between tax authorities and taxpayers.

According to Mr. August Andrian (Informant 1) that efforts to counteract thin capitalization only with PMK-169/2015. But efforts to improve compliance generally we do education, counseling, then an explanation of these rules.

According to Mr. Yohanes Bambang (Informant 2), that through education (by providing information on this rule), through a Request Letter Explanation of data and Clarification to taxpayers who have a ratio above 4:1, and are encouraged to make corrections to the Annual Income Tax Return if the interest on the loan has not been made a positive correction, and conduct an examination of the taxpayer who has not calculated correctly and does not conduct self-assessment.

According to Ms. Maria S. Rahardjo (Informant 3) that if we see the DER at the beginning of the investment when she has developed whether she is expanding her business or what is her name the source of the gift from the return is planted again, so that he can retain his debt not much, using company profits we call it reinvested profits, so the source of financing is in addition to own capital, loans, and profits are planted but this is not new because there is no profit yet.

According to Mr. Ganda Christian Tobing (Informant 4) that for the tax authorities is the expansion of checks and the increase in tax deposits and the fulfillment of targets. For taxpayers, the tax deposit is increasing due to tax regulations governing financial health measures that are not in accordance with financial health measures that are generally understood in the business world. The tax costs are increasing so that the business world is increasingly bleeding to continue to exist while still complying with tax strangulation.

According to Ms. Lisayanti Lie (informant 5) that because some companies avoid Income Tax by giving loans to companies rather than making additional capital. By lending to the company, the costs associated with the loan can be financed (reducing income).

According to Mr. Agus Budiwaluyo (Informant 6) that the business burden is closer to reasonableness because it means that the capital structure and debt are more rational, encouraging companies to be healthier if the capital structure and loans follow this rule. Comparison of capital debt 4:1 means that each loan is guaranteed one-fourth equity (0.25), and the Company is more careful in deciding to borrow.

In the interview results above the authors conclude that the drivers of the implementation of the debt equity ratio policy to counteract the practice of thin capitalization in Indonesia are through PMK-169/2015, education, socialization, Request Letter Explanation of data and Clarification to taxpayers who have a ratio above 4:1, and the initial investment process.
5. **Effectiveness Analysis of the Implementation of Tax Policies About Instrument Debt Equity Ratio in Increasing Tax Revenues in Indonesia**

Referring to the effectiveness level parameters according to Munir, et al (2004: 151), the evaluation of tax regulations concerning the Debt Equity Ratio instrument to counteract the Thin Capitalization in relation to investment policies and tax revenues in Indonesia can be categorized as the following levels of effectiveness:

- **a.** The level of achievement above 100% means very effective
- **b.** Achievement rates between 90% -100% means effective
- **c.** The level of achievement between 80% -90% means quite effective
- **d.** Achievement rates between 60% -80% means less effective
- **e.** Achievement rates below 60% means ineffective

Based on the author's analysis of the data obtained, for the effectiveness of implementing tax policies on instruments of debt equity ratio in increasing tax revenues in Indonesia from 2014 to 2017 the results are less effective. A policy is said to be effective if the activity process reaches its goals and objectives. The greater the output produced towards achieving the objectives and targets specified, the more effective the work process of an organizational unit.

**Effectiveness of DER**

The term Thin capitalization is defined as covert capital through loans that exceed the limits of reasonableness. Loans in the context of thin capitalization are loans in the form of money or capital from shareholders or other parties that have a special relationship with the borrowing party. To counter this, the general policy carried out by the government is to set restrictions on the debt to equity ratio (DER). Previously in 1984 the DER 3: 1 policy had been regulated, but in 1985 a letter was issued for the suspension of the policy due to consideration of a business climate that was not supportive. It is suspected that many foreign investors in Indonesia, who finance the operations of their companies, prefer prioritizing loans rather than equity/own capital due to the disparity in tax treatment that is more profitable interest (loan capital rewards) as a deduction from taxable debtors rather than dividends equity income), so that the thin capitalization action can reduce tax revenue. With such a background, the 2015 DER 4: 1 policy was re-issued, where if benchmarked to other countries this is a provision that is very familiar and generally applied. The majority of countries that we can do benchmarks still use fixed ratio based on DER. The Minister of Finance of the Republic of Indonesia issued PMK-169/2015 concerning the determination of the ratio between Debt and Company Capital for purposes of Income Tax Calculation, which came into force since the 2016 Tax Year. In the regulation it was stated that the calculation of income tax was determined by the ratio of debt and capital for established taxpayers or domiciled in Indonesia whose capital is divided into shares. Debt magnitude is obtained from the average debt balance in one tax year or part of the tax year, which is calculated based on:

1. average debt balance at the end of each month in the tax year concerned; or
2. average debt balance at the end of each month in the relevant tax year.

If viewed from benchmarks in other countries, the provisions of the debt equity ratio for the current implementation of tax policy on the Debt Equity Ratio instrument, none of the speakers from the research authors denied that the DER was sufficient effective in counteracting thin capitalization in Indonesia, tax policy on debt equity ratio instruments issued by the government through PMK-169/2015 concerning Determination of the ratio between Debt and Company Capital for purposes of Income Tax Calculation, the amount
the ratio between debt and capital is set to a maximum of four to one (4: 1) and based on article 7 of this PMK comes into force from the 2016 Tax Year. Consequently, for companies that still have a debt and capital ratio of more than 4: 1, the impact on a positive fiscal correction of the loan interest charged.

The regulation regarding the limit of debt interest allowed to be deducted from tax is usually applied to finance the parent company to its subsidiaries in other countries. This has been done by several developed countries as explained by Team Edgar, Jonathan Farrar, and Amin Mawani in their journals entitled Foreign Direct Investment, Thin Capitalization, and the Interest Expense Deduction: A Policy Analysis, namely 5 (five) countries including Australia, Denmark, Germany, Italy and New Zealand have enacted comprehensive restrictions on interest expenses that can be deducted in the context of foreign direct investment (DDTC, 2018).

6. Aspects of Justice

The Minister of Finance Regulation No.169/PMK.010/2015 implies that from the side of tax authorities it is good in the sense of applying the principle of consistency in charging interest fees. If the capital is smaller than the loan at a certain level it means the company is not healthy. In my opinion, taxation in charging fees requires the principle of fairness, which means that the burdens that are charged must be in line with the principles of normal business. If there is a fee charged, this fee must be fair. If the company's loan interest is not in proportion to the loan business, then this interest should not be charged because the company is not healthy (so that financial and capital restructuring must be done). Then the interest charged is also not healthy, so it cannot be charged. Approximately like this PMK-169/2015 message in general to do. But from the side of the taxpayer, of course there is a bad thing because usually the company is in liquidity difficulties. Companies that are experiencing liquidity difficulties such as this may not even charge interest fees "only" because they do not meet the debt comparison requirement for their capital. From the aspect of tax justice, such treatment seems unfair.

7. Have tax policies been synergized about DER instruments with investment policies in Indonesia?

In general, we can say that the tax policy regarding DER instruments has not been synergistic with investment policies in Indonesia for the following reasons. First, if the regulations issued by the legislation must have already been harmonized, the consideration is what the impact will be. If it is contrary to investment policy, certainly not. A simple example is taken, namely infrastructure as one that is excluded by the DER provisions. We are arranging investments in the infrastructure sector because we are building a lot and need more funds, so if stipulated DER provisions are likely to be influential, so the steps are excluded from DER. When viewed from PMK-169/2015, there are special industries that are excluded, such as banks, because the business and risk ratio is high and that is not to avoid taxes, but the business is indeed. And those that are excluded from PMK-169/2015 are not at all regulated for DER or in the sense that they are released, the test does not necessarily count the number, it is not so, it requires deep and special testing. In other parts of the country, usually in the treatment of two, namely financial industries and industry in general, he will have two differentiated DERs. In Indonesia, it is preferred for general industries only and others are excluded. Second, because indeed this policy does not distinguish between companies that use this PMK-169/2015 and those that do not. All are considered equal and treated equally. Third,
because it is not efficient for investors considering the scope of the definition of debt and the ratio used is not in accordance with the size of the company's financial health.

5 Conclusions And Suggestions

5.1 Conclusion

Based on the analysis and evaluation carried out at the Foreign Investment Services Office One Tax Office and the Investment Coordinating Board (BKPM) for 2014 to 2017, the researchers provide conclusions and suggestions as follows:

1. In implementing the tax policy on instrument debt equity ratio, it is quite effective in countering the practice of thin capitalization in Indonesia, because the tax policy regarding the debt equity ratio instrument issued by the government through PMK-169/2015 concerning Determination of the ratio between Debt and Company Capital for purposes of Income Tax Calculation, the magnitude of the ratio between debt and capital is set at a maximum of four to one (4: 1) and based on article 7 of this PMK-169/2015 comes into force since the 2016 Tax Year. So for companies that still have a debt and capital ratio of more than 4: 1, which will have an impact on the positive correction of the loan interest charged.

2. Regarding the tax policy regarding the debt equity ratio instrument, it has an indirect influence on investment policies in Indonesia, because the Directorate General of Taxes stipulates that the debt equity ratio has been considered in a macro manner that will not disrupt the business climate and the Directorate General of Taxes strives to ensure that the DER provisions not too close to investors to invest in Indonesia. This provision is made in such a way as not to limit investors but also can eliminate those who use Indonesia as tax avoidance where continuous losses but still impose costs and that is what they want to eliminate.

3. In the implementation of the debt equity ratio policy to counteract the practice of thin capitalization in Indonesia there are inhibiting entities, namely the debt equity ratio concession where the previous provisions from 3: 1 to 4: 1, education, socialization and the stages of introduction of PMK-169/2015 concerning Determination of the Amount of Comparison between Corporate Debt and Capital for Income Tax Calculation Requirements and PER-25/PJ/2018 Regarding the Determination of the Amount of Comparison Between Corporate Debt and Capital for Needs of Income Tax Calculation and Procedures for Foreign Private Debt Reporting.

4. Regarding the entity that drives the implementation of the debt equity ratio policy to counteract the practice of thin capitalization in Indonesia through PMK-169/2015, Education, Socialization, and Request Letter Explanation of data and Clarification to taxpayers having ratios above 4: 1.

5.2 Suggestions

With conclusions made by the researchers above, the authors provide suggestions as follows:

1. It is recommended that the Directorate General of Taxes and the Foreign Investment Tax Office One provide more education and outreach to all companies in Indonesia to help them understand PMK-169/2015 and PER-25/PJ/2018 because this regulation has long been suspended and has just been re-established so that the taxpayer considers it as a new
regulation and the tax authorities are obliged to carry out an audit to reduce indications of reduced state revenues and tax revenues can meet the target.

2. DGT and Tax Office should more often monitor whether the ratio of debt and capital allowances will affect future investments or not, even though it is not only because these provisions affect investment but the provisions of the debt equity ratio have an indirect impact on investment. Good cooperation between DGT and BKPM to monitor and see investment developments is also needed, so that tax policies that should have a major impact on investment in Indonesia can be minimized by these impacts with adjusted studies and regulations. If benchmarked to other countries the ratio of the ratio of capital debt set by the Minister of Finance through PMK-169/2015 is slightly looser and if possible proposed new regulations from OECD countries and world banks to try and consider using alternatives new, namely EBITDA so that it can be adapted to the circumstances of Indonesia besides not hindering investment, nor does it erode more state revenues.

3. There is a need for supervision and inspection of Tax Offices to corporate taxpayers who report their private debt position so that it is easier for Tax Offices to indicate the existence of engineering reporting from taxpayers who will erode tax revenues.

References

Books:

Journals and Other Sources


The Implementation of The Cybercrime Prevention Policy at The Metro Jaya Police Station in Central Jakarta

1st Dian Damayanti1, 2nd Mary Ismowati2
{dianadamayanti17@gmail.com1, mary.ismowati@stiami.ac.id2}

Magister of Administrative Science Study, Institut Ilmu Sosial dan Manajemen STIAMI1,2

Abstract. The research aims to determine the implementation of policies regarding cybercrime applications at the Metro Jaya Police, Central Jakarta in accordance with the Electronic Transactions of Electronic Information and / or Electronic Documents regulations. The basic theory used in this research is Edward III (1980), which states that policy implementation is influenced by communication, resources, disposition, and bureaucratic structures. This study used a qualitative descriptive method by interviewing several informants. The results showed that the Central Jakarta Metro Jaya Police had implemented a cybercrime prevention policy through communication, resources, disposition, and bureaucratic structures to overcome cybercrime. Barriers to policy implementation are limited personnel such as IT and cyber forensics experts, budget and facilities and infrastructure to support the disclosure of cybercrime cases. Training is needed for cyber police in using technology, both by the police and universities. This step is necessary to recruit information technology experts. The urgency of the need for experts must also be balanced with the presence of sophisticated facilities and infrastructure to support network security and also to facilitate tracking criminals so that cybercrime cases can be resolved quickly.

Keywords: Policy Implementation, Cyber Crime, Prevention, Impact, and Law on Information and Electronic transaction.

1 Introduction

Indonesia Ranks 70 for Cyber Crime Cyber defense in Indonesia is influenced by two main factors, namely infrastructure and reliable technology and awareness that cyber-world security is an important issue. This was conveyed in the Board of Conferences #12 of the National Conference 2017 at JIEXPO Commercial Center, Monday (10/23/2017). Speaker Faizal Djoemadi representative of Telekomunikasi Indonesia Internasional said that Indonesia still needs to upgrade its infrastructure and technology.

"But the physical and logic [software] layers can be purchased. The most urgent one indeed is cultural factor or awareness that security in cyber world is essential," said Faizal, in Jakarta, Tuesday (10/24). Until now, according to Faizal, Indonesia still places in position 70 of 193 countries in terms of cybercrime strategy. This certainly still becomes homework in an effort to implement the cyber defense of Indonesia.

Awareness and literacy for cyber activity on cyber networks is needed by internet users. The Special Capital Region of Jakarta (DKI Jakarta) is the capital city and the largest city in
Indonesia. Jakarta is the only city in Indonesia that has provincial level status. Jakarta is located on the northwest coast of Java. Formerly known by several names including Sunda Kelapa, Jayakarta, and Batavia. In the international world, Jakarta also has the nickname J-Town, or more popularly The Big Durian because it is considered a comparable city of New York City (Big Apple) in Indonesia.

The Jakarta metropolitan area (Jabodetabek), which has a population of around 28 million, is the largest metropolitan in Southeast Asia or second in the world. As a center of business, politics and culture, Jakarta is home to the headquarters of state-owned companies, private companies, and foreign companies.

The Metro Jaya Police station in Jakarta Central will apply the law on cybercrime. A legal entity should work with IT experts to tackle such crimes. To reveal who will be responsible for the crime, an IT expert should be able to perform network forensics to find out the origin and source of the offense. This strategy is expected to reduce or eradicate crimes committed in the world of technology.

Implication of cybercrime policy at the Metro Jaya Police Station in Central Jakarta has a strong legal basis, namely Law Number 19 of 2016 article 1, regarding electronic transactions of Electronic Information and / or Electronic Documents and / or printed results that are legal legal evidence Electronic Information is one or a collection of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail), telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them.

Research Question: How is the implementation of the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta? What obstacles have been faced in implementing the policy of implementing cybercrime prevention at the Metro Jaya Police Station in Central Jakarta? What are the efforts made in implementing the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta?

2 Implementation Policy

Attitude that will bring on themselves offender disposition policies. High disposition by Edward III (1980) and Van Horn and Van Meter (1975) effect on the rate of successful implementation of the policy. Disposition for Edward III (1980:53) is defined as the tendency, desire or agreement of the executive to implement the policy. If you want to be successful policy implementation effectively and efficiently, the executor is not just knowing what to do and have the willingness to carry out that policy, but they also have to have the will to implement the policy. The role of the actors in policy implementation is proposed by Edwards III (1980: 12) who states that "Public policies are made and implemented on the national, state, and local levels. Often implemented by lower level by units of government. " This suggests that public policy is made and implemented at the national level, state, and local government. Edward III (1980: 12) holds that policy implementation is influenced by four variables, namely:

1. Communication, namely the success of policy implementation requires that the implementor know what must be done, where the policy goals and objectives must be transmitted to the target group, thereby reducing the distortion of implementation.
2. Resources, even though the contents of the policy have been communicated clearly and consistently, but if the implementor lacks the resources to implement, the implementation will not be effective. These resources can be tangible human resources, for example the competence of the implementor and financial resources.

3. Disposition, is the character and characteristics possessed by the implementor, such as commitment, honesty, democratic nature. If the implementor has a good disposition, then the implementor can run the policy well as what is desired by policy makers. When the implementor has a different attitude or perspective than the policy maker, the policy implementation process also becomes ineffective.

4. Bureaucratic Structure, Organizational structure tasked with implementing policies has a significant influence on policy implementation. The aspect of organizational structure is Standard Operating Procedure (SOP) and fragmentation. Organizational structures that are too long will tend to weaken supervision and lead to red-tape, which is a complex and complex bureaucratic procedure, which makes organizational activities inflexible.

However, policy implementation has several inhibiting factors. The organizational structure of implementation may cause problems if the division of powers and responsibilities is less tailored to the division of tasks or marked by the limitation of the less obvious limitations (DeLeon P and L DeLeon 2002)

As for the obstacles in the implementation of the policy, a solution to overcome needs to meet soon. A policy will be effective if during the making and the implementation is supported by adequate facilities.

Cyber Crime

According to (Peter Stephenson, 2000) Cybercrime is “The easy definition of cybercrime is crimes directed at a computer or a computer system. The nature of cybercrime, however, is far more complex. As we will see later, cybercrime can take the form of simple snooping into a computer system for which we have no authorization. It can be the feeding of a computer virus into the wild. It may be malicious vandalism by a disgruntled employee. Or it may be theft of data, money, or sensitive information using a computer system. In two The UN Congress document cited by (Barda Nawawi Arief, 2007) concerning the Prevention of Crime and Treatment of Offenders in Havana Cuba in 1990 and in Vienna Austria in 2000, explained the existence of two terms related to the definition of Cybercrime, namely cybercrimes and computer related crime.

Cybercrime is a term that refers to criminal activity with a computer or computer network into a tool, target or scene of the crime. Included therein to include an online auction fraud, check forgery, credit card fraud (carding), confidence fraud, identity fraud, child pornography, etc. In the Internet, security issues are indispensable.

For without security, data on existing systems on the Internet can be stolen by irresponsible people. Often an Internet-based network system has flaws or often called a security hole. If the hole is not closed, a thief can enter from the hole. Theft of data and systems from the Internet, including in the case of computer crime. Cybercrime is a crime that is often done on the Internet.

Cyber Crime Types

Based on the type of activities done, cybercrime can be classified into several types as follows:

1. Unauthorized Access
2. Illegal Contents
3. Intentional spread of virus
4. Data Forgery
5. Cyber Espionage, Sabotage, and Extortion
6. Cyberstalking
7. Carding
8. Hacking and Cracking
9. Cybersquatting and typosquatting
11. Cyber Terrorism

Crime Prevention

"Prevention is the first imperative of justice " (United Nations document S/2004/616, para. 4)"Crime Prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes." Guidelines for the Prevention of Crime ECOSOC Resolution 2002/13, Annex.

Crime prevention is a multi-sectoral, multi-disciplinary, and integrated endeavour.

The introduction to the Guidelines for the Prevention of Crime indicates that: "There is clear evidence that well-planned crime prevention strategies not only prevent crime and victimization, but also promote community safety and contribute to sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens. It has long-term benefits in terms of reducing the costs associated with the formal criminal justice system, as well as other social costs that result from crime." (Economic and Social Council resolution 2002/13, annex), (above).

Recognizing the multiple causes of crime and as the custodian of the United Nations standards and norms in crime prevention and criminal justice, UNODC promotes strategies, plans, and programmes, which are multi-sectoral, multi-disciplinary, and which favour civil society participation. Such strategies and action plans are underpinned by the basic principles for the prevention of crime (Guidelines for the Prevention of Crime, ECOSOC Resolution 2002/13, Annex) (above):

1. Government leadership at all levels is required to create and maintain an institutional framework for effective crime prevention.
2. Socio-economic development and inclusion refer to the need to integrate crime prevention into relevant social and economic policies, and to focus on the social integration of at-risk communities, children, families, and youth.
3. Cooperation and partnerships between government ministries and authorities, civil society organizations, the business sector, and private citizens are required given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them.
4. Sustainability and accountability can only be achieved if adequate resources to establish and sustain programmes and evaluation are made available, and clear accountability for funding, implementation, evaluation and achievement of planned results is established.
5. **Knowledge base** strategies, policies and programmes need to be based on a broad multidisciplinary foundation of knowledge, together with evidence regarding specific crime problems, their causes, and proven practices.

6. **Human rights/rule of law/culture of lawfulness** the rule of law and those human rights which are recognized in international instruments to which Member States are parties must be respected in all aspects of crime prevention, and a culture of lawfulness actively promoted.

7. **Interdependency** refers to the need for national crime prevention diagnoses and strategies to take into account, where appropriate, the links between local criminal problems and international organized crime.

8. The principle of **differentiation** calls for crime prevention strategies to pay due regard to the different needs of men and women and consider the special needs of vulnerable members of society (https://www.unodc.org/unodc/en/justice-and-prison-reform/CrimePrevention.html)

The model implementation of the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta
3 Methodology

This research used a Qualitative approach for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The process of research involves emerging questions and procedures. Data typically collected in the participant's setting. data analysis inductively building from particulars to general themes. and the researcher making interpretations of the meaning of the data. The final written report has a flexible structure.

The first data coding system that was piloted involved "open coding": an emergent coding technique drawn from grounded theory methodology (Glaser& Strauss, 1967; Strauss& Corbin, 1998).

Informants consist of: Head of Section of the Special Criminal Regiment Unit of the Metro Jaya Central Jakarta Regional Office, People who work as entrepreneurs. who lives in the Central Jakarta area, Head of the special criminal unit of the Metro Jaya Regional Police of DKI Jakarta Office, Head of Civil Service Section of Metro Jaya Regional Office, Central Jakarta,Position of the chief the finance department of the Metro Jaya Regional Office in Central Jakarta, Head of the licensing section of the Metro Jaya Regional Office in Central Jakarta and Head of the Community Guidance Section of the Central Jakarta Metro Jaya Regional Office.

4 Discussion

1. The implementation of the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta.

The implementation of the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta the success of policy implementation requires that the implementor know what must be done, where the policy goals and objectives must be transmitted to the target group, thereby reducing the distortion of implementation. The application of the prevention of cyber transactions at the Jakarta Police Station has a strong legal basis, namely Law Number 19 of 2016 concerning electronic transactions 1, regarding electronic information and / or electronic documents that are legal legal evidence , and article 26. cross and use the concept of Edward III (1980) (in Subarsono, 2011: 90-92). The following is the explanation of the analysis of the implementation of the Jakarta police station's cybercrime in the central prevention policy based on the conceptual framework of adoption researchers using the theory of Edward III (1980), holds that policy implementation is influenced by four variables, namely: Communication, resources, disposition, and bureaucratic structure. Based on the answers of the informants in table 4.1 above, it is known that the answers to the implementation of cybercrime prevention policies at the Central Jakarta Police Station can be explained as follows:

The results of the open coding state of the implementation of cybercrime prevention policies in the central Jakarta polres, namely: Cyberspace cyber partoli, cooperation, prevention, collaborate with the Office of the Cyber Cyber Crime Investigations Satellite Office involving children in cyberspace. (Inf 1, Inf 2, Inf 3, Inf 4, Inf 5, Inf 6, Inf 7).

Based on this, axial coding regarding the state of implementation of prevention policies for cybercrime in central Jakarta polres, namely: online partoli, government cooperation and communication service providers companies. Victims of cybercrime: Children. Formation of

From open coding and axial coding, conclusions can be made on selective coding that the implementation of cybercrime prevention policies in central Jakarta polres, namely: online partoli, government cooperation and communication service providers companies. Victims of cybercrime: Children. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation. in accordance with law no 19 of 2016 concerning electronic transactions 1, regarding electronic information and / or electronic documents that are legal legal evidence, and article 26. cross and use the concept of Edward III (1980) (in Subarsono, 2011: 90-92).

a. Communication.

The implementation of the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta the success of policy implementation requires that the implementor know what must be done, where the policy goals and objectives must be transmitted to the target group, thereby reducing the distortion of implementation.

Based on the answers of the informants, it is known that the answers to communication in the implementation of cybercrime prevention policies can be explained as follows. The Cybercrime prevention policy? explain the obstacles and innovations used in countering cybercrime! The results of the open coding state of communication implementing the prevention of cybercrime policies are from (INF 1, INF 2, INF 3, INF 4, INF 5, INF 6, INF 7) posted on the bulletin board.

From open coding and axial coding, conclusions can be made on selective coding that communication in the implementation of cybercrime prevention policies namely Communication, Socialized about Maya World Crime prevention policies, barriers and innovations: Brochures posted on the bulletin board. Barriers to resources are: limited budget funds. Inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws. Innovations on resources are: Adequate facilities and infrastructure. Human resource efforts, namely: Personnel training, cooperation, empowering IT experts and universities. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation.

Based on the answers of the informants above it is known that the answers to communication Mention the results of the evaluation of the Cybercrime prevention policy in the Metro Jaya Police Chief, Central Jakarta! The results of the open coding state of communication implementing the prevention of cybercrime policies are from (INF 1, INF 2, INF 3, INF 4, INF 5, INF 6, INF 7) Cybercrime prevention policy evaluation of Cybercrime prevention policies: lack of socialization of lack of knowledge of cybercrime prevention, lack of supervision.

Based on this, axial coding regarding communication in the implementation of cybercrime prevention policies namely Evaluation results, prevention of cybercrime: Cybercrime prevention policy evaluation of Cybercrime prevention policies: lack of socialization of lack of knowledge of cybercrime prevention, lack of supervision. from the open coding and axial coding above can be made a conclusion selective coding that communication in the implementation of cybercrime prevention policies in central Jakarta polres, namely Cybercrime prevention policy evaluation of Cybercrime prevention policies: lack of socialization of lack of knowledge of cybercrime prevention, lack of supervision.

b. Resources.
Barriers to resources are: limited budget funds, inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws. Innovations on resources are: adequate facilities and infrastructure. Human resource efforts, namely: personnel training, cooperation, empowering IT experts and universities. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation. Based on this, axial coding regarding communication of cybercrime prevention communication policies, socialized about Maya World Crime prevention policies, barriers and innovations: Brochures posted on the bulletin board. Barriers to resources are: limited budget funds, inadequate facilities and infrastructure.


Based on the answers of the informants, it is known that the answers regarding resources in the implementation of the Resource World cybercrime prevention policy. Is there an increase in quality and quantity and continuous improvement of employee performance and socialization of excellent service culture? explain what obstacles are in resources? The results of the open coding state of the resource implementation of cybercrime prevention policies according to (INF 1, INF 2, INF 3, INF 4, INF 5, INF 6, INF 7) are Human Resources improve quality and quantity by: training and scholarship.

Based on this, the above axial coding is about the resource for implementing cybercrime prevention policies, namely Resource: quality, quantity, performance, obstacles and socialization of excellent service culture. Human resources improve quality and quantity by: training and scholarship. Socialization of excellent service culture, namely: Information desk staff & complaints must provide excellent service. Reliable communication skills are also important in understanding what the public wants, focusing on the community, providing efficient services, a personal approach, and good relations with the community. Show sympathy, talk with feelings, and give solutions to show that you understand the desires of the community. Ask for feedback from the community in the form of a service satisfaction survey to improve if there are deficiencies in services.

Barriers to resources are: limited budget funds, inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws. Efforts on resources are: adequate facilities and infrastructure. Human resource efforts, namely: personnel training, cooperation, empowering IT experts and universities. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation. From open coding and axial coding, a conclusion can be made on selective coding that is a resource in the implementation of cybercrime prevention policies, namely quality, quantity, performance, obstacles and socialization of excellent service culture. Human resources improve quality and quantity by: training and scholarship.

Socialization of excellent service culture, namely: Information desk staff & complaints must provide excellent service. Reliable communication skills are also important in understanding what the public wants, focusing on the community, providing efficient services, a personal approach, and good relations with the community. Show sympathy, talk with feelings, and give solutions to show that you understand the desires of the community. Ask for
feedback from the community in the form of a service satisfaction survey to improve if there are deficiencies in services. Barriers to resources are: limited budget funds. Inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws. Efforts on resources are: adequate facilities and infrastructure.

Human resource efforts, namely: personnel training, cooperation, empowering IT experts and universities. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation. Based on the answers of the informants in table 4.5 above, it is known that the answers regarding resources in the implementation of the Resource World cybercrime prevention policy. Are the facilities and infrastructures in the Central Jakarta Metro region in overcoming cybercrime sufficient?

The results of the open coding state of the resource implementation of cybercrime prevention policies according to (INF 1, INF 2, INF 3, INF 4, INF 5, INF 6, INF 7) new buildings, equipment, and updated. Based on this, the above axial coding is about the resource for implementing cybercrime prevention policies, namely Facilities and infrastructures cybercrime: new buildings, equipment, and updated.

From open coding and axial coding, a conclusion can be made on selective coding that is a resource in the implementation of cybercrime prevention policies, namely Facilities and infrastructures cybercrime: new buildings, equipment, and updated.

c. Disposition

Based on the answers of the informants, it is known that the answers regarding Attitude / disposition in the implementation of cybercrime prevention policies.

The results of open coding attitude / disposition in implementing cybercrime prevention policies namely awards: promotion of promotions, and salary increases. punishment: reprimand, sacking of dismissal. From (INF 1, INF 2, INF 3, INF 4, INF 5, INF 6, INF 7). Based on this, the axial coding regarding Attitude / disposition in implementing cybercrime prevention policies namely awards: promotion of promotions, and salary increases. punishment: reprimand, sacking of dismissal. From the open coding and axial coding, we can make a conclusion of selective coding that attitudes / dispositions in implementing cybercrime prevention policies namely awards: promotion of promotions, and salary increases. punishment: reprimand, sacking of dismissal.

Based on the answers of the informants, the obstacles in disposition. Can be explained as follows: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws. Efforts on resources are: adequate facilities and infrastructure.

d. Bureaucratic structure.

Based on the answers of the informants, it is known that the answers to the structure of bureaucracy in the implementation of cybercrime prevention policies in the Central Jakarta Regional Office, Central Jakarta have an ideal for cybercrime services, conduct reviews and have units that manage cybercrime services, and evaluate the implementation of cybercrime? can be explained as follows.

The results of open coding regarding bureaucratic structure in the implementation of cybercrime prevention policies are standard operational procedures for cybercrime. policy evaluation: lack of socialization of cybercrime, not knowing about cybercrime, easy access to information without being processed by news hoaxes. Based on this, axial coding regarding the structure of bureaucracy in implementing policies to prevent cybercrime, namely Bureaucratic structures, Standard operational procedures, cybercrime services, units, manage, evaluation. standard operational procedure for cybercrime. policy evaluation: lack of
socialization of cybercrime, not knowing about cybercrime, easy access to information without being processed by news hoaxes. From the open coding and axial coding above, we can draw conclusions about selective coding that is Bureaucratic structure, Standard operational procedures, cybercrime services, units, manage, evaluation. standard operational procedure for cyber crime. policy evaluation: lack of socialization of cybercrime, not knowing about cybercrime, easy access to information without being processed by news hoaxes.

2. Obstacles have been faced in implementing the policy of implementing cybercrime prevention at the Metro Jaya Police Station in Central Jakarta

Obstacles have been faced in implementing the policy of implementing cybercrime prevention at the Metro Jaya Police Station in Central Jakarta. The number of "players" (actors) involved: the more parties involved and also influence the implementation, the more complicated the communication the more likely there are obstacles in the implementation process.

There is double commitment or loyalty: In many cases, the parties involved or someone who should have a role in success in determining or approving a project in the implementation are still experiencing delays due to commitment to the project, time taken by other tasks or another program. The inherent complexity of the project itself: In this case in the form of technical factors, economic factors, procurement of materials and implementing behavioral factors and the community.

Too many levels of decision making: More levels and places of decision making that are needed before the project plan is implemented. Likewise, at the operation stage, the distribution of funds and donations needed is time consuming because it requires the approval of many parties.

Time factor and leadership change: The longer the time required from when planning with implementation, the more likely the implementation faces obstacles especially if there is a policy change. according to the results of the interview with the resource person.

The results of the open coding state of obstacles have been faced in implementing the policy of implementing cybercrime prevention at the Metro Jaya Police Station in Central Jakarta namely: Barriers to resources are: limited budget funds. inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology law. (Inf 1, Inf 2, Inf 3, Inf 4, Inf 5, Inf 6, Inf 7).

Based on this, the axial encoding of barriers to implementation of cybercrime prevention policies at the Central Jakarta Police Station, namely: Barriers to resources are: limited budget funds. inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws.

From open coding and axial coding, conclusions can be drawn about selective coding that the implementation of cybercrime prevention policies in the Central Jakarta police station, namely: Barriers to resources are: limited budget funds. inadequate facilities and infrastructure. Human resources, namely: limited personnel, lack of IT experts and cyber forensics. Procedural barriers: Information technology laws. In accordance with law no 19 of 2016 concerning electronic transactions 1, regarding electronic information and / or electronic documents that are legal legal evidence.

3. The efforts made in implementing the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta.

Driving Factors (Facilitating Conditions: Commitment of political leaders: in practice it is primarily a commitment from government leadership because government leadership is
essentially covered by political leaders in power in the region. Organizational ability: in the implementation phase of the program the essence can be interpreted as the ability to carry out tasks, as determined or charged to an organizational unit.

Based on the answers of the informants, it is known about the answers to assistance in relation to requests for cybercrime at the Jakarta Police Station. The results of open coding have been faced in an effort to implement the policy of implementing cybercrime prevention at the Metro Jaya Police Office in Central Jakarta, namely: Efforts on resources are: adequate facilities and infrastructure.

Human resource efforts, namely: personnel training, cooperation, empowering IT experts and universities.


Based on this, the axial encoding of has been faced in an effort to implement a policy of implementing cybercrime prevention at the Metro Jaya Police Station in Central Jakarta, namely: Effort, prevention, cybercrime: Efforts on resources are: adequate facilities and infrastructure. Human resource efforts, namely: personnel training, cooperation, empowering IT experts and universities. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation.

From open coding and axial coding, conclusions can be drawn about selective coding that have been faced with efforts to implement the policy of implementing cybercrime prevention at the Metro Jaya Police Station in Central Jakarta, namely: Effort, prevention, cybercrime: Efforts on resources are: adequate facilities and infrastructure. Human resource efforts, namely: personnel training, cooperation, empowering IT experts and universities. Formation of the unit: Police Office for Crime Metro Investigation of Cyber Crime Establishment of bodies: Satellite Office for Cyber Crime Investigation.

5 Conclusion

Based on the results of the research on the implementation of the policies to combat cybercrime in the Metro Jaya Regional Office Central Jakarta in accordance with law no 19 of 2016 concerning electronic transactions.

1. That policy implementation is influenced by four variables, namely: Communication, resources, disposition, and bureaucratic structure. And the results of the research and discussion on the analysis of the implementation of the policies to overcome cybercrime in the Central Jakarta Regional Office of Jakarta.

2. The obstacle Limited constraints of personnel such as IT and cyber forensic experts, another crucial obstacle is the limited operational budget funds, a crucial problem besides legal instruments, namely insufficient human resources, budget and facilities and infrastructure to support disclosure of cybercrime cases. From the information obtained by the authors of the police department, they are still not too literate about technology, even many members of the cyber police Indonesia are still using computers. It could be said that Indonesian polyclinic ability in cyberspace is still in the standard stage or beginner.

3. There are trainings either by the police or the state or private universities and colleges in the information technology faculty. This step needs to be done to recruit information
technology experts, especially students and students who have expertise in the field of IT (Information technology). The urgency of the needs of experts must also be balanced with the presence of advanced facilities and infrastructure and equipment facilities to support network security and also to facilitate tracking of perpetrators of crimes so that cases of cybercrime can be quickly resolved. The existence of cyber patrols to reduce the number of crimes involving children in cyberspace, we will collaborate with related parties such as the telkom and the Minister of Communication and Information. Cyber patrols are carried out to prevent cybercrime involving minors and the operation of the cybercrime investigation headquarters, the Metro Crime Police Office Cyber Crime Investigations Satellite Office.

Suggestion

In the implementation of the implementation of the cybercrime prevention policy in the Metro Jaya Regional Office Central Jakarta, namely:

1. The improvement of the cybercrime service delivery system must have experts who must be provided in the Jakarta Metro Jaya Regional Office and good coordination with the Ministry of Communication and Information.

2. Improvements from the private sector are in the form of providing service providers such as Telkomsel, and others. To improve the service system again and impact Implementation of the cybercrime prevention policy at the Metro Jaya Police Station in Central Jakarta: Increase parental awareness and attention to child supervision. The National Police of the Republic of Indonesia has also launched a child protection program on the internet (save children on the internet). State Code and Cyber Codes (BSSN). Sociocultural approaches and community socialization through seminars, training and competitions.

3. Whereas the efforts made in the implementation of the policies to combat cybercrime in the Central Jakarta Regional Office of Jakarta, namely improvements in all aspects, namely when coordinating the division of tasks in implementing cybercrime prevention policies, there must be improvements in human resources, facilities and infrastructure.

References


[13]. Peter Stephenson, Investigating ComputerRelated Crime: A Hanbook For Corporate
[16]. Republic of Indonesia. Law Number 19 of 2016 concerning Information and electronic transactions.
A Comparative Analysis of Open Government Data in Practices and Facing Problems

1st Amirudin Syarif1, 2nd Mohamad Aizi bin Salamat2, 3rd Rusmin Syafari3
{amirudinsyarif@binadarma.ac.id1, aizi@uthm.edu.my2, syafari.mov@gmail.com3} 

Department of Management and Information System, Universitas Bina Darma, Jl. Ahmad Yani 3, Palembang, 30000, Indonesia1,3, Faculty of Computer Science and Information Technology, Universiti Tun Hussein Onn Malaysia, 86400 Parit Raja, Batu Pahat, Johor, Malaysia2

Abstract. Open Government Data (OGD) is the publication of data by government and public institutions on the Internet. Interestingly, after more than a decade of implementing OGD there are different practices from countries in the world, even though they have the same aims. This difference is due to differences in the culture of openness, the level of openness, and the level of state confidence in opening data. This research is a qualitative research with a constructivist approach through descriptive analysis with comparisons of several countries. Based on the results of the analysis and discussion, it can be concluded that the implementation of OGD is carried out in many countries as part of efforts to fulfill data openness in the information age. Data structuring is made with a scheme that allows the government to choose which data can be published and which cannot. The roadmap for OGD activities is gradually becoming more comprehensive. Clarity of objectives is needed to create a roadmap that is effective in implementing OGD. The security of personal data is an important thing that must be guaranteed by the government. The strategy to build OGD must be carried out in one entity that is authorized to manage data.

Keywords: Open Government Data, Comparative Analysis, Qualitative Research, Descriptive Analysis, Road Map.

1 Introduction

The practice of government data openness (open government data hereinafter referred to as OGD) has become a kind of obligation for governments in the world. The governments must provide data free of intellectual property rights. It must be available and free to be used and republished by everyone, without restrictions on copyright, patents, or other control mechanisms. According to [1] OGD initiatives that occur throughout the world aims to provide data to the public for free without restrictions to use data. Several journal articles record OGD users to be in business activities for example, such as Croatia [2], Japan [3], Mauritius [4], Jordan [5], and etc.

Interestingly, after more than a decade of OGD implementation there were differences in practices from these countries even though the objectives of the OGD were the same. This
difference may occur due to differences in the culture of openness, level of openness, and the level of trust or confidence of the country in opening data. This is as it was said [6] in their research that different stakeholders have different perspectives. Furthermore [7] found something interesting like the practice of OGD in Austria which stated that the involvement of local authority was more important than the federal level. Some of the studies that have been submitted through articles in reputable journals by scholars are as follows: [8] said that in Brazil many steps need to be done in order to achieve a high level of effectiveness of OGD. The effectiveness in question is the use of OGD for decision making by stakeholders. In Thailand [9] examined the development of components directly related to OGD. They see the level of development of use through nine key components which include Organizations, Policies and Plans, Laws and Regulations, Innovation and participation of Citizens, Capability enhancements, Open government principles, Enterprise architecture, and Technology infrastructure. According to [10] there are several factors that influence OGD practices in Malaysia, namely user expectations, confirmation, and perceived performance. From the several papers mentioned above, there are many differences that can be seen in the success of the implementation of OGD, as well as the problems faced.

In this study, the reality of OGD will be described from several OGD practices from several countries through comparative analysis to describe the problems faced by countries that practices OGD. Focus on “What is the practice of OGD in countries that implement it as an initiative?” and “How do the countries face problems arose from OGD’s practices?”.

This research uses qualitative research methodology. The aim is to make a systematic, factual, and accurate description through a conceptual framework. The hope that conclusions can be drawn from the best practices of OGDs from the countries that have been analyzed; it will be part of an effort to provide the best reference for the practice of OGD.

2 The Material and Method

2.1 The Material

OGD is built from three words that contain a combination of three perspectives of the word, namely the word open, government, and data. According to [11] OGD can be expressed as an international phenomenon relating to the openness of government data that is freely available for use, and free for digital distribution. Furthermore the following scholar [12], [13], [14] also state the same that government data must be available and open to all stakeholders responsibly at no cost. A specific definition is conveyed by [15] that open data is openly available for use without restrictions and costs.

Data provided by the government are many types. Examples are population census data, public health data, poverty data, education data, business data, agricultural data, mining data, transportation data, and others. Stakeholders also vary according to the interests of each. According to [16] there is a lack of clarity in the open data context because of the diverse interests of the stakeholders, therefore the data provided by the government must be able to adopt all the interests of the stakeholders.

The implementation of OGD in many countries shows that diversity occurs. This is mentioned by [17] as a diversity of implementations in various countries. As also stated by [18] who researched for Austria, Greece, and UK that the practice of OGD was a concern and attracted many stakeholders interest. Awareness upon the importance of OGD was also discussed in the article [19] which discussed Switzerland’s OGD, stating that the attention of
stakeholders was on transparency, participation and collaboration. While the results of the study [20] state that attitude from public servants determines the success of OGD. For the framework, some scholars have submitted their research results such as [21] which discuss the obstacles in implementing OGD in China, [22] which discuss the strengths and weaknesses of the application of OGD in the GCC member states: The United Arab Emirates, Bahrain, Kuwait, Saudi Arabia, Oman, Qatar. In Italian’s OGD, a research is conducted on the legal system by [23] which states that in reality the Transparency Act is not enable and cannot reinforce the OGD.

As explained by [24] and [17] in their papers the British, German, Dutch and other countries formed a task force to prepare data disclosure. The practice of OGD is part of electronic governance, which is a form of honest, responsible and dignified state administration practice. According to [18] in Austria, Greece, and the UK the policy of OGD practices caught the public’s attention. Research on OGD by [19] was carried out in Switzerland with the statement that OGD emphasized encouragement of transparency, collaboration and participation. The result of their research shows that Swiss executive authorities value the increase in their core business and economic development potential.

Another study from [25] shows that the barriers in implementing OGD are perceptions based on the behaviour of state employees (identified as the main barrier). Other significant barriers includes perceived legal barriers, structuring perceived hierarchy of authority, perceived culture of bureaucratic decision making and perceptions of organizational transparency.

Some countries that are not European has different success factors and barrier factors as reported by [26]. The results of [7] reveal the success factors that accompany implementations that are defined as clear responsibility and implementation of the process model, as well as the integration of the OGD platform into the existing Content Management System.

2.2 Research Method

**Research Design**

This is a research with qualitative research methodology through a constructivist approach by means of descriptive analysis. The aim is to make a systematic, factual, and accurate description of facts and events with a conceptual framework. In this study the reality of OGD will be described from several OGD practices from several countries that have been analysed by experts in scientific articles that have been published in index and reputable scientific journals.

**Object of Research**

This study uses journal articles on the practice of OGD in various countries as the object of research. Objects are selected using classification criteria based on clustering. The number of articles is limited to six articles for reasons of grouping countries as follows: a) Two articles that have reviewed developed countries. It is a country that characterized by high per capita income and high quality of population. b) Two articles that have reviewed developing countries. It is a country that characterized by averages per capita income and relatively low quality of population. c) Two articles that have reviewed the newly industrialized countries. It is developing countries which are pioneering their economies towards advanced industries. Some countries according to classification are as follows: a) Developed countries: Britain, Germany, United States, Japan, and Australia. b) Developing countries: Nicaragua, South
Africa, India, Indonesia. c) New industrial countries: Singapore, Hong Kong, South Korea, Taiwan, Malaysia.

Research Methods

Research Method is the method or technique used for research. For this study the method used is content analysis with comparative techniques. This analysis activity uses tabulation analysis. To obtain accurate data and in accordance with the needs of this research, the steps are as follows: (1) Clustering appropriate OGD articles and published journals that is reputable and indexed; Scopus, ISI, Proquest, JSTOR. (2) Determination of country group and selection of two articles from each OGD article from that country in order to obtain information relevant to this research. (3) Other studies that are relevant to the practices of selected OGD countries, namely the authors obtain data from other sources such as: (a) OGD report books from other institutions, such as from the World Bank, OECD and others that support research. (b) References or other relevant references from previous studies that support research.

3 Results And Discussion

OGD has become an obligation for the government to provide as part of government and business interests. As part of the world agreement to organize OGD, there have been many studies conducted with OGD as objects. This study began by sorting and selecting articles that were considered to be in accordance with the objectives of the study. The method used is semantic scholar on the https://www.semanticscholar.org, and open knowledge on https://openknowledgemaps.org to see the linkages between articles. The collected articles are then carried out by country clustering, and tabulations are conducted to facilitate the comparative analysis. Following are the tabulations that have been made.

Table 1. The Relevant Articles

<table>
<thead>
<tr>
<th>Article 1</th>
<th>Article 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed Approach</strong></td>
<td>Using Relevant publication, single case study, and extended model from DeLone and McLean’s[27]</td>
</tr>
<tr>
<td><strong>Problem Focus/Country</strong></td>
<td>OGD value and impact assessment / Indonesia &amp; The Netherland</td>
</tr>
<tr>
<td><strong>Problem Description</strong></td>
<td>Seeking OGD contribution of value and impact assessment model</td>
</tr>
<tr>
<td><strong>Proposed Solution</strong></td>
<td>An evaluation model that offers a systematic way</td>
</tr>
<tr>
<td><strong>Technique</strong></td>
<td>Case study</td>
</tr>
<tr>
<td><strong>Evaluation metrics</strong></td>
<td>Quality in information, system, service, and user satisfaction, net benefit</td>
</tr>
<tr>
<td><strong>Findings</strong></td>
<td>Collaboration can solve societal problems</td>
</tr>
<tr>
<td><strong>Limitation</strong></td>
<td>1. Model needs validation through empirical studies.</td>
</tr>
<tr>
<td><strong>Future work</strong></td>
<td>2. Single case study cannot be generalized.</td>
</tr>
<tr>
<td>Article 3</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
</tr>
<tr>
<td><strong>Proposed Approach</strong></td>
<td>Benchmarking, and conceptual model [16]</td>
</tr>
<tr>
<td><strong>Problem Focus/Country</strong></td>
<td>Data openness, transparency, participation, and collaboration / USA</td>
</tr>
<tr>
<td><strong>Problem Description</strong></td>
<td>The development of an OG benchmarking is hindered by the lack of OG conceptual clarity</td>
</tr>
<tr>
<td><strong>Proposed Solution</strong></td>
<td>Conceptual model of OG</td>
</tr>
<tr>
<td><strong>Technique</strong></td>
<td>Benchmark model for open government</td>
</tr>
<tr>
<td><strong>Evaluation metrics</strong></td>
<td>Basic data set, Data Openness, Transparency, Participations, and Collaboration</td>
</tr>
<tr>
<td><strong>Findings</strong></td>
<td>E-Government openness index, Maturity</td>
</tr>
<tr>
<td><strong>Limitation</strong></td>
<td>Focused on evaluation, framework, and applied in a wider range of governments</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed Approach</strong></td>
</tr>
<tr>
<td><strong>Problem Focus/Country</strong></td>
</tr>
<tr>
<td><strong>Problem Description</strong></td>
</tr>
<tr>
<td><strong>Proposed Solution</strong></td>
</tr>
<tr>
<td><strong>Technique</strong></td>
</tr>
<tr>
<td><strong>Evaluation metrics</strong></td>
</tr>
<tr>
<td><strong>Findings</strong></td>
</tr>
<tr>
<td><strong>Limitation</strong></td>
</tr>
<tr>
<td><strong>Future work</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 5</th>
</tr>
</thead>
</table>
Proposed Approach | Conducted a questionnaire survey to collect and analyze public needs [29]
---|---
Problem Focus/Country | Appropriate data to serve public, and satisfy their needs / China
Problem Description | Government store huge amounts of data related to citizen life and work. It is critical for government to released appropriate data
Proposed Solution | An OGD model
Technique | A set of questionnaire survey
Evaluation metrics | Basic information, awareness and behaviours, and informational needs
Findings | The study found variations different demographic groups
Limitation\Future work | According to the needs of the public, government should open data fit for use.

**Article 6**

<table>
<thead>
<tr>
<th>Proposed Approach</th>
<th>Improving transparency and public participation using open data [30]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problem Focus/Country</td>
<td>Data are scattered in different sites with different statuses / Indonesia</td>
</tr>
<tr>
<td>Problem Description</td>
<td>Current open data regarding fishing SMEs are scattered and lack the strategy to integrate and utilize seized data to run fishing SMEs efficiently</td>
</tr>
<tr>
<td>Proposed Solution</td>
<td>Open data strategy</td>
</tr>
<tr>
<td>Technique</td>
<td>A top down model as a strategy to identify problems, opportunities, and challenges</td>
</tr>
<tr>
<td>Evaluation metrics</td>
<td>Strengths, Weaknesses, Opportunities, Threats</td>
</tr>
<tr>
<td>Findings</td>
<td>Open data impacts SMEs’s decision making</td>
</tr>
<tr>
<td>Limitation\Future work</td>
<td>Future research will cover more business sectors</td>
</tr>
</tbody>
</table>

The following are the results obtained from the table’s content analysis:

1. The value of OGD investments approved by the government is unclear and not in line with expectations.
2. Prospects and challenges of implementing OGD.
3. Transparency and collaboration in OGD implementation activities.
4. Inequality and obscurity in the roadmap of OGD implementation activities.
5. Mismatch of data available from OGD implementation activities on stakeholder needs.
6. Distribution of data on several sites because it has not been integrated.

OGD implementation can be assessed as a government investment. The expectation of investment is to bring benefits to the country, and provide added value from the data. The implementation of OGD is still relatively new, and has only been implemented for a decade. This is a very short period and OGD is still looking for the best form of investment. to enable countries to gather high-quality, high-value knowledge, a new business model can be valued further as a unit area advantage between the general public and the private sector that can be explored. From the attitude of the non-public sector, the value taken from OGD may be economic such as direct price savings (cheaper services), indirect price savings (saving time through more satisfying services) or increasing opportunities to generate income. the value captured may also be social as trust increases, many communities are equal and honest and expectations are increased. From the perspective of the value of the general public, the value of OGD also comes from justice and equity from economic benefits. Finally, a lot of market
activity and increasing market potential must benefit everyone to a certain extent, at least in a democratic society. Increased transparency, participation and collaboration through reasonable citizenship and procedures may be the initiatives needed to ensure that the opportunities and unit values of the regions are evenly distributed.

This can also be seen from the prospects and challenges of implementing OGD. The prospect of being a facility that can generate business is the hope of OGD implementation in the future. Big challenges also arise in line with the prospects that arise. There are important aspects that can become bridges in an effort to minimize challenges and make prospects bigger, namely interoperability. Interoperability is a condition where systems and organizations have the ability to work together. This is the ability to cross operations from different data sets. This capability maximized the potential of existing data and the challenges or risks of failure to use data can be minimized.

The issue of transparency of data that is considered to be openly comprehensive also alludes to the interests of state security. Many countries in the practice of OGD are not prepared if this transparency is carried out one hundred percent openly. That is why in collaboration and exchange of data between countries at this time can not be one hundred percent honestly applied. The issue of security and misuse of data are also big problems. The issue that develops in open government data is the issue of sustainable state security. Data on wealth contained in the country's land in the form of mining materials such as gold, uranium, oil, and gas is a very sensitive issue. There is no country that is willing to open the data on natural resources they own. It seems like someone who hides his wealth, Whereas in this open era, the mining material data that is owned must be released as part of a business collaboration, considering that the shares of a company that has been registered as a public company can be owned by anyone, including investors from outside the country. So that open government data must pay more attention to the interests of all stakeholders. The government is required to be able to open data that is supposed to be open and on the other hand it must also be able to close data that is not yet allowed to be opened to the public. It is interesting to make a data structuring scheme that allows the government to choose which data is allowed to be publicized and which is not.

The current roadmap for OGD activities is gradually becoming more comprehensive considering that each country is carrying out initiatives to develop OGD. Even so, the imbalance remains because there are no details about the objectives of the OGD. It is important to prepare objectives clearly from OGD activities in order to determine the next steps. There are four OGD perspectives, namely Bureaucratic, Technological, Political, and Economic. These perspectives are a reference in the development of OGD. The problem is in making weighting interests, and proportional interests. which perspective becomes first, second, third and fourth. this order of importance is a reference in making a roadmap for the successful implementation of OGD. Each country must have a different order of interests. Clarity is needed in order to create a roadmap so that the implementation of OGD can be effective.

Releasing appropriate data for the benefit of users, and satisfying needs is not easy. The government must also pay attention to the interests of stakeholders. Many data concerning the social life of the community such as income or salary data, paid tax data, biodata place and date of birth, mother's name, and so forth. This data certainly should not be issued or provided haphazardly because it concerns the interests of the community. The security of personal data is an important thing that must be guaranteed by the government. Privacy is a human right that is guaranteed by state law. It is a problem that clashes between openness and privacy. This is one of the concerns in designing open government data. Stakeholders must always remember...
that the importance of data privacy is more important than data disclosure. That is why the provision of open data from the government must pay attention to aspects of interest and data compatibility with the data needs of stakeholders. An example is a clear limitation of data that may be open to access by business people. In this case, business people certainly need complete data from their prospective customers. Creating a complete profile of prospective customers is an important activity in the business. While on the side of customer privacy, this can be referred to as a human rights violation. Providing data that is suitable for the people who need data is also important. Data becomes useless if it is not available and fits the needs. Many problems occur precisely from the classification of data not in the process of collecting data. Data that is not suitable and incorrect in its classification will not be useful at all.

Data logging is a problem from a country that is just starting out for data management. The OGD that has already been built is still struggling with this problem. Many developing countries are still troubled by the amount of scattered data. The strategy of building OGD must be carried out by one entity that is given authority in data management. The authority of data management is a kind of centralization of data by one entity that plans collection activities and classifies data, conducts data organization activities, conducts activities related to open data, and maintains and updates data.

4 Conclusions

Based on the results of the analysis and discussion above, it can be concluded that the implementation of OGD is carried out in many countries as part of efforts to fulfill data disclosure in the information age. The many interests of each stakeholder influence the successful implementation of OGD. This is good for the country's development because the implementation of OGD that supports the needs of stakeholders can make this investment directly beneficial to the country.

It is interesting to make a data structuring scheme that allows the government to choose which data is allowed to be publicized and which is not. This is related to the issue of sustainable state security.

Roadmap for OGD activities is gradually becoming more comprehensive considering that each country is carrying out initiatives to develop OGD. The clarity of objectives is needed in order to create a roadmap so that the implementation of OGD can be effective.

The government must also pay attention to the interests and concerns of stakeholders to release appropriate data. The security of personal data is an important thing that must be guaranteed by the government. It is a problem that clashes between openness and privacy.

OGD collaboration activities still ask for a higher level of trust from the country. In developing countries, the problems that arise are data that are still scattered. Some of the developing countries are still troubled by the amount of scattered data. That is why we need the strategy of OGD building. It must be carried out by one entity that is given authority in data management.

References


Strengthening Fisheries Institutions for Overcoming Poverty in Bantul Regency

1st Supriyanta¹, 2nd Oktiva Anggraini²
{waskito63@gmail.com¹, oktivabiyan@yahoo.co.id²}

Faculty of Economics University of Widya Mataram Ndalem Mangkubumen KT III/237 Yogyakarta¹,
Affiliation, Faculty of Social Political University of Widya Mataram
Ndalem Mangkubumen KT III/237 Yogyakarta²

Abstract. This research identified the performance's marketing of fishery busines in Bantul regency and the factors that influenced of accessibility of them in e-commerce. With descriptive qualitative research design, the data collection techniques: in-depth interviews; Literature study, observation, and FGD. Data analysis techniques with data reduction stages, the data presentation, and conclusions. The results showed that fishery business is still classified as early adopters in e-commerce. Strengthening of capacity for fishery busines in developing e-commerce needs to be done immediately. Department of Agriculture of the Food and Marine Fisheries in Bantul Regency can further develop websites to support e-commerce and Facilitate Reviews These activities in cooperation with relevant stakeholders.

Keywords: E-Commerce, Fisheries, Institutions, Strengthening The Capacity.

1 Introduction

Micro, Small and Medium Enterprises (SMEs) constitute the largest group of economic actors in the Indonesian economy and proved to be a national economic safety valve in times of crisis as well as a dynamic factor of economic growth. In 2015, recorded the number of SMEs in Indonesia as much as 57.9 million with the contribution of GDP (Gross Domestic Product) of 58.92% and a contribution to the employment of 97.30%. DIY as one of the pioneers of the export-based SMEs, the revenue potential of the industry is very encouraging. The quantity of SMEs in the province continues to increase every year. The Departement of Industrial and Commerce in DIY 2013 showed that the food industry and the craft became one of supporting the tourism sector DIY. In 2013 there were 22,970 units in the DIY craft businesses with employment 76,028 people and the investment value Rp.142,688,995,-. While the production value reached Rp.497,988,944,. Nevertheless, SMEs in Yogyakarta face a number of challenges. UGM FISIPOL ASEAN Studies Center (Suharko, 2015) in his research revealed that the main obstacle to SME development and marketing related to capital and labor skills and lack of information. Coverage sale in DIY is still dominant, 54.15%. The product is still limited mostly at the local level and many who do not have a direct link with the modern market (supermarkets). Approximately 28.8% utilizing the Internet to promote their products, the rest still use conventional methods of marketing products (Nisa, 2015).

Data survey of Indonesian Internet Service Provider Association (APJII) in collaboration with the Central Statistics Agency (BPS) in 2013 that 77.81 percent used the Internet to search
for goods and services. Internet users in Indonesia in 2013 amounted to 71.19 million people, an increase of 8.19 million people (13 percent) from the previous year, amounting to 63 million people. The positive rising trend provides interesting opportunities for the use of e-commerce in the marketing of goods and services in Indonesia. Including businesses SMEs.

E-commerce called electronic commerce is the use of computers and communications networks to implement business processes. Beginning of the use of e-commerce is to connect businesses known as Business-to-Business or B2B. But in its development, e-commerce can be used to connect between businesses with consumers known as Business to-consumer or B2C (McLeod and Schell, 2008). Manzoor (2010) states that e-commerce is a commercial activity (sales, purchase, transfer, exchange of products, services, and dissemination of information) undertaken in the business, both among businesses and businesses with consumers.

A number of studies showed that the information input markets needed, especially to determine: (1) the source of the raw materials required, (2) the price of the raw material to be purchased, (3) where and how to obtain venture capital, (4) where getting labor professional, (5) the level of wages or salaries eligible for workers, (6) where it can acquire the tools or machines required (McLeod and Schell, 2008; Manzoor, 2010; Stockdale, 2012). Market information is complete and accurate can be used by SMEs to plan their business properly, for example: (1) a product design that consumers preferred, (2) determine the competitive prices on the market, (3) determine the market that will be addressed and the many benefits more. Therefore the role of government is essential in driving the success of SMEs in gaining access to expand its marketing network.

The phenomenon was also discovered during the pre-survey research team in Bantul district, which is encouraging the performance of SMEs, including SMEs in the coastal fisheries. Currently, there are about 200 more SMEs fisheries, spread over seven TPI Bantul, processed fishery products that can support the local tourism industry. Currently, the development of SMEs fisheries experienced a number of challenges due to increasing competition in the fishing industry and a limited ability to expand your marketing reach. For that, we need a variety of efforts to improve business performance in order to be able to strengthen and improve the economy of coastal residents.

Departing from the above issues would be explored further draw on the performance of SMEs fishery districts of Bantul in marketing their products and the factors that influence SME access Fishing in the use of information technology.

2 Research Method

This study used a qualitative design. Primary data collection included structured interviews, questionnaires, focus group discussions and direct observation. FGDs were held in four (4) locations TPI with guest speaker invited representatives of stakeholders. Sampling is purposive sampling, ie the chairman, members and officials of SMEs fisheries. To ensure data validity, data source triangulation was done by collecting similar data from several different data sources. Data source were developed and stored so that at any time can be traced back if desired verifications.
3 Result

1. Description of the Research Site

Marine and fisheries sector Bantul district has a very high economic potential. Potential of marine fisheries management in Bantul continue to be pursued for the benefit of society without leaving aspects of sustainability. Improving the economy of the community who attended awareness of the importance of fish consumption creates the implication of increased demand for fish and other dairy products. This situation is an opportunity for the development of marine and fisheries sector, especially in Bantul.

For 2015, fisheries production performance achievements qualify as low, while for aquaculture production falls within the criteria quite well. Achievement of fishing production when compared with other regencies/cities in Yogyakarta, Bantul contributed 13.32% to the total fisheries production DIY. As for aquaculture production, Bantul to provide a contribution of 16.38% of the total aquaculture production DIY.

Most aquaculture is developed with the media pool in all the districts in Bantul district government, followed by the media fields and tarpaulins. With the change of use of productive land into residential areas, fishing grounds are limited. One solution to cope with the utilization of non-productive lands or marginal lands as cultivation media in the field of fisheries, such as catfish with a tarp.

Resilience catfish in water that does not flow easily applied make catfish farming despite the narrow and dry land. Catfish farming is not costly, easier and shorter maintenance time, so quickly deliver results for empowerment’s program. Unlike the other species that are susceptible to diseases, catfish do not require special attention when maintenance.

Catfish farming in drylands using pool tarp in Bantul is the best strategy. Land development for operational and business segmentation in accordance with the demand and market potential. With this strategy, the growth and development of enterprises can increase revenue catfish farmers by harnessing the power and opportunity to do the pattern of harvest and cultivation, as well as feed efficiency. This strategy needs to be done with high caution against the threat of the spread of disease and competitors from outside the area. African catfish seed production in Bantul amounted to 32,804.783 tail in 2015 followed by as many as 24,157.027 tail carp, tilapia tail 4,382.099 and 2,407,886 decorative fishtail 1,328,770 tons, 707,639 tons of carp, tilapia 378,681 tons, 141,228 tons Tawes and carp 41,074 tons.

Potential catfish farming developed than other fish commodities in Bantul. Realization of production in 2015 for example, production totaled 1,328,770 million kilograms, at most compared to carp that production reached 707,639 kilograms, indigo, Tawes, and others. Likewise with African catfish seed, reached 32,804.783 kilograms. Fish disease is endemic and pH levels are sometimes less appropriate result commodities other fish is less developed in Bantul.

Realization of fishery products of the most prominent in the sub-Imogiri, Banguntapan and Bantul. For the seed activity, dominated four districts namely Imogiri, Banguntapan, Djetis, and Kretek. While the fish rearing activities in the district of Bantul, Banguntapan and Imogiri. With the potential, setting development priorities PUMP each year in the districts of Bantul directed at the development of commodity catfish and carp. Kretek district area has the potential marketers, include 516 people, followed by 500 people Jetis sub-district, district Pundong 484 people and the smallest region potential is subdistrict Dlingo with 209 people. While the region is most fishermen Kretek sub-district, ie 74 people, followed by Sanden Srandakan 29 people and 13 people. Groups of processors and marketers the largest fish in the region of Kretek 89 people, Sewon sub-district followed 49 people. The conditions illustrate
that coastal communities in the districts of Bantul more engaged in the aquaculture sector. Fishing profession only as a sideline profession in addition to farming and animal husbandry.

2. Product Marketing SMEs

Aquaculture in coastal communities Bantul regency, followed by various post-harvest activities are encouraging. Armed with an entrepreneurial spirit who is good enough to encourage a number of cultivator develop food processing business, souvenir with raw fish or open a culinary shop business. Various products have been marketed in traditional markets and supermarkets nearby.

They have realized the importance of trademarks and brands already have etiquette. Registration etiquette brands showed relief efforts adding value to the product. The brand as a symbol of product sold as well as one of the placements bargaining position over competitors' products. Determination of the brand provides the power of a product and to differentiate between products. Marketing areas include Bantul and Yogyakarta through personal connections/relationships. The marketing system that is run by a joint Business Group (KUB) marketers and fish processors are of two kinds, marketed itself in the traditional way and new media as well as through the association Projo Mino Bantul. This association accommodate the interests of economic, social and political members. Through this association, the articulation of the interests of marketers and fish processors in Bantul voiced by relevant agencies and Parliament Bantul regency. This is consistent with the opinion of Eaton (1986), that Projo Mino as an organization can be called the institution if it has developed the ability to act as a representative of the broader community by providing functions and services are valuable, one of which increase the utilization of natural resources.

Based on the observation of many fisheries researchers SMEs that have not been able to adapt and improve competitive advantage. It may, therefore, be a challenge to improve the competitiveness of SMEs, on the institutional side and in terms of the resulting product. The structure of businesses until now dominated by the informal micro-enterprises. The perpetrators of this business have no assets, quality of human resources, access to finance and productivity are very limited. Therefore the related increasing ability and competitiveness, SMEs have to race in some ways, the increasing of competent human resources/human capital, improve product quality, conduct business efficiency, enhance business partnerships and build a strong network of marketing communications.

Through Projo Mino group, an important role for government is more geared to facilitate several things including licensing, facilitating access to raw materials, technology, and information, technical assistance in the form of training, mentoring, advocacy, while creating a favorable climate, and good capital facilitation.

On the other hand, limited funds for marketing communications causes the efforts of SMEs often encounter obstacles in reaching the wider consumer, as was able to do a large-scale company. Small-scale companies use marketing communication is still very simple through word of mouth marketing communication, or more commonly known degan term 'word of mouth'. An exciting development, the SMEs souvenirs made from stingray and fish culinary entrepreneurs mostly have combined new media, word of mouth promotion and sale through the association Projo Mino. Feedback on the new media so perceived by some employers in the form of increased sales turnover per month, product diversification, expansion of the network, the higher the confidence to participate in exhibition and sale of the water. In terms of network expansion, is in line with the opinion Manzoor (2010) that the e-commerce applications resulted in the exchange of products, services, and information dissemination is done in the business, both among businesses and businesses with consumers.
With the implementation of e-commerce will help entrepreneurs in accessing sources of raw materials required, the price of raw materials to be purchased and market opportunities. Based on data from the FGD and DKP 2016 Annual Report documents a number of issues that arise in the network of SMEs fisheries:

a. The lack of a group of institutional fish processors and marketers solid thus not been able to produce a processed fish products are of good quality and have not been able to meet the tastes of the market according to the amount needs and has not yet formed a market network that is able to absorb the results of the production as needed.

b. A group of institutional fish processors and marketers rely on raw materials of fish, fish seeds were obtained from outside the area thereby increasing the production costs for transport effect on price competition.

c. Limitations of the use and handling of fish processing technology has not used the cold chain system so that the products produced relatively declining.

Table 1

<table>
<thead>
<tr>
<th>No.</th>
<th>Information</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Do not have HR personnel in the field of IT (Information Technology)</td>
<td>10</td>
</tr>
<tr>
<td>2.</td>
<td>Lack of understanding of the internet</td>
<td>65</td>
</tr>
<tr>
<td>3.</td>
<td>Not according to the product</td>
<td>5</td>
</tr>
<tr>
<td>4.</td>
<td>Not having a business strategy in the Internet</td>
<td>5</td>
</tr>
<tr>
<td>5.</td>
<td>Do not believe the transaction on line</td>
<td>5</td>
</tr>
<tr>
<td>6.</td>
<td>Less useful for entrepreneurs</td>
<td>10</td>
</tr>
</tbody>
</table>

Primary Data: 2017 (the data processing of the 100 respondents SMEs fisheries)

According the table 1 it appears that the majority of SMEs have not yet implemented fishery e-commerce, both in financial and transaction management sales / marketing. The obstacles faced by, among others: the high cost of internet connection; do not have HR personnel in the field of IT (Information Technology); does not have a business strategy via the Internet; less useful for entrepreneurs; do not trust the security of electronic transactions; not in accordance with the products offered by employers and lack of understanding in the use of the Internet (data from interviews with a number of informants fishery SMEs, August 2017).

While the external side, the inhibiting factor is that the original Office handles fishery SMEs, Department of Marine and Fisheries began in 2017 have joined forces under the auspices of the Department of Agriculture, Food, Marine and Fisheries Bantul. By making no independent position and more often burdened by paperwork, resulting in strengthening the capacity of SMEs fisheries network was inhibited. Whether conducted by the Association of Mino Projo or through other fishery groups. The observation of researchers co indicates that the information system and website Department of Agriculture, Food, Marine and Fisheries Bantul less help farmers and SMEs in accessing market information, production inputs, consumer trends, marketing, management of disease and pest / crop livestock, market opportunities, and market price.

Based on these constraints, measures to strengthen the capacity of SMEs fisheries (based FGD stakeholder fisheries, August 2017) include:

1. SME entrepreneurs both individually and collectively need to sharpen themselves through training IT (information technology). The confidence they need to be confirmed by the ability and skill in packaging the product so worthy to be uploaded on-line. Packing
attractive and safe products, the availability of the brand, how to shoot the products are small examples that can add value to their products online.

2. Department of Agriculture data updating website Food Marine and Fisheries Bantul will be able to help SMEs access to market information, production inputs, consumer trends, marketing, management of disease and pest/crop livestock, market opportunities, and market price.

3. Hold students of Community Services Program to help e-commerce applications.

4. For users of IT applications for business, should begin to be developed that e-commerce is not only to support the marketing, but also for the search of raw materials, mapping, controlling price stability and expand business networks.

4 Conclusion

The DIY culinary potential in particular in the districts of Bantul is part of the creative industries are being developed by the government. When many culinary potential of processed fishery that is not heard, or known by the public even though taste and form of presentation of promising and lucrative, it is very unfortunate. The problem lies in the lack of promotion of such products to the general public. Henceforward, capacity building such as training of IT application in SMEs fisheries groups and individuals interested in developing e-commerce needs to be done immediately. Bantul in this case the Department of Agriculture Food and Fisheries Marine can further develop the website to support e-commerce and facilitate such activities in collaboration with relevant stakeholders.

Reference


[6]. Suharko, Subarsono (editor), 2015, Small and Medium Enterprises in whirls MEA, Opportunities, Challenges and Readiness, Yogyakarta: ASC FISIPOL UGM.

Effect of Tax Paying Awareness, Knowledge and Understanding of Taxation Regulations and Service Quality on the Willingness to Pay Tax Mandatory Individual

1st Ratih Kumala1, 2nd Renisya Ayu2
{ratih.kumala@stiami.ac.id1, renisyaniyus@gmail.com2}
Institut Ilmu Sosial Dan Manajemen Stiami1,2

Abstract. Tax is one of the sources of state finance, including individual taxpayers who are the government's mainstay for obtaining funds to finance state administration. For taxpayers who perform independent personal services, neither party is required to pay taxes. This phenomenon is almost attractive to ignore the factors that encourage people to pay taxes. This study will discuss the effect of taxes, knowledge and understanding of tax regulations, and service quality on tax willingness to individual taxpayers. The object of this research is individual taxpayers who work independently in Bekasi City, especially those registered at KPP Bekasi Utara and KPP Bekasi Selatan with a total sample of 100 respondents. The test used in testing the hypothesis, to ascertain whether the independent variable is partially or not on the dependent variable and to determine the effect of the independent variable on the dependent variable is simultaneously used the F test. From known research it is known that tax awareness, knowledge and understanding of regulations taxation has a significant effect on willingness to pay. Meanwhile, service quality has an effect but not significantly on willingness to pay taxes. This states that tax officers are required to provide friendly, fair and firm services to taxpayers at all times and can raise public awareness about tax tax responsibilities.

Keywords: Awareness of Paying Taxes, Knowledge and Understanding of Tax Regulations, Quality of Service, Willingness to Pay Taxes.
1 Introduction

Taxes are a source of state finance, including individual taxpayers who are the government's reliance on to obtain funds to finance state implementation. For taxpayers who perform independent personal services neither party is compelled to pay taxes. They have a tax ID of their own accord. This phenomenon is considered interesting to be associated with the factors that encourage people to pay taxes, therefore this study will discuss the effect of awareness of paying taxes, knowledge and understanding of tax regulations, and service quality on the willingness to pay taxes of individual taxpayers.

The object of this research is an individual taxpayer who does independent work in Bekasi, especially registered at North Bekasi KPP and South Bekasi KPP with a sample size of 100 respondents. The t test is used in hypothesis testing, to determine whether the independent variable is partially significant or not on the dependent variable and to determine the effect of the independent variable on the dependent variable simultaneously, the F test is used.

From the research that has been done, it is known that awareness of paying taxes, and knowledge and understanding of tax regulations have a significant effect on the willingness to pay taxes. Meanwhile, service quality has an effect but not significantly on the willingness to pay taxes. This states that tax officials are required to provide friendly, fair and firm services to taxpayers at all times and can foster public awareness about the responsibility of paying taxes.

2 Methods

The research design used in this study is a quantitative approach, namely the research used to describe the influence of taxpayer awareness, knowledge and understanding of tax regulations, quality on the willingness of taxpayers to pay taxes.

The population in this research is individual taxpayers who work independently in Bekasi City, especially in two KPP Pratama Bekasi Utara and Bekasi Selatan. Because in these two tax offices most of them do independent work, such as: workshop services, furniture shops, doctors and midwives who open their own work practices, notaries, travel services, computer and internet rentals, driving and sewing courses, and so on.

While the sample is part of the number and characteristics of the population (Sugiyono, 2014: 118). The sample selected in this study using the Convenience Random Sampling technique obtained by 100 respondents.

\[
n = \frac{383.976}{(1 + 383.976)(0,1)}
\]

\[
n = 99,973963
\]

\[
n = 100
\]

And the data collection method used in this study is a questionnaire method. While the data analysis technique used is multiple linear regression analysis techniques, namely to determine the effect of independent variables on the dependent variable. In addition, this
research is also accompanied by a validity test, reliability test, classical assumption test, determination coefficient test, significant F test and partial test (t test).

The variables used in this study are the dependent variable (dependent) and the independent variable (independent). The dependent variable is the variable that is affected or that is the result of the existence of the independent variable.

The dependent variable in this research is Willingness to Pay Taxes (Y). Willingness to pay taxes in this study is defined as a value that is willing to be contributed by someone, which is determined by regulation, which is used to finance general state expenditures without receiving direct (contra-achievement) services (Vanessa and Hari, 2009).

The first independent variable in this research is Taxpayer Awareness (X1). Awareness of paying taxes can be defined as a situation in which someone knows, understands, and understands how to pay taxes. And awareness of paying taxes can also be interpreted as a form of moral attitude that contributes to the state and strives to obey all the regulations that have been established by the state and can be forced on taxpayers.

While the second independent variable in this study is Knowledge and Understanding of Tax Regulations (X2). Knowledge and understanding of tax regulations is the process by which taxpayers know about taxation and can apply this knowledge to pay taxes.

And the last or third independent variable in this study is Service Quality (X3). Service is a way of serving by helping care for or preparing all the needs someone needs. In simple terms, the definition of quality is a dynamic condition related to products, human services, processes, and the environment that meet or exceed the expectations of those who want them.

From the explanation above, this variable is measured using a Likert scale with the following answer scores: Score 1 (strongly disagree); score 2 (disagree), score 3 (neutral), score 4 (agree), and score 5 (strongly agree).

3 Result And Discussions

The data in this study were obtained from a questionnaire that has been distributed to 100 individual taxpayer respondents who are domiciled in Bekasi City, to be precise, who are registered at KPP Pratama Bekasi Utara and Bekasi Selatan. Characteristics of respondents in this study include gender, age, level of education, and length of time as taxpayers.

The validity test is obtained by testing each questionnaire. From the results of the processed data, the results of the validity test of this study indicate that the correlation value of each question item is > 0.3, this explains that each question is valid in measuring a variable.

Reliability testing is to measure an instrument in interval consistency using Cronbach’s Alpha Coefficient. The results of the reliability test in this study showed that Cronbach’s Alpha value was > 0.6, this means that the questions used in this study as a measuring tool were reliable.

While the results of the normality test in this study concluded that the data spreads around the diagonal line and follows the direction of the diagonal line, so the data is normally distributed so that it can be said that the regression model has met the assumption of normality. The second assumption test is the heteroscedasticity test with the Glejser test, which is a condition where the variance inequality of the residuals in the regression model occurs. A good regression model requires no heteroscedasticity problems. To detect the presence or absence of heteroscedasticity is to look at the dots pattern in the regression scatterplots. If the dots spread out in an unclear pattern above and below the 0 on the Y axis,
there is no heteroscedasticity problem. The results of the heteroscedasticity test in this study indicate that in this regression equation there is no heteroscedasticity problem. This is obtained from the distribution of points that do not have a clear pattern, and the points are spread above and below the number 0 on the Y axis, so it can be concluded that the data in this equation model does not occur heteroscedasticity symptoms. And the third assumption test is the autocorrelation test, which aims to test whether in a linear regression model there is a correlation between the confounding error in period t with the error in period t -1 (previous). According to Ghozali (2005), a good regression model is a regression model that is free from autocorrelation. The results of the autocorrelation test of this study showed the Durbin Watson (DW) statistical value of 1.705, it can be said that this study is free from autocorrelation problems or there is no confounding error because the DW is located between -2 to +2 which means there is no autocorrelation. And the last assumption test is the multicollinearity test in this study aimed to test whether the regression model found a correlation between the independent variables (independent). The multicollinearity test results in this study indicate that there are no independent variables that have a tolerance value less than 0.10. The VIF test results also show the same thing, namely that none of the independent variables has a VIF of more than 10. So it can be concluded that all variables have met the tolerance threshold and the VIF value, meaning that there is no multicollinearity problem between the independent variables in the regression equation.

The results of testing the hypothesis of this study produce multiple regression which is obtained using the least squares method is \( Y = 9.830 + 0.246 \times X_1 + 0.202 \times X_2 + 0.127 \times X_3 + \epsilon \). Where the relationship between the dependent variable and the independent variable is quite strong, namely 40%, while the value of R Square or the coefficient of determination is 0.161, this value indicates that 16.1% of the variation or change in the dependent variable can be explained by variations or changes in the independent variable, and the rest is 83.9% influenced by other factors not included in this study.

As is known in the taxation system, that taxpayers are entrusted with implementing the Self Assessment System, namely by calculating, calculating, paying, self-reporting the tax owed. The amount of tax is calculated by the taxpayer himself, then pays the tax payable based on the provisions of the applicable tax laws. Lerche (2000) also argues that tax awareness is often an obstacle in the problem of collecting taxes from the public and taxpayer awareness of taxation is needed to improve taxpayer compliance.

The t test (T-test) is to determine whether each independent variable affects the dependent variable. The results of the t test in this study show that the Tax Paying Awareness (X1) has a significance value of 0.041, which means that this value is less than 0.05, with t counting 2.085 and t table 1.664 or t count> t table. Based on this, it is concluded that partially the awareness variable of paying taxes has an effect on the willingness to pay taxes because the significance value is smaller than 0.05 and t count> t table. The results of the research for this variable are in accordance with the research conducted by Widayati and Nurlis, (2010). Which states that consciousness is an element in humans in understanding reality and how to act or respond to reality. This high awareness itself comes from none other than the motivation of the Taxpayer. If the awareness of taxpayers is high which comes from the motivation to pay taxes, the willingness to pay taxes will be high and state income from taxes will increase.

Knowledge and Understanding of Tax Regulations (X2) has a significance value of 0.031, which means that this value is less than 0.05, with t count of 2.202 and t table of 1.664 or t count> t table. Based on this, it is concluded that partially the variables of knowledge and understanding of tax regulations have an effect on the willingness to pay taxes because the
The significance value is smaller than 0.05 and $t_{\text{count}} > t_{\text{table}}$. The results showed that knowledge and understanding of tax regulations had a significant effect on the willingness to pay taxes.

Lack of knowledge and understanding of taxation is one of the causes of low willingness to pay taxes. From this research, it is expected to be a reference for tax officers to increase the willingness to pay taxes. One of the efforts made is to provide tax education and socialization among the public, especially those who do independent work.

Service Quality ($X_3$) has a significance value of 0.126, which means that this value is greater than 0.05 with $t_{\text{count}}$ of 1.548 and $t_{\text{table}}$ 1.664 or $t_{\text{count}} < t_{\text{table}}$. Based on this, it is concluded that partially the service quality variable has an effect on but not significant to the willingness to pay taxes because the significance value is greater than 0.05 and $t_{\text{count}} < t_{\text{table}}$.

The results of the research for this variable state that tax officials are required to provide friendly, fair, and firm services to taxpayers at all times and can foster public awareness about the responsibility of paying taxes. Taxpayers can recognize taxes from the services provided by tax officials. For this reason, tax officials must have the skills to satisfy taxpayers. The better the tax authorities service, the taxpayer will have a positive attitude towards the tax process. However, if the tax authorities service is not good, it will make taxpayers reluctant to pay taxes in accordance with applicable regulations.

The F test in this study is to determine whether the awareness variable of paying taxes, knowledge and understanding of tax regulations and service quality affect the willingness to pay individual taxpayers collectively, the F statistical test is used. The F statistical test results with the SPSS program show that $F_{\text{count}}$ of 4.666 with a significance level of 0.005 is much smaller than 0.05, therefore this regression model can be used to predict the variables willingness to pay taxes.

Based on the results of the t test and f test that have been carried out, it is known that partially the awareness variable of paying taxes has a significant effect on the willingness to pay taxes, as well as the variables of knowledge and understanding of tax regulations also have a significant effect on the willingness to pay taxes, while the quality of service has an effect but not significant to the willingness to pay taxes. Then simultaneously the three variables together have an effect on the willingness to pay taxes for individual taxpayers.

4 Conclusion

Based on the results of research and discussion, the following conclusions were obtained:

1. Awareness of paying taxes ($X_1$) has a significant effect on willingness to pay taxes. This shows that the high taxpayer awareness that comes from the motivation to pay taxes, then the willingness to pay taxes will be high and state income from taxes will increase.

2. Knowledge and understanding of tax regulations ($X_2$) has a significant effect on the willingness to pay taxes.

3. Service quality ($X_3$) has a significant but not significant effect on willingness to pay taxes. This states that tax officials are required to provide friendly, fair, and firm services to taxpayers at all times and can foster public awareness about the responsibility of paying taxes.
Acknowledgement

Praise and gratitude for the author, pray the presence of Allah SWT for all His gifts and Mercy so that the author can complete this scientific writing on time. With humility, the author would like to thank all those who have been involved in encouraging and assisting the author in the preparation of this scientific writing, especially to the STIAMI Institute of Social Sciences and Management. Thank you for the help and guidance of all parties, which is truly invaluable, may Allah SWT give you a better reply. thanks.

References

[23]. Lovihan siska. 2014. Pengaruh kesadaran membayar pajak, pengetahuan dan pemahaman peraturan perpajakan, dan kualitas layanan terhadap kemauan membayar pajak wajib pajak orang pribadi di Kota Tomohon. Ejournal.unsrat.ac.id Volume 5 No.1


[56]. Undang-undang Republik Indonesia Nomor 16 Tahun 2009 Tentang Perubahan Keempat Atas Undang undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum dan Tata Cara Perpajakan.


An Analysis of Public Participation in E-Musrenbang (Planning Development Discussion) As An Effort to Support The Successful Performance of Tanjung Priok District Jakarta

1st Mary Ismowati1, 2nd Hendra Brajanegara2, 3rd Murni Sianturi3, 4th Yuliyanto4
{mary.ismowati@stiami.ac.id1, braja@gmail.com2, murnisianturi70@gmail.com3, Yuliyantosap8@gmail.com4}

Magister Program of Administrative Sciences, Institut Ilmu Sosial dan Manajemen STIAMI Jakarta1,2,3,4

Abstract. There are still many problems in the implementation of e-Musrenbang in Tanjung Priok Sub-District, including passive participation of the community, lack of socialization to the community, minimal community knowledge about e-Musrenbang, not yet professional staff, inaccurate planning implementing e-Musrenbang, a pluralistic community culture organization and a short implementation time. The research used qualitative method by interviewing the informant from variety qualifications and ability in the field of e-Musrenbang. Based on analyse shows that the implementation of e-Musrenbang in the Tanjung Priok sub-district is dependent on the participation of the community who know the conditions and needs themselves, and also community who participate in planning and accessing the input of the e-Musrenbang application. The Tanjung Priok Urban sub-district government, is only a facilitator and coordinator of the development planning activities. Community participation in the e-musrenbang program has been quite good, only the constraints in the field are due to ignorance of some people to the e-musrenbang system so that they are more willing to do it manually, so the results of implementation are hampered. E-Musrenbang still does not support the implementation of these activities, and the weak coordination between implementers of e-Musrenbang, it also greatly influences the success of the e-Musrenbang itself.

Keywords: Public Participation, E-Citizen Planning, E-Musrenbang, Performance.

1 Introduction

As a result of the decentralized government system or regional autonomy in accordance with Law No. 9 in 2015 about Regional Government, the development process must apply the principles of decentralization, bottom up from community, and active participation of the community.

Communities better understand their needs and problems, which must be empowered so that they are better able to recognize their needs, formulate plans and implement development independently and independently (Talen 2000; Pal 2000; Fadil 2013; Koontz 2014). The impact of the top-down development approach that has been implemented by the government with full power is in the central government, causing regional governments to be unresponsive and less sensitive to the aspirations of the community.
Area. As a result, it is not uncommon for development plans that have been compiled and implemented by the government not in accordance with the needs of the community. Development planning must not ignore democratic principles such as deliberative models or democratic models in public policy formulation (Abelson, 2003; Nugroho, 2015).

The Tanjung Priok sub-district of North Jakarta Administration has implemented this decentralization policy by implementing development in various sectors in accordance with the plans set by the Governor of DKI Jakarta Province. The activity involved RW level officials who contributed through the Development Planning Consultation (Musrenbang), the aim of which was to improve the welfare of the community. Determination of development programs involves community participation. This is bottom-up planning (Pal, 2006). Increasing community participation is one form of community empowerment (Fraser 2006; Tulooch 2007; Fadil 2013).

The need for community participation in the Tanjung Priok sub-district is due to the lack of optimal development carried out by the North Jakarta Administration City Government. The results of the development carried out by the Tanjung Priok sub-district are a representation of the Tanjung Priok sub-district’s Performance. Based on observations, the services provided by the Tanjung Priok village government showed that there were still complaints from the community both directly and indirectly on the performance of the Kelurahan. This can be seen from the low work productivity and discipline of these employees, and the lack of adequate work facilities.

The lack of optimal development carried out by the Tanjung Priok Urban Village is illustrated by various problems and the results of development evaluation as from the results of studies in the field presented as in the following table:

<table>
<thead>
<tr>
<th>No</th>
<th>Item</th>
<th>Target</th>
<th>Realization</th>
<th>Average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Economic sector</td>
<td>90 %</td>
<td>69 %</td>
<td>21</td>
</tr>
<tr>
<td>2</td>
<td>Health sector</td>
<td>95 %</td>
<td>73 %</td>
<td>22</td>
</tr>
<tr>
<td>3</td>
<td>Education sector</td>
<td>90 %</td>
<td>67 %</td>
<td>23</td>
</tr>
<tr>
<td>4</td>
<td>Environmnet sector</td>
<td>95 %</td>
<td>70 %</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td></td>
<td></td>
<td>23</td>
</tr>
</tbody>
</table>

Source: research in 2017

From the data above shows that the evaluation of development results in accordance with the use of the budget has not entirely met the target.

Community participation is the participation of the community in the process of identifying problems and potential that exist in the community, selection and decision making about alternative solutions to deal with problems, implementing efforts to overcome problems, and community involvement in the process of evaluating changes that occur. (Adi, 2005: 27).

Development planning discussion (Musrenbang) Kelurahan is an annual discussion forum and dialogical forum between the government and stakeholders of an issue / issue, policy, regulation, or development program being discussed. stakeholders agree on an activity plan for the next fiscal year by referring to the Regional Medium Term Development Plan (RPJMD) that has been prepared for the next 5 years, and is carried out every January.

In accordance with technological developments, digital communities seek and obtain information from different places, no longer in the conventional way. Government planning must adapt these conditions to meet community needs (Staffans, 2010). For this reason, e-Musrenbang (electronic-Musrenbang) is used on an online network, to facilitate and
accelerate the implementation of Musrenbang in capturing the aspirations of the community's proposals. Community participation in online development planning has also been carried out in many countries (Conroy, 2010; Staffans, 2010; Kubicek, 2010; Fikri 2015; Sholihmu'adi 2015).

From the observations there are still many problems in the implementation of e-Musrenbang in Tanjung Priok Sub-District, including passive participation of the community, lack of socialization to the community, minimal community knowledge about e-Musrenbang, not yet professional staff, inaccurate planning implementing e-Musrenbang, a pluralistic community culture organization and a short implementation time. From the various descriptions above, the author conducted a study with the title: "Analysis of Community Participation in e-Musrenbang as an Effort to Support the Success of the Tanjung Priok sub-district’s Performance Program”

The purpose of this study is to analyze community participation in e-Musrenbang, and any obstacles faced in implementing community participation in e-Musrenbang as an effort to support the success of the Tanjung Priok sub –district’s performance program.

2 Public Participation

According to Verhagen (1980) ”participation is a form of participation or involvement of someone (individual or citizen) in a particular activity”. The participation or involvement referred to here is not passive but actively directed by the person concerned. Therefore, participation will be more precisely interpreted as the participation of a person in a social group to take part in the activities of their community, apart from their own work or profession.

Citizen involvement in the broad sense should be encouraged both through regulation and the creation of an ideal climate of democratization in the region. Thus, it will increasingly have a growing sense of community to the programs area (Satries, 2011).

Sherry R Arnstein cited by Connor (1988) and Sigit (2013) divides the level of community participation in government development programs into eight levels of community participation based on the power given to the community, as follow :
1. Citizen control, the community can participate in and control the entire decision-making process.
2. Delegated power, at this level the community is given an abundance of authority to make decisions on certain plans.
3. Partnership, the community has the right to negotiate with the decision makers or the government, on a joint agreement the power is divided between the community and the government.
4. Placation, the power holder (government) needs to appoint a number of people from the affected part of society to become members of a public body.
5. Consultation, the community is not only notified but also invited to share opinions, even though there is no guarantee that the opinions expressed will be taken into consideration in decision making.
6. Informing, the power holders only provide information to the public regarding the proposal of activities, the community is not empowered to influence the results.
7. Therapy, power holders give reasons for proposals by pretending to involve the community.
8. Manipulation, is the lowest level of participation, where the name is only used by the community.

Furthermore Arstein divides the 8 levels of participation into 3 Ladder (Connor: 1998; Sigit: 2013), namely:
1. there is no participation at all (non participation), which includes manipulation and therapy,
2. community participation in live forms accepts several degrees (tokens of tokenism), including informing, consultation and placation,
3. community participation in the form of having power (degrees of citizen power), including partnership, delegated power, and citizen power

2.1 E- Musrenbang (Development Planning Discussion)

Development Planning Discussion (Musrenbang) is a forum for communication or deliberation of development plans carried out by a group of community and government in a region for the successful of development programs, discussing the problems they face and deciding short-term development priorities, then proposing to the government at a more level high, and through a planning agency (BAPPEDA). Musrenbang in the kelurahan was held during January.

e-Musrenbang is a website & mobile apps-based planning application developed by the Regional Development Planning Agency (BAPPEDA) of the DKI Jakarta Province with the aim of supporting the implementation of Musrenbang in the preparation of Local Government Work Plans (RKPD), and as a media for public aspirations, verifying (existing condition / field) and publish the results of the community's aspirations in the form of web and mobile applications, with the website address http://musrenbang.jakarta.go.id. and will lead to e-budgeting.

Sub-district’s Musrenbang Process
1. Pre-sub district’s Musrenbang
2. Implementation of the district’s Musrenbang

In the implementation of the district’s Musrenbang, the Team is: district’s Head, Chairperson and members of the LPM, Sub-district and District officials, Head of school, Head of puskesmas, Officials of the district’s, and NGO in the district.

While the participants of the district’s Musrenbang are all components of the community in the district’s.

3. Post-Musrenbang: to make a List of Priorities for the Issues of Urban district’s Development

2.2 Sub-district’s performance

Organizational performance is defined as the effectiveness of the organization as a whole to meet the defined needs of each group with regard to systematic efforts and to increase the organization's ability to continually achieve their needs effectively Nasuca (2004); Sinambela (2012). Wibowo (2011: 229) explained that the measurement of performance needs to be done to find out whether during the implementation of the performance there is a deviation from the predetermined plan, or whether the performance can be carried out according to the schedule specified, or whether the performance results have been achieved as expected. Kelurahan performance is evaluated to the extent that the main tasks in the development area of the Kelurahan are able to carry out in accordance with their authority.
Dwiyanto in Pasolong (2013: 178) describes several indicators used to measure the performance of public bureaucracy, namely: Productivity, Quality of Service Responsiveness, Responsibility, and Accountability.

Mahsun (2006: 31) public sector organizations require a broader measure of performance assessment, not only measuring financial levels and efficiency levels. The measurement of the performance of public sector organizations includes 6 aspects as follows: Input groups, process groups, output groups, outcome groups, benefit groups and impact groups.

This study used performance indicators according to Mahsun in assessing the performance of sub-district’s organizations.

3 Research Methods

Qualitative approaches is used in research Sampling or data sources in this study were conducted purposively. Collection techniques with triangulation (combined), qualitative data analysis and research results emphasizing the meaning of generalization. Determination of informants is carried out snowball sampling. Focus on community participation in the implementation of e-Musrenbang in the area of sub-district Tanjung Priok Jakarta.

The informants are: 1. The Tanjung Priok sub-district’s Head has worked for more than 15 years in the North Jakarta Administrative City as a sub-district’s Head so that it is credible. 2. Representative of the RW Management, so that they are expected to be able to answer the questions asked. 3. Community leaders, as people who have participated in the Kelurahan Musrenbang, so researchers are confident of their ability to answer the questions asked.

Data analysis technique

The analysis technique used is Interactive Miles and Huberman (1994), commonly referred to as interactive models, which basically consist of three components: data reduction (data reduction), data presentation (data display), and drawing and verifying conclusions. The technique of checking the validity of the data obtained is based on certain criteria. There are four criteria used in checking data validity: (1) credibility; (2) transferability; (3) dependence; and (4) certainty (Guba: 2002). The research was conducted in Tanjung Priok Sub-District, which is a Regional Work Unit in the DKI Jakarta Province, especially in the Administrative City of Jakarta, which is held for 3 (three) months from November 2017 to January 2018.

4 Results And Discussion

The Tanjung Priok sub-district has an overall area of 559 hectares, including in Indonesia Port II (PELINDO) covering an area of ± 469 ha, offices / trade and warehousing. There is the Tanjung Priok International Seaport, making Tanjung Priok Urban Village one of the International Gates to enter Jakarta from the sea. There are 158 RT (Neighborhood Unit) and 16 RW (Community Unit) with a population in December 2016 which is 41,290 people with an average population density of 73.86 people / Km2.

Secondary data on the implementation of the Musrenbang as presented in the table: 1 as follows:
Table 1.2 List of Proposed Results of Musrenbang in Tanjung Priok Sub-District 2016 & 2017

<table>
<thead>
<tr>
<th>No</th>
<th>Year</th>
<th>No of Proposal</th>
<th>Accepted</th>
<th>Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2016</td>
<td>186</td>
<td>130</td>
<td>56</td>
</tr>
<tr>
<td>2</td>
<td>2017</td>
<td>101</td>
<td>97</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: research 2017

From Table 1.2 above, there are 186 proposals for development activities and community empowerment activities. 130 proposed activities received in the SKPD Work Plan. 56 proposed activities that were rejected. In the 2017 Tanjung Priok Urban Village Musrenbang, 101 proposals for development and community empowerment activities, 87 proposed activities were received or accommodated in the SKPD Work Plan and 4 proposed activities were rejected. Based on the proposed data above, the proposed activity that was rejected was found, meaning that the community proposal could not be accommodated. Based on the results of verification of the Technical Service Team, there are proposals that do not match the designation, the number of incorrect volumes, and the location of the activity is unknown.

1. Implementation of community participation in e-Musrenbang as an effort to support the success of the Tanjung Priok Urban Village program.

Prior to the implementation of the Musrenbang, the Tanjung Priok sub-district was held a community meeting at the Rukun Warga (RW) level, is called Rembug RW. The results of the proposals will be the source in the Development Planning Discussion (Musrenbang) at Tanjung Priok Sub-District.

"Community participation is community participation in the identification and potential processes that exist in the community, selection and decision making about alternative solutions to deal with problems in efforts to overcome problems and community involvement, and basically the community is still enthusiastic about organizing musrenbang, although there are some pessimistic about the musrenbang proposal ". (Interviewed with Head of Tanjung Priok sub-district, 2017)

![Figure 1](image1.jpg)

All the results of the proposed activities in the RW rembug are input into the e-Musrenbang system by the operator from the RW element accompanied by the LMK RW and guided by the Rembug RW Companion Team (Tanjung Priok Village Staff). The result of the implementation of the Rembug RW is that all community aspirations have been inputted into
the e-Musrenbang system. Then the RW Chair reported the results of the Rembug RW to the Lurah. Then verification by the Rembug RW Team (Tanjung Priok Urban Village Staff). Then the Stage of Implementation of the Kelurahan Musrenbang Forum led directly by the Tanjung Priok sub-district’s Head.

This e-Musrenbang system is made user friendly, so that it is hoped that the community can operate easily. But there are still people who do not understand about inputting e-Musrenbang, this is because of the lack of socialization to the community regarding the mechanism of the e-Musrenbang system. This also happens in other regions, such as the Kubicek study (2010); Fadil (2013); Fikri (2015); Hertiari (2015)

Another problem which is an obstacle is the lack of coordination between the Sectoral Technical Office to the Kelurahan regarding the proposed musrenbang addressed to the relevant SKPD, so that the musrenbang proposal is not accommodated

2. From the above description, it can be concluded that the constraints of the implementation of community participation in the e-Musrenbang of Tanjung Priok sub-district are as follows:

1. The facilities owned by the RW Management in the implementation of e-Musrenbang still do not support the implementation of these activities.
2. Community participation in Tanjung Priok Sub-District in Rembug RW and Kelurahan e-Musrenbang still passive
3. Lack of socialization to the community to implement community participation in e-Musrenbang
5. The implementation time is felt to be short so that the preparation of the development plan becomes rushed and inaccurate

3. The Efforts That Can Be Made to Realize The Success Of E-Musrenbang In Tanjung Priok Village Are As Follows:

1. The Regional Government, especially the Tanjung Priok Sub-District, must conduct socialization / technical guidance on e-Musrenbang to the community in a regular and sustainable manner.
2. encourage the community Tanjung Priok Urban Village is directly involved actively participate in the organization of Rembug RW and Kelurahan e-Musrenbang.
3. Increasing the performance and professionalism of Tanjung Priok Sub-district employees, especially understanding and expertise in the area of Regional Development Planning.

5 Conclusions

5.1 Conclusion

The author can conclude as follows: The implementation of e-Musrenbang in the Tanjung Priok sub-district is dependent on the participation of the community who know the conditions and needs, and those who participate in planning and accessing the input of the e-Musrenbang application are also the people themselves. The regional government, especially the Tanjung Priok Urban Village, is only a facilitator and coordinator of the development planning activities.
Community participation in the e-musrenbang program has been quite good, only the constraints in the field are due to ignorance of some people to the electronic musrenbang (e-musrenbang) system so that they are more willing to do it manually, so the results of implementation are hampered. Musrenbang still does not support the implementation of these activities, and the weak coordination between implementers of e-Musrenbang, it also greatly influences the success of the Kelurahan Musrenbang itself.

5.2 Suggestion

Suggestions for the Tanjung Priok Urban sub-district in the implementation of e-Musrenbang in the next year are as follows:
1. Tanjung Priok Sub-District’s employees to be more optimal in disseminating information on procedures and benefits from electronic use of Musrenbang (e-Musrenbang)
2. Encouraging the enthusiasm of the community to participate in the Musrenbang for the success of the Tanjung Priok Village performance program, because the purpose of e-Musrenbang is to involve the community members in the implementation of the Musrenbang for development and welfare in their own community.

Acknowledgements

Thank you for Prof. Dwi Purwoko; Dr. Taufan Maulamin. SE. Ak. MM, and my colleagues at master Degree of Administrative Sciences Institut STIAMI.

References

[5]. Bizjak, Igor, 2012, Improving public participation in spatial planning with Web 2.0 tools Improving public participation in spatial planning with Web 2.0 tools, Social Sciences, Published by: Urbanistični inštitut Republike Slovenije central and eastern euepean on line library.


[24]. Sholihmu'adi, Dr. 2015. The Dynamic of Musrenbang Implementation with E-Musrenbang System.


[28]. Tulloch ,David L, 200Y. Many, many maps: Empowerment and online participatory mapping ,Vol :12 (2). USA: Chicago University Library, ISSN 1390-0466


**Document:**


[4]. http://musrenbang.jakarta.go.id/

[5]. https://bappeda.jakarta
Performance Value of Services in Service Organizations in Applying One-Stop Integrated Services

1st Fino Wahyudi Abdul1, 2nd Wahidin Septa Zahiran2, 3rd Diana Prihadini3, 4th Dony Hendrartho4
{fino@stiami.ac.id1}

Abstract. One-stop integrated services have been implemented in Indonesia in less than twenty years. The application of one-stop integrated services in Indonesia is very necessary to improve and accelerate the process of licensing services in several major cities in Indonesia. But in its implementation there has not been much measurement of the performance of integrated services. On this basis, this study seeks to measure the value of an integrated service performance index (IKP), the purpose of which is to get an overview of service performance in the form of a service performance index. Lean approach method and measurement using integrated service performance index (IKP) are used to obtain the speed of the licensing process and the measure of service performance index. Data collection techniques carried out are literature studies and field observations, with processing and data analysis methods using a lean approach and 7 types of waste (7 waste). The final results obtained are integrated service performance index (IKP) values which are then analyzed by indicators that have a low value potential factor which results in a low integrated service performance index in a one-stop integrated service organization. The one-stop integrated service organization that was observed was the Service Department Technical Unit (UPTD) one-stop integrated service (PTSP), Koja sub-district, North Jakarta municipality, DKI Jakarta.

Keywords: Integrated Service Performance Index, Lean, 7 Waste, One-Stop Integrated Service.

1 Introduction

Complex licensing procedures in Indonesia are a problem for the general public, including the people of Jakarta and surrounding areas, complicated and long-standing procedures are one of the problems. In this era of millennia and digital economy, acceleration and increase in productivity are not only needed in the field of production or manufacturing, but also in services and services, so that the results of this study are expected to provide an overview of service performance to customers or the public. There is not much literature that provides an overview of public service performance, although Halik (2014), in his study stated that the reason for conducting research is that there are no indicators to measure performance on
standard PTSP, so that the research is carried out through the perspective of key performance indicators in provide assessment of service performance in PTSP organizations.

In a study conducted by Furterer and Elshennawy (2005), the lean method can be applied to services in local government, such as those applied in several states of the United States. In the study, the implementation of the lean method turned out to be able to increase the speed of service time to the public and improve the effectiveness and efficiency of public service organizations in several states of the United States. In addition, the repair process is carried out to provide an increase in the quality of public services by eliminating unnecessary processes or activities that result in waste of time and service costs.

Lean application is how to define activities that have added value and those that are not value added, then eliminate these non-value-added values, by using systematic procedures to change the work environment so that it produces speed in work (Chen & Cox, 2012). Lean service with lean thinking can be effectively applied in the service industry to cut costs from activities that are not valuable and increase customer satisfaction (Bonaccorsi, Carmignani, & Zammori, 2011; Chen & Cox, 2012). In addition, lean can be defined as a systemic approach to identifying and eliminating waste, facilitating the flow of material, products and information with continuous improvement (Gaspersz, 2007). Liker (2006) explains that in the Toyota Production System (TPS) there are seven types of waste (7 waste) that do not add value, namely overproduction, waiting (over waiting time), transportation (too much transfer), overprocessing (excess in doing work processes), inventory (too much in storing goods), motion (too much unnecessary movement) and defect (too many defects in service or defect production).

The public service sector in the city of Jakarta is one sector that has an important role in driving the city's economy. Good quality public services will create competitiveness. One form of service quality is how to serve the community / customers with good speed and timeliness. This study aims to analyze service performance in service organizations to obtain the level of effectiveness of public services after the implementation of one-stop integrated services.

Service to customers or the general public is an important activity that must be maintained the quality of service. The form of service quality is photographed in the performance of services carried out by service providers to customers or the general public. Problems that arise can come from responses from customers to the quality of service they get, such as speed and timeliness in serving customers. In addition, licensing procedures that are too long, long and complex are a problem that must be faced by the people in Indonesia, including in the city of Jakarta. One of the goals applied by PTSP is to obtain efficiency in service time and reduce any unnecessary activities.

In 2007, the Asian Foundation instituted a study which resulted in an integrated service performance index (IKP). Integrated service performance index (IKP) is the value of service performance based on several dimensions and the results are used to measure the capacity and performance of each integrated service organization, using service index dimensions, which consist of structure, operations, licensing processes, perceptions of service users and volume issuance of permits (Goldberg, 2007). According to (Nakhi & Neves, 2009) and (Pires de Souza et al., 2013) in some countries service is one of the sectors that affect the economy of a country and responses and complaints from customers are always the focus that is handled comprehensively.

The analysis used to measure service performance is used the Integrated Service Performance Index (IKP) approach method while to measure the efficiency and effectiveness of services used the lean method approach. Integrated Service Performance Index Analysis is
used to measure the value of organizational performance in integrated services, while the lean method is used as an approach in achieving efficiency and effectiveness.

The dimensions in measuring the Integrated Service Performance Index (IKP) are structure, operations, licensing processes, and perceptions of service users. Then the scores are determined based on the definition of each indicator in each dimension, which will show the value of service performance in the form of a service performance index. To get optimal efficiency and effectiveness, an analysis of the lean management approach is carried out so that the expected performance can be achieved, then the analysis process is continued with a define and measurement approach.

According to Goldberg (2007), the management of a "One Stop Shop" (OSS) business license, also known as integrated service, is faster and cheaper licensing by integrating the management of various types of licensing into an integrated service. Services like this help increase the number of new formal entrepreneurs, then significantly increase the amount of regional income and of course strong economic growth will be achieved.

2 Research Methods

In this study, there are three stages used to discuss it, namely define, measurement and analyze. The first step is define, which defines the problems that arise by looking for critical to quality which is a potential factor, the search for problems is done with a lean approach to one-stop integrated services (PTSP). The second stage is measurement, which measures the performance of PTSP organizations by using an integrated service performance index (IKP) (Goldberg, 2007). The third stage is analyze, which is analyzing the potential factors obtained in the first stage.

The lean approach is used in the first stage to get the root potential problem factor, the tools used are 7 waste consisting of overproduction, waiting, transportation, overprocessing, inventory, motion and defect. In addition, a lean approach with 7 wastes is used to obtain efficiency and effectiveness in a one-stop integrated service organization (PTSP), and from seven types of waste, namely inventory that has the potential to be wasteful, because there are too many documents needed in licensing, this become a potential factor that must be addressed.

The instrument used in collecting data was checking the interview contents that were asked, and employees in the One Stop Integrated Service agency were used as informants in this study. The type of data used in this study is quantitative data based on the service dimensions category, the sample dimensions of the service index. While the analytical method used is a quantitative method based on numerical data on the dimensions of the service index, which is processed by calculating percentages and measuring scales, while literature studies and field observations are used for collecting research data. Literature studies were conducted to see the discussions conducted by other researchers related to PTSP service performance, while observations were made to collect servant performance index data (Goldberg, 2007) in the field through informants in PTSP organizations. The research location is in the UPTD PTSP in Koja District, North Jakarta Municipality, DKI Jakarta.
3 Result and Discussion

Based on the results of observations, the data obtained through PTSP UPTD staff informants in Koja District, North Jakarta are shown in Table 1. The data in Table 1 are the results of integrated service performance index (IKP) measurements in accordance with the references of The Asian Foundation (Goldberg, 2007).

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Value</th>
<th>Maximum score that can be achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structure</td>
<td>130</td>
<td>170</td>
</tr>
<tr>
<td>Operations</td>
<td>50</td>
<td>80</td>
</tr>
<tr>
<td>Licensing process</td>
<td>144</td>
<td>250</td>
</tr>
<tr>
<td>Perception of service users</td>
<td>61,25</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>385,25</td>
<td>600</td>
</tr>
</tbody>
</table>

Source: Research result 2018

3.1 Define stage

At this stage, define, which defines the problems that arise by looking for potential factors, defining the problem is done with a lean approach to one-stop integrated services (PTSP). In Table 1, there are 2 potential factors that can be problematic, firstly the excessive licensing process passed by the community in applying for overprocessing, in the PTSP UPTD organization in Koja sub-district, North Jakarta Municipality, DKI Jakarta. The PTSP UPTD of Koja Sub-District does not handle the permit process for IMB, TDI and HD / SITU, the licensing process is handled at the North Jakarta Municipal Office.

The second number of documents required and required (inventory) in processing permits in PTSP organizations in Koja sub-district, North Jakarta Municipality, which exceeds 12 documents. So that the type of waste on 7 waste that has the potential as a potential factor is waiting and inventory, because the waiting time is too long and the required document requirements are too much, in the management of permits that must be handled.

3.2 Measurement stage

At this stage an integrated service performance index (IKP) was measured at the UPTD PTSP in Koja District. It can be seen that the total service performance index (IKP) integrated in Table 1 is 385.25 of the total maximum index value of 600 which can be obtained, according to the maximum measurement reference from the Asian Foundation. This shows that the integrated IKP value in the PTSP UPTD in Koja sub-district, North Jakarta is still far from the maximum value. Why this happens, in Table 1, first on the dimensions of the structure, and the licensing process, there are several indicators that are not handled directly or
not the authority of the PTSP UPTD in Koja Subdistrict, but rather through a higher level, namely the North Jakarta Municipal Office.

Secondly there are several indicators on the dimensions of the licensing process, namely the time of the document administrator that is more than 15 days and there are still quite large different indicators between the targeted time for completing documents with the time spent by customers or the community. Third, in the dimensions of the licensing process there are still indications related to the required document requirements, the requirements required exceed 12 documents.

Fourth, in the dimension of perceptions of service users, it does not have a compliance officer, which functions as an office space specifically dealing with components from the community. The five costs are still expensive in measuring the integrated service performance index. Table 2 shows the values of the indicators of each dimension compared to the maximum value that can be achieved by these indicators, in the PTSP UPTD of Koja Subdistrict, from Table 2 the potential factor is in the dimensions of the licensing process and structure.

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Indicator</th>
<th>Value achieved</th>
<th>Reason</th>
<th>The maximum value that can be achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structure</td>
<td>Handle IMB, TDI and HD / SITU permissions</td>
<td>0 = Does not directly handle IMB, TDI and HD / SITU permissions</td>
<td>3 permits x 10 = 30</td>
<td></td>
</tr>
<tr>
<td>Licensing process</td>
<td>Many documents needed to take care of IMB, TDI and HD / SITU</td>
<td>0 = more than 12 licenses x 6 = 18</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Time for managing TDI and HD / SITU documents</td>
<td>4 = Time needed to license x 6 = 12</td>
<td>between 16-30 days</td>
<td></td>
</tr>
<tr>
<td>Perception of users</td>
<td>Official fees needed to arrange IMB permits</td>
<td>0 = It costs more than 6</td>
<td>Rp. 1,875,225</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Does it have a compliance officer?</td>
<td>0 = No compliance officer</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2. Comparison of integrated service performance index values

Source: Research result 2018

3.3 Tahap Analyze stage

The measurement results in Table 1 and the measurement phase, found the root problem in the service performance index value, namely in the process of licensing and structure. The root of this problem is based on analysis using the Pareto diagram model. The dimensional values in Table 1 are converted into an assessment diagram (Pareto diagram) as in Figure 1 and Figure 2, the Pareto diagram is based on Pareto analysis.
Bass (2007), Pareto analysis is a very simple analysis. This analysis is based on the principle that 80 percent of problems are found at the root of 20 percent of the causes of the problem.

The values obtained from Figure 1 and Figure 2 show that the dimensions of the licensing process and structure have a service performance index value that affects the service performance index value in another dimension. Nearly 80% of the service performance index value is owned by the licensing process dimension (250 for maximum values and 144 for achieved values) and structure (170 for maximum values and 130 for achieved values) and only a range of 20% service performance index values owned by dimension of perception of
service users (100 for maximum values and 61.25 for achieved values) and operational (80 for maximal values and 50 for those achieved).

4 Conclusion

Based on the results and discussion, it can be concluded that this research is first, the description of the performance of integrated one-door services can be measured based on an integrated service performance index (IKP), by measuring the dimensions of structure, operations, licensing processes and perceptions of service users. From the value of the measured results obtained from these dimensions, the service performance index value in PTSP organizations can be known.

Second, the integrated service performance index (IKP) value at the one-door integrated service UPTD in Koja sub-district, North Jakarta municipality, DKI Jakarta has not yet reached its maximum value or can be said to be far from the maximum integrated service performance index.

Based on the conclusions obtained, then one solution to improving the value of service performance is the implementation of the lean method with a 7 waste approach to be able to improve the service performance index value in poor dimensions, so that it can increase the integrated service performance index value. This approach can help integrated service organizations or doors (PTSP) reduce the accumulation of time, unnecessary costs and the number of documents needed.

Acknowledgement

Finally, there is no saying that can be conveyed, except to thank the presence of God Almighty and our thanks to Mr. Dr. Panji Hendraso, Mr. Yulianto, Mr. Dr. Hartono, Ms. Yana Kalapadang, colleagues at the LPPM Institut Ilmu Sosial and Manajemen Stiami and colleagues who cannot be mentioned one by one. For the encouragement & assistance that has been given to us to complete this research.

References


Strategy to Realize E-Government As The Public Transparency to Preventive Government of Corruption

1st Irawati1, 2nd Syahrul Reza2
{irawati@stiami.ac.id1, ukhti.ra@gmail.com1, ts.reza@stiami.ac.id2}
Institut Ilmu Sosial dan Manajemen STIAM1, Mandala International Education Institute STIAMI Jakarta2

Abstract. Efforts to prevent opportunities for corruption can rationally be carried out and constitute a preventive effort by implementing e-government which utilizes online-based computerized technology. An integrated system is needed so that e-government implementation can be directly connected from each region to the center. This is necessary in reviewing the development of regional capacities in managing their regions, the condition of their fiscal decentralization management capabilities and reducing corruption related to regional finances. The Central Government makes it easier to balance regional welfare in this case the distribution of the General Allocation Fund (DAU). There needs to be a central policy that provides awards, so that regions that are already independent, regional heads are proud to pay their own employees, without expecting general allocation funds from the central government. Fiscal effectiveness or fiscal decentralization can be realized if the government implements integration that promotes welfare. By increasing the Human Development Index (HDI) and maintaining market prices so that there is no monopoly that hinders public consumption. The consideration is that the high level of human development or showing the development of developing regions will automatically increase tax revenue. Research suggests that the government needs to make policies that are conducive to tax effectiveness.

Keywords: E-Government, Transparency, Corruption.

1 Introduction

Organizing Public Services is one of the important functions of the government. This function is the real actualization of the social contract given by the community to the government in a Principal-agent relationship (Rawls, 1971) in Tarigan (2003). Efforts to improve the quality of public services at all levels of government with the Law of the Republic of Indonesia Number 25 of 2009 concerning Public Services, and Regulation of the Minister of State for Administrative Reform and Bureaucratic Reform of the Republic of Indonesia Number 7 of 2010 concerning Guidelines for Evaluating Public Service Performance.

The phenomenon of malpractices has become an integral part of organizing public services in Indonesia. This can be traced from the number of complaints made by the community regarding the poor performance of public services in Indonesia. This is traced to the number of complaints made by the community regarding the poor performance of the
bureaucracy. Long-term service, high fees, additional fees, the behaviour of officials who act more as officials than public servants and discriminatory services (Tarigan, 2003).

The smooth implementation of general tasks of government and development depends on the behaviour of bureaucrats as Civil Servants. To achieve a just development goal, realizing a law-abiding civil society that is modern, democratic, prosperous and highly moral is needed for bureaucrats who serve as public servants fairly, efficiently and effectively. And being a general fact in the bureaucratic scope, the implementation of poorly planned activities results in overlapping, lack of coordination, communication between implementers is less effective, lack of motivation, lack of transparency, lack of accuracy, lack of understanding of tasks and mutual responsibility. The community as the subject of service no longer likes the process of public service is complicated, long, and risky because of the long chain of bureaucracy.

Wahyudi Kumorotomo (2005) quotes the Parkinson Theory as saying that within each formal structure there is a tendency for increasing personnel in organizational units. Every time he gets an assignment, officials will generally form new bureaucratic units or recruit new people. This resulted in a swelling of the bureaucracy both in terms of the number of units and the number of employees. Because the land and income sources that can be extracted by employees become more limited, they are finally encouraged to commit acts of corruption. Of course, this is not the only reason that employees commit corruption.

According to Ivancevich, Lorenzi, Skinner and Crosby (Ratminto and Atik Septi Winarsih, 2010: 2) "service is visible products (cannot be touched) that involve human efforts and use of equipment." Organizational, management, political and administrative science that deals with how to achieve output or objectives efficiently and effectively. To achieve efficient and effective equipment is needed because the millennium era is the era of computer technology that is based on internet access that can provide information quickly. E-Government is a tool that cannot be negotiated if Indonesia wants equitable development in all fields. Theoretically, the government can improve the performance of quality public services, this is because all creativity has been given to the government to carry out public services in the context of public welfare. However, in the course of the wheels of government many experienced obstacles or obstacles, for example, the budget allocated by the government in the framework of public services is still very limited, the mindset of bureaucrats tends to place itself as an agent of power rather than a service agent. These conditions that make the future of people's lives will be bleak because people are very dependent on the services provided by the government.

Efforts to realize quality public services can be done by civilizing the concept of public accountability basically, government institutions are actually created and held by the public (Hughes, 1994) in (Prianto, 2006: 122), on the basis of the theory above bureaucrats in government institutions must be accountable for their performance to the public, covering all behaviors, attitudes of work actions and various decisions made in order to carry out their duties and obligations.

Their actions were in violation, such as corruption needs to be anticipated prevention (preventive) systematically, so that there are no opportunities for corruption. But what kind of system model that makes corruption is no chance? For this reason, this article was made.
2 Literature Review

2.1 E-Government In Indonesia

The definition of E-Government by the World Bank (The World Bank Group, 2001): 
*E-government refers to the use by government agencies of information technologies (such as Wide Area Network, the internet, and mobile computing) that have the ability to transform relations with citizens, business, and other arms of government.*

The implementation of E-Government has a legal basis since the existence of Presidential Instruction No.03 of 2003 which is a legal umbrella for developing e-government. This can encourage local governments to make a technical legal umbrella in the form of a Governor's Decree or Decree of the Regent / Mayor. So those e-government activities are not hampered by budget allocations. Then with the policy of Presidential Regulation No. 96 of 2014 concerning the Indonesia Broadband Plan for 2014-2019 in order to realize an independent, developed, fair and prosperous Indonesian society which is the vision of the 2005-2025 National Long Term Development Plan and one of the manifestations of the implementation of the 2011 Indonesian Economic Development Acceleration and Expansion - 2025, it is necessary to use information and communication technology, especially broadband (broadband) as an inseparable part of the strategy, to encourage economic growth and national competitiveness, and improve the quality of life for the people of Indonesia. Presidential Regulation No. 96 of 2014 concerning broadband plans, namely: procurement: 1). E-Government, 2). E-Health, 3) E-Education, 4) E-Logistics and 5). E-Procurement.

So far some examples of the implementation of E-Government in Indonesia are:

1. E-procurement is the procurement of electronic development tenders so that potential flirting between providers and users of goods/services can be prevented.
2. Licensing on line, also known as the One-Stop Integrated Service (PTSP) to cut the bureaucracy and facilitate investment
3. (LARASITA) for making land certificates
4. (SIAK) or population administration information system
5. SMS centre for the event of interaction between the government and the community. Can be truant civil servant complaints, the latest issues
6. and ect.

The development of e-government applications requires substantial funding so that readiness from the human, government apparatus and readiness of the community is needed. The unpreparedness of human resources, organizational culture, facilities and infrastructure of information technology (infrastructure), and the lack of attention from parties directly involved can be the cause of failure in implementing e-government. However, one of the issues that are currently developing related to the implementation of e-government in Indonesia is the lack of optimal Information Technology (IT) products in the government environment and the lack of synergy implementation of e-government (Safitri Jaya: 2013)

Safitri Jaya: 2013 explained several weaknesses in the formation of e-government in Indonesia:

1. Services provided by government sites have not been supported by an effective management system and work processes because preparedness of regulations, procedures and human resource limitations severely limits computerized penetration into the government system.
2. The strategy has not been established and the inadequacy of the budget allocated for the development of e-government.
3. The initiative is an agency effort individually, so several factors such as standardization, information security, authentication and various basic applications that allow interoperability between sites reliably, safely, and reliably receive less attention.

4. Gaps in people's ability to access the internet network.

According to Arief Budi Pratama (2005) E-government logically can act as a prevention of corruption because: First, the implementation of e-government in the administration of government such as in Public Services, Public Policy, will further minimize direct contact between actors so that deviations can be reduced.

Second, with the implementation of e-government, more transparency will be created where each party can know important data or information needed by stakeholders. The level of data manipulation can be more easily tracked to find out the actual data. For example, STNK / SIM extension via the internet with the type of transaction will be easier for users/users because in the access channel Samsat extension of SIM and STNK has clear and transparent information so that it will close the possibility of the role of brokers in it.

With the implementation of e-government, the performance of public organizations will be more efficient, effective, transparent, accountable, creative, and participatory. The concept of e-Government does not only mean that there is a good change in performance from the government to its people but further means that there is a transformation in the approach of administering a government from a government-centred (executive) to a community-centred (democracy).

The slow pace of evolution of a country from the Knowledge Society towards e-Government is very dependent on how sensitive the government and its people are in reading the signs of the times (trends or trends).

In this era of globalization, there are very many variables and parameters that are outside the control of a country concerned, so there is no way another is that if you want to stay in the world community, the government and society of a country must have a sharp and accurate strategy. This is also the reason why so many third world countries and underdeveloped countries have begun to think about and carry out planning, development, and development of the concept of e-Government in their respective countries. This is because they are aware that e-Government does not only have internal boundaries (only applies and is beneficial to society in a country), but can actually be a reliable facility and medium in its efforts to establish bilateral and multilateral cooperation with other countries (Indrajit, 2002).

### 2.2 Corruption Description In Indonesia

Based on the evaluation report on the prevention and eradication of corruption issued by the Ministry of PPN / Bapennas in 2010 FROM 2006-2010 the perception index of corruption in Indonesia experienced a positive increase. This shows that prevention efforts by the government are quite good. As illustrated in table 1 below.

<table>
<thead>
<tr>
<th>Tahun</th>
<th>Skor</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>2.4</td>
</tr>
<tr>
<td>2007</td>
<td>2.3</td>
</tr>
<tr>
<td>2008</td>
<td>2.6</td>
</tr>
<tr>
<td>2009</td>
<td>2.8</td>
</tr>
<tr>
<td>2010</td>
<td>2.8</td>
</tr>
</tbody>
</table>

Source: International Transparency

<table>
<thead>
<tr>
<th>Negara</th>
<th>Skor CPI 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapura</td>
<td>9,3</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>5,5</td>
</tr>
<tr>
<td>Malaysia</td>
<td>4,4</td>
</tr>
<tr>
<td>Thailand</td>
<td>3,5</td>
</tr>
<tr>
<td>Indonesia</td>
<td>2,8</td>
</tr>
<tr>
<td>Vietnam</td>
<td>2,7</td>
</tr>
<tr>
<td>Timor Leste</td>
<td>2,5</td>
</tr>
<tr>
<td>Filipina</td>
<td>2,4</td>
</tr>
<tr>
<td>Kamboja</td>
<td>2,1</td>
</tr>
<tr>
<td>Myanmar</td>
<td>1,4</td>
</tr>
</tbody>
</table>

Source: International Transparency

The biggest corruption sector case in 2010 based on ICW data (Indonesia Corruption Watch) is the regional financial sector with Rp. 596.232 billion (38 cases), Licensing Rp. 420 billion (1 case), Mining Rp. 365.5 billion (2 cases), Energy/electricity of IDR 140.8 billion (5 cases), and Banking IDR 96.1 billion (3 cases). While the Data mode from ICW shows the biggest mode of corruption revealed during the first semester of 2010 was the mode of embezzlement with 62 cases, followed by the markup mode of 52 cases, fictitious projects of 20 cases, misuse of the budget of 18 cases and bribes of 7 cases.

3 Discussion

To realize effective e-government needs resources or quality resources, among others, is the first preparation of funds to create a systematic and integrated e-government system with stakeholders both government in ministries and central government institutions so that good servers are needed, both human resources who are competent in operating the software, so the task of bureaucrats as public administrators can be carried out, namely as a public service that functions optimally.

E-Government that is built needs to be made an integrated or integrated system model that includes several stages,
1. How to choose the target is;
2. Setting goals,
3. Validating Goals,
4. Realizing the Target,
5. Controlling the target.
If viewed from the stages of implementation of e-government above is a form of control of planning performance or planning performance of government tasks. Those connected to the internet in each government stakeholder division. With connected planning, e-government will be easier to control or control so that goal is achieved effectively.

4 Conclusion

1. Creating e-government is an activity that cannot be negotiated by the Indonesian government because the millennium era demands online-based computer technology to accelerate access to information.

2. The implementation of e-government in Indonesia faces many problems, among others, the lack of preparedness of funds in developing such systems in areas that have not been established, related to the unavailability of resources. And the lack of support from relevant agencies and the power of regional leaders in realizing their regional vision of the strategy (thinking long-term goals) is not just thinking about carrying out missions (short term).

3. Because the e-government system model is an integrated or integrated model, the system model is the basis for making planning software or planning implications for the implementation of e-government. Consists of: How to choose a target or goal; Setting goals; Validating goals; Realizing the final goal and controlling the target example: preparation of the mechanism/procedure performance from the process of input to output if the service is from the queue number to the process until the output of goods and services is issued.

4. E-Government is a form of realizing transparency of public information, the impact of which can prevent corruption as a preventive effort, and in the context of realizing Good Governance towards a civil society.

Recommendation

1. An integrated or integrated system model is needed in the implementation of e-government connected from regions to central government or government stakeholders (stakeholders).

2. The Head of State as head of government must think strategically towards e-government up to the regions, therefore the central government also needs to think about allocating funds in building e-government systems in the regions as a form of corruption prevention in regional finance based on 2010 research the most done by ICW (Index Corruption Watch).

3. There needs to be a government policy in the form of rewards or awards not only in the form of trophies or plaques but prizes can be additional remuneration or grand (grants) if for each regional head to realize effective e-government innovations, so the impact is progress and independence in regional development and the welfare of the community.

4. There is a strict law for bureaucrats who commit corruption with severe penalties, in accordance with the corruption committed, so that it builds the shock of Terapy, for government bureaucrats who are proven to commit corruption.
References


Influence of Internal and External Factors of Implementation of Government Regulation on MSME Taxpayer Compliance

1st Endro Andayani1, 2nd Novianita Rulandari2, 3rd Aji Prasetyo3
{endroandayani@gmail.com1, vira_nita@yahoo.com2, AjiPrasetyo32@gmail.com}

Institut Ilmu Sosial dan Manajemen Stiami1,2,3

Abstract. In order to increase state revenue, the Government is exploring the taxation sector for Micro, Small and Medium Enterprises / MSMEs which are located in shopping centers, due to the low compliance of MSME taxpayers. In July 2018, a Government Regulation was issued to replace the previous regulation, which contained a tax rate for MSMEs of 0.5%. MSME taxpayer compliance is important in implementing government regulations because it is influenced by many factors, namely internal and external. This study analyzes the influence of internal and external factors in the implementation of government regulations on MSME taxpayer compliance (Perception of Justice, Knowledge, Administration, Benefits, Sanctions & Socialization, and Religiosity). The quantitative approach used data collection through questionnaires and purposive sampling, and analyzed by multiple linear regression. The results of this study indicate that the factors of Knowledge, Administration and Sanctions & Socialization have a partial effect, while Perceptions of Justice, Benefits and Religiosity have no effect on the implementation of government regulations on taxpayer compliance. Simultaneously, all factors matter. The Directorate General of Taxes is advised to improve factors that can increase taxpayer compliance, so that voluntary tax payments can be achieved, such as Religious Zakat.

Keywords: Internal and External Factors, Implementation of Government Regulation, MSME Taxpayer Compliance.

1 Introduction

In 2017 state revenues from the tax sector made a very large contribution, which is 85.6% of the state’s total revenue. This gives an indication that the taxation sector has a very important role in ensuring the sustainability of our nation's lives, especially in realizing the life of a smart nation, prosperous, just and peaceful, but the realization of tax revenue in 2014-2017 has not reached the target, this is due to low level of compliance. The issuance of government regulation specifically for MSME is expected to be responsible for MSME to participate actively and obediently because it has been simplified in carrying out its tax obligations in the gross circulation of less than Rp 4.8 billion per year subject to income tax (PPh) at a rate of 0.5% since July 2018. Based on previous research before this regulation was enacted where at a rate of 1% there were researchers who found that the 1% rate had no effect on taxpayers’ compliance, this was due to many internal and external factors that influencing taxpayers’ compliance as well as other factors such as socialization &
sanctions, justice perception, benefits, knowledge, administration and religiosity, social culture, political situation, information technology and the improvement in the Directorate General of Taxation (clean and honest officers).

In this research, researchers restrict these other factors, which want to find out the influence of internal and external factors namely socialization & sanctions, justice perception, benefits, knowledge, administration and religiosity in the implementation of Government Regulation on taxpayer compliance in North Jakarta area which is an international port area. The difference with previous research is on the addition of religiosity and locations variables.

1.1 Research Objectives

To determine the influence and analyze the influence of justice perception, knowledge, administration, benefits, sanctions & the socialization of the implementation of government regulation on MSME taxpayer compliance in North Jakarta

1.2 Research Contributions

As a consideration material for the Directorate General of Taxation (DGT) in increasing taxpayers’ compliance. And for the constituent institutions of tax legislation, especially MSME, distribution of socialization to the Government Regulation (PP), and as a complement of research reference materials to increase academics so that it is useful to develop the knowledge related to the tax regulation policy for MSME.

Figure 1. Concepts

**Hypotheses**

H1 = There is an influence of justice perception of the implementation of government regulation on MSME taxpayer compliance in North Jakarta

H2 = There is an influence of knowledge of the implementation of government regulation on MSME taxpayer compliance in North Jakarta

H3 = There is an influence of administration of the implementation of government regulation on MSME taxpayer compliance in North Jakarta
H4 = There is an influence of benefits of the implementation of government regulation on MSME taxpayer compliance in North Jakarta
H5 = There is an influence of sanctions and socialization of the implementation of government regulation on MSME taxpayer compliance in North Jakarta
H6 = There is an influence of religiosity of the implementation of government regulation on MSME taxpayer compliance in North Jakarta

2 Research Design And Method

Research Approaches and Methods

The research methods used is quantitative research. (Sugiyono, 2009:14). Research was conducted by distributing questionnaires and retrieving the data according to what was needed. The quantitative approach conducted in this research used descriptive and explanatory research methods (Nazir 2005:54).

A. Data collection techniques is observation, by observing the research object, by reviewing directly and the questionnaire by distributing the questionnaire directly to the respondent to answer it. As for the variables used:

1. Independent variable, which is a free variable that explains or influence other variables, in this research are: justice perception, knowledge, administration, benefits, sanctions and socialization, and religiosity

2. Dependent variables, which is bound variables are variables that are influenced by the independent variables. In this research the dependent variable is the taxpayer compliance.

3. Operationalization of variables
   - The Justice Perception (X1), dimension of justice, with indicators of general justice, government reciprocity, personal interests and the preferred tax rate structure, interval scale
   - Tax knowledge (X2), dimension of tax knowledge, with indicators of knowledge on government regulation policy, knowledge of procedures or policy functions of government regulation, and knowledge of tax administration, interval scale
   - Tax administration (X3), dimension of simplification of administration, with indicators of simple and easy to understand, effectiveness of surveillance, information technology system, interval scale
   - Benefits of Government Regulation (X4), dimension of benefits, with indicators of facilitate orderly administration, transparency, enhancement of contributions, interval scale
   - Sanctions and socialization (X5), dimensions of sanctions and socialization, with indicators of timely in reporting, the imposition of consistent and zero tolerance sanctions, unnegotiable sanctions, directly and indirectly socialization, the interval scale indicator
   - Religiosity (X6), dimensions of belief, practice, knowledge, religious experience, with indicators of religious are very important in my life, obedient, confident and obedient to religious leaders, and well behaved, interval scale
• Taxpayer compliance (Y), dimensions of payment compliance and reporting, timely indicators in reporting, timely in payment, calculating the tax amount correctly, have no arrears in tax payment, interval scale

4. Variable Measurement

According to Sugiyono (2009:86), each statement on the Likert scale was scored. The support statement is called a positive questionnaire the respondent must describe, support the statement (positive item) or not while the non-supportive questionnaire is called negative questionnaire. Scores for the positive questionnaires are as follows: Answer respondents strongly agree score 5, agree score 4, neutral score 3, disagree score 2 and strongly disagree score 1, while questionnaire score for negative questionnaires is otherwise.

5. Population and samples

The respondent sampling method used is non-probability sampling, and sampling techniques used purposive sampling with the following formula:

\[ n = \frac{N}{(N.d^2) + 1} \]

6. Data Collection Techniques

According to Sugiyono (2010:193), data collection can be done in various sources and ways. Viewed from the data source, the data used in this research is the primary data. The primary data is data that directly data provider to the data collector (Sugiyono, 2010:193). Whereas if viewed in a way or technique of data collection in this research by: Observation techniques and questionnaire techniques.

7. Data Analysis Methods

• Descriptive statistics

This data description is presented in maximum score form, minimum score, mean and standard deviation. These descriptions are useful for measuring the minimum and mean levels of data by the processed variables.

• Data Quality Test

1. Validity

The test is used to measure whether there are a questions on the questionnaire that must be removed or replaced because they are considered irrelevant. According to Husein Umar (2013:166) formulated as follows:

\[ r = \frac{n \sum X_i Y_i - (\sum X_i) (\sum Y_i)}{\sqrt{[n \sum X_i^2 - (\sum X_i)^2][n \sum Y_i^2 - (\sum Y_i)^2]}} \]

2. Reliability Test

The reliability test is used to measure the degree of precision, accuracy or precision of the measuring instrument. For this reliability test the author used the Alpha Method (Alpha-Cronbach method). An accurate
data if the value of Alpha-Cronbach coefficient (from SPSS result) is greater than 0.6.

- **Classic Assumption Test**
  In this research the authors used a test of normality, heteroscedasticity test and multicollinearity test used in research with more independent variables and no autocorrelation test because it was only used in Times-Series research: 1. Regression normality test, 2. Multicollinearity test, 3. Heteroscedasticity test.

- **Multiple Linear Regression**
  To find out the influence of justice perception level, tax knowledge, tax administration, benefits, sanctions and socialization of the implementation of government regulations on taxpayer compliance.

- **Coefficient of Determination Test**
  Coefficient of determination test (R²), stated that how many variations of independent variables simultaneously in influencing the dependent variables, with a formula (Sugiyono 2010:231) as follows: \( KD = r^2 \times 100\% \)

- **Hypothesis Test**

  **1. T Test Statistics**
  Test the influence partially between independent variables on dependent variables assuming that other variables are considered constant, with the confidence level of 95% (\( \alpha = 0.05 \)), T-Test sequence: Null hypothesis or alternate hypothesis, calculating \( F \) count and testing criteria.
  
  - Formulating a null hypothesis and an alternate hypothesis: \( Ho: \beta_1 = \beta_2 = \beta_3 = \beta_4 = 0 \) and \( Ha: \) At least there is one \( \beta_i \neq 0 \) \( i = 1, 2, 3, 4 \)
  
  - Calculating \( T \)-calculate by using formula: Husein Umar (2013:340)
    \[
    T_{\text{hit}} = \frac{Bi}{Sbi}
    \]

  As \( Bi = \) regression coefficient of each variable, and \( SBI = \) standard error of each variables. From these calculations will be obtained the \( T \) calculate value which is then compared to \( T \) table at the confidence level of 95%.
  
  Test criteria: \( T \) calculate > \( T \) table = \( Ho \) is rejected and \( T \) count ≤ \( T \) table = \( Ho \) is received.

  **2. F Test Statistics**
  F Test, with the intention of testing whether independent variables simultaneously have influence on the dependent variable, with the confidence rate of 95% (\( \alpha = 0.05 \)), the F test sequence
includes: Null hypothesis or alternate hypothesis, calculating the F calculate and test criteria.

- Formulating null hypotheses and alternative hypotheses
  
  Ho: β₁ = β₂ = β₃ = β₄ = 0, Ha: At least one βᵢ ≠ 0 i = 1, 2, 3, 4

- Calculate F_c (F_calculate) by using formulas:
  
  \[ F = \frac{R}{k} \frac{1-R}{n-k-1} \]

  As \( R^2 = \text{Koefesien Determination} \)
  n = number of samples
  k = number of independent variables

  With these criteria, obtained the value of \( F_{\text{calculate}} \) compared to \( F_{\text{table}} \) with the level of significant in this case 0.05 and degree of freedom = n-K-1

- Test criteria: \( F_{\text{calculate}} > F_{\text{table}} \) = Ho is rejected, \( F_{\text{calculate}} \leq F_{\text{table}} \) = Ho is received

3 Research Result And Discussion

3.1 General Characteristics of Research Respondents

The results of the research based on the gender of 100 respondents showed that the average of MSME entrepreneurs/person in charge in North Jakarta has the largest percentage of male gender at 57%, the maximum level of education at senior high school at 66%, the duration of running a business in 5-10 year at 37%, having NPWP and legal entity at 95%, and average sales of Rp 300 million to Rp 500 million is 54%.

3.2 Descriptive Statistical Test

Based on the descriptive test, it is known that each independent variable has a minimum and maximum value, resulting in the average value and standard deviation, which is seen from strong standard deviation and tendencies to approach the mean value, it shows positive deviation results so that the dependent variables have a positive perception of justice, tax administration system, benefits, socialization and sanctions, knowledge, and religiosity are sufficient. Minimum value of justice 3.33, Maximum value 5.00, Mean value 4.6633 with std deviation 0.41302, minimum value of knowledge 2.89, Maximum value 4.78, Mean value 4.3657 with std deviation 0.44500, minimum value of benefits variable 3.00, Maximum value 5.00, Mean value 4.4050 with std deviation 0.42194, minimum value of socialization variable 2.29, Maximum value 5.00, Mean value 3.9471 with std deviation 0.57490, minimum value of religiosity variables 2.00, Maximum value 5.00, Mean value 3.8800 with std deviation 0.60302, Minimum value of compliance variable 3.00, Maximum value 4.50 with Mean value 4.0050 and std deviation 0.35962
3.3 Data Quality Test

1. Validity Test
   Based on the validity test indicates that all the question items in the Independent variable are valid and the Dependent variables are valid, since the R-calculated value of each question is greater than the R-table (0.1986), thus all the question items are valid.

2. Reliability Test
   Based on the results of the reliability test of Cronbach's alpha (α) a variable more or equal to 0.60 then the indicators used by the variable are reliable, the value of Cronbach's Alpha as follows: X1: 0.732, X2: 0.899, X3: 0.732, X4: 0.637, X5: 0.856, X6: 0.816 and Y: 0.799 > 0.60

A. The classic assumption test is a test whether there is a violation of classic assumptions which are the basis of multiple linear regression models.

1. Normality of regression Test
   Based on the results of the test can be seen that the independent variables and dependent which are Justice perception (X1), tax knowledge (X2), tax Administration (X3), Benefits PP No. 46 Year of 2013 (X4), socialization and sanctions (X5), Religiousity (X6} and taxpayer compliance (Y) has significance of 0.200 > 0.05. This describes that the entire independent and dependent variables are normally distributed.

2. Multicollinearity Test
   On the result of classic assumption test of Multicollinearity showed that all the VIF value for Justice X1: 1.411, knowledge X2: 1.801, Administration (X3): 3.409, and the benefits of X4: 2.359, so that the numbers between 1 and 10 as well as the tolerance numbers below or close to 1. It can be concluded that in this case the data used are free from multicollinearity. As for the socialization is 13,983 and sanctions and religiosity 13,205, so they are not free from multicollinearity because they are more than 10, but still can be used because there are no half of the number of independent variables.

3. Heteroscedasticity Test
   From the Scatterplot graph below, we can see that the points spread randomly not to form a particular pattern. It shows the model of a regression that free of heteroscedasticity or in other words called homoscedasticity.
B. Multiple Linear Regression Analysis

Taxpayer compliance = -0.488 + 0.035X1 + 0.657X2 + 0.598X3 + 0.269X4 + 0.276X5 - 0.200X6.

On this regression model, a constant value of -0.488 which means a negative sign indicates a non-directional change. This means that if the justice perception variable (X1), tax knowledge (X2), tax administration (X3), benefits of government regulation (X4), socialization and sanctions (X5) and religiosity (X6) are zero, then the taxpayer compliance variable is equal to -0.488 units. Indicators of the justice perception variable have a regression coefficient value of (X1) 0.035, (X2) 0.657, (X3) 0.598, (X5) 0.276. means that an increase of (X1, X2, X3, X5) influence on increasing the taxpayer compliance (Y) equal to the coefficient value with the assumption that other independent variables are fixed. While the indicator of the variable (X4) has a regression coefficient value of -0.269 and (X6): -0.200, it can be interpreted that the variables (X4) and (X6) have negative affect on taxpayer compliance (Y) means that the decrease in the variable has an effect on decreasing taxpayer compliance (Y) equal to the coefficient value with the assumption that other independent variables are fixed. The interpretation of the above linear regression is as follows:
C. Coefficient of Determination Test

From the table above the coefficient of determination or Adjusted R Square obtained is 0.876 meaning 87.6% of the dependent variable, namely the taxpayer compliance (Y), the variation can be explained by justice perception variable (X1) tax knowledge (X2), tax administration (X3), benefits of government Regulation (X4), socialization and sanctions variables (X5), and Religiosity (X6), the remaining of 12.4% explained by other variables such as socio-cultural, political situation, information technology, system and tax authorities which are not explained in this research.

D. Hypothesis Test

1. Partial T Test

<table>
<thead>
<tr>
<th>No</th>
<th>Name of Variable</th>
<th>t-calculate</th>
<th>t-table</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Justice</td>
<td>0.715</td>
<td>1.985</td>
<td>Have No Influence</td>
</tr>
<tr>
<td>2</td>
<td>Knowledge</td>
<td>12.725</td>
<td>1.985</td>
<td>Influence</td>
</tr>
<tr>
<td>3</td>
<td>Tax Administration</td>
<td>8.356</td>
<td>1.985</td>
<td>Influence</td>
</tr>
<tr>
<td>4</td>
<td>Benefits PP No. 46</td>
<td>-4.287</td>
<td>-1.985</td>
<td>Have No Influence</td>
</tr>
<tr>
<td>5</td>
<td>Sanctions and Socialization</td>
<td>2.457</td>
<td>1.985</td>
<td>Influence</td>
</tr>
<tr>
<td>6</td>
<td>Religiosity</td>
<td>-1.927</td>
<td>-1.985</td>
<td>Have No Influence</td>
</tr>
</tbody>
</table>

Based on the summary of the t-test results, it can be explained as follows:
The Justice Perception hypothesis test (X1) based on the data above the value of the T-calculate is 0.715. Smaller than the T-table (0.715 < 1.989). Thus, it can be concluded that partially there is no significant influence on the variable of justice perception (X1) to taxpayers' compliance (Y), as well as religiosity hypothesis test (X6) based on data above the value of T-calculate is -1.927 smaller from -T-table (-1.927 < -1.985). The Government Regulation Benefits hypothesis test (X4) results at -4.287 greater than -T-table (-4.176 > -1.985), while the Tax knowledge hypothesis test (X2) T-calculate of 12.725 is greater than T-table (12.725 > 1.985).
The tax administration hypothesis test (X3) was 8,356 greater than the T table (8,356 > 1,985), the sanctions and socialization hypothesis test (X5) results of 2.457 greater than T table (2.457 > 1,985). So, it can be concluded that partially there is a positive and significant influence of the socialization and sanctions variables (X2, X3, X4 dan X5) on taxpayer compliance (Y).

2. Simultaneous F Test

Simultaneous F Test Result Table

<table>
<thead>
<tr>
<th>Model</th>
<th>Sum of Squares</th>
<th>d</th>
<th>f</th>
<th>Mean Square</th>
<th>F</th>
<th>Sig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regression</td>
<td>20.712</td>
<td>6</td>
<td>3.452</td>
<td>117.254</td>
<td>.000</td>
<td></td>
</tr>
<tr>
<td>Residual</td>
<td>2.738</td>
<td>9</td>
<td>3</td>
<td>.029</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>23.450</td>
<td>9</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a. Dependent Variable: Compliance
b. Predictors: (Constant), Religiosity, Knowledge, Justice, Benefits, Tax Administration, Socialization dan Sanctions

According to the F Test, it is known that $F_{\text{calculate}}$ 117.254 is greater than $F_{\text{table}}$ 3.09 (117.254 > 3.09). Thus, Ho is rejected and Ha is accepted, meaning that the entire independent variables affect the variable of taxpayer compliance.

4 Discussion

1. Based on partial F test

Based on the partial F test result Independent variable of justice perception, benefits, religiosity, implementation of government regulation has no influence on MSME taxpayer compliance in North Jakarta, which means in justice perception variable regarding General justice and distribution of tax charges are still felt unfairly aligned with the results of research conducted by (Dian Anggraeni Berutu, 2012) that in terms of tax justice variables in general Justice and the distribution of tax charges, Government reciprocity, and special provisions have no significant effect on the behavior of WPOP compliance, and in the benefits variable there is no perceived benefit from the imposition of such tariffs and the reciprocal relationship of public facilities, in line with the research conducted by (Wachidatul YUSRO, Heny, 2014), and in religiosity variable resulted that the level of faith of a person does not guarantee the level of obedience to the obligation on tax payment, means there is not the same viewpoint in carrying out obligations to God and obligations to the State, in line with (Tahar & Rachman, 2013) and (Anggada Satria Duta Arya, 2018) and not in line with (Benk, slave, Yüzbaşı, & Mohdali, 2016).
Based on the results of partial f test independent variable of knowledge, socialization & sanctions, administration of the implementation of government regulation influence the MSME taxpayer compliance in North Jakarta, this means in the knowledge variable that Respondents understand how to calculate, the deadline to pay taxes on government regulations, understand that the reporting deadline at the end of the following month is a policy to be known by taxpayers, and to know that as a MSME entrepreneur filling out the Annual Tax Return form, while the Periodic Tax Return is not reported because the report evidence is proof of payment every month, the results of this research is in line with the results of research conducted by (Oladipupo & Obazee, 2016), in the administration variables, Reform in taxation administration in the form of system changes in paying and reporting taxes, as well as ease in calculating with a single rate is not complicated so it is easy to implement. The results of this research are in line with the results of research conducted by (Maseko, 2013) stating that the quality of service is the application of tax administration system to the taxpayer compliance. Based on empirical studies stating that the policy of government regulation gives ease in the supervision of taxpayers, payment of tax on government regulation policy for MSME can be online at ATM, tax reporting can be done online or electronically (Tologana & Kalalo, 2011), as for the socialization variables and sanctions therefore, the respondent felt that there is still minimal socialization carried out in North Jakarta, so an incentive counseling was needed to increase the understanding of MSME in North Jakarta, this research is in line with (Lambey3, 2016) for taxation sanctions, the results showed that there was a significant positive influence between taxation sanctions on taxpayer compliance in reporting Annual Tax Return and in line with the result of hypothesis test conducted proving that tax socialization is influential and significant in taxpayer compliance (Lola Kurnia Pitaloka & Kardoyo & Rusdarti, 2018). Due to the significant status of tax socialization variables is smaller than the real level (0.000 < 0.05), where Ho is rejected and Ha is accepted. Thus, it can be concluded that with the T-Test has a partial effect on MSME taxpayer compliance (Andriani, 2015), and research (Lola Kurnia Pitaloka & Kardoyo & Rusdarti, 2018), stating that tax socialization could not affect the size of The role of the taxpayer's compliance awareness, but the role of tax socialization only as an independent variable to accompany the variables of awareness, meaning that interactions in the relationship between awareness and tax socialization make tax socialization as a moderator predictor variables means that tax socialization reinforces the role of understanding the tax regulations on taxpayer compliance, and tax socialization reinforces the role of understanding tax regulation on taxpayer compliance (Putu & Cahyani, 2019).

2. Based on simultaneous F test

Based on the result of the simultaneous F test, variables justice perception, taxpayer knowledge, tax administration, benefits of implementation of government regulations, government sanctions and socialization, and religiosity show that simultaneously, the entire independent variables simultaneously have a significant influence on MSME taxpayer compliance variable as evidenced by the Fcalculate value 117.254 (table) is greater than the ftable 3.09 (117.254 > 3.09). As for the dependent variables namely the taxpayer's compliance (Y) the variation can be explained by the variable of justice perception (X1), Taxpayer Knowledge (X2), administration of tax (X3), benefits of implementation of government Regulation (X4), sanctions and socialization (X5), and Religiosity (X6) amounted to 87.6% the remaining 12.4% is described by other variables such as socio-cultural, political situations, which are not described in this
research. Thus it can be concluded that the result is in accordance with the theory of attribution where the taxpayer's attitude to obey taxation is influenced by two factors, internal and external factors. Internal factors obtained from the tax and religious knowledge of the government regulation so that MSME taxpayers can comply with their tax obligations. External factors obtained from taxation justice, the implementation of tax administration, benefits as well as the firmness and taxation sanctions that affect the taxpayer's attitude to not commit violations and comply with their tax obligations.

5 Conclusions And Suggestions

A. Conclusion

Based on the problem formulation, research hypothesis and research results already outlined in the previous chapter, the authors can draw conclusions as follows:

1. Based on the upper partial test:
   a. Have no influence variables are the justice perception variable (X1), Benefit (X4), and Religiosity (X6) on MSME taxpayer compliance (Y) in North Jakarta, the majority of MSME taxpayers in North Jakarta state that the tariff imposed by the government in implementation of government regulations is unfair because the imposition of taxation is not based on the ability to pay, how much profit or amount of losses remain the same pay at a rate of 0.5% turnover, do not feel the benefits in the orderly administration, either from the tariffs and reciprocity obtained in the form of public facilities and have not felt that tax as a duty in which there is guilt when disobedient, which means to distinguish obligations to God and obligations to the State.

   b. Have influence variables are independent variable of knowledge (X2), Administration (X3), Socialization & Sanctions (X5) on MSME taxpayer compliance in North Jakarta so the respondents understand the tax regulation in calculating, paying, and reporting, reform in the tax administration in the form of system changes in paying and reporting taxes, as well as ease of calculating at a single rate is not complicated so it is easy to implement

2. Based on simultaneous hypothesis testing.

   Variable justice perception (X1), tax knowledge (X2), tax Administration (X3), Benefits of government Regulation (X4) and variable socialization and sanctions (X5), Religiosity (X6) have positive and significant influence on taxpayer compliance (Y), the results is in accordance with the theory of attribution where the taxpayer's attitude to obey the taxation is influenced by two factors, some internal factors and external factors. Internal factors are derived from the tax knowledge and benefits of government regulation so that MSME taxpayers can comply with their tax obligations. Based on the above conclusion, the author gives some advice as follows:

   a. The Government (Directorate General of Tax) is incentive to provide periodic and direct explanation to the public regarding the role of MSME tax in the imposition of taxes as the obligation of the citizens to contribute partially their income for development and that the fair does not mean the same treatment but many factors that must be considered, no need special tariff for MSME, monitoring in addition to direct socialization, and action by mail as a notification to properly enforce tax
obligations so that the purpose of the taxation on taxpayers with a turnover of < 4,8B may go well.

b. The Government (Directorate General of Tax) needs to conduct a survey of MSME, so as to know directly the wishes, capabilities and circumstances of the actual MSME in establishing regulatory policies, and perform improvements in the taxation system especially for MSME, because the knowledge in information technology updates is still minimal.

References

Journals


Books

Financing Management: An Alternative for Increasing The Profitability of Islamic Bank

1st Irma Setyawati, 2nd Siti Mardiyah

Abstract. The purpose of this study was to analyze the financing management carried out by Islamic banks to increase the profitability of Islamic banks in Indonesia. Data were taken from the monthly financial statements of Islamic banks of 2009-2014 period and was analyzed with simultaneous equation regression. The results of this study suggested that in model 1, equity financing positively and significantly affects the non-performing finance, Debt financing positively and not significantly affects the non-performing finance. While in model 2, non-performing finance negatively and significantly affects the profit expense ratio. Non-finance income positively and not significantly affects the profit expense ratio. Thus, the company's performance reflected in the profit expense ratio, which is used to assess cost efficiency performed by Islamic banks for profit achievement is largely determined by the financing management of the bank. Cost efficiency will be achieved if Islamic bank can overcome bad financing, both in the form of debt financing and equity financing.

Keywords: Debt Financing, Equity Financing, Non-Finance Income, Non-Performing Finance, Profit Expense Ratio, Simultaneous Equation.

1 Introduction

A country can never be separated from the banking sector, because it is the backbone of the economy (Marotta, Miccichè, Fujisawa, Iyetomi, & Aoyama, 2016; Setyawati, 2017). The banking sector is an important means of implementing transmission mechanism from the monetary sector to the real sector (Hélène Rey, 2016). Government of a country wants soundness of banking, because it is important for economic progress in general (Marotta et al., 2016). Banking sector requires all time supervision, because banks act as an intermediate of surplus unit to the deficit unit in increasing efficiency, reallocating and utilizing funds from the last source in the economy (Mistry & Savani, 2015; Setyawati, 2016).

Policies implemented by the government are intended to increase welfare and eliminate financial vulnerability (Setyawati, 2018). Vulnerability occurred because of the failure of the household and banking sectors (liquidity crisis) and profits of all banking sectors sharply fell (bank crisis), so that financial vulnerability is the unfulfilled short-term liquidity resulting in fragility of the banking sector (Olweny, 2011). Financial vulnerability is influenced by an increasing failure from the banking sector so that it will reduce bank profitability (Tsomocos, 2003). Thus, economic stability and growth can be maintained.

The global crisis impacts on 80% of the banking sector, where the banking sector is one of the sectors most affected (Bremus & Fratzscher, 2014). Almost all conventional banks are...
affected by the global crisis, however it doesn’t affect the performance of Islamic bank and almost insignificant when it is compared to the conventional bank. It is because the nature of the Islamic bank which all financial transactions must be based on trade and related asset (Hidayat & Abduh, 2012), while the sectors affected by the financial crisis are financial sectors such as money markets and Islamic banks are prohibited from carrying out business activities of money market (Rey, 2016). Nevertheless, a lot of Islamic banks can be affected by the financial crisis if the real sector is affected by the crisis, considering that Islamic banks are very close to the real sector (Hassan & Kayed, 2011).

With the development of Islamic banking in Indonesia, with the enactment of dual banking system, the problems often faced include the profitability, asset growth, funding sources growth, distribution of funds and bank business risk (Zahra, Ascarya, & Huda, 2018). Profitability can be determined by how much the management considers the macro and micro risks (Petria, Capraru, & Ihnatov, 2015). At the macro level, profit is a cheap source of funds for banks in developing their business, additionally, the high profit indicates market power, especially for large-scale bank. Meanwhile, low profits can lead to agency conflicts from activities performed by the bank. High and low profits will hinder the financial intermediation function because with the large market power, banks may offer low returns for savings/deposits but charge high loan interests rates. Very low profits resulting in banks failed to attract enough capital to operate and usually occur in banks with low capitalization (Dharmendra S. Mistry & Savani, 2015).

The competition between Islamic and conventional banking is seen in the bank’s effort to attract public funds. The competition between banks is not only limited to a group of banking industries, in addition to competition between banks, banks also have to compete with non-bank institutions (Vives, 2018). Islamic banks, in addition to having to compete with other Islamic banks, must also compete with conventional banks. When competition is carried out intensively and when banks start offering more or less similar products and services, customer satisfaction will affect the bank's performance and determine its competitiveness and success (Khan & Fasih, 2005). Thus it will affect the profitability and improve management of funds distribution. Islamic banks still have low source of third party funds, even though from year to year it experience growth. However, Islamic banks and Islamic units are only able to raise third party funds around 5% of all third party funds in the national banking industry (Setyawati, Kartini, Rachman, & Febrian, 2015). The causes include the lack of education carried out by Islamic banks and Sharia units on Islamic banking products/services. Other factors such as the passive attitude of the people, the complexity of the products/services offered, and influence from third parties are also obstacles to Islamic bank products/services. When viewed from the side of an Islamic commercial bank, a competitive strategy with a competitor’s orientation has not been optimally implemented in extending funds collection or community financing.

On the financing side, the majority of Islamic banks channel third party funds for debt financing of 70.93%, with a murabahah composition of 66.42%; others 4.51%, while the equity financing is only 29.07% with the mudharabah composition of 18.05%; musyarakah of 11.02% (Financial Services Authority, 2017). At the beginning of the development of Islamic banks, this is possible if debt financing dominates the funds distribution in banks, because of various obstacles faced in distributing equity financing, both internal and external.

Internal constraints occur because the lack of understanding of the essence of Islamic banking, the preferred business and effort orientation, the inadequate quality and quantity of resources, the behavior of aversion to effort and aversion to risk (Zahra et al., 2018), so that Islamic banks consider financing with an equity financing system has a high risk in terms of
losses that can occur in the period of financing and can reduce company profits because the profit sharing financing is not only sharing profit but also sharing losses, if the loss is not an error/negligence of the party given the financing.

External constraints lie in the character of the equity financing which requires a very high level of honesty from the party that receives the financing. The concept of spiritual management is used as an organizational culture in the management of Islamic organizations, which means transforming Islamic teachings sourced from the Holy Qur'an and As-Sunnah about business into organizational culture and exploring Islamic values contained in these sources, such as honesty, and trust to be applied in the management of an organization (Kahf & Khan, 2009).

Not all customers who have received financing from Islamic banks can return it properly according to the agreed time. In reality there are always some customers for whatever reason, cannot return the financing that has been given which lead to bad debt which usually creates a risk called the credit risk or the risk of inability to pay and counterparty risk (Ahmed, 2009).

Bad debt is when a bank is truly unable to deal with the risks posed by financing, in the form of risk of loss related to the counterparty unable and unwilling to fulfill the obligation to repay the loan borrowed in full at maturity or after (Cooper & Nikolov, 2013). Bad debt financing has a high rate of non-performing financing (NPF), which ultimately lowers the profits of Islamic banks.

The profit of Islamic banks in Indonesia still relies on more than 95% of the total profit in terms of financing (Setyawati et al., 2015). By using a measure of non-financing income divided total assets (NFI/TA) as an indicator of income diversification, NFT/TA of Islamic banks in Indonesia range from 0.3% - 5%. This illustrates that Islamic banks have begun to diversify products, although not maximally. Unlike the banking business in the Republic of Korea, non-interest income is divided by total assets (NII/TA) which has an average value of 75.4%, this means that banks have diversified their products and rely on fee-based income (Sufian, 2011)

There are a lot of research on the factors that affect the profits of Islamic banks, and among these studies are using financial ratios, including liquidity management, capital, operational cost efficiency, income diversification, leverage and asset quality as determinants of the profitability of Islamic banks. Some other studies include external factors as determinants of the profitability of Islamic banks, including bank concentration, supervisory, foreign ownership and regulatory variables.

The purpose of this study is to analyze the financing management carried out by Islamic banks as one way to increase the profitability of Islamic banks in Indonesia. Current research on Islamic banks is focused more on the introduction of sharia principles, laws, regulations, developments and prospects, such as research conducted by Aggarwal & Yousef (2000), Taylor (2003), Serbel (2008), Gupta (2009), Ihsan & Achmad Tohirin (2010), Adi (2011). Other studies revolve around the efficiency of Islamic banks compared to conventional banks, such as research conducted by Hassan (2005), Jalil & Rahman (2010), Abdul-Majid, et al (2010), Sufianullah (2010), Hanif (2011), Noor & Ahmad (2011), Yahya, et al (2012). However, research on increasing profitability through financing management carried out by Islamic banks in Indonesia has not been done much.
2 Research Method

The research was conducted by accessing the monthly financial statements for the period 2009 - 2014, from eleven Islamic banks from the financial services authority site. Data were processed using Stata version 15 software, using simultaneous equation regression analysis. Estimation model for analyzing research research data is as follows:

Table 1 and 2 shows variables that affect the increase in profitability of Islamic banks.

**Table 1: Variables Used in Model 1 Regression Equations**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Sub Variable</th>
<th>Definition of Variable</th>
<th>Hypotheses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent Variable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Risk</td>
<td>Non-performing finance (NPF)</td>
<td>Parameters that indicate bad financing. Measured by dividing the amount of bad financing with total financing</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent Variable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing</td>
<td>Equity financing (EF)</td>
<td>Financing with profit sharing principles. Measured by dividing total equity financing with total financing</td>
<td>+</td>
</tr>
<tr>
<td>Management</td>
<td>Debt financing (DF)</td>
<td>Financing with the principle of buying and selling. Measured by dividing total debt financing by total financing</td>
<td>+</td>
</tr>
</tbody>
</table>

**Table 3: Variables Used in Model 2 Regression Equations**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Sub Variable</th>
<th>Definition of Variable</th>
<th>Hypotheses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent Variable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profitability</td>
<td>Profit expense ratio (PER)</td>
<td>Ratio to assess cost efficiency carried out by Islamic banks to achieve profit. Measured by dividing net income by total costs</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent Variable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing</td>
<td>Non-performing finance (NPF)</td>
<td>Parameters that indicate bad financing. Measured by dividing the amount of bad financing with total financing</td>
<td>+</td>
</tr>
<tr>
<td>Management</td>
<td>Non-financing income divided</td>
<td>Parameters that show diversification of profits. Measured by dividing non-</td>
<td>+</td>
</tr>
<tr>
<td>total asset</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Simultaneity test can be done with the Hausman Simultaneity Test. After the model is proven to be simultaneous, the next step is the identity test with the order method to ensure that the model can be estimated, because an equation of the simultaneous system can only be estimated correctly if the equation is justly or overly identified. The order method was used in this research, if the necessary conditions have been fulfilled using the Order method, then there is enough evidence to identify simultaneous equations (Gujarati & Porter, 2010).

For a simultaneous equations system with M structural equations can be identified, then at least must have M-1 endogenous variables. If the number of endogenous variables is exactly M-1, the equation is said to be exactly identified and if the number of endogenous variables is more than M-1, the equation is said to be over identified, or in order that a system of simultaneous equations with M structural equations can be solved, the number of predetermined variables in the equation must be no less than the number of endogenous variables in the equation minus one.

3 Result And Discussion

The first model (1), the results of the Restricted $R^2$, Hausman, and Langarange Multiplier tests concluded that the best data panel model was Fixed Effect. This indicates that each bank has strong individual characteristics or it can be said that the influence of independent variables (debt financing and equity financing) on dependent variable (non-performing finance) is highly dependent on individual (banks) characteristics which lead to intercept differences of each individual. While the $F$ stat test (Global Test) states that this model is significant so that it can be accepted in describing the dependent variable.

The second model (2), the results of the Restricted $R^2$, Hausman and Langarange Multiplier tests by the author concluded that the best data panel model was Fixed Effect. This indicated that each region has strong individual characteristics or it can be said that the influence of independent variables (non-performing finance and non-finance income) on dependent variable (profile expense ratio) is highly dependent to the individual (banks) characteristics which lead to intercept differences of each individual. While the $F$ Stat Test (Global Test) stated that this model is significant so that it can be accepted in describing the dependent variable. Meanwhile, the estimation results of the panel simultaneous model is presented in table 2.

<table>
<thead>
<tr>
<th>Model</th>
<th>Equation</th>
<th>$R^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 NPF</td>
<td>= -5.16* -0.012 DF +0.021EF**</td>
<td>71.98</td>
</tr>
<tr>
<td></td>
<td>(105.64) (0.105) (0.194)</td>
<td></td>
</tr>
<tr>
<td>2 PER</td>
<td>= 238.27** -36.51 +35.36NFI**</td>
<td>64.89</td>
</tr>
<tr>
<td></td>
<td>(106.33) NPF (26.67)</td>
<td></td>
</tr>
</tbody>
</table>

*** Significant at $\alpha$ level = 1 percent
From model 1 it can be seen that equity financing positively and significantly affects non-performing finance. Debt financing positively and not significantly affects non-performing finance. With R² of 71.98%, it means that the debt financing and equity financing variables are able to explain the NPF variable of 91.98%, while 28.02% is explained by other variables outside the model. Equity financing is a financing transaction for a cooperation aimed at obtaining both goods and services, with the principle of profit sharing. The profit-sharing product is determined by the agreed profit-sharing ratio in advance. Banking products included in this group are *musyarakah* and *mudharabah*.

*Musyarakah* is a partnership agreement between two or more parties for a particular business where each party contributes funds (or charity/expertise) with an agreement that the benefits and risks will be borne together in accordance with the agreement. The profit-sharing system (*musyarakah*) requires complex calculations, especially in calculating the profit portion of small customers whose savings value in the bank is not fixed. Thus the possibility of miscalculating can occur at any time.

*Mudharabah* is a contract of business cooperation between two parties where the first party (Shahibul Maal) provides all (100%) capital, while the other party becomes the manager. Mudharabah business profits are divided according to the contract agreement, whereas the loss is borne by the capital owner as long as the loss is not due to the negligence of the manager. Mudharabah also has risks such as side streaming; the customer uses the funds not as stated in the contract; negligent and intentional mistakes and concealment of profits by the customer, if the customer is not honest. Thus, equity financing causes Islamic banks to receive a share of profit sharing from the financing in small amounts or even can suffer losses.

Debt financing is a financing transaction aimed at owning goods with the principle of buying and selling. Products included in this group are products that use the principle of debt financing, namely murabahah, salam, istishna, ijarah, qard.

*Murabahah* is a buying and selling transaction where the bank calls the amount of profit. The bank acts as a seller, while the customer as a buyer. Both parties must agree on the selling price and payment term. In banking, murabahah is usually carried out by installment payments (*bi tsaman ajil*). In this transaction the goods are delivered immediately after the contract while the payment is made in a delayed manner.

*Salam* is a buying and selling transaction where the goods being sold is not ready yet. Therefore, goods are delivered in a delayed manner while payments are made in cash. The bank acts as a buyer, while the customer acts as a seller. In practice, when the item has been handed over to the bank, the bank will sell it to the customer or customer partner itself in cash or in installments. The selling price set by the bank is the bank's purchase price from the customer plus profit. In the case of banks selling it in cash it is usually called bridging financing. Whereas if the bank sells it in installments, both parties must agree on the selling price and the term of payment. The selling price is included in the sale and purchase contract and if agreed upon it cannot change during the validity of the contract. Generally this transaction is applied in financing goods that do not ready yet, such as purchasing agricultural commodities by the bank and then reselling them in cash or in installments.

*Istishna* products resemble Salam products, but in Istishna the payment can be made by the bank several times (terms) of payment. The Istishna scheme in Islamic banks is generally applied to manufacturing and construction financing.
The ijarah transaction is based on the transfer of benefits. So basically the principle of ijarah is similar to the principle of buying and selling, but the difference lies in the object of the transaction. The object of the transaction in selling — buying is goods, while object of the transaction in ijarah is service. At the end of the lease period, the Bank may sell the goods it rents to customers. Therefore in Islamic banking there is a term ijarah muntahiyah bittamlik (rent followed by transfer of ownership). The rental price and selling price are agreed at the beginning of the agreement.

Qardh is the giving of assets to other people who can be billed or asked to return or in other words lend without expecting a reward.

Thus, debt financing has risks such as default or negligence; customers intentionally do not pay the installments, comparative price fluctuations; this happens when the price of an item in the market rises after the bank buys it for the customer. The bank cannot change the sale and purchase price, customer refusal; goods that have been sent may be rejected by the customer, sold; Customers are free to sell their assets so there will be larger risk for default. While qardh is risky because it considered a financing that is not covered by collateral.

In model 2, it can be seen that non-performing finance negatively and significantly affects the profit expense ratio. Non-finance income has positive insignificant effect on profit expense ratio. With R2 of 64.89%, it means that the NPF and NFI variables are able to explain the profit expense ratio variable of 64.89%, while 35.11% is explained by other variables outside the model.

Non-performing financing is the ratio between bad financing and the total financing disbursed by Islamic banks. Based on the criteria set by the Bank of Indonesia, those categorized in NPF are substandard, doubtful and loss financing. Not all customers who have received funding from the bank are able to return the fund properly according to the agreed time, in fact there are always some customers that cannot return the loans that have been given for whatever reasons, which leads to bad financing. Bad financing is a condition in which a customer is unable to pay the full amount of financing the bank gives on time, resulting in bad financing. Usually it will cause a risk called credit risk or the risk of inability to pay and counterparty risk (Sufian, 2010).

Non-performing financing (NPF) will impact on the decreasing level of profit sharing shared with fund owners. The relationship between banks and customers is based on two interrelated elements, namely law and trust. A bank can only carry out activities and develop its business if the customer believes to place the money. Then after collecting funds from the community in the form of deposits, the bank then channeled back to the community in order to improve people's living standards (Setyawati et al., 2015). Without immediate steps taken regarding the bad credit in a relatively large amount or even incorrect information regarding bad credit experienced by a particular bank, it will cause anxiety to the bank's customers and may lead to a bank rush (Hassan & Kayed, 2011). The ideal non-performing financing (NPF) value is in accordance with the regulations of the Bank of Indonesia with a maximum of 5% in accordance with the regulations of the Bank of Indonesia Number 15/2/PBI/2013 concerning Determination of Status and Follow-Up for Commercial Bank Supervision.

Non-finance income is the income of a bank outside the interest income/profit sharing proceeds from non-traditional activities, to measure diversification of income from non-traditional activities. Non-financing income includes commissions, services, fees, guarantee fees, net income from the sale of securities and net income from the sale of foreign exchange (Sufian & Habibullah, 2010). In his research, used the NII/TA (non-interest divided income by total assets) ratio to measure bank diversification against traditional funding sources. The increasing non-finance income (fee based) is expected to increase profits. If there is an
expectation of increasing income from non-financing, then the bank's business shifts from traditional intermediaries, which will reduce income from financing and simultaneously will reduce bad financing and financing risk (Jalil & Rahman, 2010).

The increase in NPF is due to the accumulation of several problems. First, global financial conditions not only reduce aggregate demand, but also cause Islamic banks to be in an increasingly fierce competitive climate. This situation makes Islamic banks difficult to maintain the market and reduce the business prospects. As a result, the income of Islamic banks declined with unhealthy balance sheet. This makes the ability of Islamic banks to pay in the form of profit sharing to customers or pay obligations from issued Sharia bonds to decrease. Second, the banking policy of maintaining high profit sharing amidst unstable economic conditions also contributed to the rise of the NFF. The high profit sharing when the company's income and balance sheet (mudarib) decrease, makes the installment burden of the company's financing to the banking sector relatively increased. Third, banking inadvertence in channeling financing is also likely to encourage an increase in NPF. When banks maintain a high profit share, banks are in fact in the possibility of increasing the risk of bad financing. When profit sharing remains high, only risk taker companies will propose financing requests to Islamic banks. Fourth, as a monetary authority, BI must also be responsible for the NPF increase. Some of BI's policies to relax the financing distribution process, such as the type and quality of collateral or a decrease in the minimum reserve requirement (GWM), which is expected to increase the role of bank intermediation, seem to have a detrimental effect on the NPF increase.

4 Conclusion

From models 1 and 2 it can be seen that the company's performance reflected in the profit expense ratio, which is used to assess the cost efficiency carried out by Islamic banks for profit achievement is largely determined by the bank's financing management. Cost efficiency will be achieved if Islamic banks can overcome bad financing, both in the form of debt financing and equity financing. In addition, Islamic banks must maximize the income that comes from financing, but non-financing income, such as bank services.

However, the NPF increase will force banks to strengthen their capital structure. For this purpose, banks may enlarge the allowance for earning assets (PPAP). The consequence is that when banks try to strengthen the capital structure, this will automatically reduce the ability of banks to expand to the financing sector (to the real sector).

Reducing Islamic banking capacity to expand to financing sector will have a negative impact on the economy, because the negative impact of the global economy has decrease the role of several capital sources to support economic growth such as portfolio investment in the capital market, FDI and private capital. Thus, only state expenditure and bank financing that can still be expected as a source of capital to encourage economic growth. Therefore, the financing management of Islamic bank is needed to ensure the stability of the Indonesian economy. By managing the funds that are channeled to the community well, it will encourage economic growth and improve people's welfare.

In this regard, banks should improve stricter control management in carrying out the process of selection and verification of prospective debtors to assess collateral and business prospects, disbursement of financing, monitoring, and collecting refunds. Efforts to reduce the
high NPF must be a concern of all parties. If not, the NPF will become an obstacle to achieve the economic growth.

References


The Influence of Corporate Social Responsibility Disclosure, Profitability and Leverage on Informative Profit with Environmental Performance as Moderating Variables

1st Dedi Putra1, 2nd Rhiska Gustiana2
{dedi.putra@darmajaya.ac.id1, rhiskag8@gmail.com2}

Faculty of Business and Economics, Institute of Information & Business Darmajaya Jl. Z.A. Pagar Alam No. 93, Gedong Meneng, Bandar Lampung 35142 – INDONESIA Telp. (0721)787214 Fax. (0721) 7002611, 2

Abstract. The objective of this research was proving empirically the effect of the corporate social responsibility, the profitability, and the leverage on the earnings response through the environmental performance as a moderating variable. The population of this research was the manufacturing companies indexed in Indonesia Stock Exchange and Corporate Performance Rating Program in 2014-2016. The sampling technique used in his research was the purposive sampling. A number of samples used in this research were 21 companies. The time of this research was 2014-2016 so that there were 63 observed data. The data analysis technique used in this research was the multiple linear regression. The analytical tool used in this research was SPSS V.20. The result of this research showed that the corporate social responsibility, the profitability, and the leverage had a significant effect on the earnings response.

Keywords: Corporate Social Responsibility, Profitability, Leverage, Earnings Response Coefficient (ERC).

1 Introduction

One of the information in financial statements that investors respond to and influence economic decision making is information about profits (Boediono, 2005). Profits are generally seen as a basis for taxation, determinants of dividend payment policies, investment guidelines, decision making, and predictive elements. According to Roy Chow Dhury and Sletten (2012) refer to informative earnings as informational profit defined as the ability of earnings in the current period that can help investors determine the rate of return or return in the future.

Research by Ball and Brown (1968) found a significant relationship between company earnings announcements and changes in stock prices. When a company announces an increase in profits, there will be a positive tendency to change in stock prices and vice versa if profits decline, there will be a negative change in stock prices. Some researchers have found a coefficient used to measure the strength of information earnings in influencing stock returns (earnings) which is measured by the earnings response coefficient or commonly called Earnings Response Coefficient (ERC which is the correlation between unexpected earnings and abnormal stock returns). ERC is the coefficient used to measure the amount of stock
returns in response to profits reported by the company. Every company has a different variation of relationship between company profits and shares According to Scott (2009).

The phenomenon that occurs is at PT Japfa Comfeed Indonesia Tbk. PT Japfa Comfeed Indonesia Tbk (JPFA) recorded a drastic decline in net income in 2017. Japfa's net profit fell by Rp1.06 trillion or approximately 51.69%. Launching information disclosure issued by the company on the Indonesia Stock Exchange (IDX) website on Friday (02/03/2018), net profit attributable to owners of the parent entity was recorded at Rp997.35 billion in 2017. The net profit in the same period in the previous year, reaching Rp2.06 trillion. In fact, the company's sales have increased to IDR 29.6 trillion from IDR 27.06 trillion. As a result, earnings per share of Rp88 from the previous Rp. 189. On the other hand, the company's debt also increased to Rp. 11.29 trillion from Rp. 9.87 trillion. The debt consists of short-term debt of Rp. 4.76 trillion and long-term debt of Rp. 6.52 trillion. (Jakarta, economy.okezone.com).

An information is said to be informative if the information can change investors' beliefs in making investment decisions. The existence of new information in addition to financial statements will increase trust among investors towards a company. Currently information that gets a lot of spotlight is about corporate social responsibility. Corporate social responsibility or corporate social responsibility is used as the availability of financial and non-financial information relating to organizational interactions with the physical environment and social environment that can be made in the company's annual report or separate social report (Guthrie and Athews 1985 in Rakhiemah and Agustia, 2009).

According to Suratno et al. (2006) environmental performance or environmental performance is the company's performance in creating a green environment. Patten (2002) revealed that "environmental performance is quantified as the company’s specific amount of toxicity released into the environment". It can be interpreted that environmental performance is a company's performance as measured by the extent to which poisons released by the company into the environment. In Indonesia, the company's environmental performance is assessed by the Ministry of Environment through a company performance rating assessment program in environmental management (PROPER) using colors ranging from the best, namely gold, green, blue, red to the worst black (http://www.menlh.go.id). Through this program, companies are expected to increase compliance in management and environmental management, because the results of this ranking will be announced to the public, so that it can have an impact on the reputation of the company. Through this also the community will find it easier to know the level of management arrangements for the company (Rakhiemah and Agustia, 2009). The research conducted by Pranbadari and Suryanawa (2014) states that the higher the environmental performance will affect the reaction of investors, for investors in making investment decisions in order to use PROPER as one of the information to consider in investment investment.

This study refers to previous research conducted by Herawaty and Wijaya (2016) with the title "The Effect of Corporate Social Responsibility Disclosure, Profitability, and Leverage on Informatative Profit with Environmental Performance as Moderating Variables". By changing the measurement of Profitability from ROA to ROE and the observation period from 2010-2014 to 2014-2016. The object of research is a publicly listed manufacturing sector company listed on the Indonesia Stock Exchange and consistently participating in the PROPER program for 2014-2016.
2 Research Hypothesis

2.1 The Influence of Corporate Social Responsibility Disclosures on Formality of Profit

Hidayati and Murni's research (2009) found that disclosing corporate social responsibility can reduce an investor's reaction to earnings announcements, which can be measured by earnings response coefficient. This can be caused by the existence of other information besides the profit that can be used by investors in making investment decisions.

H1. Disclosure of corporate social responsibility has an effect on earnings informativeness.

2.2 Effect of Profitability on Formality of Profit

Profitability ratios can measure the effectiveness of company performance and show the company's ability to generate profits or profits for a period. If this profitability is associated with earnings response coefficient or profit response coefficient, then it can be seen if the company with high profitability, then the profits generated by the company will increase, and affect large earnings response coefficients to help investors invest compared to companies with profitability low. The results of research from Kusuma Herawati and Wijaya (2016) show that profitability has a positive effect on earnings response coefficient.

H2. Profitability has an effect on profit informativeness.

2.3 Effect of Leverage on Informative Profit

Companies that have a high degree of leverage mean that they have a debt greater than capital, which means that the financial burden is heavier and the risks faced by the company are higher. That means, companies with high leverage will cause low earnings response coefficients. The results of research from Murwaningsari (2008) and Wulansari (2013) prove that leverage negatively influences earnings response coefficient.

H3. Leverage influences informativeness of earnings.

2.4 The Influence of Environmental Performance which Moderates the Relationship between Corporate Social Responsibility Disclosures Against Informative Profit

Research conducted by Rakhiemah and Agustia (2009) shows that environmental performance has an effect on disclosure of corporate social responsibility, that companies with good environmental performance will tend to express company performance, because it provides good news for market participants. Therefore, companies with good environmental performance disclose information on the quality and quantity of the environment which is more compared to companies with worse environmental performance. The better the environmental performance of the company in improving its environment, the higher the value of the company, so that investors will respond to the company.

H4. Environmental performance influences the relationship of disclosure of corporate social responsibility to informational profit.

2.5 The Influence of Environmental Performance which Moderates the Relationship of Profitability to Informativeness Profit

The benefits that will be obtained by the company, because it performs environmental performance, namely the company's reputation in the eyes of the community becomes good so that it can improve the company's financial performance which directly contributes to
increasing the profitability of the company. According to Fitriani et al. (2015) that the company's environmental performance increases, this will increase the level of trust of stakeholders, especially investors, thus the return on assets of the company increases and will get a good response from investors to invest in the company.

**H5. Environmental performance affects the relationship of profitability to profit informativeness.**

2.6 The Influence of Environmental Performance which Moderates Leverage Relationships to Informative Profit

Companies that have a high debt to equity ratio will be responded negatively by investors, because the company's debt is greater than the company's capital. But this will decrease, if the company has good environmental performance, and will be responded positively by investors. Profit is believed to be the main information presented in the company's financial statements (Lev, 1989, in Sayekti and Wondabio, 2007). Research conducted by Pranbandari and Suryanawa (2014) that the higher the environmental performance affects the reaction of investors, and for investors to make investment decisions to use PROPER as one of the information to consider in investing investment.

**H6. Environmental performance influences the relationship of leverage to profit informativeness.**

3 Research Methods

3.1 Sample and Population

According to Arikunto (2010: 173) the population is the whole of the research subjects. The population in this study are manufacturing companies listed on the Indonesia Stock Exchange and consistently follow PROPER in 2014-2016. According to Arikunto (2010: 174), the sample is partially or representative population studied. Samples were selected using purposive sampling method. The criteria for the sample to be used are:

3. Manufacturing sector companies listed on the Indonesia Stock Exchange (IDX) that use the rupiah currency in their 2014-2016 financial statements.
4. Manufacturing sector companies that consistently follow the Corporate Performance Rating Program in Environmental Management for three consecutive years (2014-2016).
5. Manufacturing sector companies that consistently follow the Corporate Performance Rating Program in Environmental Management, which report corporate social responsibility in the company's annual report.
6. Manufacturing sector companies that have complete stock price data and there are no consistent stock prices during 2014-2016.

3.2 Operational Definition of Variables

1. Corporate Social Responsibility
Corporate social responsibility can be interpreted as an industry commitment to account for the impact of operations in the social, economic and environmental dimensions and to maintain that these impacts contribute to the community and the environment described in the formula:

\[
\text{CSRDI}_j = \ldots
\]

2. Profitability

The measurement of profitability in this study uses Return On Equity (ROE), which is the amount of returns from net income to equity and expressed as percent. This is used to measure the ability of an issuer to generate profits by capitalizing on the equity that has been invested by the shareholders.

Profitability is proxied using Return On Equity (ROE).

\[
\text{ROE} = \ldots
\]

3. Leverage

Companies with high leverage mean that they have more debt than capital, so if there is an increase in profits, the beneficiaries are debtholders (Sri and Nur, 2007). Leverage/Capital Structure is proxied using Det To Equity Ratio (DER).

\[
\text{DER} = \ldots
\]

4. Environmental Performance


<table>
<thead>
<tr>
<th>Scale</th>
<th>Meaning</th>
<th>Color</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Worst</td>
<td>Black</td>
</tr>
<tr>
<td>2</td>
<td>Bad</td>
<td>Red</td>
</tr>
<tr>
<td>3</td>
<td>Good</td>
<td>Blue</td>
</tr>
<tr>
<td>4</td>
<td>Better</td>
<td>Green</td>
</tr>
<tr>
<td>5</td>
<td>The Best</td>
<td>Gold</td>
</tr>
</tbody>
</table>

Sumber: Kementrian Lingkungan Hidup, 2013

5. The opportunity to grow

Price to Book Value (PBV) is used to proxy for growth opportunities (growth opportunities). Price to book value is a ratio that shows whether the company's current market price is above or below the company's book value. The higher this ratio means the market believes in the prospect of the company.

\[
\text{PBV} = \ldots
\]

6. Informative Profit

One measurement that can be used to measure shareholders' reaction to the informativeness of accounting earnings is earnings response coefficient. Definition of earnings response coefficients according to (Scott, 2003). Imaging Response Coefficient (ERC) is a
measure of size abnormal return of a stock in response to an abnormal earnings component (unexpected earnings) reported by the company that issued the stock.

Tahap Pertama menghitung CAR (Cumulative Abnormal Return)

\[
AR_{i,t} = R_{i,t} - R_{m,t} \quad \ldots \ldots (2)
\]

\[
R_{i,t} = \quad \ldots \ldots (3)
\]

\[
R_{m,t} = \quad \ldots \ldots (4)
\]

The second stage, calculate EU (Unexpected Earnings) or surprise profit

\[
UE_{i,t} = \quad \ldots \ldots (5)
\]

Then, Regress Cumulative Abnormal Return (CAR) and Unexpected Earnings (EU) then the earnings response coefficient is formulated as follows (Chaney and Jeter, 1991):

\[
\text{CAR}_{i,t}(-5, +5) = \beta_0 + \beta_1 \text{UE}_{i,t} + \text{SI}_{i,t}
\]

3.3 Data Analysis Technique

Analysis of this research data includes:

1) Descriptive Statistics
2) Regression Test: Normality Test, Multicollinearity Test, Autocorrelation Test and Heterocapacity Test.
3) Multiple linear regression, with the Equations of multiple linear regression models used as follows:
   \[
   \text{CAR}_{i,t} = \beta_0 + \beta_1 \text{SI}_{i,t} + \beta_2 \text{OE}_{i,t} + \beta_3 \text{DE}_{i,t} + \beta_4 \text{SI*P}_{i,t} + \beta_5 \text{OE*P}_{i,t} + \beta_6 \text{DE*P}_{i,t} + \beta_7 \text{PBV}_{i,t} + \epsilon
   \]
4) Test of Determination Coefficient, f Test, and Hypothesis Test

4 Results And Discussion

Classic assumption test

Normality Test Results

The results of the normality test using the Kolmogrov-Smirnov One-Sample Test show a significant value (2-tailed) of 0.000 < 0.05, which means that the residual data is not normally distributed. Therefore a corrective action is taken, namely using outlier observations of data. The limitation of the normal curve is to have a Z-Score value with a range of -2.5 to 2.5 (Sufren and Natanael, 2013: 15). The results after the outliers are that the significant level (2-tailed) is 0.025 < 0.05, which means that the data is still not normally distributed.
According to Gujarati (2011) that it can ignore the nomination test because data is biased with various methods available.

**Multicollinearity Test Results**

In general, the moderating regression analysis model will cause high multicollinearity between variables, the existence of multicollinearity problems is difficult to avoid because of the moderating variable which is the interaction of independent variables. towards the dependent variable (Gujarati, 2009).

**Autocorrelation Test Results**

It can be seen that the Dw value obtained is 1.944, then the value of the watson durbin will be obtained, namely dl at 1.5052 and the value (du) of 1.6475. Because the Dw value is < 4 - du where 1.944 < 2.3525, it can be concluded that there is no autocorrelation in the regression model.

**Heteroscedasticity test**

Based on the picture above shows the picture of heteroscedasticity test results, from the scatterplot graph image above shows that the points do not form a specific pattern and spread on the Y axis. So, it can be concluded that the regression model in this study did not have heteroscedasticity.

**Determination Test R2**

In the summary model shows that the adjusted R square or coefficient of determination is 0.383 or 38.3% which means five variables of Corporate Social Responsibility, Profitability, Leverage with moderating variables namely Environmental Performance and control variables namely Growth Opportunity can explain the dependent variable Informative Profit of 38.3% and the remaining 61.7% is explained by other reasons.

**F Test/Feasibility Model**

From the results above obtained significant coefficient results indicate that a significant value of 0.000 is less than 0.05 (α 5%) with a calculated F value of 6.050 and F table 3.16. This means that sig < 0.05 and Fcount > F table, it was decided to reject Ho and accept H1. Thus it can be concluded that the resulting regression model is suitable to see the effect of Corporate Social Responsibility Disclosure, Profitability and Leverage on the Informativeness of Profit with Environmental Performance As a Moderating Variable in manufacturing companies on the Indonesia Stock Exchange.

### 5 Hypothesis and Discussion Results

The Influence of Environmental Performance which Moderates the Relationship between Corporate Social Responsibility Disclosure and Informative Profit

Based on the test results it is known that the coefficient value of Environmental Performance Moderating Corporate Social Responsibility Disclosure Relationship to Profit Informativeness is 0.000 < 0.05. That explains that Environmental Performance Moderating Corporate Social Responsibility Disclosure Relationship and Informativeness Profit has a significant effect and the direction of regression coefficient shows that Environmental...
performance variables strengthen the relationship of corporate social responsibility disclosures to profit informativeness. The results of this study indicate that environmental performance has an effect on disclosure of corporate social responsibility, companies with good environmental performance will tend to reveal company performance, because it provides good news for market participants. Companies with good environmental performance, not only cover the company's concern for the environment, but also about product quality, product safety, corporate social responsibility towards the surrounding community, to the company's concern for safety and welfare of its work (Rakhiemah and Agustia, 2009), investors are more interested in investing their capital in companies that are environmentally friendly.

**Effect of Environmental Performance that Moderates Profitability and Informative Profit**

Based on the test results it is known that the coefficient value of Environmental Performance that Moderates the Relationship between Profitability and Informative Profit is 0.000 < 0.05. This explains that Environmental Performance that Moderates the Relationship of Profitability and Informativeness Profit has a significant effect and the direction of the regression coefficient which has a positive direction shows that the variable environmental performance weakens the relationship of the effect of Profitability on informational informativeness. That the company's environmental performance increases, it will also increase the level of trust of stakeholders, especially investors, thus the value of the company's return on equity will increase and will get a good response from investors. The results of this study are in line with the research conducted by Fitriani et al (2005) which states a significant effect on Environmental Performance which moderates the relationship of Profitability to Informative Profit.

**Effect of Environmental Performance that Moderates the Relationship of Leverage and Informative Profit**

Based on the test results it is known that the coefficient value of Environmental Performance which Moderates the Relationship of Leverage and Informative Profit is 0.005 < 0.05. This explains that environmental performance that moderates the relationship of leverage and profit informativeness has a significant effect and the direction of the regression coefficient that has a negative direction shows that environmental performance variables reinforce the relationship of influence to the informativeness of earnings. The higher the leverage, the better the performance of the company. But this will decrease, if the company has good environmental performance, and will be responded positively by investors. The results of this study are in line with the research of Herawaty and Wijaya (2015) which states a significant effect on Environmental Performance which moderates the relationship of Leverage to Informative Profit.

**The Effect of Growing Opportunities on Formality of Profit**

Based on the test results it is known that the coefficient value of the Growth Opportunity Against Informative Profit is 0.986 > 0.05. This explains that Growth Opportunities have no significant effect on earnings informativeness. The possibility of growth is not statistically significant, this can happen because investors' motivation in their investment is not to get long-term profits but to get capital gains. Capital gain is an advantage that an investor gets from the difference in selling price minus the purchase price of a stock. This research is in line with research conducted by Margareta (2006) which states that growth opportunities do not have a significant effect on earnings informativeness.
6 Conclusion and Suggestion

Conclusion
Based on the results of the analysis that has been done, it can be concluded:

1. Disclosure of Corporate Social Responsibility affects the Informativeness of Profit, Profitability has an effect on Informativeness Profit and Leverage has an effect on the Informativeness of Profit
2. Environmental performance strengthens the relationship between Corporate Social Disclosure of responsibility for informational profit
3. Environmental performance weakens the profitability relationship with earnings informativeness
4. Environmental performance strengthens the relationship of leverage to profit informativeness.

Suggestion
Suggestions that can be given for further research to be even better, are as follows:

1. In further research, it is better to expand the population and sample and should add other independent variables that can affect earnings informativeness such as company size, it is expected that the adjusted R Square obtained will be greater, because the independent variable in this study can only explain earnings response coefficient variables amounting to 38.3%.
2. In the next study, it is better to replace moderating variables such as auditor quality, because the results of this study are moderating variables that are environmental performance weaken and cannot strengthen the influence of independent variables on earnings informativeness and add control variables such as earnings and beta persistence or risk, because in this study using one control variable, namely the opportunity to grow.

References


[15]. www.finance.yahoo.com

[16]. www.idx.co.id

[17]. www.menlh.go.id

[18]. www.sahamok.com
The Role of Audit Regulation on The Relationship between Audit Quality, Corporate Governance and Firm Value

1st Bambang Prayogo1, 2nd Meco Sitardja2

{bprayogo60@yahoo.com1, m sitardja@gmail.com2}

Trisakti University, Indonesia1, Agung Podomoro University, Indonesia2

Abstract. This study examined the role of audit regulation on the effect of corporate governance and audit quality on firm value with earning management as intervening. This study examined using structural equation modeling method with the approach of partial least squares (SEM-PLS). The research sample is purposive with a total of 79 manufacture companies listed on the Indonesia Stock Exchange in period 2008-2015 with 480 observation years. The results showed audit regulation influence positively on audit quality, while audit committee and firm value shows no significant. Independent commissioner and audit quality influence negatively on earnings management, while audit committee and firm value shows no significant. Earnings management influences negatively on firm value. The changes of audit quality is significantly effect on earnings management mitigation in companies so firm value that represented on stock price can be analyzed more carefully in long term period view.

Keywords: Corporate Governance, Audit Quality, Audit Regulation, Earnings Management, Firm Value.

1 Introduction

The essence of the establishment of a company is to improve the welfare of its owners or shareholders, or to maximize shareholder wealth through increasing the value of the company becomes an important goal (Brigham and Houston, 2001). This is confirmed by Siallagan and Machfoedz (2006) which states that the main goal of the company is to maximize the value of the company. The value of a company is the present value of the company's profits in the present and the future (Baye and Prince, 2014). This is what makes the value of the company as very important in investment transactions (Moeljadi and Supriyati, 2014). The better the value of the company, the greater the level of investment in the company.

Changes in company value are not only perceived from the company's financial statements. This is because companies have high social values such as economic, social and environmental. However, financial statements are information for investors in making decisions to make investments (Moeljadi and Supriyati, 2014). According to Sudiyatno, Puspitasari and Kartika (2012), an accounting statement that provides various measurements of financial ratios on company performance can be used as a barometer of the company's success which is used as a benchmark for investors to invest. This is because
financial ratio analysis can be used to predict financial difficulties, operational results, current and future financial conditions where this can be a guide for investors to see the company's past and future performance (Moeljadi and Supriyati, 2014). According to Bapepam Regulation No. Kep-51 / PM / 1996 as of January 17, 1996, companies going public are required to include relevant financial ratios in order to predict company value. The increase in company value can be achieved if the company is able to operate by achieving targeted profits. This profit enables companies to pay dividends to shareholders, increase company growth and maintain the company's survival. This is in line with the research of Siallagan and Machfoedz (2006) which states that the lower the quality of earnings creates bad decision-making for investors and creditors so that the market performance of a company also decreases as reflected in its stock price (Fama, 1978).

Problems will occur when the relevance of earnings as a measure of the company's financial performance is faced with earnings management practices by managers. Gunny (2009) classifies earnings management in three categories, namely fraudulent accounting, accrual management, and real earnings management. Fraudulent accounting includes the selection of accounting that violates generally accepted accounting principles. Accrual earnings management includes accounting choices that are allowed in generally accepted accounting principles that try to mask or obscure the actual performance of the company (Dechow and Skinner, 2000).

Thus an important effort to be able to be done to overcome earnings management is to limit management's authority in calculating the profits of a company and the limitation of management authority mentioned can be done with preventive actions and corrective actions. There are two preventive measures that can be taken to limit earnings management activities which are internal factors of the company, namely corporate governance, while corrective actions which are external factors of the company are high audit quality of audits conducted by the Public Accountant Office or Public Accountant for the report corporate finance.

Research Gap is not yet optimal in the implementation of Audit Quality and Corporate Governance. This is due to the occurrence of additional KAP / AP sanctions for each audit regulation. In addition, there have been financial cases of public companies in Indonesia until 2015. Finally, the occurrence of errors in the audit process at the Big-4 KAP during the 2012-2017 period. So the novelty of this research is on how the relationship between the implementation of audit regulation and audit quality. This relationship will certainly influence the contribution of audit quality and governance to earnings management and corporate value. In other words, the novelty proposed is in terms of the contribution of audit quality and governance to earnings management and the value of the company will be different if it takes into account the existence of a range of audit regulations and audit quality.

The present study investigate the role of audit regulation on the relationship between audit quality, corporate governance and firm value. The objective of the study are as follow:

1. To determine the influences of audit regulation on audit quality.
2. To determine the influences of commissioner board on firm value.
3. To determine the influences of audit committee on firm value.
4. To determine the influences of audit quality on firm value.
5. To determine the influences of commissioner board on earnings management.
6. To determine the influences of audit committee on earnings management.
7. To determine the influences of audit quality on earnings management.
8. To determine the influences of earnings management on firm value.
2 Literature Review

2.1 Agency Theory

This study uses Agency Theory as a grand theory derived from Jensen and Meckling (1976) concerning agency relations that a company or entity is a collection of contracts (nexus of contract) between owners of economic resources (principal) between owners or shareholders of a public company and managers (agent) or open company management. Each individual in the contract has an incentive to maximize their respective interests so that it raises agency costs that can erode the value of the company (Watts and Zimmerman, 1986). In an effort to overcome or reduce agency problems mentioned above, these efforts will cause agency costs to be borne by both the principal and the agent. Jensen and Meckling (1976) divide agency costs consisting of monitoring costs, bonding costs and residual loss. Monitoring cost is the cost that arises and is borne by the principal to monitor the agent's behavior or company management. Bonding cost is the cost borne by the agent to determine and comply with a mechanism that guarantees the agent will act for the principal's interests. While residual loss is a sacrifice in the form of reduced principal ability as a result of agent decisions that are different from principal decisions.

In order to monitor the agent's behavior in ensuring that the agent will act in accordance with the wishes of the principal, the principal needs an independent third party as a mediator between the principal and agent. Setiawan (2006) states that independent auditors are third parties who are able to safeguard the interests of principals and agents in managing corporate finances where an independent auditor can perform the monitoring function of the agent's work by using a means in the form of financial statements.

2.2 Audit Regulation

In order to improve audit quality, the government issued several regulations governing the supervision of the quality of audit services carried out by KAP with the Minister of Finance Decree No. 423 / KMK.06 / 2002 in 2002, then revised with KMK No. 359 / KMK.06 / 2003 of 2003. During the 2008 global crisis, the government revised the audit regulation with Minister of Finance Regulation No. PMK No.17 / PMK.01 / 2008 year 2008. In the revision of the audit regulation, article 3 emphasizes the limitation on the period of the provision of audit services where the KAP is limited to a maximum of 6 (six) years and the AP is limited to a maximum of 3 (three) years. Restrictions on the audit period are expected to increase auditor independence and public accounting firms so that audit quality is better and there is no long-term dependence and attachment to the audit client.

But over time, there have been quite large cases in the Indonesian Capital Market, namely cases involving several publicly traded companies such as PT Bakrie & Brothers Tbk (BNBR), PT Bakrie Sumatra Plantations Tbk (UNSP), PT Energi Mega Persada Tbk (ENRG) and PT Benakat Petroleum Energy Tbk (BIPI). In this case, it was found that there was manipulation of the interim financial statements, namely the violation of accounting on deposit funds income at Bank Capital Indonesia (BACA). This accounting violation should be identified by the Public Accountant Office when auditing because there is only one KAP that audits BNBR, UNSP and ENRG. Through the Capital Market and LK Supervisory Agency, the Government issued a Decree of the Chairman of the Capital Market and LK Supervisory Agency Number Kep-86 / BL / 2011 dated February 28, 2011. Which was strengthened by Law No.5 of 2011 which was effective on May 3, 2011 where The Law has a heavier law enforcement element compared to the previous regulation because the Law regulates the...
existence of Criminal Provisions for Public Accountants and Corporations in article 55 where in case of financial manipulation it is punishable by imprisonment of at most 5 (five) years and criminal a maximum fine of 300 million rupiah.

Act No. 5 of 2011 apparently did not provide a clear limitation on detailed and straightforward details about the period of audit services provided to a public accountant. In practice, it was found that the application of Law No.5 of 2011 to the AP audit assignment period could only be implemented properly in the Individual Public Accountant Office. However, in the Partnership Public Accountant Office, the implementation of Law No.5 of 2011 still has a loophole in limiting the AP assignment period, which in fact is often found by an AP who wants to extend his assignment, so this is done by adding an AP to a particular KAP, for example KAP AB becomes ABC KAP and then if the AP assignment period will run out again, then it is again done by adding AP to ABC KAP to become ABCD KAP. This condition can threaten the level of independence of public accountants.

With the above phenomenon, the Government will immediately impose PP No.20 of 2015, in which articles 10 and 11 no longer limit the period of assignment of audit services to the Public Accountant Office, but focus more on limiting the period of audit service assignments by Public Accountants, that is, a maximum of 5 (five) years and can return the audit services within a period of 2 (two) years. Through the enactment of this regulation, it is expected that the level of independence of public accountants as assessors of audit reports is better and can be accounted to the public. It is also felt the importance and urgency of the Financial Services Authority, so OJK through POJK No.13 / POJK.03 / 2017 also includes restrictions on the period of assignment of audit services for Public Accountants no later than 3 (three) years and can give back its audit services within 2 (two years later).

2.3 Audit Regulation and Audit Quality

Leuz et al. (2003) found evidence that high levels of earnings management occur in countries with small capital markets, high ownership concentrations, and weak legal enforcement of contractual. They concluded that weak investor protection actually led to a high level of earnings management. Of the 31 non-US firms studied, Indonesia ranked 15th of the highest earnings management score. Therefore, this study wants to examine how far the influence of audit regulations on various forms of earnings management manifestations that might occur in the Indonesian context. In addition, the regulation in the audit services mentioned above may also have an impact on the behavior of public company earnings management. Several previous studies have found a regulatory association with other forms of earnings management. Cohen et al. (2008) and Cohen and Zarowin (2010), for example, found that after the issuance of regulations through the SOX Act in the United States, the behavior of accrual earnings management and the tendency to meet profit targets decreased, but the behavior of real transaction earnings management increased compared to the previous period. Zhou (2008) also found evidence that after the enactment of regulations in audit services and public companies in America, companies not only became more conservative, but also reported absolute discretionary accruals lower. Cohen et al. (2008) and Cohen and Zarowin (2010) found a shift in the pattern of earnings management behavior from accruals to real transactions after the issuance of the SOX Law.

Based on the empirical evidence of the above research, it can be concluded that the application of different audit regulations can influence the relationship between audit quality and earnings management. Based on the discussion above, the researchers compile the following hypotheses:
H1: Audit regulation has a positive effect on audit Quail

2.4 Corporate Governance and Firm Value

According to Shleifer and Vishny (1997), corporate governance is related to the method by which investors can ensure to get a return on their investment. The definition is in accordance with agency theory which states that governance costs must exist in order to minimize adverse selection and especially ex post moral agency hazard problems. In order to minimize agency costs, a good corporate governance system must be able to combine large types of investors and small investors (Shleifer & Vishny, 1997, p.739). It also explained that governance is a construction of rules, practices, and incentives to equalize the desires of agents effectively (commissioners and managers) with their principals (investors). In this perspective, company value can be maximized by reducing agency costs and encouraging managers to behave in accordance with the wishes of shareholders. This study, the proxy used is the quality of the board of commissioners and the quality of the audit committee.

Some empirical evidence that concludes that corporate governance can increase corporate value. Eberhart (2012) states that the audit committee system is proven to increase the value of the company compared to just using the auditor. In Siahaan (2013), it was found that the size of the board of directors can positively increase the value of a company. This result is reinforced by other studies which state that the audit committee has a significant effect on firm value (Debby et al, 2010) and the percentage of directors in the board of commissioners and the frequency of meetings of the board of directors significantly influence firm value (Berthelot et al., 2011).

Based on the description above, it was concluded that with good corporate governance, it was hoped that it would increase the value of the company. Previous research results also state that the board of commissioners and audit committee are part of corporate governance from internal governance structures. Based on the discussion above, the researchers compile the following hypotheses:

H2a: The Board of Commissioners has a positive effect on Firm Value.
H2b: The Audit Committee has a positive effect on Firm Value

2.5 Audit Quality and Firm Value

Agency theory describes the existence of agency problems caused by two things, managerial compensation and information asymmetry (Jensen & Meckling, 1976). The first agency problem can be solved by negotiating managerial compensation or managerial ownership. However, the second agency problem is expected to be resolved by the role of an external auditor. The independence of external auditors is expected to provide guarantees to stakeholders that the financial statements prepared by management are free from bias and material errors and in accordance with accounting standards.

Audit quality is an essential component of the quality of financial statements. The higher the audit quality, the higher the credibility of the financial statements. The high credibility of financial statements reflects the basic foundations of a company's economy (DeFond & Zhang, 2014). High audit quality will tend to be audit reporting of errors and irregularities (Bartov et al., 2000). In addition, high audit quality can increase the relevance value of earnings and book value so as to increase the usefulness of accounting information in the investment decision making process (Alfraih, 2016). Reichelt and Wang (2010) show that auditor specialization is related to company performance. In addition, Ghosh and Moon (2005) also state that long-term auditor-client relationships can enhance client-specific knowledge.
Finally, Wallace et al. (1994) states that companies audited by Big-4 have more detailed information than Big-4 unaudited companies. This is because Big-4 accounting firms tend to be more professional and the scope of the audit is broader than non-big-4 accounting firms. Based on the description above, it can be concluded that audit quality is positively related to the value of the company, namely with the high audit quality, the value of the company increases by itself because the financial statements represent the company's financial position and the results of the company's audited operational results. Based on the discussion above, the researchers compile the following hypotheses:

H3: Audit quality has a positive effect on Firm Value

2.6 Corporate Governance and Earnings Management

According to agency theory, earnings management activities can be limited by a good corporate governance that can align the interests of various parties. Corporate governance is a mechanism that can be used by shareholders and corporate creditors to control earnings management activities carried out by management. Good corporate governance is expected to be an obstacle to earnings management activities so as to improve the quality of financial statements. In this study, the proxy used is the quality of the board of commissioners and the quality of the audit committee. There is a lot of empirical evidence that concludes that corporate governance will inhibit or limit earnings management activities. The researcher further discusses the quality of the audit committee in detecting earnings management actions by Xie (2001) examined corporate governance and management behavior in companies listed on US exchanges with a focus on corporate governance mechanisms on CEO quality, also found the number of meetings held by the board of directors, executive committees and audit committees capable of preventing earnings management behavior. However, Carcello and Neal (2000) conclude that earnings management behavior can be reduced if the competence and independence of the audit committee are maintained.

For the Indonesian context, the results of Nasution and Setiawan (2007) concluded that the composition of independent commissioners negatively affected earnings management activities. While Kusumawati and Hermawan (2013), concluded that the effectiveness of the role of the audit committee negatively affects the probability of fraudulent financial reporting. This indicates the effectiveness of the audit committee can reduce the occurrence of fraudulent financial reporting. Based on the description above, it was concluded that with good corporate governance, it was hoped that it would limit opportunistic earnings management activities. Previous research results also state that the board of commissioners and audit committee are part of corporate governance from internal governance structures. Based on the discussion above, the researchers compile the following hypotheses:

H4a: The Board of Commissioners has a negative effect on Earnings Management
H4b: The Audit Committee has a negative effect on Earnings Management

2.7 Audit Quality and Earnings Management

De Angelo (1981) defines audit quality as the probability that an auditor finds and reports a violation in the client's accounting system. In the standard financial audit field (SPAP, 2011) states that public accountants are responsible in such a way as to be aware of potential characteristics and types of material irregularities, related to the area being audited, so that public accountants can plan their audits to provide sufficient certainty in detecting material irregularities. A quality auditing process will be able to provide adequate protection and
confidence that the financial statements are free from material misstatement, whether caused by errors or fraud. Quality auditors are better able to find errors and cheating contained in financial statements because they have better resources and experience.

The results of previous studies have documented that high audit quality can reduce corporate earnings management (Jordan et al., 2010; Yasar, 2013). The results of the study concluded that auditors were able to detect accrual-based earnings management by clients so that auditors made restrictions on aggressive accrual accounting (Chen et al., 2005; Chiang et al., 2011; Sharma et al., 2011). Based on the description above, it can be concluded that audit quality is negatively related to earnings management, namely by the presence of high audit quality, then the possibility of management will make earnings management activities will decrease. Based on the discussion above, the researchers compile the following hypotheses:

H5: Audit quality has a negative effect on Earnings Management

2.8 Earnings Management and Firm Value

The results of Bitner and Dolan's (1996) study show that equity markets ignore earnings management through real transactions and earnings management through changes in accounting procedures or methods. The research also shows that although earnings management can be detected by the stock market, the stock market or investors ignore the information about the profit engineering. This reflects that earnings management is considered by investors as a general matter or is considered a management strategy that will not risk the investment.

Managers as agents who have authority in a company know more about the internal information and prospects of the company in the future compared to shareholders (owners). The separation of roles and differences in interests between managers and shareholders is a trigger for actions to maximize the welfare of certain parties, such as taking earnings management actions. Earnings management can indeed increase the value of the company, but is limited in certain periods and will not increase the value of the company in the long run. Darwis (2012) states that even though earnings management will increase the value of the company in a certain period, actually earnings management will reduce the value of the company in the future.

Bao and Bao (2004) show that income smoothing which is one of the proxies of earnings management is positively related to the profit per share as a proxy for shareholder value. Earnings management can actually increase productivity and sales volume so that company profits increase. This reflects that earnings management is for the benefit of shareholders' prosperity. There is an impression that the manager does not act opportunistically for his own sake but instead prioritizes the prosperity of shareholders, because he hopes to get additional bonuses from the owner. So it can be concluded that the lower earnings management, the greater the shareholder value. Based on the results of the above research, it can be concluded that earnings management is negatively related to the value of the company. Based on the discussion above, the researchers compile the following hypotheses:

H6: Earnings Management has a negative effect on Firm Value
3 Methodology

Research Subject: The population in this study were all companies listed on the Stock Exchange in 2008 to 2015 (8 years). Sample selection is done by purposive sampling method. The following are the criteria for selecting research samples:
1. Public Go Company engaged in the Manufacturing sector.
2. Issued its annual financial statements ending on December 31, starting from 2008 to 2015 and fully operational during the year, and excluding new listing companies (IPOs) between the periods of observation.
3. Never been delisted from the IDX, did not stop the activity, did not stop its operations on the IDX, did not merge, and did not change the status of the industrial sector during 2008-2015.
4. In the process of selecting research samples, the study population of 170 issuers was reduced by the number of issuers registered in 2007 by 50 issuers and the number of issuers that did not have the completeness of the annual report and financial statements for the 2008-2015 period of 51 issuers. The complete report that is not presented is detected based on the checklist of indicators of the board of commissioners and audit committee, if it is not complete, the issuer is not included as a sample, so the total sample in this study is 69 issuers. This selection is done so that the research sample used must have the same number of financial and annual reports.

Data collection and materials in this study were carried out by literature study by collecting data and processing the data to solve problems in this study. Data splitting comes from financial report documentation and annual reports accessed through www.idx.co.id and stock reports accessed through www.finance.yahoo.com.

Table 2. Operational Variables (1)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Scale</th>
<th>Measurement</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Independent</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audit Regulation</td>
<td>Ordinal</td>
<td>1. Period audit regulation in 2008 - 2010 is given score 1 (100)</td>
<td>Developed in dissertation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Period audit regulation in 2012 - 2014 is given score 2 (100)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Period audit regulation in 2015 is given score 3 (100)</td>
<td></td>
</tr>
<tr>
<td>Corporate Governance</td>
<td>Ordinal</td>
<td>1. Commissioners Board: Independence Board, Board Activities, Board Size, Board’s Skills &amp; Competences</td>
<td>Hermawan (2011)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Audit Committee: Audit Committee Activities, Audit Committee Size, Audit Committee’s Skills and Competences,</td>
<td></td>
</tr>
<tr>
<td>Audit Quality</td>
<td>Ordinal</td>
<td>Audit Quality Score</td>
<td>Hermetysa (2012)</td>
</tr>
<tr>
<td><strong>Intervening</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Earnings Management</td>
<td>Ratio</td>
<td>Performance matched discretionary accrual</td>
<td>Kothari et al. (2005)</td>
</tr>
<tr>
<td><strong>Dependen</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Firm Value</td>
<td>Ratio</td>
<td>Book Value per Share</td>
<td>Wulandari (2009)</td>
</tr>
<tr>
<td><strong>Kontrol</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Leverage</td>
<td>Ratio</td>
<td>Debt to Equity Ratio</td>
<td>Juningan (2011)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Debt to Assets Ratio</td>
<td></td>
</tr>
<tr>
<td>Firm Size</td>
<td>Ratio</td>
<td>Total Sales</td>
<td>Supranto &amp; Subiantoro (2007)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total Assets</td>
<td></td>
</tr>
</tbody>
</table>
In an effort to determine the relationship between variables simultaneously, a multivariate statistical method is needed that can analyze more than two variables. The software used to help SEM analysis is Partial Least Square (PLS). PLS uses an iteration algorithm consisting of OLS (Ordinary Least Squares) series so that the problem of model identification is not a problem for recursive models (models that have one direction causality) and avoid problems for non-recursive models (reciprocal models or reciprocal between variables) which can be solved by covariance-based SEM (Ghozali & Latan, 2015).

The following is a breakdown of the research equation model:

\[
\begin{align*}
\text{Model 1} & \quad \text{AUD}_t = \beta_0 + \beta_1 \text{REG}_t + \varepsilon_t \\
\text{Model 2} & \quad \text{EARN}_t = \beta_0 + \beta_1 \text{AUD}_t + \beta_2 \text{DKOM}_t + \beta_3 \text{KM}_t + \varepsilon_t \\
\text{Model 3} & \quad \text{EARN}_t = \beta_0 + \beta_1 \text{AUD}_t + \beta_2 \text{DKOM}_t + \beta_3 \text{KM}_t + \varepsilon_t \\
\text{Model 4} & \quad \text{VALUE}_t = \beta_0 + \beta_1 \text{AUD}_t + \beta_2 \text{DKOM}_t + \beta_3 \text{KM}_t + \varepsilon_t \\
\text{Model 5} & \quad \text{VALUE}_t = \beta_0 + \beta_1 \text{AUD}_t + \beta_2 \text{DKOM}_t + \beta_3 \text{KM}_t + \varepsilon_t \\
\end{align*}
\]

Keterangan:
- \(\beta_0, \beta_2\) = Coefficient
- \text{REG} = Audit Regulation
- \text{DAR} = Debt Asset Ratio
- \text{DER} = Debt Equity Ratio
- \text{ASET} = Total Asset
- \text{SALES} = Total Sales
- \text{EARN} = Earning Management
- \text{EARN1} = Earnings Management which variable control are DAR and DER
- \text{DKOM} = Commissioner Board
- \text{KM} = Audit Committee
- \text{AUD} = Audit Quality
- \text{VALUE} = Firm Value
- \text{VALUE1} = Firm Value which variable control are Total Sales and Total Asset
- \(\varepsilon\) = Error

4 Results

4.1 Descriptive Statistics

The unit of analysis in this study are companies listed on the Stock Exchange in accordance with the IDX Fact Book in 2014. The sample was taken based on purposive sampling, namely companies engaged in the Manufacturing sector for the period 2008 - 2015. The total sample was 69 companies with 8 years of observation year so that the overall study was 552 years of observation. But in testing normality using AMOS 22.0, the number of samples became 480 observations where 72 observations were omitted and considered as outliers.
4.2 Outer Model Analysis

This study uses 5 latent variables namely board of commissioners, audit committee, audit quality, earnings management, and company value. The Board of Commissioners variable consists of 17 indicators, the audit committee consists of 11 indicators, audit quality consists of 1 indicator, earnings management consists of 1 indicator and finally firm value consists of 1 indicator. Evaluation of the measurement model of latent variables with formative indicators based on substantive content is by comparing the relative weight and seeing the significance of the weight size (Chin, 1998).

Table 3. Descriptive Statistics

<table>
<thead>
<tr>
<th>Variable</th>
<th>N</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Mean</th>
<th>Std. Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner Board</td>
<td>480</td>
<td>1.000</td>
<td>2.533</td>
<td>1.777</td>
<td>.289</td>
</tr>
<tr>
<td>Audit Committee</td>
<td>480</td>
<td>1.00</td>
<td>3.00</td>
<td>2.165</td>
<td>.559</td>
</tr>
<tr>
<td>Audit Quality</td>
<td>480</td>
<td>0</td>
<td>1</td>
<td>.343</td>
<td>.299</td>
</tr>
<tr>
<td>Earnings Management</td>
<td>480</td>
<td>-.623</td>
<td>.423</td>
<td>-.068</td>
<td>.153</td>
</tr>
<tr>
<td>Firm Value</td>
<td>480</td>
<td>.000</td>
<td>.013</td>
<td>.002</td>
<td>.002</td>
</tr>
<tr>
<td>Firm Size1</td>
<td>480</td>
<td>9.608</td>
<td>18.463</td>
<td>14.334</td>
<td>1.701</td>
</tr>
<tr>
<td>Firm Size2</td>
<td>480</td>
<td>7.031</td>
<td>18.405</td>
<td>14.436</td>
<td>1.708</td>
</tr>
<tr>
<td>DER</td>
<td>480</td>
<td>-39.598</td>
<td>322.267</td>
<td>2.995</td>
<td>18.769</td>
</tr>
<tr>
<td>DAR</td>
<td>480</td>
<td>.000</td>
<td>411.040</td>
<td>1.559</td>
<td>18.832</td>
</tr>
<tr>
<td>Valid N (listwise)</td>
<td>480</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Firm Size1 : total asset*  
*Firm Size2 : total sales*
Test evaluation of the outer model concludes that:

1. 17 Board of Commissioners' indicators show significance with t-statistics above 1.645. This means that all indicators used to reflect the board of commissioner's variables are valid. So that the board commissioner variable as an unobserved variable can be accepted. Among the 17 indicators, the NC Indicator (Nominating Committee) is more strongly reflecting the board of commissioners with a t-statistic value of 4,959.

2. 11 indicators of the Audit Committee show significance with t-statistics above 1.645. This means that all indicators used to reflect the audit committee variables are valid. So that the audit committee variable as an unobserved variable can be accepted. Among the 11 indicators, the EKL indicator (Full Audit Committee Evaluation) is more strongly reflecting the board of commissioners with a t-statistic value of 2,693.

3. For the variables of Audit Quality, Profit Management and Firm Value, there is no t-statistic result because it only uses 1 indicator which cannot be processed by the SmartPLS 3.0 statistical tool.

4.3 Inner Model Analysis

Evaluation of Goodness of Fit Structural models were measured using predictive-relevance (Q2). Predictive-relevance values are calculated by the formula:

\[
Q2 = 1 - (1-R1^2) (1-R2^2) \ldots (1-Rm^2)
\]

R^2 values for each dependent / intervening variable can be seen in table 3.

<table>
<thead>
<tr>
<th>Variable</th>
<th>R-Square</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Quality</td>
<td>0.047</td>
</tr>
<tr>
<td>Earnings Management</td>
<td>0.215</td>
</tr>
<tr>
<td>Firm Value</td>
<td>0.313</td>
</tr>
<tr>
<td>Predictive-relevance (Q^2)</td>
<td>0.575</td>
</tr>
</tbody>
</table>

Overall predictive-relevance of 0.575 or 57.5% means that the model is able to explain the phenomenon of corporate value by 57.5%, while the remaining 42.5% is explained by other variables that have not entered the model.

4.4 Hypotheses Analysis

One-tailed hypothesis testing is done by looking at the results of the t value at a 90% confidence level (significance level of 10%) and the path coefficient (Beta) of each relationship between the variables hypothesized. The one tailed hypothesis is stated to be significant if the statistics> 1.645 (Hair et al., 2012).
Table 5. Hypotheses Results

<table>
<thead>
<tr>
<th>Hyp.</th>
<th>Model</th>
<th>Prediction</th>
<th>Estimate</th>
<th>t-statistik</th>
<th>Results</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Audit Regulation → Audit Quality</td>
<td>+</td>
<td>0.217</td>
<td>2.175</td>
<td>Significant and Positive</td>
<td>H₁ accepted</td>
</tr>
<tr>
<td>2a</td>
<td>Commissioners Board → Firm Value</td>
<td>+</td>
<td>0.216</td>
<td>2.072</td>
<td>Significant and Positive</td>
<td>H₂a accepted</td>
</tr>
<tr>
<td>2b</td>
<td>Audit Committee → Firm Value</td>
<td>+</td>
<td>0.039</td>
<td>0.315</td>
<td>No Significant</td>
<td>H₂b rejected</td>
</tr>
<tr>
<td>3</td>
<td>Audit Quality → Firm Value</td>
<td>+</td>
<td>0.166</td>
<td>1.887</td>
<td>Significant and Positive</td>
<td>H₃ accepted</td>
</tr>
<tr>
<td>4a</td>
<td>Commissioners Board → Earnings Management</td>
<td>-</td>
<td>-0.323</td>
<td>-3.152</td>
<td>Significant and Negative</td>
<td>H₄a accepted</td>
</tr>
<tr>
<td>4b</td>
<td>Audit Committee → Earnings Management</td>
<td>-</td>
<td>-0.017</td>
<td>-0.135</td>
<td>No Significant</td>
<td>H₄b rejected</td>
</tr>
<tr>
<td>5</td>
<td>Audit Quality → Earnings Management</td>
<td>-</td>
<td>-0.191</td>
<td>-2.251</td>
<td>Significant and Negative</td>
<td>H₅ accepted</td>
</tr>
<tr>
<td>6</td>
<td>Earnings Management → Firm Value</td>
<td>-</td>
<td>-0.149</td>
<td>-1.704</td>
<td>Significant and Negative</td>
<td>H₆ accepted</td>
</tr>
</tbody>
</table>

Table 5 shows that audit regulation influences positively on audit quality. Commissioners board and audit quality influence positively on firm value and earnings management. However, audit committee doesn’t influence on firm value and earnings management. Lastly, earnings management influences negatively on firm value.

5 Discussion

Based on hypothesis 1, the role of audit regulation in strengthening the influence of audit quality on earnings management is in line and in accordance with agency theory where audit regulation is an audit standard that must be followed by the auditor in the audit process. Detailed audit regulations and strict sanctions can limit the gray area that is used by the auditor and management to carry out earnings management actions simultaneously. Audit regulations can also increase the independence of public accountants so that in the process of auditing they do not collide with conflict of interest from the management.
Based on the hypotheses, the mechanism of corporate governance that is effective for increasing the value of the company is the board of commissioners. The uncertainty of the audit committee variable on the value of the company due to the appointment and authentication of the audit committee is determined by the board of commissioners so that the independence of the audit committee is still in doubt. In addition, the percentage of the independent audit committee has not been optimal in the composition of the company's audit committee.

Based on hypothesis 3, the higher the audit quality, the higher the credibility of the financial statements. The high credibility of financial statements reflects the basic foundations of a company's economy (DeFond & Zhang, 2014). High audit quality will tend to be audit reporting of errors and irregularities (Bartov et al, 2000). In addition, high audit quality can increase the relevance value of earnings and book value so as to increase the usefulness of accounting information in the investment decision making process (Alfraih, 2016). This result is in line with several studies (DeFond & Zhang, 2014; Alfraih, 2016) which concludes that audit quality can increase firm value.

Based on hypothesis 4, an effective corporate governance mechanism for decreasing earnings management is the board of commissioners. This is in line with agency theory where corporate governance is a monitoring mechanism for principals on the activities of management within the company. The board of commissioners and audit committee are external parties of company management so they are not involved in a conflict of interest.

Based on hypothesis 5, the influence of audit quality on earnings management is in line and in accordance with agency theory where in order to conduct monitoring activities of agent behavior to ensure that the agent acts in accordance with the principal's interest, the principal requires an independent third party as a mediator between the principal and agent. These third parties are external public accountants. Analysis and auditing of financial reports by external parties can bring up findings in company management activities such as moral hazard actions. That is why in the review of financial statements, the auditor states the audit opinion based on the findings in the financial statements. This evaluation from third parties can be a mitigator for management in taking earnings management actions.

Based on hypothesis 6, the influence of earnings management on the value of the company is in line and in accordance with the agency theory where in the agency relationship, each individual in the contract has an incentive to maximize their respective interests so as to incur agency costs that can reduce the value of the company (Watts and Zimmerman, 1986). So, the higher earnings management within the company, the company assets and profits listed in the financial statements are not in accordance with the actual value of the company. This is what can affect the company's valuation of valuable companies in the future.

Limitations Of The Study

Due to the incompleteness of audit fees in the financial and annual reports, the audit fees as a proxy for Client Importance are not used as an indicator of audit quality. In addition, there are data outliers that reduce the number of research samples. Finally, the number of issuers per period of the implementation of audit regulations is not the same, namely the 2008-2010 period (3 years), the 2011-2014 (4 years) period and the 2015 period (1 year). This causes the empirical analysis to be disproportionate.
6 Conclusion

Empirical results show that audit regulation influences positively on audit quality. Commissioners board and audit quality influence positively on firm value and earnings management. However, audit committee doesn’t influence on firm value and earnings management. Lastly, earnings management influences negatively on firm value.

The results of this study can provide new input on audit regulation because changes in audit regulations are proven to minimize earnings management that occurs in the company. Audit regulations can strengthen determinant factors such as audit quality in order to reduce earnings management within the company. These results are consistent with the findings of Cohen et al. (2008) which states that earnings management activities can be reduced because audit regulation can strengthen the relationship between audit quality and earnings management.

For the Financial Services Authority, this research can provide input on the importance of making new regulations in reducing fraud in finance such as earnings management. One of them is audit regulation which has an impact on reduced levels of earnings management. In addition, this study gives consideration to the Financial Services Authority in using internal and external factors of the company in reducing earnings management such as the board of commissioners and audit quality.

Future research may consider adding indicators of corporate governance mechanisms such as renumeration / nomination committees because this committee determines the amount of compensation and the recruitment requirements of directors. This committee can be a preventive corporate governance tool. In addition, the measurement of audit quality can be added to the client importance indicator. Finally, this research can provide new considerations in analyzing the company's performance through a different approach, namely how tightly the company follows and implements regulations so that the compliance factor of audit regulations can be analyzed for further research.

References


Analysis of Maklon Service Raw Material Control Using EOQ (Economic Order Quality) Method Based on Big Logistic Data to Support Industry 4.0

1st Dina Eka Shofiana, 2nd Moh. Imsin
{dinaekashofiana@fia.unipdu.ac.id/ mohimsin@fia.unipdu.ac.id}

Fakultas Bisnis dan Bahasa Universitas Pesantren Tinggi Darul ‘Ulum (Unipdu)Jombang

Abstract. This study aims to determine the control of raw materials for maklon services using the EOQ (Economic Order Quality) method based on big data logistics at CV. Surya Kencana Food. Raw materials have the potential difference in the arrival (inGoing), the use of raw materials on the production services JasaMaklon. Because in this Jasa maklon industry Raw material is the responsibility of Vendor which Jasa maklon does not charge Raw material. So it is important that the control of raw materials for the maklon service is done to correction each other, the raw materials used in the shipping services are sent from the vendor, the recipient does not know the type of raw materials to be used, because it is required big data in the classification of Raw Materials there is no mistake in distributing raw materials in Operational Production. This research uses descriptive qualitative approach. The results of this study indicate that using EOQ (Economic Order Quality) method on raw material maklon based on big data by using data base more efficient than conventional method or without using data, this is proved by the level of controlling of raw material of maklon service on the arrival of raw materials, usage and stock position position can be run and seen the accuracy of data from big data Logistics.

Keywords: Economic Order Quality (EOQ), Big Data, Logistic.

1 Introduction

A business that is carried out commercially is always oriented to obtain maximum benefits or benefits. The efforts in this direction only allow it to be realized by directing and utilizing all the potential or resources (resources) that are owned to create and add to the utility (utility) of goods and services. To regulate these activities, decisions need to be made relating to efforts to achieve the objectives so that the goods and services produced are in accordance with what is planned. To achieve this plan, efficiency in all fields is needed.

One method that is quite efficient in managing raw material control is the EOQ method (Economic Order Quality). EOQ (Economic Order Quality) is an inventory control technique that minimizes the total cost of ordering and storing. (Heizer, J.d 2015: 561). EOQ Method (Economic Order Quality) strives to achieve the minimum inventory level, low cost and better quality. EOQ planning method (Economic Order Quality) in a company will be able to minimize the occurrence of stock shortages (out of stock) so as not to interfere with the production process in the company because there is efficiency in the supply of raw materials in the company concerned. In addition, with the application of the EOQ method (Economic
Order Quality) the company will be able to reduce storage costs, save space, both for warehouse space and work space, resolve problems that arise from the large amount of inventory that piles up so as to reduce the risk that can arise.

CV. Surya Kencana Food is a maklon service company where all raw materials from the vendor realize that competition is increasingly competitive. Therefore, the right strategy is needed to deal with this competition. One strategy used by a company to win in competition is to reduce the cost to a minimum, manage the data base in big data so that the logistic inventory turn over can be controlled. Because in meeting the demands of its customers, companies need a large amount of raw material inventory. For this reason, it is necessary to plan a data base for big data inventory that is issued as efficiently as possible and does not become a problem that can drain large costs. CV. Surya Kencana Food has a problem in the method of recording in a database the raw material inventory, namely the receipt of raw materials that sometimes lack, so that the production process is disrupted due to the absence of raw materials to be processed, distribution of raw materials and supplies of existing raw materials.

The company requires a method to control the supply of raw materials and determine the availability of raw materials in the right quantity and time. For that the authors are interested in lifting the method of Economic Order Quantity (EOQ), where this method can minimize errors in inventory data, and existing bafer stock and cost control. Based on the background above, the authors are interested in conducting research with the title “Analysis of Raw Material Control of maklon services using the EOQ Method (Economic Order Quality) based on Big Data Logistics on CV. Surya Kencana Food.”

2 Theoretical Basis

Production in a company is an activity that is quite important even in various talks. It can be said that production is the kitchen of the company. If the production activities in a company will come to a standstill, the activities in the company will also stop. Because also if there are various kinds of obstacles that result in the stagnation of production activities in a company. Then activities within the company will also be disrupted. Understanding of management itself according to Assauri (2004: 12) activities or efforts made to achieve the goal by using or coordinating the activities of others. While production according to Assauri (2004: 11) is an activity that transforms input (input) into a result of output (output). Production Management According to Assauri (2004: 12) is an activity to regulate and coordinate the use of resources in the form of Human Resources, Resource Tools and Fund Resources as well as materials, effectively and efficiently to create and add to the utility of goods and services.

2.1 Understanding EOQ (Economic Order Quality).

According to Heizer, Jd (2015: 561) EOQ (Economic Order Quality) is an inventory control technique that minimizes the total cost of ordering and storage. According to Mannulang (2005: 70) EOQ (Economic Order Quality) is a way to obtain a way to obtain a number of goods with minimum costs and supervision of order costs and Carrying costs.

Then according to Pardede (2005: 422) states that EOQ (Economic Order Quality) shows a number of items that must be ordered for each order so that the overall preparation costs become as small as possible.
2.2 Determining EOQ (Economic Order Quality)

Determining inventory orders is by determining how much inventory the company needs in carrying out its activities. For this reason, an EOQ method (Economic Order Quantity) is needed in order to determine the economical quantity of inventory.

EOQ calculations according to Heizer, J.d (2015: 563), namely:

$$\text{EOQ} = \sqrt{\frac{2DS}{H}}$$

Information:

EOQ = The optimum number of units per order  
S = Order cost for each order  
D = Annual request in the unit  
H = Storage cost per unit per year

In addition to the EOQ formula (Economic Order Quality), there are several formulas to support the calculation of inventory costs, including:

Available average inventory = Q*2  
Estimated order inventory = D.Q *  
Annual booking fee = D. S. Q *  
Annual storage fee = Q *. H. 2  
Total price per unit = Price per unit × Order cost  
Total annual costs = Installation costs (orders) + Storage costs.

Safety Stock.

According to Rangkuti (2007: 10) safety stock is an additional inventory held to protect or maintain the possibility of a stock out.

Safety Stock Formula:

$$\text{Ss} = Z \times S$$

Information:

Ss = Safety stock or safety supplies  
Z = Factor which is the amount of deviation of trust in service or safety factor whose amount is determined by the level of service level  
S = Standard deviation of demand during the order grace period or standard deviation of demand over the lead time.

To find the standard deviation the formula is as follows:

$$S = \sqrt{\left(\frac{\sum X^2 - (\sum X)^2}{N}\right)}$$

Information:

S = Standard deviation  
x = Use of real raw materials  
\[\sum\] = Average use of raw materials  
N = Amount of data.
Reorder Point

According to Heizer, J.d (2015: 567) Reorder Point is the level of inventory (point) where to replenish inventory. Whereas according to Assauri (2016: 232) the assumption of Reorder Point is:

That a company will place an order, if its inventory level for a certain item has reached zero.

The company will receive the item it ordered immediately or immediately.

Description: \( Q^* \) is the optimum order quantity and the waiting time represents the time between order placement and order receipt.

The formula for determining reorder points:

\[
ROP = (d \times L) + SS
\]

Description:
\( d \) = Request per day
\( L \) = Time to wait for new orders in the day

This ROP equation assumes that the demand during the waiting time and the waiting time itself is constant. Requests per day (\( d \)) are calculated by dividing the annual demand (\( D \)) by the number of working days in a year:

\[
\text{Request per day (D)} = \frac{D}{\text{Number of working days in one year.}}
\]

Big data is a control database

Big Data described by inspiration in article writing is a general term for all sets of data in a very large and complex amount that makes it difficult to handle or process if only using ordinary database management or traditional data processing applications. The most important thing about Big Data is not just the technical ability to process data but the benefits that can be realized by the company by using Big Data Analytics. The terminology of Big Data is believed to come from web search companies that process data with a very large and unstructured distribution. Big Data Example Big Data Data can be in the form of data up to petabytes (1,024 terabytes) or exabytes (1,024 petabytes), such as billions to trillions of someone's personal records, all of which come from different sources such as web, sales, customer service, social media, mobile data and so on.

Data analysis can be carried out descriptively through the description of past business situations to obtain trend trends and exceptions, predictive conducting real-time analysis and establishing historical data as predictions of the front while prespective measures prediction analysis to inform and suggest actions that function to take advantage or avoid certain results.
Big data is a solution to control the inventory of raw materials with the data obtained is the raw material data that is in stock maklon services by using the material trase code so as not to make mistakes made by Incoming QC before it is included in the formulation of material use which then goes into the production process. The data needed is raw material data, item data according to the code given by the vendor, raw material data from the supplier directly to the production usage data, so that the vendor can see the turnover of raw materials with big data.

3 Research Methods

According to Sugiyono (2015: 307) qualitative methods are research methods that are based on positivism / enterpretif philosophy, used to examine natural object conditions, (as opposed to experiments) where researchers are key instruments, data collection techniques are triangulated (combined), data analysis is inductive / qualitative, and the results of qualitative research emphasize the meaning rather than generalization. The design of this study is a descriptive study in which this study attempts to analyze the control of Raw Materials using the Big Data-based EOQ method at CV Surya Kencana Food, to explore in-depth data

The research subjects at this stage are the Heads of Warehouse / Logistics CV. Surya Kencana Food that manages Turn over Logistics with raw data in the form of road documents from the vendor and data Proof of receipt of raw materials by Formuli and Production Section at CV. Surya Kencana Food Jombang. After that, at the next stage, analyzing the raw data that has been entered with the EOQ method based on Big data, the point is to see the accuracy of the data made reference in the preparation of inventory stocks with accountable records Data collection can be done in various settings, various sources, and various way. When viewed from the settings, data can be collected from natural settings. When viewed from the data source, the data collection can use primary sources and secondary sources. Primary sources are data sources that directly provide data to data collectors and secondary data sources are sources that do not directly provide data to data collectors, for example through other people or documents. Various data collection techniques are shown in the following figure 3.1.
Based on the picture, it can be seen that in general there are four types of data collection techniques, namely observation, interview, and combination / triangulation. Data analysis in this study is descriptive analysis with a qualitative approach. According to Miles and Huberman in Sugiyono (2016: 246), suggesting that activities in qualitative data analysis are carried out continuously until complete, so that the data is saturated. Activities in data analysis, namely data reduction, data display, and conclusion drawing / verification.

4 Urgency (Principles) Research

The results of the study provide input to be able to take steps and decisions to make preparations and improvements for the progress of the company and provide a good picture and hope for the company in managing raw material management due to raw materials. Through this research, it is expected that the author will deepen his knowledge in the field of operational management, especially the problem of controlling raw material inventory from big data, can provide recommendations for control of both the management and the employer vendors. in the field of operational management regarding the control of raw materials.

5 Expected Findings And Innovations

1. As a vehicle for building communication between Islamic boarding schools, the academic community and the small and medium entrepreneurs in the field of maklon services within the framework of mutually beneficial development and assistance.
2. To build business communication that has a continuous content of research and community service, in the framework of mutual cooperation (MOU) for the long term.
3. To bridge in building market communication through Islamic boarding schools and higher education networks within the framework of research and community service.

References

Effect of Resources on Competitive Strategies Through Unique Capability in Chicken Distributor Companies in Dki Jakarta Province

1st Siti Mariam1, 2nd Abdul Haeba Ramli2
{marry.dbm@gmail.com1, abdul.haeba@trisakti.ac.id2}

Institut Ilmu Sosial dan Manajemen STIAM1, Universitas Trisakti2

Abstract. The competitive strategy in the chicken distribution company in Jakarta indicates low resources and unique capability. The purpose of this study is to determine the effect of low resources and unique capability to competitive strategy. Quantitative methods are used in this study. Population is the employees of the chicken distribution company in Jakarta with more than 2,000 people. Sampling technique used is purposive sampling with the number of samples of 104 people. Data collection technique uses questionnaires and regression analysis. Finding on the research results shows that there are positive and significant influence of resources on unique capability and positive and significant influence of resources on competitive strategy, positive but not significant influence of unique capability on competitive strategy and also the influence of company resources on unique capability to competitive strategy.

Keywords: Competitive Strategy, Unique Capability, Resources And Chicken Distribution Company.

1 Introduction

Consumption of animal foods is increasing steadily due to an increase in population and income levels, chicken prices are relatively cheaper than other meats and increasing the development of other sectors that support chicken farming, for example opening new restaurants, restaurants and supermarkets increasing, increasing public awareness of nutrition fulfillment, community needs at certain times such as marriage parties, and high selling prices in the fasting month, Eid al-Fitr, Christmas, and others (PDSIP, Ministry of Agriculture, 2016). The need to fulfill animal food needs has supported business development in the field of chicken production.

One sector that plays a major role in the meat business is the chicken distributor sector. Distributor of company chicken / business that connects suppliers (suppliers) with consumers, cooperation to make both parties synergetic and can guarantee the accuracy in the distribution of chicken products. In the end it will increase the amount of production, compared to the number of requests. With the increase in the number of production, it will definitely increase competition in seizing the market for these products. Questioning every chicken distributor company will do a competitive strategy to improve and improve the performance of the company.
In DKI Jakarta Province there are currently 1,153 chicken slaughterhouses (TPA), each of which has a cutting capacity of 402,000 head / day and 216 locations for chicken shelters (TPnA) or also called chicken distributor companies and employees as a whole are more than 2,000 people spread in 5 (five) municipalities: Central Jakarta, East Jakarta, South Jakarta, West Jakarta, and North Jakarta, with a chicken holding capacity of 452,460 birds per day (DKI Jakarta Province Marine and Agriculture Food Security Service, 2018).

Wheelen et al. (2015) states that competitive strategies focus on increasing the competitive position of a product or service from a business unit or company in an industry or a particular market segment where they compete. But the implementation of competitive strategy that is still not optimal by chicken distributors has an impact on the performance of chicken distributors. This is consistent with the results of the research of Hahn and Powers (2010). Several studies of the determinants of corporate competitive advantage have been carried out, for example Tracey et al (1998), and Salazar et al (2012). In this case, Toha (2001) underlines the role of leaders in directing the human resources they manage to move optimally toward the target without violating existing boundaries.

However, the existing studies have not specifically reviewed the business units in the livestock industry, especially the chicken distributor business unit with a relatively distinctive character of capital and market sources. Therefore, this research will fill the literature gap. Specifically, this study will examine the effect of resources on competitive strategies through unique capabilities in chicken distributor companies in DKI Jakarta Province.

2 Literature Review

2.1 Resources

In the opinion of Pearce and Robinson (2015), based on RBV, each company is fundamentally different because each has a unique collection of resources consisting of tangible assets, intangible assets, and organizational capabilities to utilize these assets. Based on the Resource-Based Model, Hitt, Ireland, & Hoskisson (2015) assume that each organization is a collection of unique resources and capabilities. The uniqueness of resources and capabilities is the basis of the company's strategy and its ability to obtain above-average returns. Resources are input to the company's production processes, such as capital equipment, individual employee expertise, patents, finance, and talented managers. Hsieh, Chen, Ming (2011) conducted a literature review regarding the relationship between resources and competitive strategies. Competitive strategies are designed based on individual specifications, consistent with human resource strategies, namely skills-oriented and innovation strategies.

2.2 Unique Capability

Unique capability is defined by Makadok (2001) as a specific resource that is owned by the company and invested in increasing the productivity of other resources within the company. Simonceska (2008) underlines that unique capabilities are the strengths and characteristics of the company and its exploitation efforts to encourage companies to create certain products that excel in competition in the market. Meanwhile, according to Wheelen et al (2015), unique capabilities related to core capabilities are the company's superior expertise that can provide the greatest benefits to customers.
2.3 Competitive Strategy

Hubbard and Beamish (2011) state business strategies related to how organizations position their business more competitively than other similar industries. Another notion of competitive strategies is stated by Thompson et al. (2014) where the competitive strategy of a company relates to game planning from management to compete successfully, namely specific businesses to serve customers, strengthen market position, face maneuvers from competitors, respond to market conditions, and to achieve certain types of excellence.

In relation to the company's efforts to be competitive in its market, there are several strategies that can be carried out as stated by Hitt, Ireland, Hoskisson (2015) that companies can choose five business strategies to build and maintain the company's strategic position against competitors, which consists of: cost of leadership, differentiation, focused cost leadership, focused differentiation, and integrated cost leadership / differentiation.

Based on the theory and the results of the above assessment, the conceptual framework like the picture 1 below:

![Conceptual Framework](image.png)

3 Hypothesis Development

According to Hitt, Ireland & Hoskisson (2013) based on the RBV mode it is assumed that each organization is a unique collection of resources and capabilities. So that both have a mutually influential relationship to produce optimization of company performance. Likewise according to Wheelen et al (2015), that the uniqueness of resources and unique capabilities is a superior expertise of companies that can provide the greatest benefits to their customers.

Based on various results of the above research, the hypotheses developed in this study are:

H1: Resources have a positive and significant effect on unique capabilities.

The company's internal resources are an important key in creating competitive advantage (Omerzel & Gulev, 2011). Likewise according to Wheelen et al (2015), that the uniqueness of resources is a superior expertise of a company that can provide the greatest benefits to its customers.

Based on various results of the above research, the hypotheses developed in this study are:

H2: Resources have a positive and significant effect on competitive strategies.

Simoneska (2008) underlines that unique capabilities are the strengths and characteristics of the company and its exploitation efforts to encourage companies to create certain products that excel in competition in the market. Likewise with Wheelen et al (2015), that unique
capacity is a superior capacity of a company that can provide the greatest benefits to its customers. Research conducted by Rentala, Anand and Shaban (2014) in the Indian pharmaceutical industry also supports the conclusions above. Unique capability plays a role in the process of determining competitive strategies.

Based on various results of the above research, the hypotheses developed in this study are:

H3: Resources have a positive and significant effect on bersing strategies.

The findings of Hsieh, Chen, Ming (2011) related to the relationship between resources, unique capabilities and competitive strategies. Competitive strategies are designed based on individual specifications, consistent with human resource strategies, namely skill-oriented strategies and innovations that are the company's unique capabilities. One study of the determinants of competitive strategies was carried out by Boasson (2001), who conducted studies on the pharmaceutical industry in the US. In this study, Boasson (2001) places the characteristics and location of the company as a resource element that influences unique capabilities. The research concludes the important role of unique capabilities for the development of the company's competitive strategy.

Based on various results of the above research, the hypotheses developed in this study are:

H4: Resources have a negative and significant effect on the competitive strategy through an organization comitment.

4 Research Methods

The method used in this study is exploratory research with the data sources used in this study are primary data covering all respondents who came from chicken distributors in DKI Jakarta Province. The sample is chicken distributor executives from 38 chicken distributor companies in the entire DKI Jakarta Province with a total number of 104 people from more than 2,000 population populations.

The analysis method starts from looking at the characteristics of the data through descriptive statistics and then the analysis of the multivariate data analysis model includes factor analysis and Partial Least Square (PLS). Because of the limited number of samples used under 200 and the PLS model also does not require data that is not normally distributed (Cassel, 1999), besides that this PLS model is a model that is able to explain complex structural models.

The measurement instruments for the three variables in this study are for resource variables using instruments adopted from Pearce and Robinson (2015). Furthermore, the instruments of the unique capability variable from Wheelen et al (2015) and competing strategy variables were adopted from Hitt, Ireland, Hoskisson (2015). To test the validity of the instrument used the product moment correlation formula proposed by Pearson (Arikunto, 2008: 72). Test the validity of the Resource variable, unique capabilities and competitive strategies carried out by validity test as in the table below:
Table 1. Outer Loadings

<table>
<thead>
<tr>
<th>Variables</th>
<th>N of Items</th>
<th>Cronbach’s Alpha</th>
<th>Keputusan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resources</td>
<td>5</td>
<td>0.964</td>
<td>Reliabel</td>
</tr>
<tr>
<td>Unique Capability</td>
<td>3</td>
<td>0.943</td>
<td>Reliabel</td>
</tr>
<tr>
<td>Competitive Strategy</td>
<td>4</td>
<td>0.916</td>
<td>Reliabel</td>
</tr>
</tbody>
</table>

In the table above, shows the value of t-value in each indicator of the study has good validity. This is based on good validity criteria, where the value of the t-value of each item above is greater than the benchmark value t of 0.3 (t-value> of 0.3), Masrun in Sugiyono, (2009). So, all items are declared valid.

Tabel 2. Reliability Test Results

<table>
<thead>
<tr>
<th>Variables</th>
<th>N of Items</th>
<th>Cronbach’s Alpha</th>
<th>Keputusan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resources</td>
<td>5</td>
<td>0.964</td>
<td>Reliabel</td>
</tr>
<tr>
<td>Unique Capability</td>
<td>3</td>
<td>0.943</td>
<td>Reliabel</td>
</tr>
<tr>
<td>Competitive Strategy</td>
<td>4</td>
<td>0.916</td>
<td>Reliabel</td>
</tr>
</tbody>
</table>

Source: 2018 Data Results.

Reliability testing is related to the consistency, accuracy, and predictability of a measuring instrument. According to Sekaran (2006), the basis for decision making for reliability testing is as follows:

a. If the Cronbach's Alpha coefficient is > 0.6, then Cronbach's Alpha is acceptable (reliable construct)

b. If Cronbach's Alpha < 0.6 then Cronbach's Alpha is poor acceptable (unreliable construct).

From the table above, all variables with Cronbach's Alpha are greater than 0.60, so the variables are considered reliable and this research can be continued.

5 Results And Discussion

Testing of the four hypotheses proposed was carried out using Structural Equation Modeling (SEM) with the help of PLS software. Hypothesis test decision making is to look at the results of t-value, where if the value is positive it means that the variable has a positive effect, while to see its significance is to refer to the t-statistic value between variables, if the t-value obtained is greater than t-table amounting to 1.96, meaning that the effect is significant. The results of this study, can be seen below:
Table 3. Hypothesis Test Result

| Variables                        | T Statistics (|O/STERR|) |
|---------------------------------|--------------|-----|
| Resources -> Unique Capability  | 4.541880     |    |
| Resources -> Competitive Strategy| 3.232623     |    |
| Unique Capability -> Competitive Strategy | 1.130606 | |
| Resources -> Unique Capability -> Competitive Strategy | 2.123876 | |

Source: 2018 Data Results of PLS

In the table above shows that all influences between one variable to another variable show positive values, including:
1. The Effect of Resources on Unique Capability is positive and significant because the value of t-value is 4.541880 which means positive and significant because it is greater than the t-table of 1.96.
2. Effect of Resources on competitive strategies is positive and significant because the value of t-value is 3.232623 which means positive and significant because it is greater than t-table of 1.96.
3. The effect of unique capability on competitive strategies is positive but not significant because the t-value is 1.130606 which is positive but not significant because it is smaller than t-table of 1.96.
4. The Effect of Resources on Competitive Strategies through Unique Capability is positive and significant because the t-value is 2.123876 which means positive and significant because it is greater than t-table of 1.96.

6 Conclusion

The conclusion of this study was formulated based on the results of hypothesis testing. The conclusion of this study is that the positive effect of resources on unique capabilities is proven, then the positive effect of resources on competing strategies is also proven, then the positive effects of unique capabilities on competitive strategies are proven but not significant. As well as proven the positive influence of resources on competitive strategies through unique capabilities.

Managerial Implications

The results of the conclusions above, will provide a reference to company leaders because the results of this study indicate that competitive strategies will be increased positively and significantly if the company's unique Resource and Capability level is taken into account. So that the company will be able to achieve the desired goals.

Limitations Of Research And Suggestions

This research was only conducted on employees of a chicken distributor business company in Jakarta, so the results cannot be generalized to all business industries. And this
study only examines resources, competitive strategies, and unique capabilities, so it is necessary to try the development of other variables as determinants of forming competitive strategies, such as technology adoption and management of innovation (Tsai, Tsai, Li, & Lin, 2012).

References


The Strategies Competitiveness for Yogyakarta Tourism Industry

Jumadi1, Cahya Purnama Asri2, Bahri3
{jumadi@widямataram.ac.id, cahyapurnama.uwm@gmail.com, bahri@widямataram.ac.id}

Department Management Economics Faculty of Widya Mataram University1
Department Entrepreneurship Economics Faculty of Widya Mataram University2,3

Abstract. Yogyakarta is the second wonderful destination in Indonesia after Bali, aim to this paper to Kwon Yogyakarta Tourism Strategies. This paper aims to contribute to the tourism industry in Yogyakarta. The methodology used is the Attractiveness-Competitiveness Matrix. This model is expected to be used in helping make policies to determine the priority scale of tourism development in Yogyakarta. The manuscript presents a matrix, describes how the matrix is used to help Tourism prioritize the Strategy. Based on the SWOT Matrix studied, an alternative strategy was formulated in the Yogyakarta tourism industry are: Branding Yogyakarta tourism destination, Satisfaction tourism strategy, tourism-based heritage, and culture, building the optimization of promotion with government support, human and technology development, developing public transportation and safety facilities of tourism, the complete package of several facilities options and development tourist attractions such as art performances.

Keywords: Tourism strategy Tourism set priorities strategy, Competitiveness situation analysis (SWOT), Tourist attractions such as art performances

1 Introduction

Rural Tourism is a complex industry that urgently needs a strategy for directing large numbers of people from different countries with different socio-economic structures who have different needs, tests, attitudes, expectations, and behavior patterns. To achieve a competitive advantage in its tourism industry sector, a destination must ensure that it has a multiplicity of 'attractiveness', and the tourist destinations it offers must have an advantage over other alternative destinations. Potential visitors to any destination are closely tied to the overall competitiveness of that destination (Dwyer and Kim, 2003).

Determination of the level of the competitive position will determine the level of the company's relative position in the competitive arena. This can enable the company to create a more defensible position by formulating and selecting strategies based on strengths, weaknesses, and existing opportunities and threats (Porter, 1980, 1985). Competitiveness remains a concept that is not well understood, despite its widely accepted importance of competition at the country, industry, and company levels. Therefore (Moon et al., 1998) provides insights into increasing knowledge and understanding of competitiveness. Dwyer, Forsyth, and Rao (2002) explain that the competitiveness of the tourism sector is a general concept that includes price differences coupled with exchange rate movements and productivity levels of various components of the tourism industry as well as qualitative factors.
that affect attractiveness or other objectives. Meanwhile, Hassan (2000) defines competitiveness as the ability of destinations to create and integrate product strengths that have added value that support their resources while maintaining their market position relative to competitors.

Tourism and destinations that are competitive will attract visitors so that they can increase the socio-cultural, economic, and environmental benefits of the surrounding destinations (Vanhole, 2006; Ritchie & Crouch, 2005; Armenska, 2011). Tourism that has competitiveness can increase sustainable tourism development, this means that a destination that has competitiveness provides high benefits for the community as its host (Wondowossen et al. 2014). Conditions of intense competition amidst globalization, which is strong and the need to survive life has led to an urgent need for management so that competitiveness can be obtained. The concept of competitiveness has been widely understood in almost all industries and countries since Porter published his "Competitive Strategy" in 1980 (Fulad, Kume; 2013). To create competitiveness, this can be done through developing, implementing, and monitoring each initiative with a measurable and understandable framework.

This paper aims to develop models and indicators of the competitiveness of a destination, especially for tourism destinations in Yogyakarta. Yogyakarta is a province of Indonesia which is a developing country in Asia. Tourism in Yogyakarta has experienced a decline due to inadequate and ineffective promotional activities, so a study is needed to produce strategic approaches for tour operators. Yogyakarta as a destination must be able to make tourists aware of things to see, places to stay, and what it has to offer to be done at these tourist attractions. In its development, the Yogyakarta Tourism Industry needs to develop infrastructures such as hotels, resorts, and a strategy that better connects government tourism operators with private business actors to increase joint promotional activities and create a suitable tourism brand. However, in building a brand, ideally, it is not only attractive to tourists but also attractive to international investors to be able to invest (Hossain, 2013), so an effective strategy is needed.

2 Method
This study uses qualitative and quantitative approaches with primary and secondary data. Primary data collection techniques are carried out through Focus Group Discussion (FGD) with competent people including consultants, academics, and researchers. Meanwhile, secondary data collection techniques used studies with published literature (local & international).

3 Result and Discussions

The Environmental Monitoring

The environment is a factor that can influence organizational activities. The external environment is the most important environment that cannot be directly controlled by the organization. The external environment includes the economic environment, political environment, culture, political environment, and technology.

SWOT Analysis
SWOT analysis is an analysis tool that is equipped with relevant information related to the diagnosis process, and the best indication for developing a marketing strategy and tactics, components in a SWOT analysis include strengths, weaknesses, opportunities, and threats (Midleton at. al 2009). The SWOT analysis method in research uses EFAS-IFAS information, namely analysis of external strategic factors and internal strategic factors.

**Result**

**Environmental Monitoring**

The influence of organizational activities is the most important environment that cannot be directly controlled; These environments are Economy, Inflation, Politics, Culture, Technology, and Protection of the Natural Environment. Table 1 shows the results of combining secondary data with primary data obtained through FGD, with academics, businesses, and the Yogyakarta government.

<table>
<thead>
<tr>
<th>Factors of Influence</th>
<th>TRENDS</th>
<th>TOURISM EFFECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Inflation</td>
<td>The inflation rate is expected to reach double-digit</td>
<td>The population will reduce tourism activities.</td>
</tr>
<tr>
<td>Economics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Political turmoil</td>
<td>Social unrest</td>
<td>Some countries will prohibit their citizens from traveling</td>
</tr>
<tr>
<td>3. Communication</td>
<td>The development of the internet has an impact on digital tourism</td>
<td>The new alternative to promote tourism through the homepage and digital marketing tourism.</td>
</tr>
<tr>
<td>Media Technology</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Sociocultural</td>
<td>Tourism activities develop to overcome burnout</td>
<td>Preparation of tourists the needs</td>
</tr>
<tr>
<td>vacation time</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Natural Environment</td>
<td>Increased public awareness of environmental conservation significance</td>
<td>Tourism planning must be more sensitive to the environment.</td>
</tr>
<tr>
<td>Environmental</td>
<td></td>
<td></td>
</tr>
<tr>
<td>protection</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Yogyakarta has places best value destination, tourist attractions comprise, The Sultan Palace, Culture Heritage, Water Castle, Merapi Mountain, Lava Tour, Cave, WaterFall, Malioboro, the traditional market, Zoohistorical sites, resorts, beaches, playgrounds, forest and tourist villages, and animal parks.

**The SWOT Analysis of Yogyakarta Tourism Industry**

<table>
<thead>
<tr>
<th>SWOT Analysis of Yogyakarta Tourism Industry</th>
<th>STRENGTH</th>
<th>WEAKNESSES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
A. The natural beauty and great weather  A. The place for performing arts or performing venues is still lacking

B. A complete package of several facilities options  B. Promotion is not maximized

C. Unique and interesting attractions  C. Lack of souvenir shops

D. Typical arts and culture  D. Price attraction expensive facilities

E. The hospitality of surrounding communities  E. Human Resources poorer quality

OPPORTUNITIES  THREATS
A. The growth of tourism supply resources  A. Competition among tourism attraction
B. Availability of job allowances in the destination  B. Natural disaster
C. Access to preserve local culture  C. Unsafety facilities and infrastructure
D. An Emergence of technology  D. Lack of public transportation
E. Words of mouth promotion  E. Lack of government support

SWOT Analysis With EFAS – IFAS
SWOT analysis is assessed by two factors, namely using weights and ratings. The score of the total weight score is one, while the ranking scores range from 0-9. Each rank is multiplied by the weight equal to the item score. The following table shows the scores from the EFAS.

Table 3
External of Situation Analysis

<table>
<thead>
<tr>
<th>External Factors</th>
<th>Weight</th>
<th>Rating</th>
<th>Item Scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPPORTUNITY</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Growth of tourism resources</td>
<td>0,2</td>
<td>7,27</td>
<td>1,454</td>
</tr>
<tr>
<td>C. Availability of job allowances in the destination</td>
<td>0,1</td>
<td>5,5</td>
<td>0,55</td>
</tr>
<tr>
<td>D. Access to preserve local culture</td>
<td>0,1</td>
<td>6,8</td>
<td>0,68</td>
</tr>
<tr>
<td>E. An Emergence of technology</td>
<td>0,05</td>
<td>6,6</td>
<td>0,33</td>
</tr>
<tr>
<td>F. Words of mouth promotion</td>
<td>0,05</td>
<td>7,4</td>
<td>0,37</td>
</tr>
<tr>
<td>Total</td>
<td>0,5</td>
<td></td>
<td>3,384</td>
</tr>
<tr>
<td>THREATS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Competition among tourism attraction</td>
<td>0,2</td>
<td>6,33</td>
<td>1,266</td>
</tr>
<tr>
<td>C. Natural disaster</td>
<td>0,1</td>
<td>6</td>
<td>0,6</td>
</tr>
<tr>
<td>D. Unsafety facilities and infrastructure</td>
<td>0,1</td>
<td>4,8</td>
<td>0,48</td>
</tr>
<tr>
<td>E. Lack of public transportation</td>
<td>0,05</td>
<td>5,8</td>
<td>0,29</td>
</tr>
<tr>
<td>F. Lack of the government support</td>
<td>0,05</td>
<td>5,87</td>
<td>0,2935</td>
</tr>
<tr>
<td>Total</td>
<td>0,5</td>
<td></td>
<td>2,9295</td>
</tr>
<tr>
<td>Aggregate</td>
<td>1</td>
<td></td>
<td>6,3135</td>
</tr>
</tbody>
</table>

Based on this SWOT analysis it can be explained that the factors external strategic which consists of opportunities and threats have a score of 6.3135 which means that the External Market Business Attraction means Yogyakarta can anticipate all threats that come well.
<table>
<thead>
<tr>
<th>Internal Strategic Factors</th>
<th>Weight</th>
<th>Rating</th>
<th>Item Scores</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STRENGTH</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Natural beauty and great weather</td>
<td>0.2</td>
<td>7.9</td>
<td>1.58</td>
</tr>
<tr>
<td>C. A complete package of several facilities options</td>
<td>0.1</td>
<td>6.9</td>
<td>0.69</td>
</tr>
<tr>
<td>D. Unique and interesting attractions</td>
<td>0.1</td>
<td>7.06</td>
<td>0.706</td>
</tr>
<tr>
<td>E. Typical arts and culture</td>
<td>0.05</td>
<td>7.8</td>
<td>0.39</td>
</tr>
<tr>
<td>F. Hospitality of surrounding communities</td>
<td>0.05</td>
<td>8.4</td>
<td>0.42</td>
</tr>
<tr>
<td>Total</td>
<td>0.5</td>
<td></td>
<td>3.786</td>
</tr>
<tr>
<td><strong>WEAKNESS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Lack of tourist attractions such as art performances</td>
<td>0.2</td>
<td>5.9</td>
<td>1.18</td>
</tr>
<tr>
<td>C. Promotion is not maximized</td>
<td>0.1</td>
<td>6.3</td>
<td>0.63</td>
</tr>
<tr>
<td>D. Lack of souvenir shops</td>
<td>0.1</td>
<td>5.6</td>
<td>0.56</td>
</tr>
<tr>
<td>E. Price attraction expensive facilities</td>
<td>0.05</td>
<td>5.6</td>
<td>0.28</td>
</tr>
<tr>
<td>F. Human Resources poorer quality</td>
<td>0.05</td>
<td>6.1</td>
<td>0.305</td>
</tr>
<tr>
<td>Total</td>
<td>0.5</td>
<td></td>
<td>2.955</td>
</tr>
<tr>
<td>Aggregate</td>
<td>1</td>
<td></td>
<td>6.741</td>
</tr>
</tbody>
</table>

Based on the Internal Strategic Analysis which is focused on strengths and weaknesses, a score of 6.741 shows that the more competitive internal-Business Strength / Competitive Position means that the business is getting stronger and the attractiveness of the industry is getting higher.

Therefore, based on the SWOT analysis above, the matrix of SWOT analysis is formulated as follows.

<table>
<thead>
<tr>
<th>Internal Factors</th>
<th>Strength</th>
<th>Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>External Factors</strong></td>
<td>- The natural beauty and great weather</td>
<td>- The place for performing arts or performing venues is still lacking</td>
</tr>
<tr>
<td></td>
<td>- A complete package of several facilities options</td>
<td>- Promotion is not maximized</td>
</tr>
<tr>
<td></td>
<td>- Unique and interesting attractions</td>
<td>- Lack of souvenir shops</td>
</tr>
<tr>
<td></td>
<td>- Typical arts and culture</td>
<td>- Typical arts and cultural attraction expensive facilities</td>
</tr>
<tr>
<td></td>
<td>- The hospitality of surrounding communities</td>
<td>- Human Resources poorer quality</td>
</tr>
</tbody>
</table>
Opportunity
− The growth of tourism supply resources
− Availability of job allowances in the destination
− Access to preserve local culture
− An Emergence of technology
− Words of mouth promotion

Treats
− Competition among tourism attraction
− Natural disaster
− Unsavety facilities and infrastructure
− Lack of public transportation
− Lack of government support

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Opportunities</th>
<th>Opportunities</th>
</tr>
</thead>
<tbody>
<tr>
<td>− Branding Yogyakarta Tourism</td>
<td>− The Optimization of</td>
<td>− Building souvenir shops</td>
</tr>
<tr>
<td>− Satisfaction Tourism Strategy</td>
<td>− Promotion with government support</td>
<td>− Formulate the Favorable tourism Policy</td>
</tr>
<tr>
<td>− Tourism Based Heritage and Culture</td>
<td>− Promotion of the Unique destination</td>
<td>− Development tourist attractions such as art performances</td>
</tr>
</tbody>
</table>

Based on the SWOT Matrix above, it can be formulated for the formulation of alternative strategies in achieving Competitiveness in Yogyakarta Tourism as follows:
− Branding Yogyakarta tourism destination
− Satisfaction tourism strategy
− Tourism based heritage and culture
− Building the optimization of promotion
− Human and technology development
− Building souvenir shops
− Promotion of the unique destination
− Developing public transportation and safety facilities of tourism
− The complete package of several facilities options
− Promotion with government support
− Formulate the favorable tourism policy
− Development tourist attractions such as art performances

4 Conclusion

The source of the uniqueness of tourism in Yogyakarta is the culture of Yogyakarta which teaches the relationship between humans and nature, with other people and creators, thereby creating a long-term business continuity. Special of Territory of Yogyakarta are many destinations consists of: Sultan Palace, Malioboro, Beringharjo Traditional Market, Tamansari Water Castle, Museum Sonobodoyo, Taman Pintar, Gembiroloka Zoo, Museum the Matta, are
of the tourism destination in Yogyakarta City. Merapi mountain, Lava Tour, Prambanan and Boko Temple, Kaliurang, Tubing Breksi are the tourism destination in Sleman Regency. Becici mountain, Parangtritis beach, Depok beach, Parangkusomo beach, Kasongan art market, Slarong Cave, the Flower Garden, is the tourism destination in Bantul Regency. The Pindul Cave, Kalisuci cave, Gunung Api Purba, Indrayanti beach, Baron beach, Krakal beach, Wedo Ombo beach, Srigethuk waterfall are the tourism destination in Gunung Kidul Regency. So the Glagah beach, Bugel beach, Congot beach, Dolan Ndeso, Menoreh mountain are the tourism destination in Kulon Progo.

Based on the analysis of internal and external situations, a score of 6.741 for internal factors is obtained, which means that the competitive position of the Yogyakarta tourism industry is getting stronger and the attractiveness of the industry is getting higher. While the value of External Factors with a score of 6.3135, which means that the Yogyakarta tourism industry can anticipate all threats.

Based on the SWOT Matrix the study formulated an alternative Strategy Competitiveness in the Yogyakarta tourism industry are: branding Yogyakarta tourism destination, satisfaction tourism strategy, tourism based heritage and culture, building the optimization of promotion, human and technology development, building souvenir shops, promotion of the unique destination, developing public transportation and safety facilities of tourism, the complete package of several facilities options, promotion with government support, formulate the favorable tourism policy, and development tourist attractions such as art performances.

References


Performance Analysis of Rural Banks and Sharia Rural Banks in Indonesia

Pandoyo¹, Mohammad Sofyan²
{p.pandoyo@gmail.com¹, sofyan@stiami.ac.id²}
Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia¹,²

Abstract. This study aims to analyze and compare the performance of rural banks with Islamic public finance banks. The data used during the 2011-2018 period is from Indonesian banking statistics and Islamic banking statistics published by the financial services authority. The results showed that rural banks with good capital capacity and keeping NPLs below 8% were able to generate profitability as expected by investors.

Keywords: Sharia rural banks, Rural banks, Performance Analysis

1 Introduction

Rural banks and sharia rural banks are institution finance aims to serve needs banking services for the economic community weakness and small businesses on Indonesia. BPR has a role important for small businesses in business improvement because micro and small businesses require capital easily and quickly. In the banking business, especially rural banks, management carries a huge risk of obtaining profitability as a reward for the risks covered. risks vary in different businesses but there is a positive relationship between risk and profit. Rural banks are increasingly pressed for the existence of commercial banks, foreign banks, and fintech peer to peer lending to put massive funding on microcredit (Sofyan, 2016). The existence of people's credit banks and Islamic people's financing banks is very important in helping the country's economic growth. The role of people's credit banks and Islamic people's financing banks in providing the funds needed to keep economic growth and development on track.

Rural banks utilize a combination of debt and equity in financing projects. A fixed percentage of interest is expected from the debt finance. The shari'a rural banks system which is based on the tenets of Sharia prescribes equity participation in investment. A distinctive feature of Islamic finance is that it does not allow the creation of debt through direct lending and borrowing of money or other financial assets. Debts can only be created through the sale or lease of real assets through lease based financing schemes (Babatunde & Olaitan, 2013).

Rural banking follows conventional (interest-based) principles while sharia rural banking is based on interest-free principles and the principle of profit-and-loss sharing in performing their businesses as intermediaries. The rationale behind the prohibition of interest and the importance of profit-and-loss sharing in sharia rural banking has been discussed in many Islamic economics studies. Moreover, the Islamic profit-and-loss principle creates the relationship of financial trust and partnership between borrower, lender, and an intermediary (Yudistra, 2003).
However, there are certain differences when analyzing the expected loss for conventional and sharia rural banks. Such differences appear in the way of breaking even the loss, caused by different types of products and services which these banks offer to their clients. In a conventional rural bank, the expected loss is broken even from the profit made by a bank in that period; the unexpected loss is to a certain extent broken even from the bank capital while the amount above that level is refunded from the insurance or the bank accepts bankruptcy (Kozarevic, Nuhanovic, & Nurikic, 2013).

Sharia rural banks have a high growth rate and profitability over the rural banks. Moreover, the Sharia rural banks have high liquidity power over rural banks (Usman & Khan, 2012). It has been realized that there exists a significant difference in credit performance between the two sets of banks. However, the study finds no major difference in profitability and liquidity performances between Sharia rural banks and rural banks (Samad, 2004).

In the banking system between rural banks and sharia rural banks, there are several differences in terms of company performance, namely: lies in returns and profit-sharing provided by customers to financial institutions and/or those given by financial institutions to customers (Rindawati, 2007). Rural bank's operational activities use interest as a means to earn income or charge interest on the use of funds and loans. While sharia rural banks use the principle of profit and loss sharing and do not provide interest.

Bank performance is a significant consideration for parties who have an interest in the bank. The parties with an interest in the bank include investors, creditors, customers, employees, the government, and the surrounding community. Given the number of interested parties so that the assessment of bank performance becomes very important. Bank performance is assessed based on how the company management is carried out all duties.

The bank's performance can be seen through regular financial reports issued by a go public bank. The information contained in the financial statements is information in the form of numbers which are records of transactions that occurred during one period. To find out the meaning of the numbers in the financial statements is necessary an analysis tool. The analytical tool used is usually financial statement analysis in the form of financial statement ratios.

Analysis of financial statements in the form of these ratios, among others, first, liquidity ratios, ratios This shows aspects of the company's ability to meet maturing obligations in the short term. The second ratio is leverage or solvency. Solvency measure the company's ability to meet obligations that are due in the long term. The third ratio is profitability, which is the company's ability to produce benefits with the resources they have (Darsono and Ashari, 2004).

2 Method
The purpose of this study is to evaluate the comparative financial performance of sharia and conventional BPR registered with the Indonesian Financial Services Authority. To obtain proven results, ROA, CAR, NPL/NPF, and LDR/FDR from the publication of Indonesian banking statistics and Islamic banking statistics during the period 2011 to 2018 are used. Data has been processed through Stata version 14.0 and Microsoft Excel and analysis has been conducted based on secondary data, descriptive statistics, and T-test.

3 Result and Discussions

The main advantages of the banking business based on conventional principles are obtained of the difference in interest on deposits given to depositors with interest on loans or credit extended. The profit from this difference in interest in the bank is known as the spread based. If a bank experiences a loss from the difference in interest, where is the interest rate savings are greater than the credit interest rate, this term is known as a negative spread.

For banks based on sharia principles, the term interest in providing services is not known to depositors and borrowers. In this bank, the bank services provided are adjusted with sharia principles by Islamic law. Islamic principles applied by banks sharia is financing based on the principle of profit-sharing (mudharabah), financing based on the principle of equity participation (musyarakah), the principle of buying and selling goods with obtaining profit (murabahah), or financing capital goods based on principles pure lease without choice (ijarah) or in the presence of a choice of transfer of ownership goods leased from the bank by another party (ijarah wa iqtina) (Kasmir, 2014). So like conventional banks, Islamic banks also offer a variety of products to customers although given on a different principle.

![Figure 1. Comparison ROA of Sharia and Conventional Rural Banks](image)

The overall trend of ROA is almost similar for Sharia BPR and conventional BPR. There is a downward trend in ROA from three segments from 2011 to 2018 in Figure 1. From 2011 to 2014 the ROA of sharia rural banks showed a decreasing trend, 2015 to 2018 showed an increasing trend. From 2012 to 2018 the ROA of conventional rural banks showed a
decreasing trend. If we analyze the past 8 years, conventional rural banks have done far better than shari’a rural banks of the same size. ROA is used to measure a bank's ability to generate profits.

![Comparison of NPL and NPF](image1)

Figure 2. Comparison NPL/NPF of Sharia and Conventional Rural Banks

Figure 2. shows the risk of sharia rural bank's credit is better than conventional rural banks. From 2013 to 2018 sharia rural banks shows a good trend, whereas conventional rural banks show a bad trend. The high NPL/NPF causes a reduction in capital owned and reduced customer confidence.

![Comparison of CAR](image2)

Figure 3. Comparison CAR of Sharia and Conventional Rural Banks

Figure 3. shows that sharia capital is better than conventional rural banks. With sufficient CAR, rural banks can operate well.
Figure 4. Comparison LDR/FDR of Sharia and Conventional Rural Banks

Figure 4. shows sharia rural bank's financing is better than conventional rural banks. The LDR is used to measure the ability to repay funds withdrawals with credit as a source of liquidity.

Table 1. Resume Two-sample t-test with equal variances

<table>
<thead>
<tr>
<th></th>
<th>Conventional Rural Banks</th>
<th>Sharia Rural Banks</th>
<th>Different</th>
</tr>
</thead>
<tbody>
<tr>
<td>ROA</td>
<td>2.94</td>
<td>1.44</td>
<td>1.5</td>
</tr>
<tr>
<td>CAR</td>
<td>15.53</td>
<td>19.55</td>
<td>-4.02</td>
</tr>
<tr>
<td>NPL / NPF</td>
<td>5.36</td>
<td>5.12</td>
<td>0.24</td>
</tr>
<tr>
<td>LDR / FDR</td>
<td>78.4</td>
<td>98.5</td>
<td>-20.1</td>
</tr>
</tbody>
</table>

Table 1. shows the differences in the ROA of conventional rural banks with sharia rural banks. Conventional rural banks are far better at 1.50 points than sharia rural banks. The differences in the CAR of sharia rural banks with conventional rural banks, sharia rural banks are far better at 4.02 point than rural banks. The differences in the NPL of sharia rural banks with NPL conventional rural banks. sharia rural banks are far better at 0.24 points than rural banks. The differences in the FDR of sharia rural banks with LDR conventional rural banks. sharia rural banks are far better 20.1 points than rural banks.

Rural bank's performance as indicated by high ROA as a basis for investor valuation. based on these results show that conventional rural banks are better than sharia rural banks. the results of this study are in line with the results of previous studies stating that conventional rural banks is far better than sharia rural banks (Babatunde & Olaitan, 2013; Fayed, 2013; Massah & Al-Sayed, 2015)
4 Conclusion

This study compared rural bank's performance with sharia rural banks. Based on the results of the study showed that the performance of rural banks was better than sharia rural banks. This study also shows that rural banks with good capital capabilities and keeps its NPL below 8% by Bank Indonesia regulations, so that it can produce good profitability in line with investor expectations.

References


The Effect of Profitability and Company Size on Equity Structure of Pharmaceutical Company Listed on Idx Period 2012 -2017

1st Agung Fajar Ilmiyono1, 2nd Mutiara Puspa Widyowati2
{agung.fajar@unpak.ac.id, mutiara.puspa.widyowati@unpak.ac.id}

Program Studi Akuntansi Fakultas Ekonomi Universitas Pakuan1,2

Abstract. To carry out its operational activities, the company requires funds. Funds can come from internal or external sources. If internal funds are not able to meet the company's funding needs, then the company must use external funds from the company, for example, debt. The capital structure shows the level of debt usage against the company's shareholders' equity. The high or low capital structure can be influenced by the profitability and firm size. Purpose of this research are for examine and analysis effect of profitability and firm size to capital structure in pharmaceutical sub-sector companies that listed on the Indonesia Stock Exchange for the period 2012-2017. The sample used in this research amounted to 6 companies using multiple linear regression analysis techniques. The result showed that profitability has a negative effect on capital structure, firm size has a negative effect on capital structure, and simultaneously the profitability and firm size influences the capital structure.

Keywords: Profitability, Company Size, and Capital Structure.

1 Introduction

In carrying out its activities, a company needs fund that determined by its operational activities. These funds can be sourced from internal and external. If the company prioritize internal source so ot will be reduce dependency with external parties. But if internal funds are considered already no longer able to meet funding needs company, then the company have to take external source of fund. External fund can be sourced from debt financing or external equity financing. One of the problem in financing policy is about the equity structure. So that it is important for the company to determine the source of equity for funding their operational activities.

Equity structure is the ratio of debt (foreign equity) and owner’s equity (Halim, 2015:81). Equity structure can be measured by Debt to equity ratio (DER). DER is the ratio of debt level to total shareholder equity (Wijaya, 2011:101). DER is the important ratio to asses financial company health. If the ratio is higher means that company is funded by creditor or debt funded. The creditor and investor usually choose company with lower DER. Lower DER means that the interest of creditor and investor are more protected if there is a decline in business. Thus, companies that have a high Debt to Equity Ratio may not be able to withdraw additional capital with loans from other parties.
Riyanto (2013: 296) states that capital structure is an important problem for every company, because bad capital structure will have a direct effect on the company's financial position. A good capital structure is a capital structure that optimizes the balance between risk and return thus maximizing stock prices. Companies that have bad capital structure, where there is a gap between the available capital and the capital needed will result in companies using external funding through debt that will burden the company.

Capital structure is influenced by several factors such as profitability, company size, asset structure, company liquidity, company growth, tax rate, business risk, operating leverage, management attitude, financial flexibility and so on (Hadianto dalam Hidayat, 2015). Profitability is one of the factors that influence the capital structure by showing the company's ability to generate profits for a certain period (Munawir 2014:33). Brigham and Houston (2013: 189) state that high returns allow companies to do most of their funding through funds generated internally. Companies with high profitability have more internal funds than companies with low profitability.

Profitability in relation to capital structure has an influence where companies that have high profitability will reduce their dependence on outsiders because the high level of profit allows the company to obtain the majority of its funding from retained earnings. This is in line with the Pecking Order Theory (Myers & Majluf, 1984) that companies tend to use as many internal funding sources as possible before deciding to owe.

Company size is an important factor which is a consideration in making decisions related to capital structure. Riyanto (2013: 299) states that the size of the company influences the capital structure. The larger the size of a company will tend to use a larger debt. This happens because creditors are more interested in large companies than small companies because loans from creditors require guarantees that are worth the amount lent to the company.

This study examines the pharmaceutical sub-sector companies in the period 2012-2017, where there are gaps or gaps between existing theories and practice.

Figure 1. Graphic of Average Profitability, Company Size, and Capital Structure of Pharmaceutical Companies Registered on the Stock Exchange for the 2012-2017
Research conducted by Tasman and Melda (2015) found that profitability had a negative and significant effect on capital structure. However, from Figure 1 it can be seen the gap between the theory and the phenomenon that occurred for 4 years, that the value of low profitability is not always accompanied by a high value of capital structure. As happened in 2013 when the value of profitability did not change from the previous year, the capital structure actually increased by 0.08. In 2014 where the value of profitability decreased by 0.01, the capital structure did not change in value from the previous year, so did the case in 2015 where profitability experienced a decline in value but the capital structure did not change.

Then in 2016 where the value of profitability remained 0.11 but the capital structure increased by 0.03. Research conducted by Maidah (2016) states that company size has a positive and significant influence on capital structure, whereas in the graph it appears that there are differences between the theory and the phenomenon for 2 years. In 2014 when the size of the company increased by 0.06, its capital structure did not change from the previous year. Then in the following year, namely 2015 the size of the company also increased from the previous year by 0.04 while the capital structure did not experience an increase or decrease.

Because there are inconsistencies between the results of previous studies, the researchers are interested in researching and further examining the effect of company profitability and size on the company's capital structure.

2 Study Of Theory And Literature

2.1 Pecking Order Theory

The Pecking Order Theory proposed by (Myers & Majluf, 1984) states that companies tend to use as many internal funding sources as possible before deciding to owe. This theory described that:

1. the company likes internal financing (funding from the results of the company's operations).
2. If external financing is needed, the company will issue the safest securities first, that is, starting with characterized by options (such as convertible bonds), only when there is still insufficient, new shares are issued.
3. The company tries to adjust the targeted dividend distribution ratio, by trying to avoid changes in dividend payments drastically.
4. Relatively reluctant dividend policies to be changed, along with unpredictable fluctuations in profitability and investment opportunities, result in sometimes operating funds sometimes exceeding funding requirements for investment.

2.2 Profitability

Kasmir (2016: 196) defines that profitability ratios are ratios to assess a company's ability to seek profits or profits in a given period. This ratio also provides a measure of the level of effectiveness of a company's management as indicated by profits generated from sales or from investment income. Fitriati and Handayani (2016) in their study said that profitability is the company's ability to obtain profits from its operations. Whereas Agustini and Budiyanto (2015) in their research stated that profitability is the company's ability to earn profits from the business activities they do.
Profitability has several types of ratios that can be used to review a company's ability to generate profits, including Return on Assets (ROA), Return on Equity (ROE), Earning Per Share (EPS), Profit Margin (Profit Margin on Sale), Profit Margin Gross (Gross Profit Margin), and Net Profit Margin [Kasmir (2016: 201) and Sartono (2010) in Fahmi (2013: 135)]. In this study profitability is measured using the Return on Asset ratio. Return On Asset (ROA) is a ratio that shows the return (return) on the amount of assets used in the company.ROA can be calculated using the following formula:

\[
ROA = \frac{\text{Net profit after tax}}{\text{Total Assets}}
\]

### 2.3 Company Size

Company size is an important factor which is a consideration in making decisions related to capital structure. Company size can affect the capital structure because the larger the size of a company will tend to use larger debt. Debt is one source of funds chosen if the company's own capital is insufficient. According to Kurniasih, Butar and Sudarsi (2012), company size is a value that shows the size of the company. Then according to Riyanto (2008: 313) in Hartati (2015) states that the size of the company is seen from the magnitude of the value of equity, the value of sales or asset value. Whereas Meisya (2017) defines company size as a measure or size of assets owned by a company. The formula used to measure company size using total assets is as follows:

\[
\text{SIZE} = \ln(\text{Total Assets})
\]

Information:
\[\ln = \text{Natural logarithms}\]

The total assets are transformed into natural logarithms (ln) because the total assets are relatively large compared to other variables. In this way the variance between variables is not too large (Kurnianingsih, 2013).

### 2.4 Capital Structure

Capital structure plays an important role in a company's activities. Capital structure is obtained from sources of funds from within the company and from outside the company. According to Brigham and Houston (2006: 42) in Antoni, et al. (2016), there are several factors that influence the company's capital structure decisions, including: sales stability, asset structure, operating leverage, growth rate, profitability, company size, tax, control, management attitude, lender attitude and rating agent, conditions market and internal conditions of the company, as well as financial flexibility.

Halim (2015: 81) defines that capital structure is the ratio between debt (foreign capital) and equity (equity). According to Isnurhadi and Ferdiansyah (2013), capital structure is a proposition in determining the fulfillment of corporate expenditure needs where funds are obtained using a combination or source of sources derived from long-term funds consisting of two main sources, namely those originating from inside and outside the company. Whereas According to Cahyo, et al. (2014), the capital structure is the comparison or balance between foreign capital and own capital. Foreign capital in this case can be in the form of long-term debt and short-term debt.

To be able to obtain an overview of the financial condition of a company, it is necessary to analyze or interpret the financial statements that contain the financial data of the company
concerned. According to Sjahrial and Purba (2013: 37) the capital structure ratio consists of: Total Debt to Total Assets Ratio / DAR, Total Debt to Equity Ratio / DER, and Long Term Debt to Equity Ratio / LDER. In this study researchers used Debt to Equity Ratio (DER) to measure the value of the company's capital structure. DER is the ratio between total debt and total equity.

$$DER = \frac{Total\ Liability}{Total\ Equity}$$

3 Hypothesis Development

Profitability or ability to earn profits shows the company's ability to generate profits during certain periods of Munawir (2014: 33). According to Pecking Order Theory, companies tend to use as many internal funding sources as possible before deciding to owe (Myers & Majluf, 1984 in Sugianto, 2009). According to the theory of Weston and Brigham (1990) that companies with levels a high return on investment uses a relatively small debt due to the level high returns allow companies to finance most internal funding. This is in line with research conducted by Rahmiati, Tasman, and Melda (2015) and Nadzirah, Yudiaatmaja and Cipta (2016) that profitability has a negative and significant effect on capital structure.

H₁: Profitability has a negative effect of on capital structure

Company size is the size or size of assets owned by the company (Meisya, 2017). The size of a company will affect the capital structure, the greater the company, the greater the funds needed by the company to invest (Ariyanto, 2002 in Yunita Widyaningrum, 2015). According to Riyanto (2011: 230) the size of the company size directly affects the capital structure policy. This is in line with the research conducted by Maidah (2016) and Juliantika and Dewi (2016) that company size has a positive and significant effect on capital structure.

H₂: Company size influences positive capital structure

Achmad and Triyonowati (2017) state that a high rate of return makes it possible to finance most of the funding needs with funds generated internally. This shows that profitability affects the company capital structure. The higher the profit obtained means the lower the debt issued. In addition, he also stated that the greater the size of a company, the greater the tendency to use foreign capital. This is in line with the research conducted by Nadzirah, Yudiaatmaja and Cipta (2016) that the profitability and size of the company influence the capital structure.

H₃: Profitability and company size jointly effect capital structure

4 Research Methods

Population in this study are pharmaceutical sub-sector companies listed on the Indonesia Stock Exchange for the period 2012-2017. Sampling was done by purposive sampling method,
from a population of 10 companies after sampling selection, which became the sample of the study were as many as 6 companies.

Data used is quantitative and secondary data in the form of company financial statements downloaded from the Indonesia Stock Exchange website and the IDN Financials website sampled. This study also uses panel data. This study uses independent variables namely Profitability and Company Size while the dependent variable is Capital Structure. The analysis used in this study uses quantitative analysis, in the form of testing hypotheses using statistical tests. Quantitative analysis is emphasized to reveal the behavior of research variables. The researcher conducted a classic assumption test and then used multiple linear regression analysis as follows:

\[ Y = a + b_1X_{1i} + b_2X_{2i} + \mu_i \]

Information:
- \( Y \) = Capital Structure / Debt to Equity Ratio (DER)
- \( a \) = Constant
- \( b \) = Regression Coefficient
- \( X_1 \) = Profitability / Return on Asset 0. (ROA)
- \( X_2 \) = Company Size
- \( \mu \) = Disturbance error i: i-i individual
- \( t \) = period

This study also uses hypothesis testing including the coefficient of determination, t test, and F test.

5 Results

Hypothesis testing

Coefficient of Determination

Based on the test results of the coefficient of determination test in this study the results obtained that the value of Adjusted R Square is 0.619. This means that 62% of capital structure variables can be explained by profitability and firm size variables while the remaining 38% is explained by other variables not included in this study.
Based on the results of partial testing (t test) in the table above can be described as follows:

1. Effect of Profitability on Capital Structure

From table 4.13 it can be seen that the value of t calculates profitability that is proxied using ROA (X1) of -4.157 with a significance of 0.000 < 0.05. This is in line with the results of statistical tests that compare between t count with t table (0.025; 27) is 2.052, then t count > t table (4.157 > 2.052). Thus it can be concluded that profitability has a negative effect on capital structure.

2. Effect of Company Size on Capital Structure

From table 4.13, it can be seen that the value of t calculated company size (X2) is -3.797 with a significance of 0.001 < 0.05. This is consistent with the results of statistical tests that compare between t count with t table (0.025; 27) is 2.052, then t count < t table (3.797 > 2.052). Thus it can be concluded that the size of the company negatively affects the capital structure.

Uji F

From table 4.13, it can be seen that the value of t calculated company size (X2) is -3.779 with a significance of 0.001 < 0.05. This is consistent with the results of statistical tests that compare between t count with t table (0.025; 27) is 2.052, then t count < t table (3.797 > 2.052). Thus it can be concluded that the size of the company negatively affects the capital structure.
Based on the analysis of the F test in the table above, it can be seen that simultaneously the independent variables have \( \text{sig} < 0.05 \) which is 0.000 and \( \text{F count} = 24.576 \). By using a 95% confidence level = 5%, \( \text{df 1} \) (number of variables -1) \( = 3-1 = 2 \) and \( \text{df 2} \) \( = n-k-1 = 30-2-1 = 27 \) (\( n \) is the number of cases and \( k \) is the number of independent variables), the results obtained for \( \text{F table} \) are 3.35. Thus the value of \( \text{F count} \) is 24.576 > \( \text{F table} \) 3.35. So it can be concluded that the independent variables in this study, namely profitability (X1) and firm size (X2) simultaneously influence the company's capital structure (Y).

**Analysis of Multiple Linear Regression**
The results of multiple regression analysis in this study are as follows:

\[
Y = 1.795 - 1.157X1 - 0.045X2 + \mu
\]

The results of the multiple regression equation can be explained as follows:

1. Constants of 1.795 means that if all independent variables are considered constant (worth 0) then the capital structure is valued at 1.795.
2. ROA of -1.157 means that if ROA increases by 1 unit while other variables are considered constant, the capital structure will decrease by 1.157 units.
3. SIZE is -0.045 means that if SIZE rises by 1 unit while other variables are considered constant, the capital structure will decrease by 0.045 units.

6 Discussion

**Effect of Profitability on Structure**

Based on the results of the study, profitability has a negative effect on capital structure. This is consistent with previous research conducted by Rasmiati, Tasman, and Melda (2015) which states that the use of profitability calculated using Return on Asset has a negative effect on capital structure. But it is not in accordance with the research conducted by Widyaningrum (2015) which states that profitability does not affect the capital structure. The results of this study are in line with the grand theory of Pecking Order Theory revealed by Myers & Maljuf (1984) that companies tend to use as many internal funding sources as possible before deciding to owe, meaning companies that have high returns have a tendency to use funding external or lower debt so that the value of the capital structure is also low.

**Effect of Company Size on Capital Structure**

Based on the results of the study it can be concluded that the size of the company negatively affects the capital structure. This is in accordance with previous research conducted by Meisya (2017) which states that company size has a negative effect on capital structure, but not in accordance with the research conducted by Widyaningrum (2015) which states that firm size does not affect the capital structure. This happened because several pharmaceutical companies listed on the Indonesia Stock Exchange had determined that a large portion of earnings were used for company reserves. That way the company has a greater percentage of retained earnings, so it is able to fund its funding needs with internal costs which cause the capital structure is not high. This is also in line with Pecking Order Theory that companies tend to use as many internal funding sources as possible before deciding to owe, meaning
companies that have high assets are able to maximize assets owned by placing cash held as the main operational source so as to reduce the amount of debt they have.

**Effect of Profitability and Company Size on Capital Structure**

The results of this study indicate that the variable profitability and size of the company jointly influence the capital structure. This value indicates that the capital structure of the pharmaceutical sub-sector companies listed on the Indonesia Stock Exchange in 2012-2017 is influenced by variable profitability and firm size as explained by the regression test of this study. The results obtained by the researchers are also in accordance with previous studies conducted by Tasman and Melda (2015) that the profitability and size of influential companies towards capital structure because of the level high returns allow the company to finance most of the funding with funds generated internally, besides that a large amount of assets also allows the company to use its internal funds so as to minimize the use of external funds. But the results of this study are not in accordance with the research conducted by Naibaho (2015) which states that the profitability and size of the company does not affect the capital structure.

### 7 Conclusion

Based on research conducted by researchers, conclusions can be taken as follows:

1. Profitability has a negative effect on the Capital Structure of the pharmaceutical sub-sector companies listed on the Stock Exchange for the period of 2012–2017. This can be proven by the Sig 0.000 value which is smaller than 0.05 (0.000 <0.05) and t-count value 4.157 where t count is greater than t table (4.157 <2.052).

2. Company size has a negative effect on Capital Structure in pharmaceutical sub-sector companies listed on the Stock Exchange for the period 2012-2017. This is evidenced by the Sig 0.001 value that is smaller than 0.05 (0.001 <0.05) and the value of the t count of -3.779 where t count is greater than t table (3.797> 2.052).

3. Profitability and Company Size affect the Capital Structure of pharmaceutical sub-sector companies listed on the Stock Exchange for the period 2012-2017. This is evidenced by the Sig 0.000 value which is smaller than 0.05 (0.000 <0.05) and the calculated F value of 24,576 where F count is greater than F table (24,576> 3,35).

**Suggestion**

There are suggestions that can be conveyed to the reader in connection with the problems of this research, namely as follows:

1. For Practitioners

   Based on the results of the study, the company is advised to pay more attention and caution in determining financial decisions that reflect the company's internal financial condition, especially covering the profitability and size of the company in order to have good quality in managing the source of funds. This is important so that companies can be wiser in using internal funding sources and reducing dependence on using external sources of funds so that they can attract investors who want to invest and expect high returns. Then the company is also expected to always provide objective, relevant, and verifiable financial information.
2. For Academics

This study uses capital structure as the dependent variable with Debt to Equity Ratio (DER) as an indicator. For further researchers are advised to measure capital structure using other indicators and can add other variables besides the Return on Assets (ROA) and Company Size ratios which are still rarely examined as variables that are thought to influence capital structure such as asset structure, operating leverage, company growth rate, and so on. Further researchers can also add to the research period for example 10 year and also conduct research in other sub-companies such as food and beverages sector, mining sector, construction and building sub-sectors, and so on.

References


The Role of External Green Supply Chain management on Green Marketing Mix toward Sustainability of Petrochemical Industry in Indonesia

Yuary Farradia¹, Abdul Talib Bon², Hari Muharam³
{juaryfarradia@yahoo.com¹, talib@uthm.edu.my², hari.muharam@unpak.ac.id³}

Faculty of Economics – Universitas Pakuan – Bogor, Indonesia ¹,³ Faculty of Technology and Management - Universiti Tun Hussein Onn – Malaysia ¹,²

Abstract. An effort on study and innovation toward green industry is one of the Indonesia government focus for the petrochemical industry. This green industry target is in line with the aim of sustainability in the petrochemical industry in Indonesia. Implementation of green supply chain management has been recommended from most study of sustainability. There is external green supply chain management consist of green purchasing and reverse logistics which play important role in relate to both customer and supplier subject to greening the supply chain management practice. This green practice then be informed to the customer trough the green marketing mix practices which finally will contribute to the firm sustainability. This study focuses only for the Olefin petrochemical group located in Banten province Indonesia. To improve the sustainability of petrochemical industry mainly in olefin area, it is need to implement the external green supply chain management such green purchasing and reverse logistic and green marketing mix.

Keywords: External Green supply chain management, Green Purchasing, Reverse Logistic, Sustainability, Green Marketing Mix

1 Introduction

There are economic indicators can be used to draw current level of the business operations which can be used to describe how business is managed subject to economic perspective of triple bottom line (TBL) dimension of sustainability. Economic as one of the TBL dimension reflects the organizational success in achieving the needs of either the owners or the shareholders (Sridhar, 2012).

Both environmental dimension of TBL and sustainability issues are always take the most attention for modern humanity and governments, in particular for the emerging economies subject to organizational sustainability, (Hsu et al., 2013; Fabbe-Costes et al., 2014; Tseng et al., 2015). According to Dubey et al. (2015) and Zhu et al. (2012), indeed the adoption of GSCM practices was increased due to enforcement by the regulatory bodies.

The social dimension of TBL relates to corporate social responsibility (CSR). Elkington (1997) stated that this dimension measures any organization’s impact on the social systems of the community within national or global level.

The implementation of environmental practices relates to organizations in terms of supply chain and their business environments (Kim & Chai, 2017). The external Green Supply Chain Management/ GSCM which relates to the external factor of a firm such as supplier and
customer can improve firm performance once it implemented after the internal GSCM (Zhu et al., 2020). According to Chavez et al. (2014), manufacturers that implement customer-centric GSCM can reduce cost and improve quality, delivery, and flexibility. Thus, the external GSCM practices used in this study are referred to green purchasing (GP), green logistics (GL) and reverse logistics (RL).

This external GSCM dimension focuses on purchasing and procurement functions within an organization, it also represents the ‘upstream’ portion of the supply chain. Purchasing activities relate to specific responsibilities such as selection on both vendor and material, outsourcing, negotiation, buying, delivery scheduling, inventory and materials management and to some extent, involvement in design. In fact, the focus of supplier management is mainly refer to responsibility of the purchasing and procurement department (Sarkis, 2014).

GP focuses on the procurement of products and services activities in order to reduce any effect on human health and environment which can be compared with competing products or services that serve the same purpose (Vishal & Avinash, 2016). Furthermore, consumers have the ability to prevent or minimize environmental destruction by purchasing green products. In conjunction, prior study indicates that consumers responds positively towards environmental protection (Liu et al., 2012).

The other stages in external GSCM practices and functions which relate to the customer are reverse logistics. An appropriate reverse logistics system could be designed toward operation efficiency because it is focus on both environmental and economic aspects (Govindani et al., 2015). The main objective of reverse logistics is to maximize after sales activities such as customer service, quality evaluation and warehousing so that can generate additional source of income, increase customer satisfaction and of the environment conservation (Christopher, 2016). Refund, restock, refurbish and recycle are known as the basis of reverse logistics, namely 4R (Murray, 2012).

Previous study done by Hashem & Rifai (2011) in three Arab States in West Asia, concluded, that applying green marketing mix elements by the chemical industries companies in three countries on consumer's mental image is significant, and suggested that such chemical manufacturers should improve their products development focus by adding environmentally friendly products, whilst raising public awareness of green marketing importance in chemical industries companies.

Rath (2013) describes those products that are manufactured from the industry through the green technology and caused no environmental hazards are called “Green Products”. Green products will impact to its bottom line. Indeed, environmentally aware consumers tend to earn more and are willing to pay more for green products.

Green pricing aimed to create pricing practices that concern on both the economic and environmental costs of production and marketing, while generate value for customers and a fair profit for business (Martin & Schouten, 2012). Green pricing which refer to the environmental friendliness is important because it can be added to the product in order to enhance its appearance, functionality and customization (Shrama & Goyal, 2012).

Chin et al. (2015) identified that green distribution has various benefit which able to reducing energy consumption in warehouses. Furthermore, green distribution able to contribute an improvement of the overall firm performance as well as better corporate image. The results study of Chin et al. (2015) concluded that green distribution has both significant and positive impact on the environmental performance of industrial firms in Malaysia.

Hasan & Ali (2017) stated that green promotion act as media of communication that promotes the product and the services as well as green advertising campaign to enhance the
corporate image of social responsibility. Implementation of both green innovation and green promotion will influence the firms’ performance.

Hypotheses Development

The research hypotheses as follow:

H1: There is a direct positive effect of External GSCM on economic performance
H2: There is a direct positive effect of External GSCM on environment performance
H3: There is a direct positive effect of External GSCM on social performance
H4: There is a positive effect of Green Marketing Mix on economic performance
H5: There is a positive effect of Green Marketing Mix on environment performance
H6: There is a positive effect of Green Marketing Mix on social performance
H7: There is a positive effect of External GSCM on green marketing mix
H8: Green marketing mix mediate the External GSCM to economic performance
H9: Green marketing mix mediate the External GSCM to environment performance
H10: Green marketing mix mediate the External GSCM to social performance

Figure 1 Conceptual Model Hypothesis

2 Method

This study focuses only for the Olefin petrochemical group located in Banten province Indonesia. Data collection is based on cluster random sampling. The total number of respondents in this study are 296. Having data screening form outliers by SPSS then the data ready for measurement analysis is 255.
The concepts of external GSCM practices will be measured by quantitative approach. SPSS statistic tools is used for data screening, and descriptive statistics, whilst smart PLS 3 of the structural equation model (SEM) is used to test model hypotheses. The research model of this study consists a higher order construct.

3 Result and Discussions

Table 1 present the hypothesis evaluation shown that the external GSCM has positive relationship with both economic and environment sustainability only. Whilst the GMM has positive relationship with all the sustainability dimension. However, external GSCM has positive relationship with GMM. On the other side, table 2 present that mediation was significant plays a role in the relationship between external GSCM with sustainability.

Table 1 Hypothesis result

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Description</th>
<th>Standard Beta</th>
<th>Standard Error</th>
<th>t-value</th>
<th>p-value</th>
<th>Conclusion</th>
<th>(R²)</th>
<th>(f²)</th>
<th>(Q²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>H₁</td>
<td>EXTERNAL GSCM ➔ SUSTAINABILITY ECONOMIC PERFORMANCE</td>
<td>0.259</td>
<td>0.067</td>
<td>3.885</td>
<td>0.000</td>
<td>Supported</td>
<td>0.082</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H₂</td>
<td>EXTERNAL GSCM ➔ SUSTAINABILITY ENVIRONMENT PERFORMANCE</td>
<td>0.140</td>
<td>0.081</td>
<td>1.734</td>
<td>0.042</td>
<td>Supported</td>
<td>0.014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H₃</td>
<td>EXTERNAL GSCM ➔ SUSTAINABILITY SOCIAL PERFORMANCE</td>
<td>0.077</td>
<td>0.085</td>
<td>0.906</td>
<td>0.183</td>
<td>Not Supported</td>
<td>0.004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>H₄</td>
<td>GREEN MARKETING MIX ➔ SUSTAINABILITY ECONOMIC PERFORMANCE</td>
<td>0.500</td>
<td>0.082</td>
<td>6.547</td>
<td>0.000</td>
<td>Supported</td>
<td>0.199</td>
<td>0.296</td>
<td></td>
</tr>
<tr>
<td>H₅</td>
<td>GREEN MARKETING MIX ➔ SUSTAINABILITY ENVIRONMENT PERFORMANCE</td>
<td>0.574</td>
<td>0.089</td>
<td>6.414</td>
<td>0.000</td>
<td>Supported</td>
<td>0.110</td>
<td>0.234</td>
<td></td>
</tr>
<tr>
<td>H₆</td>
<td>GREEN MARKETING MIX ➔ SUSTAINABILITY SOCIAL PERFORMANCE</td>
<td>0.238</td>
<td>0.104</td>
<td>2.294</td>
<td>0.011</td>
<td>Supported</td>
<td>0.028</td>
<td>0.217</td>
<td></td>
</tr>
<tr>
<td>H₇</td>
<td>EXTERNAL GSCM ➔ GREEN MARKETING MIX</td>
<td>0.200</td>
<td>0.059</td>
<td>4.897</td>
<td>0.000</td>
<td>Supported</td>
<td>0.054</td>
<td>0.016</td>
<td>0.453</td>
</tr>
</tbody>
</table>
Table 2. Hypothesis on Mediation

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Description</th>
<th>Standard Beta</th>
<th>Standard Error</th>
<th>T Statistics (O/S/DEV)</th>
<th>P Values</th>
<th>Confidence Interval (BC)</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>H₀</td>
<td>EXTERNAL GSCM -&gt; GREEN MARKETING MIX -&gt; ECONOMIC PERFORMANCE</td>
<td>0.157</td>
<td>0.042</td>
<td>3.705</td>
<td>0.000</td>
<td>0.04</td>
<td>0.250</td>
</tr>
<tr>
<td>H₁</td>
<td>EXTERNAL GSCM -&gt; GREEN MARKETING MIX -&gt; ENVIRONMENT PERFORMANCE</td>
<td>0.167</td>
<td>0.044</td>
<td>3.741</td>
<td>0.000</td>
<td>0.091</td>
<td>0.266</td>
</tr>
<tr>
<td>H₂</td>
<td>EXTERNAL GSCM -&gt; GREEN MARKETING MIX -&gt; SOCIAL PERFORMANCE</td>
<td>0.069</td>
<td>0.034</td>
<td>2.046</td>
<td>0.041</td>
<td>0.013</td>
<td>0.142</td>
</tr>
</tbody>
</table>

Based on the hypothesis result it can be seen that the green purchasing and reverse logistic are play important role in relate to both customer and supplier subject to greening the supply chain management practice. This green practice then be informed to the customer trough the green marketing mix practices which finally will contribute to the firm sustainability.

4 Conclusion

To improve the sustainability of petrochemical industry mainly in olefin area, it is need to implement the external GSCM covers green purchasing and reverse logistic and GMM. Thus External GSCM and GMM plays the main role toward sustainability in petrochemical industry in Indonesia.

Acknowledgement

This research has been benefiting from the Universiti Tun Hussein Onn Malaysia and Universitas Pakuan, Bogor – Indonesia. Some direct observation and preliminary interview are contributed from various manufacturers in Banten Province – Indonesia.

References


Influence of Human Capital, Structural Capital and Relational Capital toward Bank Service Performance and Customer Satisfaction

1st Usup Riassy Christa, 2nd Tresia Kristiana
{usupriassychrista@gmail.com, tresiakristiana@yahoo.co.id}

Departement of Economic University of Palangkaraya (UPR) Palangka Raya, Indonesia, Departement of Social and Politic Palangkaraya Cristian University (UNKRP) Palangka Raya, Indonesia

Abstract. This study analyzed the influence of interrelated variables to explain the effect of human capital, structural capital, and relation capital toward bank service performance and customer satisfaction at commercial banks in Central Kalimantan. The hypothesis were tested by Partial Least Square (PLS) are the direct and indirect variable influence of human capital to variable relational capital, structural capital, bank service performance and customer satisfaction. This research approach uses quantitative approach through survey method. The study population is all branch offices and sub-branches of Central Kalimantan Commercial Bank with total sample of 42 office units in four (4) banks, determined using purposive sampling method. Research respondents were 5 bank employees and 5 customers were taken from each research sample unit. The findings of the study support the opinion that the relationship between human capitals, structural capital, and relation capital significantly form the performance of bank service (servperf) and customer satisfaction. However, research results have not been generalizable to all types of bank services.

Keywords: Intellectual Capital, Human Capital, Structural Capital, Relational Capital, Bank Service Performance And Customer Satisfaction.

1 Introduction

Each company aims to achieve effective and sustainable performance, but the competitiveness of competition and limited availability of corporate resources are two sides of the contradictory, but affect the achievement of performance. Management of internal organizational resources (human capital, structural capital and relational capital) through the proper optimization of empowerment of internal resources of the company and the correct procedures, can encourage the achievement of effective performance and competitiveness.

An important perspective in today's banking services business is that banks always provide excellent services to customers and maintain high quality of service and customer satisfaction. This has indeed been done by commercial banks, but these efforts have not been maximized, constrained by the limited availability of resources (human capital as intellectual assets) following the example. Some components, such as multi-leveled equations, graphics, and tables are not prescribed, although the various table text styles are provided. The formatter will need to create these components, incorporating the applicable criteria that follow. That impact on the ability of banks (human capital as a manager of intellectual assets) to mobilize and utilize
intellectual capital in an integrated manner. The problems of commercial banks in Central Kalimantan need immediate handling to ensure the existence of banks are maintained in good condition (healthy banks) and not just exist, but to find the right solution so as to overcome the problems that are being experienced. Management of intellectual assets or intangible assets of banks through the empowerment of human capital - strategic human resources, must be supported by the availability of structural capital, relational capital and integrated will be the best solution to overcome the limitations of the resources in the competition while increasing the ability of banks in achieving the performance effective or superior performance (competitiveness).

The demand for modern industrialization is characterized by the creation of value derived from intangible assets and is known as Intellectual Capital (IC), which is the knowledge and skills that are owned and attached to individual employees, relationships social / relational depth with consumers, as well as a culture of sharing knowledge that enables innovation and strategic change, will encourage the creation of competitiveness and competitive advantage (competitiveness). The above description, a reason and basic consideration for researchers that this research needs to be done.

The research problem is "How is the main component role of Intellectual Capital (IC): Human Capital, in influencing the performance of Bank Service and Satisfaction of Commercial Bank Customers in Central Kalimantan". To answer the problem of research, then proposed problem formulation as follows:

1. Does the increase of Human Capital bank significantly influence the improvement of Relational Capital bank?
2. Is the increase of Human Capital bank significantly influence to increase Structural Capital bank?
3. Does the increase in Relational Capital of banks have a significant effect on the increase of Structural Capital bank?
4. Does the Bank's Human Capital increase significantly affect the improvement of Bank Service Performance?
5. Does the increase in Relational Capital of banks significantly affect the improvement of Bank Service Performance?
6. Does Structural Capital bank increase significantly influence the improvement of Bank Service Performance?
7. Is the increase of Human Capital bank significantly influence the increase of Bank Customer Satisfaction?
8. Does the Bank Service Performance Improvement significantly affect the improvement of Bank Customer Satisfaction?

2 Methodology

The population in this study are all branch offices and sub-branches of commercial banks operating in the territory of Central Kalimantan Province. The sampling technique using purposive sampling refers to Roscoe in Sekaran (2006) Sugiyono (2008) and Sugiyanto (2006), determined 42 units of branch offices and sub-branches of commercial banks as research samples with 420 internal respondents (bank employees) and external respondents (customers / customers) of commercial banks in Central Kalimantan with 384 respondents.
elected, as they meet the requirements and have been filled in completely as the data being
analyzed.

Based on the conceptual framework of research, there are two groups of variables: variables that affect other variables in the model as exogenous variables and variables that are influenced as endogenous variables. In this study, exogenous variables are (1) Human Capital; (2) Relational Capital; (3) Structural Capital. Endogenous variables are (1) Performance of Bank Service and (2) Customer Satisfaction.

The research instrument used is a questionnaire containing a number of written questions about the items of the research variables, in order to obtain respondent perceptions. Answers to this question were measured using a five-point Likert scale (1-5) including: (1) strongly disagree / STS; (2) disagree / TS; (3) hesitation / RR; (4) agree / S; (5) strongly agree / SS. In measuring the research variables, respondents are asked to state their perceptions by choosing one of the alternative answers that are considered most suitable or in accordance with what is felt or experienced. In addition to using questionnaires, interviews were conducted to obtain information from a number of key persons selected as informants.

Techniques of data analysis using descriptive analysis, to know the characteristics of respondents and descriptions of respondents to the indicators of each research variable. Description of each indicator is expressed in percentage of frequency value and average value, so as to obtain the perception of respondent's perception of the indicators as a variable formers. While for hypothesis testing and produce good research model (fit), this research uses Structural Equation Modeling (SEM) with Partial Least Square (PLS) structural equation approach.

3 Research Result

A. Characteristic of respondents

<table>
<thead>
<tr>
<th>No.</th>
<th>Characteristic respondent</th>
<th>Number (individu)</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Umur</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>20 – 30 tahun</td>
<td>45</td>
<td>23,4</td>
</tr>
<tr>
<td></td>
<td>31 – 40 tahun</td>
<td>68</td>
<td>35,4</td>
</tr>
<tr>
<td></td>
<td>41 – 50 tahun</td>
<td>58</td>
<td>30,2</td>
</tr>
<tr>
<td></td>
<td>&gt; 50 tahun</td>
<td>21</td>
<td>10,9</td>
</tr>
<tr>
<td>2</td>
<td>Jenis Kelamin</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Laki – laki</td>
<td>75</td>
<td>39,1</td>
</tr>
<tr>
<td></td>
<td>Perempuan</td>
<td>117</td>
<td>60,9</td>
</tr>
<tr>
<td>3</td>
<td>Kedudukan di Pekerjaan</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kadiv. operasional</td>
<td>30</td>
<td>15,6</td>
</tr>
<tr>
<td></td>
<td>Staf div. kredit &amp; analis kredit</td>
<td>65</td>
<td>33,9</td>
</tr>
<tr>
<td></td>
<td>Teller, Customer Service</td>
<td>97</td>
<td>50,5</td>
</tr>
<tr>
<td>4</td>
<td>Masa Kerja</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 5 tahun</td>
<td>35</td>
<td>18,2</td>
</tr>
<tr>
<td></td>
<td>5 - 10 tahun</td>
<td>70</td>
<td>36,5</td>
</tr>
</tbody>
</table>
The internal respondent characteristics of the majority of employees of the bank by age, aged between 31-40 years are 68 people (35.4%), followed by 58 people (30.2%) aged 41-50 years, 45 (23.4%) aged between 20 to 30 years and 21 people (10.9%) are over 50 years old. The percentage of the largest age group of respondents was at productive age (31 - 40) years, on the contrary the lowest percentage was at the age before consecution i.e. age above 50 years.

The description reflects the characteristics of bank-rich commercial banks in Central Kalimantan based on their age in the productive age condition which means that employees of commercial banks in Central Kalimantan have the opportunity to improve their professionalism which will affect individual capabilities in transforming knowledge and skills to tasks so as to produce performance more increased.

### Table 2. Characteristic Respondent External: Customers

<table>
<thead>
<tr>
<th>No.</th>
<th>Karakteristik Responden</th>
<th>Jumlah (orang)</th>
<th>Persentase (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Umur</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 20 tahun</td>
<td>11</td>
<td>5.7</td>
</tr>
<tr>
<td></td>
<td>21 – 30 tahun</td>
<td>38</td>
<td>19.7</td>
</tr>
<tr>
<td></td>
<td>31 – 40 tahun</td>
<td>77</td>
<td>40.1</td>
</tr>
<tr>
<td></td>
<td>41 – 50 tahun</td>
<td>55</td>
<td>28.6</td>
</tr>
<tr>
<td></td>
<td>&gt; 50 tahun</td>
<td>31</td>
<td>16.1</td>
</tr>
<tr>
<td>2</td>
<td>Jenis Kelamin</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Laki – laki</td>
<td>88</td>
<td>45.8</td>
</tr>
<tr>
<td></td>
<td>Perempuan</td>
<td>104</td>
<td>54.2</td>
</tr>
<tr>
<td>3</td>
<td>Lama sebagai Nasabah</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 5 tahun</td>
<td>55</td>
<td>28.6</td>
</tr>
<tr>
<td></td>
<td>5 – 10 tahun</td>
<td>84</td>
<td>43.8</td>
</tr>
<tr>
<td></td>
<td>&gt;10 tahun</td>
<td>53</td>
<td>27.6</td>
</tr>
<tr>
<td>4</td>
<td>Tingkat Pendidikan</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>SMU (setara)</td>
<td>22</td>
<td>11.5</td>
</tr>
<tr>
<td></td>
<td>Diploma III (D3)</td>
<td>33</td>
<td>17.2</td>
</tr>
<tr>
<td></td>
<td>Strata satu (S1)</td>
<td>72</td>
<td>37.5</td>
</tr>
<tr>
<td></td>
<td>Strata dua (S2)</td>
<td>47</td>
<td>24.4</td>
</tr>
<tr>
<td></td>
<td>Strata tiga (S3)</td>
<td>18</td>
<td>9.4</td>
</tr>
<tr>
<td>5</td>
<td>Jenis Pekerjaan</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pelajar/Mahasiswa</td>
<td>28</td>
<td>14.3</td>
</tr>
</tbody>
</table>
Table 2 describes the condition of external respondents by age. The majority of customers/clients are clients aged between 31-40 years old as many as 77 people (41.1%), followed by 55 people (28.6%) aged 41-50 years old, as many as 38 people (19.7%) aged between <20 years (5.7%) as many as 11 people and 31 people (16.1%) aged over 50 years. Of the five age groups, it is the age of 31-40 years, while the lowest percentage is in the age group below 20 years.

The description describes the characteristics of customers of commercial banks in Central Kalimantan is a potential customer and has a significant influence on the existence of business (Commercial) business in Central Kalimantan based on Age, because it is at the level of productive age (31-40) years.

B. Test of Validity and Reliability of Research Instruments

Validity test is conducted to determine whether the measuring instrument/instrument used is really appropriate to measure the measured object. While the reliability test carried out to determine the reliability of the measuring tool or the consistency of the measuring instrument, if used to measure the same object more than twice. Result of validity test and reliability of research instrument with reflexive indicator, showing result of measurement of convergence validity, composite reliability and discriminant validity as follows:

a. Convergence validity test results (Table IV) Obtained all outer loading value of constructor indicator has bigger value than 0.5 (≥ 0.5) so that it can be concluded that the measurement has fulfilled the requirement of convergent validity.

b. Composite reliability test results (Table V) Obtained by all composite reliability values: X1 of 0.862, Y1 of 0.888 and Y2 of 0.759 indicates a value greater than 0.7 thus all indicator variables are the constructor gauge. That is, each research instrument used is a reliable or consistent instrument.

c. Discriminant test results validity shown from AVE root value (average variance extracted) in Table VI. Each construct shows a value greater than the correlation score between its latent variables (value X1 = 0.823 greater than Y1 = 0.362 and Y2 = 0.434), (value Y1 = 0.893 greater than X1 = 0.362 and Y2 = 0.418) and (value Y2 = 0.720, greater than X1 = 0.434 and Y1 = 0.418). This means that all constructs involved in the study meet the criteria of discriminant validity.

C. Results of Descriptive Analysis

1. Description of Human Capital Variables (HC) / X1

Results of respondents' answers to the complete human capital variable can be seen in the table as follows:

Table 3. Description Of Human Capital Variable (HC)
The average score of Human Capital indicator is: employee capability, employee satisfaction and employee sustainability show score above 3 i.e. (3.41) and dominant indicator with highest score is employee capability (X11). With a mean score of 3.38 including the moderate category indicates that employee perceptions of the ability to transform individual employee knowledge and skills to tasks have increased considerably.

2. Description of Variabel Relational Capital (RC)

<table>
<thead>
<tr>
<th>Indikator</th>
<th>Prosentase Jawaban Responden (%)</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pelanggan/ customer (X21)</td>
<td>1.4</td>
<td>17.1</td>
</tr>
<tr>
<td>Sistem Partner/ Jaringan (X22)</td>
<td>1.2</td>
<td>17.6</td>
</tr>
<tr>
<td>Indeks Persepsi Rerata Variabel Relational Capital (X2)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The average score of Human Capital indicator is: employee capability, employee satisfaction and employee sustainability show score above 3 i.e. (3.40) and dominant indicator with highest score is employee capability (X22). With a mean score of 3.38 including the moderate category indicates that employees' perceptions of the ability to transform individual employee knowledge and skills to tasks have increased considerably.

3. Descriptions Variabel Structural Capital (SC)

<table>
<thead>
<tr>
<th>Indikator</th>
<th>Prosentase Jawaban Responden (%)</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budaya Org. (X31)</td>
<td>1.6</td>
<td>17.5</td>
</tr>
<tr>
<td>Kekayaan intelektual (X32)</td>
<td>1.2</td>
<td>17.6</td>
</tr>
<tr>
<td>Sistem Op. (Y33)</td>
<td>1.6</td>
<td>17.4</td>
</tr>
<tr>
<td>Indeks Persepsi Rerata Var. Structural Capital (X3)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 5 above the average score of the Human Capital indicator shows the score above three (3.40) and the dominant indicator with the highest score is the employee's capability (X32). A mean score of 3.38 including the moderate category indicates that employees'
perceptions of the ability to transform individual employee knowledge and skills to tasks have increased considerably.

4. Bank Service Performance (SP)

Table 6. Description Of Bank Service Performance (SP)

<table>
<thead>
<tr>
<th>Indikator</th>
<th>Prosentase Jawaban Responden (%)</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>STS</td>
<td>TS</td>
</tr>
<tr>
<td>Tangibles ($Y_{11}$)</td>
<td>1.6</td>
<td>17.6</td>
</tr>
<tr>
<td>Responsiveness ($Y_{12}$)</td>
<td>1.8</td>
<td>12.6</td>
</tr>
<tr>
<td>Assurance ($Y_{13}$)</td>
<td>1.4</td>
<td>16.3</td>
</tr>
<tr>
<td>Reliability ($Y_{14}$)</td>
<td>7.7</td>
<td>19.4</td>
</tr>
<tr>
<td>Empathy ($Y_{15}$)</td>
<td>1.4</td>
<td>17.5</td>
</tr>
</tbody>
</table>

**Indeks rerata persepsi variabel Kinerja Layanan Bank ($Y_i$)**: **3.37**

Resource: Primer Data

The average score of Bank service performance: tangibles, responsiveness, assurance, reliability, empathy show score above 3 i.e. (3.37) and dominant indicator with highest score is employee capability ($X_{12}$). A mean score of 3.37 including the moderate category indicates that employee perceptions of the ability to transform individual employee knowledge and skills to tasks have increased considerably.

5. Variable of Customer Service (CS)

Table 7. Description Of Customer Service (CS)

<table>
<thead>
<tr>
<th>Indikator</th>
<th>Prosentase Jawaban Responden (%)</th>
<th>Rata-rata Skor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>STS</td>
<td>TS</td>
</tr>
<tr>
<td>Y21</td>
<td>1.0</td>
<td>17.2</td>
</tr>
<tr>
<td>Y22</td>
<td>0.5</td>
<td>15.1</td>
</tr>
<tr>
<td>Y23</td>
<td>0.5</td>
<td>18.8</td>
</tr>
<tr>
<td>Y24</td>
<td>2.6</td>
<td>18.8</td>
</tr>
<tr>
<td>Y25</td>
<td>1.6</td>
<td>15.1</td>
</tr>
<tr>
<td>Y26</td>
<td>2.6</td>
<td>22.4</td>
</tr>
<tr>
<td>Y27</td>
<td>0.5</td>
<td>18.8</td>
</tr>
<tr>
<td>Y28</td>
<td>0.5</td>
<td>18.8</td>
</tr>
<tr>
<td>Y29</td>
<td>2.6</td>
<td>18.8</td>
</tr>
<tr>
<td>Y210</td>
<td>2.6</td>
<td>18.8</td>
</tr>
<tr>
<td>Y211</td>
<td>0.5</td>
<td>18.8</td>
</tr>
<tr>
<td>Y212</td>
<td>0.5</td>
<td>15.1</td>
</tr>
<tr>
<td>Y213</td>
<td>2.6</td>
<td>18.8</td>
</tr>
<tr>
<td>Y214</td>
<td>2.6</td>
<td>15.1</td>
</tr>
<tr>
<td>Y215</td>
<td>0.5</td>
<td>15.1</td>
</tr>
<tr>
<td>Y216</td>
<td>2.6</td>
<td>15.1</td>
</tr>
</tbody>
</table>
The average score of Human Capital indicator is: employee capability, employee satisfaction, and employee sustainability show a score above 3 i.e. (3.37) and dominant indicator with the highest score is employee capability (Y212 and Y219). With a mean score of 3.37 including the moderate category indicates that employee perceptions of the ability to transform individual employee knowledge and skills to tasks have increased considerably.

D. Test of Linearity Assumptions

1. Test Result of Linearity Assumption

Testing Assumption The linearity of relationships among variables in this study using Curve Fit method and test results can be seen in Table VIII as follows:

Table 8. Test Of Linearity Assumption

<table>
<thead>
<tr>
<th>Hubungan Variabel</th>
<th>Pengujian Model Linier</th>
<th>Kesimpulan</th>
</tr>
</thead>
<tbody>
<tr>
<td>HC</td>
<td>RC</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>HC</td>
<td>SC</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>RC</td>
<td>SC</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>HC</td>
<td>SP</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>RC</td>
<td>SP</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>SC</td>
<td>SP</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>HC</td>
<td>CS</td>
<td>Model Linier Signifikan</td>
</tr>
<tr>
<td>SP</td>
<td>CS</td>
<td>Model Linier Signifikan</td>
</tr>
</tbody>
</table>

Based on the results of the linearity assumption test as shown in Table 8 above, it is known that all linear models are significant. This explains that the linearity assumption in this research model is met, meaning that analysis can proceed.

2. Testing the Goodness of Fit Structural Model (Inner Model)

The Goodness of Fit test of the structural model in the inner model uses predictive-relevance (Q2) values and the calculation is valued based on the value of R2. The R2 value of each endogenous variable in this study is shown as Table IX following:

Table 9. Endogen Variable Of R² Score

<table>
<thead>
<tr>
<th>Variabel Endogen</th>
<th>R-square</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relational Capital (RC)</td>
<td>0,131</td>
</tr>
<tr>
<td>Structural Capital (SC)</td>
<td>0,267</td>
</tr>
<tr>
<td>Bank Service Performance (SP)</td>
<td>0,498</td>
</tr>
<tr>
<td>Customer Service (CS)</td>
<td>0,142</td>
</tr>
</tbody>
</table>
Goodness of Fit test of structural model in inner model using predictive-relevance value \((Q_2)\) is obtained based on R-square value of each endogenous variable as shown in Table 9 above. The predictive-relevance \((Q_2)\) value is obtained using the following formula:

\[
Q_2 = 1 - (1 - R1^2) (1 - R2^2) ... (1 - Rp^2)
\]

\[
Q_2 = 1 - (1 - 0.131) (1 - 0.267) (1 - 0.498) (1 - 0.142)
\]

\[
Q_2 = 0.726
\]

The calculation results show a predictive-relevance \((Q_2)\) value of 0.726 or 72.6%, meaning that the model deserves to be said to have a relevant predictive value. The predictive relevance value of 0.726 indicates the diversity of data that can be explained by the model is 72.6% or in other words, the information contained in the data can be explained by the model by 72.6%. While the rest of 27.4% is explained by other variables that have not been contained in the model and error.

**E. Hypothesis Testing Results**

The results of hypothesis testing based on the test results of Loading Factor (outer model) to show the weight of each indicator as a measure of each variable. The indicator with the largest loading factor shows the indicator as the strongest (dominant) variable. The results of hypothesis testing (Inner Model) with t test (t-test) on each lane of direct and indirect influence partially. The result of complete analysis is found in result of Partial Least Square (PLS) analysis as seen in Appendix 5 and Table 5.10 presents result of hypothesis test of direct influence, Table 5.11 presents the result of indirect effect hypothesis testing. Complete see Table 5.10 below:

### Table 10. Test Result Of Influence Between Researches Variable Hypotesis

<table>
<thead>
<tr>
<th>Hipotesis</th>
<th>Pengaruh antar Variabel</th>
<th>Koefisien Jalur</th>
<th>p-value</th>
<th>Keterangan</th>
</tr>
</thead>
<tbody>
<tr>
<td>H1</td>
<td>HC → RC</td>
<td>0.362</td>
<td>0.007</td>
<td>Signifikan</td>
</tr>
<tr>
<td>H2a</td>
<td>HC → SC</td>
<td>0.326</td>
<td>0.011</td>
<td>Signifikan</td>
</tr>
<tr>
<td>H3</td>
<td>RC → SC</td>
<td>0.300</td>
<td>0.033</td>
<td>Signifikan</td>
</tr>
<tr>
<td>H4a</td>
<td>HC → SP</td>
<td>0.472</td>
<td>0.000</td>
<td>Signifikan</td>
</tr>
<tr>
<td>H5a</td>
<td>RC → SP</td>
<td>0.147</td>
<td>0.321</td>
<td>Non Signifikan</td>
</tr>
<tr>
<td>H5a</td>
<td>SC → SP</td>
<td>0.258</td>
<td>0.033</td>
<td>Signifikan</td>
</tr>
<tr>
<td>H5a</td>
<td>HC → CS</td>
<td>0.178</td>
<td>0.355</td>
<td>Non Signifikan</td>
</tr>
<tr>
<td>H6</td>
<td>SP → CS</td>
<td>0.238</td>
<td>0.035</td>
<td>Signifikan</td>
</tr>
<tr>
<td>H2b</td>
<td>HC → RC</td>
<td>0.109</td>
<td></td>
<td>Signifikan</td>
</tr>
<tr>
<td>H4b</td>
<td>HC → SC</td>
<td>0.084</td>
<td></td>
<td>Signifikan</td>
</tr>
<tr>
<td>H5b</td>
<td>RC → SP</td>
<td>0.077</td>
<td></td>
<td>Signifikan</td>
</tr>
<tr>
<td>H5c</td>
<td>RC → SP</td>
<td>0.035</td>
<td></td>
<td>Non Signifikan</td>
</tr>
<tr>
<td>H4b</td>
<td>SC → SP</td>
<td>0.061</td>
<td></td>
<td>Signifikan</td>
</tr>
<tr>
<td>H7h</td>
<td>HC → SP</td>
<td>0.112</td>
<td></td>
<td>Signifikan</td>
</tr>
</tbody>
</table>
The results of hypothesis testing based on the test of line diagram model in Partial Least Square (PLS) of 8 (eight) hypotheses of research, there are 5 (five) significant variables, receive (H1, H2a, H2b, H3, H4a, H4b, H5b, H6a, H7b and H8) and 3 (three) variables are not significant, meaning H5a, H7a and H5c are not accepted (rejected) and can be explained as follows:

1. H1: Increasing the quality of Human Capital bank, it will increasingly be able to improve the quality of Relational Capital. The test results showed that the value of the coefficient of HC variable path to RC is 0.362 with the significant (p-value) of 0.007 smaller than 0.5 (<0.05). This means that Human Capital has a significant effect on Relational Capital, so H1 is accepted.

2. H2a: Increasing the quality of Human Capital bank, it will increasingly be able to improve the quality of Structural Capital. The test results showed that the coefficient value of HC variable path to SC of 0.326 with a significance level (p-value) of 0.011 is greater than 0.5 (>0.05). This means that Human Capital has a significant effect on Structural Capital, so H2a is accepted.

3. H2b: Increasing the quality of Human Capital bank, it will be able to improve the quality of Structural Capital through Mediation Relational Capital. The test result showed that the coefficient value of HC variable path to SC through RC equal to 0.109. Since the path coefficient is positive, it indicates the indirect effect of both directions. This means that Human Capital has no direct effect on Structural Capital, so H2b is accepted.

4. H3: Increasing the quality of Relational Capital of the bank, it will increasingly be able to improve the quality of Structural Capital. The test results showed that the coefficient value of RC variable path to SC through RC of 0.300 with a significance level (p-value) of 0.033 greater than 0.005 (>0.05). This means that Relational Capital effect on Structural Capital, so H3 accepted.

5. H4a: "Increasing the quality of Human Capital bank, it will increasingly be able to improve the quality of Service Performance Bank". The test result showed that the coefficient value of HC variable path to SP is 0.472 with p-value equal to 0.000 (<0.05), meaning Human Capital has significant effect to Bank Service Performance, so H4a is accepted.

6. H4b: "Increasing the quality of Human Capital bank, it will increasingly be able to improve the quality of Service Performance of the bank through Structural Capital mediation". Test results showed that the value of the path coefficient of HC variable to SP of 0.084, because the coefficient of the path marked positive, indicating the indirect effect of both directions. This means that Human Capital has no direct effect on Structural Capital, so H4b is accepted.

7. H5a: "Increasing the quality of Relational Capital of the bank, it will increasingly be able to improve the Quality of Service Performance Bank". The test results showed that the coefficient value of the RC variable path to SP of 0.147 with p-value of 0.3.21 is greater than 0.05 (> 0.05), meaning that Relational Capital has no significant effect on the Service Performance of the Bank, so H5a is rejected.

8. H5b: "Increasing the quality of Relational Capital of banks, it will increasingly be able to improve the quality of service performance of banks through Structural Capital mediation". The test results showed that the coefficient value of the RC variable path to
SP is 0.077, because the path coefficient is positive, indicating the indirect effect of both directions. This means that Relational Capital affects the performance of bank services through Structural Capital, so H5b is accepted.

9. H5c: "The increased quality of Relational Capital bank, it will increasingly be able to increase the level of Customer Satisfaction through mediation Performance Banking". The test results showed that the coefficient value of the RC variable path to CS is 0.035, because the path coefficient is positive, indicating the indirect effect of both directions. It means Relational Capital has no significant effect on Customer Satisfaction level through Bank Service Performance, so H5b is rejected.

10. H6a: "Increasing the quality of Structural Capital bank, it will increasingly be able to improve the quality of Service Performance Bank". The test results showed that the value of the coefficient of the SC variable path to SP of 0.362 with p-value of 0.007 (<0.05), meaning that Human Capital has an effect on Relational Capital, so H1 is accepted.

11. H6b: "Increasing the quality of Structural Capital bank, it will increasingly be able to increase the level of Customer Satisfaction through mediation of Bank Service Performance". The test results showed that the coefficient value of the variable path of SC to CS is 0.061, because the path coefficient is positive, indicating the indirect effect of both directions. This means Structural Capital affect the level of Customer Satisfaction.

4 Conclusions and recommendations

Based on the results of theoretical, empirical and research studies both quantitatively and descriptively as described in the previous chapters, it can be drawn some conclusions and suggestions from the results of this study. These conclusions and suggestions can be put forward as follows:
A. Conclusion

1. Improving the quality of Human Capital resulted in the improvement of Relational Capital quality. Improved Human Capital Capability encourages the enhancement of individual employee productivity capabilities, in terms of their ability to communicate (soft skills) or the ability to communicate their knowledge (competence) and skills (work) (professional), so as to build a better relationship / relational value in the form of cooperation or continuous partnership with customers.

2. Improving the quality of Human Capital leads to an increase in the quality of Structural Capital. It can be interpreted that improving the quality of Human Capital will improve the capability of individual employees to transform their knowledge and skills on non-human assets. Professional employees will be able to utilize various physical facilities of bank services such as information technology (IT) machines, data-based equipment, organizational structures and other physical facilities, and contribute to supporting the productive process of the organization (bank) in service so as to improve the quality of service bank. Improving service quality has an impact on increasing profitability and overall bank performance.

3. Improving the quality of Relational Capital caused an increase in Structural Capital performance. The potential utilization of available customer capital is a market opportunity (potential market), if managed in such a way as to be appropriate and correct by the bank, it will be able to increase the profitability (profit-value) of bank better for bank and customer. Thus, a win-win sustainable relation (sustainable) is established between the internal (stakeholder) bank and the external (stakeholder) customers.

4. Improving the quality of Human Capital leads to the improvement of Bank Service Performance Quality through Structural Capital mediation. Should high-skilled employees (professionals) will contribute better in driving the improvement of the Bank Service Performance, even though it has to go through a series of transformation processes of knowledge and skills through Structural Capital mediation. The role of Structural Capital collectively encourages the expansion of Human Capital's knowledge-experience through the support of infrastructure and financing that bridges between Human Capital and the Bank Service Performance.

5. Improving the quality of Relational Capital is able to drive the improvement of Bank Service Performance Quality, through Structural Capital mediation. It explains that, as much or as good as any potential customer-Relational Capital available, will not cause changes to the high fluctuations in the quality of the Bank's Service Performance, except with the support of Structural Capital (routine operational centre) role through a series of service processes (main aspects of operations) a service organization, especially the banking services industry of commercial banks in Central Kalimantan.

6. Structural Capital improvements resulted in improved quality of Bank Service Performance. Structural Capital of high quality, capable of supporting the employee productivity process so as to be able to drive the improvement of Service Performance of Bank where Structural Capital is a bank operational service centre as a vehicle for transformational information and knowledge (internal resource - IC-intellectual capital) and bank service to customers / customers (external resources).

7. Improving the quality of Human Capital will not be able to move the level of Customer Satisfaction without going through mediation of Bank Service Performance. However, the professionalism of Human Capital bank does not mean anything without the support
of Structural Capital's role which is reflected in the improvement of the quality of the Bank's Service Performance. This is the case with Bank Service Performance and Customer Satisfaction. Qualified Human Capital will not cause an increase or decrease in the level of Customer Satisfaction, although it is stated that Human Capital is a dominant key component as a driver of Customer Satisfaction level. But otherwise Human Capital will be able to increase the level of Customer Satisfaction if mediated or bridged through Quality Service Performance.

8. Improving the Service Performance of the Bank may increase the level of Customer Satisfaction. The performance of Bank Services is a reflection of the performance of Human Capital, Relational Capital and Structural Capital which are integrated as internal resources.

B. Recommendations

Based on the results and limitations of this study, there are some suggestions that can be given to academics and practitioners in developing academic ability in line with the development of science related to this research topic, are as follows:

1. Further research is needed to fill the research gap by increasing the number of research samples and involving other types of banking services industry or non-bank financial services to get more comprehensive and comparative results and better results.

2. Conducting research by examining more in the dimensions of independent variables of research in relation to the creation of intellectual asset value-corporate performance from aspects of organizational culture and leadership.

Acknowledgment

Thanks to Bank Pembangunan Kalteng (BPK) for their support and recommendation.

References


[64]. Zeithaml, Berry and Parasuraman (1996). The Behavior Consequences of Service Quality. Journal of Marketing,
Purchase Order Analysis Imported Goods in PT. XYZ

Darno1, Khadijah Binti MD Ariffin2, Hariyati3, Dewi Agustya Ningrum4, Siti Mahmudah5  
{darno@dosen.umaha.ac.id1, hadija@uthm.edu.my2, hariyati@unesa.ac.id3, dewi_agustyaningrum@dosen.umaha.ac.id4, siti_mahmudah@dosen.umaha.ac.id5}

Universitas Maarif Hasyim Latif, Indonesia1,4,5, Universiti Tun Hussein Onn Malaysia, Malaysia2, Universitas Negeri Surabaya, Indonesia3

Abstract. The purpose of this research is to find out the Purchase Order / PO process and to know the obstacles in the PO process. This research was carried out based on descriptive qualitative methods. Analysis is carried out on the system in the company and compared with the input theory. Problems faced by companies in the purchase order process (PO) include; sending time, technical payment, technical and location of delivery of goods, unit price of goods and total price. The most common obstacle is the technical time and place of delivery of goods. This incident is caused by the purchasing department not filling in the section or column "condition". This causes the process of purchasing goods or purchase orders to stop or fail. Constraints and obstacles in the PO process can lead to errors in completing the work of each division. Delays and errors that occur in each division outside the tolerance limit will cause difficulties and disrupt the company's operational plan. It is recommended that each writing description in the PO be written clearly and also in detail. This is to clarify every element in the PO in order to avoid misunderstandings with the agreements listed in the PO. To improve procurement quality, it is necessary to have the principle of procurement of goods, namely efficient and effective, transparent and open, competitive prices, and fair and accountable.

Keywords: Purchase Order, Imported Goods, Procurement.

1 Introduction


Dalam suatu perusahaan terdapat banyak pelaku ekonomi, baik itu pemerintah sendiri maupun pihak swasta. Untuk memenuhi kebutuhannya pihak pemerintah maupun swasta (perusahaan) pasti melakukan pembelian barang (purchasing). Purchasing memiliki peranan vital dalam pengelolaan (manajemen) perusahaan. Purchasing bertugas untuk pengadaan kebutuhan barang yang diperlukan oleh perusahaan. Khusus untuk perusahaan dalam untuk
pencarian, pemesanan dan pembelian bahan baku, alat-alat produksi, peralatan-peralatn kapan produksi dan fasilitas-fasilitas lainnya untuk kelancaran proses produksi.

Hambatan-hambatan dalam proses Purchase Order (PO) yang terjadi yaitu ada beberapa pembeli terkadang purchase order (PO) tidak diberikan dalam suatu dokumen tertulis. Hal ini menyebabkan tidak adanya alat pengikat kedua belah pihak baik pembeli (buyer) maupun penjual (seller) untuk melaksanakan hak serta kewajiban masing-masing (Ineke Febriana H; 2009).


Pada prakteknya, *Purchase Order* (PO) berisi tentang jenis barang, harga, jumlah barang, sistem pembayaran dan waktu serta tempat penyerahan barang. Pada praktek dilapangan banyak bagian pembelian atau *purchasing* di perusahaan yang tidak lengkap mengisi form *Purchase Order* sehingga penyedia akan kebingungan untuk memenuhi kebutuhan customer dalam melaksanakan PO yang ada. Hal ini akan menyebabkan proses PO akan menjadi bermasalah. Ada beberapa sebab kendala yang menyebabkan PO menjadi bermasalah yaitu terkait harga barang, jumlah barang, waktu dan tempat penyelesaian, serta pemenuhan spesifikasi yang diminta.

Adanya masalah atau kendala terkait proses pengadaan barang ini, sehingga diperlukan penelitian untuk mengetahui, mempelajari dan memberikan masukan mengenai proses PO disuatu perusahaan. Proses penelitian ini dilakukan pada PT. XYZ dalam proses pengadaan khususnya barang impor. Dari hal itu penulis akan mengangkat tema itu menjadi pokok permasalahan yang berjudul “ANALISIS PENGENDALIAN PEMBELIAN (PURCHASE ORDER) BARANG IMPOR PADA PT. XYZ”.

1.2 Rumusan masalah

Berdasar pada pengamatan yang dilakukan selama proses penelitian di PT. XYZ khususnya di Deparmemen Purchasing, maka rumusan masalah dalam penelitian ini adalah;

1. Bagaimana proses PO (Purchase Order) khususnya barang impor.
2. Bagaimana hambatan-hambatan dalam proses PO (Purchase Order) barang impor.

1.3 Tujuan

Tujuan penelitian ini adalah;
1. Mengetahui proses PO (Purchase Order) impor.
2. Mengetahui hambatan-hambatan dalam proses PO (Purchase Order).

1.4 Metode penelitian

Penelitian ini dilaksanakan dengan menggunakan metode kualitatif deskriptif. Dimana dilakukan analisa terhadap sistem yang ada diperusahaan dan dibandingkan dengan masukan teori dan hasil penelitian lapangan.

Teknik pengumpulan data dan informasi yang diperlukan untuk penelitian ini baik itu data primer maupun sekunder dilakukan oleh peneliti dengan berikut ini;

Observasi Langsung

Teknik pengumpulan data melalui observasi langsung adalah cara pengambilan data dengan menggunakan mata tanpa ada pertolongan alat standar lain. Penulis mengumpulkan data dan informasi dengan cara meninjau dan melakukan pengamatan secara langsung ke lapangan terhadap suatu kegiatan yang sedang dilakukan atau berjalan, untuk memperoleh semua data yang dibutuhkan. Observasi dilakukan agar mengetahui secara langsung alur proses pembelian barang yang berada pada PT.XYZ di departemen purchasing order.

Wawancara

Wawancara merupakan proses memperoleh keterangan untuk tujuan penelitian dengan cara tanya jawab sambil bertatap muka. Wawancara secara langsung pada saat penelitian di departemen purchasing order dengan beberapa karyawan.

Studi Pustaka

Peneliti melakukan studi pustaka untuk mendapatkan bahan tambahan dalam melengkapi kekurangan data yang didapatkan dari interview dan observasi.

2 Literature Review

2.1 Import


**Persyaratan Impor**

Seseorang atau badan usaha yang akan melakukan import barang harus memiliki syarat yang telah ditetapkan untuk import barang. Tentu barang importnya bukanlah barang yang terlarang oleh pemerintah. Adapun kelengkapan teknis untuk melakukan import barang meliputi API, NIK, NPWP dan perizinan lain yang sesuai dengan jenis barang impornya.


**Klasifikasi Barang Impor**


### 2.2 Purchase Order


Dengan demikian, *purchase order* (PO) ialah bukti tertulis dan sah yang menyatakan bahwa seseorang atau badan usaha betul-betul untuk melakukan transaksi jual-beli. *Purchase order* (PO) memuat informasi terkait jenis barang, jumlah, harga (satuan atau total), waktu dan lokasi pengirimam dan teknis pembayaran barang yang dipesan. *Purchase order* (PO) ialah

Proses Pesanan Pembelian/Purchase Order (PO)

Berdasarkan dengan gambar diatas, dapat dijelaskan prosesnya adalah berikut ini;
mendaftarkan produknya di Badan Pengembangan Ekspor Nasional (BPEN) atau National Agency for Export Development (NAFED) dan Indonesian Trade Promotion Centre (ITPC) di luar negeri.


3 Discussion

3.1 Proses PO (Purchase Order)

Dalam proses transaksi jual dan beli suatu produk mesti memuaskan kedua pihak, baik itu penjual ataupun pembeli. Supaya tercapai kesepakatan bersama dalam proses pengadaan atau pembelian barang diperlukan ketelitian dan koordinasi kedua pihak. Ada juga kesepakatan tidak tercapai dan transaksi batal. Oleh karena itu dalam penelitian ini memfokuskan pada hal hal supaya yang tercapai kesepakatan transaksi bisnis khususnya analisis terkait dengan penerbitan purchase order (PO).

Pihak pembeli akan meneliti detail jenis dan kualitas produk (barang) sebelum menerbitkan Purchase order (PO) dan dikirim kepada penjual (penyedia). Detail jenis dan kualitas barang dapat diketahui dari iklan, penawaran, pameran atau katalog yang diberikan. Purchase order (PO) yang dikirimkan kepada penyedia barang tentu akan berisi spesifikasi barang yang dibutuhkan. Jika penjual setuju dengan detail teknis barang yang di purchase order (PO) maka penyedia akan memproduksi barang sesuai dengan purchase order (PO) dengan terlebih dahulu mengirim Performa Invoice kepada pembeli. Performa Invoice adalah sebagai bentuk tanggapan (respon) bahwa penyedia sudah menerima dan setuju dengan purchase order (PO) serta akan menjual barang sesuai yang dipesan. Pembeli akan
mengajukan teknis packing, ekspedisi barang, waktu dan lokasi pengiriman barang. Teknis pembayaran dan persyaratan penyerahan barang tentu sudah disepakati dahulu oleh kedua pihak.

Terkait dengan ekspedisi barang, perlu dimasukkan asuransi agar tidak terjadi kerusakan barang. Penting untuk membicarakan pihak mana yang harus menanggung beban biaya asuransi barang termasuk memakai FOB destination atau FOB shipping point. Pemilihan ini berdampak pada siapa yang akan menanggung eksedisi dan asuransinya, apakah itu penjual atau pembeli.

Perlu juga dibicarakan terkait dengan syarat hukum dua negara yang berbeda. Perlu dinegosiasikan, apakah menggunakan hukum negera ekspor atau import yang diapaki. Jika tidak bisa bersepakat maka kemungkinan besar akan mengabaikan masalah tersebut. Biasanya yang terjadi adalah menggunakan hukum yang berlaku di negara importir (pembeli). Negara ekspor biasanya prosedur hukumnya lebih sederhana dan lebih terjalin penegakan hukumnya

Hambatan-hambatan dalam proses PO (Purchase Order)

Secara umum masalah yang dihadapi dalam proses purchase order (PO) adalah waktu kirim, teknis pembayaran, teknis dan lokasi penyerahan barang, harga satuan barang dan jumlah harga total. Yang paling sering terjadi adalah teknis waktu dna tempat pengiriman barang. Ini akan sering terjadi karena di bagian purchasing (pembielian) tidak mengisi bagian atau kolom “condition”. Apabila ini terjadi maka proses transaksi pembelian barang atau purchase order akan terhenti atau gagal.

Tawaran Solusi dan masukan

Hambatan-hambatan dari proses Purchase Order diatas dapat mengakibatkan keracunan dalam menyelesaikan pekerjaan di setiap divisi. Dimana akibatnya keterlambatan yang terjadi setiap divisi dapat ditolak. Hal ini menimbulkan kesulitan dalam pembuatan rencana operasional perusahaan. Sehingga disarankan agar setiap penulis uraian dalam PO (Purchase Order) ditulis dengan jelas serta detail. Hal ini disusul agar jelas setiap unsur dalam PO (Purchase Order) agar dapat terhindar dari kesalahpahaman dengan kesepakatan yang tercantum dalam PO (Purchase Order).

Pembuatan DML (daily market list) adalah bagian dari tugas purchasing yang secara rutin dilakukan untuk ketersediaan barang yang dibutuhkan. Pembuatan PO adalah tugas utama bagian purchasing untuk memenuhi segala jenis barang pesanan yang dibutuhkan semua bagian untuk kelancaran operasional perusahaan.

Khusus untuk menangani order tambahan dimana proses DML (daily market list) sudah berjalan, departemen terkait tetap harus tetap mengisi form DML untuk melakukan pemesanan seperti prosedur. Bagian purchasing perlu menyediakan form DML untuk persiapan pengadaan tambahan. DML tambahan tersebut di prosedur sendiri prosedurnya oleh departemen terkait dan bagian purchasing tinggal melakukan order.

Penyimpanan arsip sangat membantu pekerjaan bagian purchasing untuk mempertanggungjawabankan tugas dan kewajiban kepada atasan. Selain itu, arsip ini sangat berguna untuk acuan proses pembelian berikutnya. Untuk meningkatkan kualitas proses Pengadaan Barang perlu memiliki prinsip prinsip dasar pengadaan barang yaitu efisien, efektif, transparan, terbuka, harga bersaing, Adil/tidak diskriminatif, akuntabel,
4 Conclusions And Suggestions

Berdasarkan hasil pengamatan di lapangan dan simulasi analisa yang telah diuraikan pada bab sebelumnya, maka dapat ditarik suatu kesimpulan yang berupa ringkasan dan penulis berupaya mengemukakan saran yang mungkin berguna.

4.1 Conclusions

Pembelian (purchasing) adalah proses yang sangat oenting dalam suatu perusahaan dan bagian dari fungsi dasar perusahaan. Sangat penting karena siklus bisnis perusahaan tidak dapat terjadi kalau proses purchasing (pembelian) tidak ada. Pembelian adalah awal dari siklus bisnis untuk meningkatkan nilai tambah suatu barang oleh sebuah perusahaan.

Secara umum hambatan yang sering terjadi dalam dalam purchase order (PO) adalah waktu dan tempat pengiriman, teknis dan jenis pembayaran, syarat teknis penyerahan barang, harga satuan barang dan harga total keseluruhan. Perlu diperhatikan lagi terkait dengan teknis waktu dan tempat penyerahan barang. Biasanya ini terjadi karena di purchase order tidak mengisi bagian (kolom) “condition”. Ini menimbulkan kerancuan dalam pelaksanaan teknis pekerjaan dan proses purchase order akan terhenti atau gagal. Sehingga disarankan agar setiap penulisan uraian dalam PO (Purchase Order) ditulis dengan jelas dan detail. Hal ini diusulkan supaya jelas setiap unsur dalam PO (Purchase Order) agar dapat terhindari dari kesalahpahaman dengan kesepakatan yang tercantum dalam PO (Purchase Order).

Pembuatan DML (daily market list) mutlak perlu dilakukan untuk menjaga ketersediaan ketersediaan barang yang dibutuhkan. Khusus untuk order tambahan dimana proses DML (daily market list) sudah berjalan, departemen terkait tetap harus tetap mengisi form DML untuk melakukan pemesanan seperti prosedur.

Penyimpanan arsip sangat membantu pekerjaan bagian purchasing untuk mempertanggungjawabkan tugas dan kewajiban kepada atasan. Selain itu, arsip ini sangat bermanfaat sebagai acuan proses pembelian berikutnya.

4.2 Suggestions

Department purchasing (pembelian) memiliki peranan dan fungsi yang sangat penting dan bukanlah pekerjaan yang mudah. Diperlukan kelincian, ketepatan, keuletan dan juga keterampilan untuk mengolah dan menganalisa barang dan atau jasa yang akan dipakai. Disarankan, hendaknya perusahaan lebih meningkatkan dalam hal menyesuaikan jadwal PO (Purchase Order) dengan kemampuan produksinya serta menjaga hubungan baik dengan instansi yang terlibat dalam proses ekspor dan menjaga kepercayaan dari seller luar negeri sehingga terpeliharanya hubungan kerjasama yang baik.

Perlu disiapkan DML (daily market list) tambahan untuk berjaga jaga kalau ada order tambahan dimana proses DML (daily market list) sudah berjalan.

Penyimpanan harus dilakukan dengan rapi dan teliti untuk mempertanggungjawabkan tugas kepada atasan dan untuk menjadi acuan proses pembelian berikutnya.

References
Policy Strategy for Halal Logistics Development in Indonesia

Sutandi
{sutandi@stiami.ac.id}

Department Logistics Management, Institut Ilmu Sosial dan Manajemen Stiami

Abstract. The current global economic trend is the halal industry which is characterized by a rapidly growing food industry involving a complex global market. In 2017, Indonesia was included in the top 10 countries with the largest halal industry consumers in the world based on Global Islamic Economy Indicator data. The Indonesian halal industry is still struggling with halal product certification but has not paid attention to the movement of goods to customers by paying attention to the transparency of raw material sources and contamination of halal products for Muslim residents and there are no guidelines for all parties in developing halal logistics in Indonesia. So, this study aims to map the strategy for the development of the halal logistics industry in Indonesia using a road mapping model. In formulating a strategy for government policies and facilities in supporting halal logistics, it refers to the six main drivers in the Indonesian National Logistics System Blueprint. The results of this study are a strategic roadmap for developing policies for the halal logistics industry in Indonesia from the aspects of commodities, infrastructure, business actors, human resource competence, information and communication technology, as well as regulations and policies, which are expected to contribute as draft recommendations for the government in policy making.

Keywords: Policy Strategy, Halal Logistics, Road-Mapping Model.

1 Introduction

The current attractive global economic trend is related to the halal industry including halal tourism. In 2017 Indonesia was included in the top 10 countries as the largest halal industry consumers in the world based on Global Islamic Economy Indicator data. Indonesia is ranked number one in the world for halal food shopping and is ranked fifth in the halal tourism sector. In addition, Indonesia ranked sixth for pharmaceuticals and halal cosmetics ranked sixth and tenth for Islamic finance.

Besides food, which is included in halal products include pharmaceuticals, cosmetics, clothing, financial services, and logistics (Tieman, 2010). Regarding logistics, the amount of the halal logistics market is US $ 2.3 trillion with the largest distribution in Southeast Asia, the
Middle East and Africa (Abdullah, 2015). This value is three times the GDP of Indonesia or equivalent to IDR 30,000 trillion or. The growth trend of the Muslim population is around 1.86% per year, the value of the halal logistics market is very lucrative (Martono, 2016).

The management of halal supply chain performance in Indonesia must refer to the Effective principle (addressing process quality and minimizing waste), Efficient (low cost and high utilization of existing assets) and robust (high availability of halal assets). So that this becomes a new strength and business opportunity in Indonesia. This is indicated by the increased demand for halal products (food and non-food) by Muslim communities.

While in Indonesia itself (a Muslim majority country) there are still not many logistic service providers certified as "halal logistics". The government needs to support logistical actors in Indonesia to implement and obtain "halal logistics" certification so they can control the supply chain of halal products in Indonesia and the world.

The success of a public policy is determined by good policy planning. One of them is by compiling a master plan or roadmap. Literally, a roadmap can be interpreted as a map of determinants or directions. In the context of efforts to achieve the results of an activity, a roadmap is a document planning and implementing programs and activities within a certain range. Therefore, in developing the halal industry sector in Indonesia, especially halal logistics requires a roadmap in ensuring the success of halal logistics development policies.

**Problems**

How to determine the strategy for halal logistics development policies in Indonesia?

2 Literature Study

In general, logistics is defined as the process of planning, implementing and controlling efficiently, effective flow and storage of goods, services and information from the beginning to the final destination to serve the needs of consumers. The purpose of logistics is to ensure that customers can consume the product at the right time, the right amount and in good condition. Therefore, logistics management involves a series of activities including transportation, storage and warehousing, inventory management, material management, product scheduling and customer service. Logistics plays a key role in protecting product quality and conditions through proper transportation, storage and handling in the supply chain, until it reaches its final destination (Tieman, 2008).

The success of the halal industry depends on the management capabilities of logistics services in ensuring the integrity of halal products from start to finish for consumption. Kamaruddin et al (2012) mention the trend of consumer consumption not only for halal products but also halal logistics. Tieman (2011) reiterates the distribution, storage, handling and procurement of halal products must follow Sharia principles to be considered halal. Therefore, halal and Sharia logistic competencies including technical knowledge are very important to maintain the integrity of halal products.

In halal logistics, halal products must be protected from non-halal products or substances until they arrive at their final destination. However, there is a high tendency for halal products to cross contamination during the process and give due to transportation or contaminated containers (Zulfakar et al. 2014).

Halalan-toyyiban can literally be translated as "halal and good" in the clear sense of the process of handling, production and material / composition. The basic principles of halal
logistics are separation (from raw materials, products or accessories that are not halal) both in
the process of handling, producing, storing, labeling, transporting, delivering and other work
processes included in the supply-chain process from the initial producers (ultimate producers )
reaching the ultimate consumers.

Halal logistics focuses on the handling and physical movement of goods so that there is a
similarity between the Standard Food Safety (ISO 22000 certification) and the Halal Food
Standard with derivatives of Halal Logistics Standards. The difference is that the scope of the
Food Safety system is to ensure that food is safe when consumed by humans (to ensure that
food is safe at the time of human consumption). While the Halal Standard Food system is
applied to the food / related and non-food products, covering various processes involved in
their production, including appliances and materials used, storage, preparation, packaging,
distribution, sale and display.

Halal Logistics Benchmarking refers to Malaysia and Japan. The Malaysian Halal
Industry has a master plan (2008-2020) which has a focus on four areas, namely Specialty
Processed Food, Cosmetic Personal Care, Ingredients, and Animal Husbandary with key
driving forces are legalization and policy frameworks, human resources, physical
infrastructure and connectivity , funding and incentives, industry standards and certification,
and delivery systems in the public sector.

Japan has seen a big opportunity for the halal industry that requires halal labels on their
products. Halal labels are obtained by applying Halal certification. In Japan halal certification
is carried out by an institution called Nippon Asia Halal Association (NAHA). Applications in
Japan are carried out according to Halal standards such as ISO (International Standard
Organization), HACCP (Hazard Analysis Critical Control Points), or GMP (Good
Manufacturing Practice). With this institution, it can be ascertained that in the future more
Japanese halal products will enter the Muslim market in the World.

The main key to the halal industry is the existence of halal certification. Based on Law
Number 33 of 2014 concerning Halal Product Guarantee (JPH), mandates the establishment of
Halal Product Guarantee Management Agency (BPJPH) no later than 2017 or three years after
the law is passed. This institution began operations in early 2018. The parties involved in the
halal certification process are BPJPH, MUI, and Halal Inspection Institutions (LPH).

The challenge of implementing halal logistics is halal facilities. Halal supply chain
facilities are very important along with adherence to religious guidelines regarding halal
products. However, the implementation will lead to additional cost logistics related to
production, storage and distribution in addition to process costs because halal facilities require
halal audits of the network of facilities used. As a result, the price of halal food will be
expensive. Therefore, it is necessary to identify halal supply chain problems more deeply
along with the solution.

In this study, a roadmap for the development of halal logistics policies will be made using
the road-mapping model approach and referring to SISLOGNAS key drivers. The road-
mapping approach is the creation of a shared vision. The road-mapping process classifies
future goals, and the path to achieving that goal. As a guideline for policy strategy also refers
to Presidential Regulation 26 of 2012 concerning the National Logistics System Blueprint, in
carrying out the National Logistics development strategy based on six key drivers including
Main Commodities, Transportation Infrastructure, Logistics Service Providers and Providers,
Human Resources, Information and Communication Technology and Regulations and
Policies. Therefore, in formulating government policies and facilities in supporting halal
logistics, it can refer to these six key drivers.
3 Research Methodology

The research method is conducted by reviewing existing policies and then making policy recommendations through a roadmapping strategy.

The first stage is SWOT analysis in determining indicators based on market potential, products and technology analysis. The next step is to design a road map including time and determination of available resources to achieve the objectives.

In this paper we propose a roadmap to support the development of new business models, their implementation and evaluation. For the roadmap, a set of tools is proposed to support each stage from the design of the business model to its evaluation.

4 Result And Discussion

A. Identification of the Cause and Effect Method

1. Equipment

IT System

The rapid progress of information technology and the internet certainly has a significant impact on the system changes to various sectors in the world, including in the industrial and logistics sectors. In the industrial and logistics sectors, the most felt impact of this IT progress is the increasing speed and accuracy in each process.

Internet-based applications and web services are also widely available to support the functions in the logistics service industry business processes, for example: for transporting and storing cargo in warehouses with the help of information-based services such as transportation route information, highway condition information, claim management, vehicle transportation mode tracking, calculation of transportation cost predictions to reporting (Pokharel, 2005).

Related to halal logistics, According to Tieman (2013) there are three basic halal logistics, including: direct contact with illicit products, risk of contamination, and perceptions of Muslim consumers. These three things are important to ensure the integrity of the halal products produced. By utilizing the IT system above, the level of accuracy to avoid direct contact with illicit products and the risk of contamination can be minimized.

2. Method

Logistics Informatization Tracking is a method for defining and tracking the exact position of goods both during the production, shipping and storage processes in the warehouse. Referring to the previous Tiemen (2013) statement, this method is believed to be able to increase the posture of implementing halal logistics in Indonesia.

3. People

a. Consumer

According to the Central Statistics Agency (BPS) the population of Indonesian Muslims reaches 207 million Muslims or 87.18% of the Indonesian population (BPS 2010). So with such a large market share of halal products, the need for halal products in the market is very large. Based on a survey conducted by the Indonesian Majlis Ulama (MUI) research team, it was revealed that the level of Indonesian people's awareness of halal products increased very
significantly. If in 2009 the level of public awareness of product halalness was only around 70%, by the end of 2010 that number had jumped to around 92.2%, which meant that this potential should have made Indonesia as a world-class halal producer (Syahrudin 2014).

b. Producer

In the past five years, industrial growth carrying the halal concept in Indonesia has reached 40%, consisting of clothing, food, bottles, cosmetics and financial sharia (Mix, 2017). The Institute for Food, Drug and Cosmetic Studies of the Indonesian Ulama Council (LPPOM MUI) as the only institution authorized to provide halal certificates until 2014 as many as 26,979 out of 8,636 companies with 53,383 certified products from 231,851 products circulating (Ministry of Religion, 2015).

The State of The Global Islamic Economy report from 2016 to 2017 published by Thomson Reuters ranked Indonesia first for consumers of halal food products, which amounted to $154.9 billion. However, the Indonesian government has not been able to maximize the market potential because Indonesia is still ranked 10th in the category of halal food producers.

c. Logistics Service Provider

From the volume of logistics spread in Indonesia, 55% is still handled by the industry and has not outsourced, which is an opportunity for supply chain companies. But from around 12,500 supply chain companies there are only a small number of companies that specifically have halal licenses (Yukki N Hanafi, ALFI, 2016).

4. Environment

a. Location of halal industry

The Ministry of Industry has been planning for the establishment of a halal industrial area which is targeted to be completed before 2020. This is in response to the increasing demand for halal products in the world. Halal industrial zones are industrial estates in which all industries apply or comply with Islamic standards ranging from upstream to downstream. This Halal Industrial Area will be selected in the Java region because there is already an industrial area for the consumer goods sector. As for its management, the government will submit to one business actor who has known good halal production standards.

b. Bonded Logistics Center (PLB)

The latest policy as an instrument for reforming the National Logistics System is the establishment of a Bonded Logistics Center (PLB) which is contained by Government Regulation Number 85 of 2015 concerning Amendments to Government Regulation Number 32 of 2009 concerning Bonded Stockpiling Sites. Through this policy the Government seeks to provide various facilities and incentives to the national business community.

The existence of a Logistics Center Bonded (PLB) has been responded to well by the business community because it is considered to have been able to provide assurance for the growth of the industrial world through various incentive offers, especially tax related. This is supported by the rapid level of achievement of the number of Bonded Logistics Centers (PLB) which in the first year only amounted to 11 rapidly increasing to reach 76 at the end of 2017 which spread from Lhokseumawe in Aceh to Sorong in West Papua. This increase in numbers indicates that the existence of the Bonded Logistics Center (PLB) contributes positively,
especially to the flow of supply of raw or semi-finished materials needed by the national industry.

Associated with halal logistics, the increasing number of companies incorporated with PLB has made warehousing service providers in Indonesia increase. Thus, separating halal and unclean goods when the storage process becomes more feasible.

B. SWOT Analysis

1. Strength
a. Halal logistics goals are to ensure product halal along the flow in the supply chain. Halal logistics is developing because the level of consumer awareness is getting higher, in addition to product halalness, the halal logistics process or supply chain (Setijadi, 2016).
b. According to Antonius (2016), consumers in the world currently want cosmetics to pharmaceutical products that are halal certified, not just food.
c. The halalness of a product is not only viewed from how the product is produced, but also must be seen from how the product is processed, including in this case the process of handling the flow of materials / products such as transportation, storage and so on. So, halal not only concerns the product content, but also relates to halal and halal supply chain logistics systems.
d. The halal logistics movement has been initiated by the President Director of PT Pos Indonesia (Persero) which supports halal logistics (Bisnis Indonesia, December 15, 2015), and PT Pelabuhan Indonesia II (Persero) through its subsidiary IPC Logistics Services will work on the first halal port in Indonesia (Kompas, October 26, 2015).

2. Weakness
a. Indonesia does not yet have halal standards for logistics matters to consumers (www.gomuslim.co.id).
b. There are no supply chain companies in Indonesia that have halal licenses (Alhafidz, 2016).
c. Not many industries in Indonesia are interested in this business with halal standardization (Antonius, 2016).
d. The lack of regulation of halal guarantee systems and systems and the absence of tools / software that ensure halality (Vanany, 2017).
e. There are not many halal logistics experts, therefore halal logistics training is important for employees involved in handling halal products (Jaafar et al. 2013).

3. Opportunity
Indonesia is a country with the largest percentage of Muslim population in the world, around 12.5% of the world population or as much as 88% of the approximately 250 million Indonesian population (Lawi, 2016).

4. Threat
a. Halal supply chain implementation requires more coordination and collaboration than halal products. Halal supply chains must be understood by actors in the supply chain. The
lagging understanding and implementation of halal supply chains has the potential to weaken competitiveness (Setijadi, 2016).

b. According to Simatupang (2016) the challenges of Indonesian Halal Logistics include: the development of halal industries; Halal park operator; Halal producers; Warehousing; Technology; Halal Logistics Services Business Development; Tariff and non-tariff barriers; Market niche development; Willingness to pay from customers; and Customer Education.

c. The difficulty of managing to ensure halal in the supply chain perspective is because the halal food chain becomes longer and more complex, from producers to consumers (Vanany, 2017).

d. Malaysian pioneering in halal supply chain can be a threat to Indonesia, including the food industry and Indonesian logistics service providers (Setijadi, 2016).

e. About 90 percent of halal products are produced in non-Muslim countries. The halal and halal logistics status of a product is uncertain (Jaafar et al. 2013).

C. Roadmap Halal logistics development policy strategy with SISLOGNAS six key drivers

1. Regulation

In order to be able to implement a halal logistics system in Indonesia, regulation from the government is a must. This regulation can be a law that requires logistical agents to shift existing systems (in this case especially when the process of shipping and stockpiling) becomes a system that supports halal logistics, thus the halal logistics system is no longer based solely on consciousness but becomes a provision that must be followed by every logistics agent. In addition, the government can also establish an institution in charge of measurement, where the raw goods which should have a halal certificate will be checked for halal, then checked again when the goods are ready to be distributed to consumers to ensure the goods remain in the market conditions during upstream to the final consumer.

2. Information and Communication Technology (ITC)

Currently the logistics information system has become increasingly popular, used by both industry players and companies engaged in logistics. The problem, LIS itself does not have a special function to maintain the halalness of a product. In order for the halal logistics system to work properly, it is necessary to add a separate tracking system to SIL, for example, with its own barcode code to show whether the goods are halal and not, or even items that are easily contaminated or not. With this tracking system, the separation between halal and illicit goods will be easily separated both during the shipping and storage process, which means that the risk of changes in the halal value of an item will be minimized which of course strongly supports the implementation of halal logistics systems in Indonesia.

3. Human Resources

Higher education acts as a center for study and halal logistics research and HR competency development and halal logistics organizations. Halal logistics research is directed at developing logistics systems, infrastructure, technology, and halal logistics business processes. Research is also directed towards the development of halal logistics markets, both domestic and international market segments.
Meanwhile, universities also have a role in building human resource competencies that will struggle in the field of logistics. Thus, so that the halal logistics system can run well, every university that has a department or logistics study program needs to include this halal logistics related learning into the lecture curriculum. Thus, it is expected that HR who will later be involved in logistics have competent competencies in halal logistics.

4. Logistics agents and Logistics Service Providers

The development of the halal market requires increased efficiency in the market to offset this growth. One approach that can be used is supply chain management (SCM) (Noordin, Noor, & Samicho, 2014). SCM can be used to increase productivity and profitability of the halal market (Noordin et al, 2014). Strategic and systemic coordination of business functions in a company is the key to the successful implementation of SCM in the company. Traditional SCM can be defined as the process of converting raw materials into finished goods and then distributing them to end consumers (Manzouri, Ab-Rahman, Zain, & Jamsari, 2014). In the increasingly rapid development of industry, especially the development of the halal industry, traditional SCMs are considered not sufficient to accommodate market needs. Therefore, SCM develops according to industry needs to become halal supply chain.

Halal supply chain can be defined as the integration of processes and business activities from raw materials to end consumers (from farm to plate) (Omar & Jaafar, 2011). So the difference between SCM and halal supply chain is the goal. Supply chain management (SCM) is applied in companies so companies can reduce production costs. On the other hand, halal supply chain is used by companies with the aim of maintaining and maintaining product halality (Gillani et al, 2016). The halal integrity of products (halal integrity) will be one of the competitive advantages for producers to be able to compete with other producers in the same industry. The following are examples of halal supply chain images to be able to maintain product halalness. Only halal species can be bred and halal species do not consume unclean feed (Soon, Chandia, & Regenstein, 2017).

To encourage and facilitate the implementation of halal supply chain in Indonesia, Setijadi (2016) argues, the strong role of the Indonesian Government is needed, in this case including preparing facilities and infrastructure in implementing halal and halal supply chain logistics, which include logistics centers, warehousing airports, freight terminals, port, goods terminal, warehousing and so on. Likewise according to Zaroni (2016), the development of halal logistics in Indonesia needs to be encouraged and directed towards halal logistics management in an integrated supply chain management system.

According to him, the blueprint for halal logistics development in Indonesia needs to be compiled immediately, as a halal logistics development master plan in Indonesia. Blue map is needed for the concept of the halal product industry supply chain in Indonesia (www.gomuslim.co.id). On the other hand, Hutauruk (2016) said that goods truckers said the discourse on halal supply chain implementation would be ideal if the government had a transparent and clear certification component.

5. Infrastruktur dan Transportasi

If we look at Indonesia's geographical conditions and its population distribution, halal hub ports are one of the important facilities in the implementation of halal supply chains in Indonesia. Halal hub port will make the processes needed in halal supply chain implementation effective and efficient (Setijadi, 2016). In order to realize the halal hub port, on 2 August 2016 PT Pelabuhan Indonesia II (Persero) / IPC with PT Jakarta Industrial Estate Pulogadung (JIEP) signed a memorandum of understanding (MoU) on the preparation of a
joint study on the development and operation of integrated halal logistics areas JIEP area. This agreement aims to prepare everything related to halal international hubs in the JIEP region. Halal hub is a transit area for products originating from non-Muslim countries, with the aim to Muslim countries such as Indonesia (Lestari and Hakim, 2016).

PT Multi Terminal Indonesia, often called IPC logistics, is a subsidiary of PT Pelabuhan Indonesia II (IPC). PT Multi Terminal Indonesia operates a Halal Logistics & Cold Storage Unit which covers the handling of goods, storage and distribution of halal products (www.ipclogistics.co.id). PT Multi Terminal Indonesia has partnered with LPPOM MUI in order to implement a halal port or halal hub port in the Tanjung Priok Port of North Jakarta. The collaboration was confirmed through the signing of a memorandum of understanding between the two institutions (Hutauruk, 2016). On the other hand, PT Pos Indonesia as one of the Government Owned Enterprises (SOEs) also supports the development of the Halal Movement in Indonesia. The one done is by preparing a generation that has competence in the field of halal. (Firmansyah, 2015).

6. Main Commodity

Logistics can be defined as a process of planning, implementation, and control related to the process of storing goods and services in order to meet the needs of customers. The main objective of logistics is to ensure that consumers can enjoy, use, or consume products at the right time and amount, as needed, and in good condition (Talib & Hamid, 2013). So it can be concluded that logistics management includes a variety of activities, including: transportation, storage and warehousing, inventory management, service to consumers, and so on.

All halal products must follow sharia law, including the logistics process. Therefore, there is a need for a logistics process that applies sharia principles in its implementation. The main principle of halal logistics is ensuring the separation between halal and non-halal products. From all supply chains, logistics service providers play an important role in ensuring that raw materials, raw materials, packaging, storage and transportation of halal products have been carried out properly so that they are not contaminated with non-halal products (Soon et al, 2017). According to Tieman (2013) there are three basic halal logistics to ensure the integrity of the halal products produced, including: direct contact with illicit products, risk of contamination, and perceptions of Muslim consumers. Potential products that can be used as a focus for mining include:

- Halal Food Products
- Cosmetics and Halal Medicines
- Halal Logistics
- Halal tourism
- Muslim Fashion
- Halal Media and Recreation
- Islamic finance

D. Indicator of the Roadmap for Halal Logistics Development Strategy

In accordance with the main criteria for guaranteeing halal products, referring to the law guaranteeing halal products and the main indicators of the National Logistics System, several indicators can be used in preparing the Roadmap for Halal Logistics Development Policy Strategy roadmap. The following indicators are used:
E. Implementation Phase of the Halal Logistics Development Policy Strategy Roadmap

Halal Logistics Development Policy through the Roadmap The Halal Logistics Development Policy Strategy can be described as follows:

**Figure 1.** Indicator of the Roadmap for Halal Logistics Development Policy Strategy

**Figure 2.** Implementation Phase of the Halal Logistics Development Policy Strategy Roadmap
5 Conclusion

From the description above it can be concluded, halal logistics is the application of the principles of halalan toyyiban throughout supply chain activities. All activities ranging from sources of supply, storage, transportation, manufacturing, handling, and distribution must comply with the concept of halalan toyyiban. Halal logistics goals are to ensure product halal along the flow in the supply chain. Halal logistics is developing because of the higher level of consumer awareness, in addition to product halalness, it is also the halal of logistics and supply chain processes.

Halal logistics is important in Indonesia and the roadmap can be used in Indonesia in developing a national halal logistics system. The government's strong role in encouraging and facilitating the implementation of halal logistics is needed in dealing with problems and challenges. Along with this, researchers and academics have had the time to conduct research in the field of halal logistics.

Reference


[16]. Law Number 33 of 2014 concerning Guaranteed Halal Products

Seven Principles of Creative Problem Solving’ Prima Publishing & Communications.


Effective and Efficient Food Commodity Distribution Strategy at The Indonesia Logistics Bureau (BULOG)

Yusup Rachmat Hidayat¹, Yuli Evitha²
{yusup.rachmat@gmail.com¹, yuli.evitha@gmail.com²}

Departement of Logistics Management, Institut Ilmu Sosial dan Manajemen Stiami, Indonesia¹,²

Abstract. One of the business The Indonesia Logistics Bureau (BULOG) is logistics management of food commodities which have an important role in realizing national food security. Business activities BULOG has a commercial function and non-commercial functions or public service obligation (PSO) which is the duty from government. One of the BULOG activities that most felt by the people is the distribution of food commodities that have a large and broad influence on stability, affordability and availability of food commodities in the people. This study aims to determine the strategies used by BULOG in achieving effective and efficient food commodities distribution activities. This research was conducted with a policy research approach, with qualitative analysis, secondary data sources and explained descriptively. The results of the study show the implemented strategies by BULOG in food commodities distribution by applying the types of direct distribution channels and indirect distribution channels for their commercial business functions. Whereas for public service obligation function by applying the type of distribution channel whose system and mechanism are adjusted to the laws and government regulations, because public service obligation function are the duty from the government and use the Indonesia State Budget (APBN) which must be account to the public.

Keywords: Commercial Distribution Channel, Food Distribution Channel, Non-Commercial Distribution Channel.

1 Introduction

The Indonesia Logistics Bureau (BULOG) is one of the Government-Owned Enterprises (BUMN) in the form of a Public Company (Perum) which has commercial and non-commercial business functions. The commercial business function is to get profits to run and develop its business, while the non-commercial business function is the duty of the government in the form of Public service obligation (PSO). One of the business sectors carried out by BULOG is managing logistics in the field of food commodities.

The logistics management of food commodity by BULOG has a large and broad influence on stability, affordability and availability of food commodities to all Indonesian people. Of all BULOG logistics business activities that are most felt and directly affected by the public are food distribution activities.

Distribution is one of the elements of logistics management activities, according to Tjiptono (2014: 295), "Distribution channels are a series of organizational participants who perform all the functions needed to deliver products / services from sellers to final buyers".
Meanwhile according to Daryanto (2011: 63), "Distribution is an organizational tool that is interdependent in providing a product to be used or consumed by consumers/users".

In conducting a distribution system, BULOG certainly has a distribution strategy that can be applied simultaneously and does not interfere with each other between commercial business functions and non-commercial business functions. This distribution strategy is of course to achieve effective and efficient business operations in managing the logistics of food commodities.

According to Trisilawaty et. al. (2011), The strategy is realized by the application of company policy in dealing with six factors driving supply chain performance, namely facilities, inventory, transportation, information, resources, and prices.

"Food distribution is an efficient distribution system which is a prerequisite for ensuring that all households can obtain sufficient quantities of food and quality at all times, at affordable prices", Nainggolan (2008).

A study that has been done before about the role of distribution channels in product and service marketing, Lubis (2004), "To place an item and service in the right place, the right quality the right amount, the right price and the right time needed a distribution channel right too. If the company is wrong in choosing a distribution channel it will be able to disrupt the smooth flow of goods or also from the company into the hands of consumers ".

From the background of the problems mentioned above, a question arises about:

1. What is the distribution strategy for food commodities in BULOG which has the function of commercial and non-commercial business activities?
2. Is the distribution strategy effective and efficient for BULOG business operations that have the function of commercial and non-commercial business activities?

This study aims to identify the application of food commodity distribution strategies carried out by the Bureau of Logistics and to find out whether the strategy is effective and efficient for BULOG business operations that have the function of commercial and non-commercial business activities at once.

2 Research Method

Sugiyono (1999: 1) The research method is basically a scientific way to obtain data with specific purposes and uses. In conducting this research, the authors approached the Policy Research method and used qualitative data analysis. Sugiyono (Majchrzak, 1987) explains, policy research is a process of research carried out on, or analysis of basic social problems, so that findings can be recommended to decision makers to act practically in solving problems.

Data analysis in this study was carried out by qualitative analysis. Denzin and Lincoln (Moleong, 2005) explain that qualitative research is research that uses natural settings, with the intention of interpreting phenomena that occur and are carried out by involving various existing methods. With sources of data obtained secondary, which are data obtained by researchers indirectly and from studies of several journals, articles, government regulations, company data, internet, etc. which is considered relevant and related to the topic of research.

And the results of this study in the preparation and delivery or the level of exploration carried out a descriptive approach. Moleong (2008: 6) explains that descriptive research is research that describes and paints the state of the object of research at present as it is based on facts.
3 Result And Discussion

From the results of the research, the function of BULOG's business activities in managing food commodities has several objectives for business functions, namely:

1. Commercial Business
2. Non-Commercial Business / Public Services Obligation (PSO).

From the various functions of business activities that are jointly managed, BULOG's distribution strategy implements a variety of different distribution channels according to the function and purpose of shipping these food commodities.

1. Commercial Business

BULOG, although it is one of the government-owned companies (BUMN), in its business activities still has to carry out the function of commercial business activities to seek profits to support, operate and develop the BULOG business as a whole and compete with other companies in a market mechanism.

In distributing products in the form of food commodities for its commercial business functions, BULOG conducts a distribution strategy by implementing distribution channels that generally apply and are known in various businesses and by the community. The distribution channel is another:

a. Direct Distribution Channel
b. Indirect Distribution Channel

![Figure 1. Distribution Channel of the BULOG Commercial Business Unit](https://www.kompasiana.com/agungatv/5afb4e59cf01b475ae00def2/yuk-raih-penghasilan-melalui-program-rumah-pangan-kita-perum-bulog?p=0)
a. Direct Sales Distribution Channels

Distribution of BULOG products carried out by BULOG directly to consumers. In this case, activities are distributed and trade transactions are carried out directly between BULOG and consumers without intermediaries. The Direct sales distribution channels are carried out in various ways as follows:

1) consumers buy directly at the BULOG Mart Shop at the BULOG divorce.
2) BULOG uses cars placed at target points and;
3) BULOG through Direct Sales directly sells to consumers which they call HOREKA (hotels, restaurants, catering), etc.

b. Indirect Distribution Channel

Product distribution carried out by BULOG indirectly to consumers through sales intermediaries. The intended intermediary for selling BULOG food commodities are distributors and BULOG partners.

Distributors are intermediaries for the sale of food commodities who act and act as agents or large traders in traditional markets and modern markets, modern retailers. Distributors get supplies from BULOG with certain quantity, quality and price and determine the return selling price according to the Highest Retail Price (HET) set by the government. Or conversely the sales brokers or distributors can buy directly into the BULOG warehouse.

Whereas the BULOG Partner is developing a direct distribution channel with a community-based Partnership Program with business guidance to become a food entrepreneur and become an agent for selling BULOG products. There are two partnership programs carried out by BULOG to the community for guidance as partners and become agents of entrepreneurs in the food sector, namely Rumah Pangan Kita (RPK), and Toko Baitul Pangan (TOBATAN).

2. Business Non-commercial or Public Service Obligation (PSO)

The function of non-commercial business activities is the function of business activities with the aim not to seek profit in the form of the implementation of the duties of the public services obligation (PSO) given by the government because BULOG is one of the government-owned enterprises (BUMN).

This PSO’s duties activity from the government is the management of food commodities whose general purpose is to realize national food security with more specific type food commodities management is rice. The PSO activities of the government, especially the management of rice type food commodities are activities that dominate all operational activities of BULOG in the food commodity logistics management sector.

The reason the government assigns management of more specialized and large staple foods to rice-type food commodities to BULOG, is due to the following:

a. The nature of rice that is vulnerable and easily damaged.
b. Rice has uncertainty in terms of availability and price.
c. In terms of staple food needs in Indonesia, rice has a large, broad and mass level of needs.
d. As Rice is an important commodity in food security of a country. Many countries implement special food availability policies for rice to realize food security and as a national food reserve.
e. As Rice is very strategic in dealing with emergencies, disasters and food insecurity.
The distribution of food commodities by BULOG which is the duty of the government has various programs with different goals, objectives and functions and has been regulated in accordance with applicable government laws and regulations, as well as the distribution channels also adjusted by applicable laws and regulations.

Some of the implementation of the PSO program from the government was carried out by BULOG in terms of logistics management of staple food commodities, especially rice, namely:

a. Procurement and Distribution of Bansos Rastra
b. Management of Government Rice Reserves (CBP) for activities:
   1) Market Operations.
   2) Handle emergencies, disasters and food insecurity.
   3) Assistance and / or international cooperation and other requirements stipulated by the government.

a. Procurement and Distribution of Rastra Bansos

The program has long been known by the Indonesian people for a long time, namely rice for the poor (Raskin) and is now transformed into a Social Assistance of Rice For The Community to Prosperous (Bansos Rastra). The transformation of the government program in the form of a rice food subsidy pattern into a pattern of social assistance began to be effective in 2018. The fundamental changes and differences between the previous programs were in implementation, namely at Bansos Rastra there is no price / ransom fee to be paid by the recipient's family benefits (KPM), so that beneficiary families are expected to be more prosperous.

The distribution of Bansos Rastra is regulated through a mechanism in accordance with applicable regulations. There are technical guidelines for the implementation of prosperous rice social assistance (2018) as a general guideline for the Bansos Rastra which has been explained in relation to the pattern and mechanism of the Bansos Rastra distribution channel.
b. **Government Rice Reserves Management (CBP)**

Government Rice Reserve Management (CBP) is a PSO's duties program from the government managed by BULOG. Regulated in accordance with, Permentan (2018), about the Determination of the Amount of Government Rice Reserves, Government Rice Reserves are rice supplies that are controlled and managed by the government.

In addition, it is in accordance with Perpres (2016), about the Assignment of BULOG in the Framework of National Food Security. Government Rice Reserve Management by BULOG in the purpose and purpose of its use can be grouped among others to:

1) Market Operations
2) Handling Emergencies, Disasters and Food Insecurity,
3) Assistance and / or International Cooperation and other requirements stipulated by the government.

In each distribution of government rice reserves, different purposes and purposes have been used and the distribution channels implemented have a system and mechanism adapted to government laws and regulations.

1) **Market Operations**

The general principles of market operations for handling food shortages and stabilizing food prices are:

a) To prevent a surge in the increase in rice prices that can disturb the public.
b) Performed in certain areas at certain times.
c) Implemented by the merchant and related task force.
d) Using Government Rice Reserves.
2) Handling Emergencies, Disasters and Food Insecurity.

Permensos (2012), about Procedures and Mechanisms for Distribution of Government Rice Reserves for Emergency Response Handling is the legal basis that regulates the purpose of CBP use as a response to emergencies, disasters and food insecurity. It also regulates the procedures, patterns and mechanisms for dealing with them, such as: Determination of the level of emergency response status, Duration, Amount of rice distributed, procedures for submission, submission, authority to use CBP, charging fees, monitoring, evaluation and reporting.

3) Assistance and / or International Cooperation and other requirements stipulated by the government.

The use of CBP as assistance to foreign countries and / or international cooperation is currently still in the mechanism of coordination of the Ministry of Foreign Affairs because until now there has been no government regulation or technical implementation instructions regarding the distribution procedures and mechanisms.
4 Conclusions And Suggestion

4.1 Conclusions

Based on this research, it can be concluded that the effective and efficient distribution strategy of food commodities by BULOG are:

1. The distribution strategy of food commodities carried out by BULOG by applying:
   a. For the functions of commercial business activities, BULOG applies Direct Distribution Channels and Indirect and Distribution Channels
   b. For the functions of non-commercial business activities or Public Services Obligation (PSO), BULOG applies distribution channels based on laws and regulations.

2. For BULOG which conducts commodity food logistics management which has the function of commercial business activities and functions of non-commercial / Public Services Obligation (PSO)business activities at the same time, the distribution strategy that implemented by BULOG are distribution strategy are effective and efficient for BULOG business operations.

From this research it can be seen that a product can implement and have several distribution channels, each of which distribution channels depends on the purpose and function of the distribution of the product.

And the right distribution channel for a product depends on the purpose and function of the distribution of the product.

4.2 Suggestion

And based on research and conclusions, the authors suggest some recommendation for parties involved and related to BULOG business activities as following:

1. BULOG must have ability of good team work, fast and strong response in every action and decision. Because the distribution system involves many parties and a lot of coordination, which can often occur miss-communication and conflict. Moreover, BULOG in carrying out its service duties to the community has large and broad interests, so that it causes miss-communication and conflict as much as possible not to occur.

2. BULOG must have a speed of response and adaptation, for any policy changes related to the duty of public service obligations (PSO) from the government. BULOG is part of the government and is one of the A state-owned enterprise (BUMN).

Reference

Modeling The Green Marketing and Green Supply Chain Management in The Context of Supply Chain Risk Management Toward Sustainability

Yuary Farradia¹, Abdul Talib Bon²
{juaryfarradia@yahoo.com¹, talib@uthm.edu.my²}

Faculty of Economics – Universitas Pakuan – Bogor, Indonesia ¹, Faculty of Technology and Management - Universiti Tun Hussein Onn – Malaysia ¹²

Abstract. Consequences of both social, economic, and environmental within their operations and daily actions are required by industry sustainability. Sustainability issues relate to businesses operation carrying out firm commitment by responding to basic overall environmental issues. With regard to supply chain systems, knowledge of understanding risks and how to manage them in order to be of benefit to managers to reduce their consequences is very important. The environment, demand, supply, and process control are factors that usually attract attention. The model findings illustrate the model relationship between GMM and GSCM towards sustainability in terms of supply chain risk management. Greening management of supply chain will become best effort to prevent any risk of the supply chain, namely environment and economic (profitability) protection. Furthermore, GMM is also needed to maintain economic sustainability.

Keywords Green, Supply Chain Management, Marketing, Sustainability, modeling

1 Introduction

Industry sustainability requires some consequences of environmental, economic, and social inside their processing and routine work. That is, the reduction of environmental pollution, while in the downstream this also occurs in the welfare of the community, thus affecting economic performance known as the triple bottom line. In addition, the Triple bottom line having as subordinated issues as stated by European Commission (2013) are:

- **Social**: covers not only local community but also employees, solicitors and clients
- **Economy**: financial performance with its effect on any development of economic indicators and comply with principle business ethics; and
- **Environment**: broad effect from campaign programs relate to utilization of environment, natural resources, rejection of all nature, control of territory;

Implementation of the triple bottom line in the manufacturer can be done through both execution and control of raw materials flow efficiency, planning process, supply chain management, related information flow, inventories process as well as finished products. Transporters, warehouses, retailers, and customer themselves are the thing covered by supply chain besides manufacturer and suppliers. Involving linking marketing and supply chain alignment is also be needed. (Leppelt et al. 2013)
Research on green supply chain management (GSCM) has seriously concern on the environmental leverages and jeopardies to human health from industrial activities (Barari, 2012). Green supply chains concern on various process and activities related to its supplier within business perspectives. Adding green concept in supply chain refer to the supply chain perspective by including the natural environment. Zhu and Sarkis (2004) states that GSCM integrates the supply chains starting from supplier, to manufacturer, to customer and reverse logistics.

Business activities in green supply chain, consists of risk factors and or drivers as well as various risks (Ruimin et al., 2012). (Hayati et al., 2014) stated that it is always important to concern on managing the supply chain risk because there are balance of both opportunity and uncertain risk within the industry.

This paper emphasizes the model of green marketing (GM) and GSCM as the implications of supply chain risk management (SCRM). Finally, appropriate model of the GM and the GSCM within the context of the SCRM toward sustainability is reviewed.

**Sustainability**

Sustainability relates to how businesses concern on corporate responsibility to respond various matters on global environmental. Indeed, the corporate sector need to mediate the conflicts between economic imperatives and environmental goals in order to minimize harm of natural environment (Roxas & Chadee, 2012). There are some taxonomies used for sustainability indicator such as triple bottom line (TBL) concepts, 3P’s covers profit, planet and people (Burritt, 2012) and 3E’s namely economics, environment and equity (Thnawala, 2001).

To achieve firm sustainability in the heavily business competitive atmosphere, most companies do various effort in order to reduce operational expenses and to serve the customers better. Other effort is aimed to reduce the risk of the disorders in inventories and predicting the future as well as designing and managing the supply chain effectively (Burgess et al., 2006). Thus companies which figure out the way to improve their SCM able to have better performance within the competitive market (Jain et al., 2010).

**Supply Chain Risk (SCR)**

In regard to the system of supply chain, it is important to get knowledge on risk understanding and its management to get greatly beneficial in minimize various consequences (Juttner 2005). March and Shapira (1987) explore an understanding of risk in the field of SCM eg. risk as "a divergence in the possibility of supply chain outcomes distribution, their likelihood, and their subjective values".

Identifying and understanding the sources of risk in the supply chain reviewed by Zsidisin et al. (1999), Johnson (2001), and Mason-Jones and Towill (1998). Further more, demand, supply, environment, and process control are important factors in risk sources.

Srivastava, (2007) stated that SM need to integrate the dimension of environmental for designing the products, purchasing activities, material options, manufacturing process up to product delivery to the end of consumer.

**Green Supply Chain Management (GSCM)**

The GSCM is one of famous programs in environmental friendly business activities (Chen et al., 2012). This program results in lower cost to significant advantages and profit as well as responsible towards the environment issues for companies (Nikbakhsh, 2009). In addition, sustainable business and improvement of organizational performance could be achived by the GSCM practices and its elements (Rahim et al., 2016). GSM propose to
Consider the environmental challenges of all the product life cycle stages. These challenges constitute performance green goals.

In petrochemical industry, GSCM guides internal environmental management, environmental regulations, green purchasing, cleaner production, recovery, eco-design and pollution, reverse logistic, green supplier, customers collaboration, green innovation and return on investment (return investment) (Khaksar et al., 2015).

From the SCM perspective, external and internal factors in adopting environmental practices, defined as management practices to reduce various materials usages, innovate an eco-design products, up to sustaining the impact of environmental systems. Green et al., (2012) recommend firm to take internal factors of GSCM before adopting the external GSCM. This recommendation is supported by the study of Zhu et al., (2012) as firm performance was improved by adopting the internal GSCM and external GSCM, respectively. Environmental practices is involved in the supply chain and their business environments (Kim & Chai, 2017). Chavez et al. (2014) study found a cost reduction benefit for manufacturers through customer-centric GSCM practices, as well as another benefit on quality improvement, delivery, and flexibility.

The external GSCM relates to the external factor of a firm such as with supplier and customer. The external GSCM variables used in terms of supplier is to green purchasing (GP) whilst reverse logistics (RL) is from the customer perspective.

Green purchasing (GP) refers to the procurement of products and services that reduced effect on human health and the environment and promoting recycling, reuse, resource reduction, and substitution of materials as well as reducing any sources of wastage (Carter & Elram, 1998; Min & Galle, 2001; Zsidisin & Siferd, 2001).

GP has focus priority to overcome various problem of sustainability in the purchasing so that not only focus on conventional purchasing criteria of cost, quality, and delivery (Jimenez & Lorente, 2001; Kannan et al., 2008; Lambert & Cooper, 2000). GP concern on any purchase of products and services which able to minimize harm factors on human health and the atmosphere when compared with competing products or services that serve the same purpose. (Vishal & Avinash, 2016).

Reverse logistics adoption level has increased due to cost savings and revenues from returned products reason subject to the growing environmental concern (Roghanian & Pazhoheshfah, 2014), means that the practice of reverse logistics particularly on product return would generate various savings cost from transportation, inventory and waste disposal. Reverse logistics is commonly known based on the 4Rs i.e. refund, restock, refurbish and recycle (Murray, 2012).

Internal GSCM practices, such environmental management systems able to repair operational performance measures such as quality, cost, utilization of various capacity, on-time delivery, and market positioning, create the shortest production lead time, better products and equipment selection decisions, degrade waste in production and rectify chances for selling products in the global markets (Lai & Wong, 2012; Zhu et al. 2013). Yu et al. (2013) study also confirmed that internal GSCM influences operational performance in terms of delivery, flexibility, quality, and cost.

The internal GSCM practices are eco-design, internal environmental management, and investment recovery (Jabbour & Sousa, 2015). Green et al., (2021), stated that corporations tend to take up internal GSCM first before external GSCM. Zhu et al., (2012) stated that external GSCM can remedy firms' performance after the adoption of internal GSCM.
Green Marketing

Green marketing is one important draft at which marketers are using these days as a solution way for sustainable development. Peattie & Crane (2005) elaborated that green marketing tools such as eco-brand, eco-label, and environmental advertisement, will make insight easier and increase awareness of green products attributes and characteristics. Green marketing also plays an important role in performing sustainable development in the Business to Business (B2B) context (Arunachalam & Burgh, 2013).

Green marketing covers policies, marketing activities, and procedures that allow the natural environment benefits in which these activities proposed to generate income in which resulting outcomes that fulfill the product or product line objectives of both the organization and individuals toward sustainability. Firm sustainability based on the strategic and financial goals can be attained via the concept of green marketing mix, particularly in terms of reducing the harmful effects on the natural environment.

Green marketing mix (GMM), as a marketing tools and elements are used to attain enterprise goals without harming the natural environment (Al-Salaymeh, 2013). Green products which involve the environmental protection is become a purchase motivation for family and friends, therefore it contributes long run development of sustainability in the country (Gopalakrishnan & Muruganandam, 2013)

2 Method

The conceptual framework draws the relationship among the six constructs namely Internal GSCM, External GSCM, GMM and Sustainability. This study aims to explain the impact of Internal GSCM, and External GSCM with GMM on firm sustainability. In particular this study will elaborate that Internal GSCM and External GSCM are part of supply chain risk management effort.

This study reviewed of the previous research and data gathered from the current literatures. This study is also focus on the effectiveness of supply chain risk management efforts and analyzes the structural relationship between the constructs toward firm sustainability.

Supply Chain Risk Management

Various risks in supply chain can be categorized into industry, environment, and organizational risks (Rao and Goldsby, 2009). Some effort are needed To manage these various of supply chain risks to improve the supply chain performance through both reasonable trade-offs and balance situations between the among economic, environment and social sustainability. As the result, evaluation and selection of suppliers should be based on environmental and social standards elements subject to the implementation of supply chain risk management. One of the action on this associated risk management is to respond any social by developing various strategy on supplier development, coordination and obedience (Yawar and Seuring 2017).

Internal Green Supply Chain Management

Greening the manufacturing process can be done through implementation the internal GSCM where organization may enforce staff awareness on various internal environment management program and also designing programs of eco product as well as production process. A good policy in managing the environmental can ensure a guarantee of better financial performance (Yuhui, 2014). Hence, managing risk trough green manufacturing concept is the most important part of the financial performance of enterprises (Dongying et al.,
External Green Supply Chain Management

Greening the manufacturing process is also be done from the support of external GSCM factors such purchasing activity. Purchasing risk management become the most important part for environmental performance. Thus it is very important to implement the green purchasing as part of supply chain risk management. In relate to the customer side of the supply chain, a reverse logistics is the next important point for the supply chain risk management.

Green Marketing Mix

Green marketing mix dimension are green product, green price, green promotion and green distribution. Dongying et al. (2017) study found that there was an effect of green marketing risk to both financial and environment performance. Farradia (2019) find that GMM has significant relationship with both internal and external GSCM. Further her study also find that GMM plays as mediator between internal and external GSCM with sustainability.

Model Development

A model of the GMM and GSCM in the context of Supply Chain Risk Management toward sustainability can be developed as below:

![Figure 1. Conceptual Model](image)

3 Result and Discussions

The model development as illustrated at figure 1, describes the role of both GSCM and GMM as a part of the supply chain risk management. Greening the supply chain as well as the marketing can fulfilled the environment risk management. Green products to meet customers’ needs and wants could be driven by green marketing (Polonsky, 1994). Leonidou et al. (2013) study concluded the benefit of green marketing program on firms’ performance and Fraj et al. (2011) reported that green marketing strategy support the firms to manage their
resources efficiently and improve corporate image and reputation and leads firms to improve profitability.

The above literatures and various studies indicates that the dimension of green marketing mix such as product, price, place or distribution and promotion are applied as a green marketing strategy to generate sales which can strengthen the competitive advantage toward firms’ profitability. Green marketing mix encourages a greener pattern of consumption among consumers. Green promotion as the communication media for green product and the services. Another advantage through this green campaign also will enhance the corporate image subject to the social responsibility.

Internal GSCM concern on the innovation concept of environmental preservation in designing the products. Thus, the success internal environment management enforcement to the organization will lead to green manufacture vision. Whilst the eco design implementation would generate green product and green process which influence the firms’ performance. In particular for the environment risk management.

External GSCM more focus to both customer and supplier relationship. Thus the best risk management from external supply chain will impact to the firms' indicators for economic performance such as sales growth, market share up to the financial returns as well as the overall aspects of operational performance in order to increase the efficiency and to improve the quality of products.

Finally, various variables that link to the supply chain management within this study are analyzed based on the development framework for supply chain risk management toward firm sustainability.

4 Conclusion

The model illustrates the relationship between GMM and GSCM toward sustainability within the scope of supply chain risk management. Greening the supply chain management will become best effort to prevent any risk of the supply chain, namely environment and economic (profitability) protection. Furthermore, GMM also play an important role to maintain the economic sustainability as GMM can do green promotion continuously as well as creating the green product and green distribution innovation which will increase the margin set by the green pricing.

Acknowledgements

This research was supported by Universiti Tun Hussein Onn Malaysia and Universitas Pakuan, Bogor – Indonesia. Some direct observation and preliminary interview are contributed from some manufacturers in Banten Province – Indonesia

References


[36] Journal of Sustainable Development Studies. ISSN 2201-4268 Volume 6, Number 1, 2014, 71-95

Operations and Production Management, Vol. 21 No. 9, pp. 1222-1238.
Dior's $146 Straws: How Sustainability Becomes Fashion’s Business Drive

Manuel Gultom\textsuperscript{1}
{manuelgultom@gmail.com\textsuperscript{1}}

Universitas Airlangga, Surabaya, Indonesia\textsuperscript{1}

Abstract. This paper trying to answer the question of how is the global community responding to the global environment threat? In the business context, the awareness of consuming sustainable products is rising. Consumers’ awareness toward the products they are using, whether it’s the ingredients or the process of production sustainability has changed the businesses into a ‘greener’ way of operation. We could see that the two sides (consumer and producer) are trying their best to take care of the environment, but in the specific case of Dior the writer could also conclude that there is another motive beside sustainability awareness. Dior’s product of an expensive set of glass straws could be seen as taking advantage of the trend not to raise awareness but just to bring more and more profits. So the conclusion is that environmental threat could also bring positive impact to globalism, in this context: multinational companies’ profit.

Keywords: global community, global environment, sustainability

1 Introduction

In the current state of globalization, many actors around the world especially in the economic sector didn’t put environment to their best interest. Because of this careless actions, human has accelerated the degradation of environment. One of the major environment catastrophe caused by industries either from the North countries or the South countries are productions that are made from unsustainable materials. Plastic waste is the prime example of the industry carelessness. From 1950 to 2010 the gathered data shows that in 1950 alone the world produced 2 million tons of plastics and in 2015 it has multiplied in nearly 200 fold reaching 381 million tons.

Pavani and Rajaswari (2014) explained that plastic, while popular to use because of its flexibility and various ways to produce it is giving negative environmental impacts that are direct and also indirect. Plastic waste becomes a big issue when it comes to marine life. The ocean with plastic pollution do so much harm to the birds, fish, mammals of the sea as the waste mistaken by the creatures as natural food. For example, plastic bags are often mistaken by the sea creatures a squid, and plastic pellets are of often mistaken as fish eggs (Pavani and Rajaswari, 2014). Plastic as a material is also cannot be buried in the soil as it prevents the production of nutrients in the soil. Burning or trying to dispose of plastics is also unsafe as they produce toxins when they are breaking down and then polluted the air, water, and the ground. Pollutants from plastic waste include heavy metals (cadmium and lead) and chemicals (benzene, dioxins, and other pollutants).
The plastic waste phenomenon has raised awareness of the world’s population and the trend of using a more sustainable alternative has arisen. As stated by Bekmezci (2015), it’s seen today that more consumers are getting more conscious about the environment and are preferring to buy products that responsive and responsible to nature and environment. Environment aware consumers made a huge expectation on companies to keep up with the sustainable and environmental friendly production trend. The main pollutant that the writer is highlighting in this writing is plastic and this paper trying to answer the question of “How is the global community responding to the global environment threat?” and the global community that want to underline here are international companies. The unsustainable trajectory that happened requires a dramatic change in human relationship with the planet (Chapin et al., 2009) and explore the motives of their respond and the impact of environment crisis to capitalism. The main company that observed to set as the main example of this issue is Christian Dior SE as they just launched a rather expensive set of sustainable straws earlier this 2019.

2 Underlining Problems

2.1 Sustainability Trend Among Consumers
In this current age, consumers are more concerned about on the sustainability of the products they eat or wear. Concern about tools they’re using to accommodate activities is also growing. In their research about consumers green consumption behavior, Young et al. (2014) discovered that the decision to obtain sustainable products of consumers is consisted of five elements: (1) Green Values of Consumers (2) Choosing the Green Criteria (3) Barriers and Facilitators (4) Product Purchase and (5) Feedback. Based on those elements, the reasoning behind consumer’s decision to go green is a mixture of their knowledge of the issue regarding environmental degradation and their knowledge about how sustainable the product that they want to buy (regarding the production process and the ingredients). Saunter & Shin (2019) wrote in their WGSN report that current generation of youth is deeply woven with sustainability as they grew up in the time where the impact of environmental carelessness become more visible. Current generation prefer brands that support positive messaging, sustainability, and inclusivity.

Van Helven (2019) wrote in her article that over 80 percent of Millennials across Canada, the United States, India, Australia, China, and the UK took the importance of sustainable products seriously and they want corporations to operate in a more environmental friendly way. Millennials are also expected to spend 150 billion dollars on sustainable product by 2021. The known positive traits of a ‘green’ product are easiness to use, longer life spans, easy recyclability, and low environmental impact, these factors point that sustainable products have the main motivators that needed by costumers in order to purchase: value through better quality and lower price (Young et al, 2009). The trend is increasing and reaching a global level but as Clark et al. (2009) concluded, the main demography of green consumers are the ones who live in a developed wealthy nations who have the luxury to choose what kind of material the products that they’re willing to buy.
2.2 Sustainability Trend Among Companies

The awareness of environmental damage had risen since the 1980’s when UNEP (United Nations Environmental Programme) was implementing Cleaner Production (CP) and was proposed to prevent pollution from occurring in the first place, the result was cost effective and used all over the world (Young et al, 2009). The trend of “green” business has spread to most companies, e.g. Nike, Mark & Spencer, and IKEA have integrated green business model whether it’s the production or the products themselves (Deloitte Sustainability Report, 2014). The awareness among companies on sustainability is actually preceded by the fact that consumers and investors are increasingly aware of how the environmental and social issues so they began to question how the products are made. This phenomenon forces companies to approach a more responsible supply chain management. Production design then become more increasingly apparent in their intention to be ‘green’. Design for sustainability is not necessarily only about creating a new technology but about how companies could achieve growth while also reducing the negative environmental and social impacts of their products. That is why the design for sustainability trend is pillared by three factors: people, profit, and planet (Young et al, 2009).

Green or not, the main focus of companies is to generate profit. Product improvement in sustainability context has a positive impact on the growth of company, which also measured by profit growth. Fredriksen (2016), concluded that even though there were no significant finding in her study regarding financial profitability in green business, there was still increased in sales if the products and services are sustainable.

2.3 Fashion Industry’s Participation In Sustainability Trend

Sustainability in this current era has been one of the major considerations in fashion industry to implement in their designs. The fashion industry is currently undergoing a gradual change where they try to satisfy the consumers’ need of more environmentally friendly products. Fashion industry is the second most environmentally damaging industry with 1.5 million tons of waste put into landfills every year (Khandual & Pradhan, 2019). Given all the critiques, though, it seems worth noting that companies operating in the fashion apparel sector were among the first to concentrate on sustainability issues with the establishment of supplier codes of conduct in the early 1990s. In the years that followed, clothing brands took various steps to demonstrate their contribution to corporate sustainability like establishing sustainability committees or working teams or developing sustainability programs and publishing sustainability reports (Arrigo, 2015). One of the most prestigious fashion companies, Kerring (the company that housed Gucci, Stella McCartney, Bottega Veneta, & Puma) made a trailblazing decision when Puma became the first company that ever launched an Environmental Profit & Loss (EP&L) account in 2011 and finally the entire Kerring in 2014 had released an EP&L account on their website (WGSN Futures, 2016).

The major rule in sustainable fashion is a production that helps the producers and their crafts in sustainable fashion. This form of sustainable fashion indicates the production and procurement of raw materials, as well as manufacturing, in such a way as to pay fair wages to workers or people living on the land, to ensure a safe working environment and to promote sustainable agriculture. Achieving a production level of zero-waste remains a challenging task, but most companies have begun to take action by using various ways to minimize waste. It has become common practice for designers to use discarded fabrics to produce trims such as
buttons, tassels, and embellishments, or sculpt the m (Khandual & Pradhan, 2019). To order the assessment of environmental impact, it is important to analyze the sustainability of the item and the life cycle problems, such as garment washing, beginning from the design stage. Experimentation in the search for a more sustainable approach to fashion can involve finding new ways and tools to reduce the impact of fashion on the planet, for example by using three-dimensional scanning to measure the body of customers (Arrigo, 2015). Both businesses (fast fashion or luxury brands) see corporate sustainability as a key driver of growth and invest capital and skills in the search for new innovative technologies and procedures to achieve sustainable development where benefit, environment and people are balanced (Arrigo, 2015).

2.4 Sustainable Straws as an Example of the Trend
One of the most tangible examples of trend change towards a more sustainable product is straws. The using of plastic straws is estimated in numbers as 175 million a day. It may seem like a big number but not as huge as other various types of microplastic that have released into the ocean with 8 trillion daily (Xanthos & Walker, 2017). The singular obsession toward plastic straws can be traced from the 2015 viral video of turtle with straws embedded into his nose, causing it to bled (Perry, 2018). The panic toward plastic straws has created a new opportunity in business, by selling alternatives to plastic straws. In the United States other alternatives like metal, glass, and paper straws are more popular than ever (Glum, 2018). Small businesses have took an advantage from this alternative straw trend and generated a lot of profit. With the help of e-business boom, the alternative straws reached its demographic easier. The search for metal straws on Etsy (an e-commerce website focused on craft supplies) up 205% over the past 6 months of July 2018 (Glum, 2018). The one example of those small businesses profiting from the trend is Koffie Straws, a New Jersey based sustainable straws business. With $11.99/package they reported that the sales could reach 20,000 or 40,000 monthly.

What about the big businesses? Earlier in 2019, Dior has jumped on the trend train. Christian Dior SE or simply ‘Dior’ is a luxury brand company based in France. Dior is chaired by Bernard Arnault who also chaired LVMH (Moët Hennessy – Louis Vuitton) that is also a huge luxury brand company. Unsurprisingly, Dior is also the main holding company of LVMH. Dior has six principal product lines: Couture, Wines & Spirits, Fashion & Leather Goods, Perfumes & Cosmetics, and Watches & Jewelries. On 8 August 2019, Dior has announced an introduction to its very own $146 box of six hand-blown brown glass straws painted in metallic gold. Justin Fenner, a reporter for Business Insider said that “the product shouldn’t come as a surprise since Arnault has enacted in earth – friendly measures like installing LED lights in stores and sponsoring UNESCO biodiversity programs”. The current trend of sustainability has reached a lot of fashion companies not only Dior, for example Prada who produced nylon bags recycled from ocean waste and Ralph Lauren who created a line created from recycled plastic bottles called Earth Polo. Ferrier (2019) stated that the fashion industry has never been afraid to capitalize on a cause in order to sell products. Decision of launching a luxury straws product by Dior also drew criticism. Ellen Scott, a columnist for Metro Magazine UK said that the idea is ‘ridiculous and ‘silly’. She elaborated that what Dior do is like ‘putting a plaster on sinking ship’ – not contributing much to the environment crisis. Scott also criticized the relatively high price and the effort to distract people from the real issue: waste from corporations.
2.5Is Following the Trend Enough?

Van Elven (2019) reported that although 72 percent companies mentioned the UN’s Sustainable Development Goals in their annual report, only 27% actually implemented them in their business strategy. This could be simplified that the next goal for corporations is to actually do “walk the walk”. Rather than just using sustainable materials and giving the consumers post purchase responsibility, it is important for companies to go for drastic change beyond expectation in order to reduce waste. Some companies who have change implement drastic measure are Adidas who pledged to only use recycled plastics by 2024 and Burberry who signed agreement to only use recyclable packaging by 2025 (Van Elven, 2019).

WGSN (World Global Style Network) reported the insight about future sustainability on their ‘The Vision 2030’ newsletter; they wrote that with the help of technology companies could increase the awareness of sustainability even further. The steps are (1) Educating consumers by sharing companies stories about their production to consumers, (2) Empowering consumers so they could make a conscious and educated decisions on their consumption and give them chance to communicate dissatisfaction to companies, (3) Fostering connection with consumers using technology to connect directly the consumers and the companies, (4) Promoting transparency in supply chain by using technology to collect and track the data from supply chains all around the world, and last but not least (5) Reducing waste with collecting data before production to know what kind of trend or in demand style before designing the products as it could lead to reducing waste from unwanted or unused materials. In a more specific manner, the WGSN also wrote about the benefit of 3D printing in the future. Apparels made from 3D printing will create some benefits that are environmentally friendly such are small in carbon footprint, no production waste, recyclable materials could be used, biodegradable materials could be used, the possibility of extending the life of existing products.

In a more general discussion about the whole environmental degradation issue, Chapin et al. (2009) proposed a strategy framework to tackle the issue of this rapidly changing planet. The frame work is called ‘Ecosystem Stewardship’ and defined as an action-oriented process aimed at promoting a rapidly changing planet's social-ecological sustainability. Recent developments describe three approaches in a world of imminent confusion and abrupt change that allow effective use of current understanding that are also an overlapping integration: (1) Reducing the vulnerability to known stresses (the environment damages), (2) Promoting resilience in the face of disruptions and instability to preserve optimal conditions, and (3) Transforming from unwanted trajectories when opportunities arise. The team addressed that all social-ecological systems are vulnerable to recent and expected changes, but have sources of adaptive ability and resilience capable of sustaining ecosystem services and human well-being through effective Ecosystem Stewardship.

Reducing the vulnerability to a global stress like the climate change is a bigger challenge since local community behavior often minimizes the stress exposure and also often minimizes the stress (e.g. building sea walls that prevent the rise of sea levels). Reducing global stresses require an international cooperation which sometimes lacks governance frameworks. Collaboration between influential nations can reduce global stresses (Chapin et al., 2009). Ecosystem Stewardship also shifts the philosophy of resource management from reactions to observed changes in proactive governance that shapes sustainability to prepare for the unexpected. This is similar to a business strategy that shapes markets in a changing and
unpredictable economic climate to maintain and build competitive advantage. The last step in Ecosystem Stewardship is to transform the unwanted trajectories to more favorable ones. Social-ecological transitions are always dangerous as the changes are large by nature, and the implications are unpredictable, including possible exploitation by special interest groups. Nevertheless, structural reforms are necessary to avoid the persistent trajectories of inequality, hunger, civil strife, and social-ecological mismanagement that so many parts of the world are marked by.

2 Conclusion

Referring to the question of “How is the global community respond to the environmental threat?” the write concluded that the respond has been positive. In the business context, the awareness of consuming sustainable products is rising. Consumers’ awareness toward the products they are using, whether it’s the ingredients or the process of production sustainability has changed the businesses into a ‘greener’ way of operation. We could see that the two sides (consumer and producer) are trying their best to take care of the environment, but in the specific case of Dior the write could also conclude that there is another motive beside sustainability awareness. Dior’s product of an expensive set of glass straws could be seen as taking advantage of the trend not to raise awareness but just to bring more and more profits. So the conclusion is that environmental threat could also bring positive impact to globalism, in this context: multinational companies’ profit

References

‘i want to go to school but …’ The case of the Penan and Orang Asli Children of Malaysia

Ong Puay Liu¹, Ong Puay Tee², Ng Kum Loy³, Ong Puay Hoon⁴
{ puayliu@gmail.com¹, ptong@mmu.edu.my², ngkumloy@yahoo.com³, ongpuayhoon@ntu.edu.sg⁴ }

Institute of Ethnic Studies, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia¹, Multimedia University, Melaka Campus, Malaysia², Dyslexia Association of Sarawak, Kuching, Sarawak, Malaysia³,⁴

Abstract. This paper argues that one of the main contributory factors is ‘dysteachia’, a term coined to refer to the inappropriate methodology used by teachers in schools to teach language, in particular, Malay and English languages. Primary schools in Malaysia have the tendency to use the whole word approach to teach reading and writing in English, and the syllabic approach (letter-name) for the Malay language (Bahasa Melayu). Students with reading difficulties have problems with these approaches. Through its experience of teaching students with reading difficulties, the Dyslexia Association of Sarawak (DASwk) have created a phonics-based program with special features: it is structured, cumulative, multi-sensorial and utilises an array of tools and activities to stimulate interest, attention as well as cultivate appropriate skills progressively. For the English language program, it is called SMARTER*phonics and the Malay program is called foniks*PINTAR. The application of these two programs through one-week literacy camps, showed that SMARTER*phonics and foniks*PINTAR have proven to be effective learning strategies to enhance the reading skills of Penan and Orang Asli Temuan children who participated in these programs. In addition, these phonics-based programs also serve as advocacy tools to inspire these children to want to go to school, to remain in school and to acquire an education through the confidence they have acquired through their ability to read and write.

Keywords: Sustainable Development Goal (SDG), Penan and Orang Asli Children

1 Introduction

The indigenous peoples (Orang Asli and Orang Asal) of Malaysia have historically been associated with isolation and remoteness due to their preferred habitations along rivers, in jungles, mountains and valleys and life-styles as hunters and food-gatherers. As of 2015, the indigenous peoples of Malaysia were estimated to account for 13.9% of the 31 million total population (Lasimbang 2016). The Orang Asli are the indigenous minority peoples of Peninsular Malaysia. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay account for 205,000 persons, representing a mere 0.84% of the national population.

Ever since the five-year Malaysia Plans were published, the Penan community of Sarawak and the Orang Asli community of Peninsular Malaysia have never failed to be listed among the most impoverished of Malaysians until today (Nicholas 2000).
In the case of the Orang Asli, it was found that an average 94.4% of Orang Asli schoolchildren who registered in Primary One never reached the end of secondary schooling 11 years later (Hasan 1997). According to Hasan’s analysis, an average of 62.1% of Orang Asli students dropped out annually for the period 1971-1995, and 39.2% (almost 4 in 10 young children) did not go to school at all (Hasan 1997).

In 2011, the Human Rights Commission of Malaysia (SUHAKAM) published a report titled ‘Laporan Status Hak Pendidikan Kanak-Kanak Orang Asli’ (Report on the Status of the Right to Education among Orang Asli Children). In this report, SUHAKAM noted that through its research, it was found that in several areas, Orang Asli children did not attend school at all. In addition many Orang Asli children have stopped schooling. Among the factors contributing to this dismal state of education and schooling among Orang Asli children were problem of transportation to school, lack of formal documentation such as birth certificates and identity cards, attitudes of Orang Asli parents and children towards education and schooling, attitudes of school Heads, Principals and teachers, teaching and learning pedagogy, lack of teaching equipment and learning aids, shortcomings in the implementation of the Supplementary Food Plan (Rancangan Makanan Tambahan, RMT) and Poor Student Trust Fund (Kumpulan Wang Amanah Pelajar Miskin, KWAPM) (SUHAKAM 2011: i).

According to the Education Blueprint 2013-2025 published by the Ministry of Education, several economic, geographic, and cultural factors limit Orang Asli students’ access to quality education. Firstly, higher incidences of poverty and the tendency to live in remote locations means that many Orang Asli students do not attend preschool and thus start from a low literacy and numeracy base in Year 1. Additionally, Bahasa Malaysia is not the mother tongue for most of these students, which further impedes learning. Secondly, principals and teachers report that existing training programmes do not sufficiently prepare them for the complexities of working with these communities. They struggle to support students on multiple levels: from helping them integrate with their non-Orang Asli peers, to convincing them and their families of the value of pursuing basic and further education (Ministry of Education 2013: 4-21).

In the case of the Penan community currently residing in relocated areas in Murum, Sarawak, accessibility to formal education is still limited. The Penans recognised the value and importance of formal education for the advancement and well-being of the community. Nevertheless, their aspiration for formal education is constrained by the fact that schools are often not located in the vicinity of their villages.

2 Literature Review

2.1 Education among Penan and Orang Asli Communities

The Sustainable Development Goals (SDGs), also called Global Goals from Transforming Our World: the 2030 Agenda for Sustainable Development, are committed to achieving sustainable development where ‘no one is to be left behind’. The 17 SDGs represent a universal call of action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. As quality education is the main foundation in achieving progress in each dimension, SDG Goal Number 4 seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030 (United Nations 2015).

The importance of the right to education epitomises the indivisibility and interdependence of all human rights (UNESCO 2014; Ong et al. 2016) and is supported by the Universal Declaration of Human Rights (1948) and the Convention on the Rights of the Child (1989),
that all children, young people and adults have the human right to benefit from an education that will meet their basic learning needs in the best and fullest sense of the term. It is an education geared towards tapping each individual’s talents and potential, and developing learners’ personalities, so that they can improve their lives and transform their societies (UNESCO 2000: 8). Illiterate persons have lower or minimal opportunities for gainful employment and increased risk of poverty, involvement in delinquency, criminal activities and incarceration (see for example, Hogenson 1974; Adiseshiah 1990; Brunner 1993; Nordtveit 2008).

In its Education Blueprint 2013-2025, the Ministry of Education Malaysia maintains that every Malaysian child deserves equal access to an education that will enable that child to achieve his or her potential (Ministry of Education 2013: E-9; Ong et al. 2016). Although 97.3% of Malaysia’s population aged 10-64 are literate in 2010 (Department of Statistics Malaysia 2013: 3), there are grossly different literacy rates among its diverse communities, especially between indigenous and non-indigenous communities. Indigenous and other minority groups comprise groups such as Orang Asli, Penan, Peribumi Sabah and Peribumi Sarawak. They account for 4% of all Malaysian primary and secondary school students. 68% of these students live in rural areas, and 80% in the states of Sabah and Sarawak. The Blueprint reported that statistics on student outcomes of indigenous and other minority groups in National schools apart from those regarding Orang Asli students is limited. Thus, while acknowledging that some difference in experience is likely to exist between groups, it noted that the Orang Asli experience will be used as a gauge for how indigenous and other minority groups are faring, at least until better data is available (Ministry of Education 2013: 4-20).

Of particular interest is that children of Orang Asli in Peninsular Malaysia and the Penan community of Sarawak have been identified in the Education Blueprint as communities requiring special attention in its aspiration to achieve equitable education for all (Ministry of Education 2013: 4-20-21). Literacy levels among the children of these communities (as per note above, statistics available only for Orang Asli children) are lowest when compared to other communities and notwithstanding, high rates of absenteeism from school, dropouts and poor performances in examinations (Center for Orang Asli Concerns 2012).

The Ministry’s current policy is to provide Orang Asli and Penan students with educational opportunities relevant to their needs. As such, in July 2012, the Ministry launched a dedicated 5-year transformation plan for Orang Asli education that ran from 2013 to 2018. A comparable plan for the minority groups in Sabah and Sarawak was launched in April 2013 (Ministry of Education 2013: 4-21). However, to date, as noted by the Education Blueprint, statistics regarding student outcomes of indigenous and other minority groups in National schools apart from those regarding Orang Asli students is limited.

2.2 Towards A More Effective Reading Methodology

In response to the need for more effective methods of teaching reading and writing to young children, the Dyslexia Association of Sarawak (DASwk), which is based in Kuching in Sarawak, Malaysia proposed an alternative paradigm to help children increase their literacy skills with the hope of enhancing their opportunities for social inclusion in future. Primary schools in Malaysia use whole word approach to teach reading and writing in English and syllabic method (using letter names) to teach for Bahasa Malaysia. Not all children are able to learn to read and write with these two instructional techniques. From its years of experiences of teaching struggling readers, DASwk has developed an innovative, highly structured, cumulative and multi-sensorial reading programme which uses letter sounds (Ong et al. 2014). This program, called SMARTER*phonics™ (and foniks*PINTAR, its counterpart for Bahasa
Melayu), has helped struggling & poor readers and children in rural and remote schools in Sarawak since 2009. The phonics approach has been widely documented to be an effective instructional technique for reading and writing (Fountas & Pinnel, 1999; National Reading Panel 2000).

Since 2011, DASwk has conducted SMARTER*phonics™ workshops for teachers in preschools, schools and teacher training colleges as well as camps for school-going children, particularly children in LINUS (Literacy and Numeracy Screening) remedial classes in the various administrative divisions of Sarawak. The modus operandi of having the camp as a one-week stay-in style is to provide an intensive and immersive environment for the children to learn. Such camps had also been conducted for children in rural and remote schools, and children of the marginalized indigenous Penan community in Sarawak.

The “Literacy for Social Inclusion - the Right to Read for All Children Program”, was introduced in Peninsular Malaysia in 2016 for the first time among Orang Asli communities residing in the State of Selangor, Peninsular Malaysia. This program aims to ensure that all participating children will have the basic decoding and encoding skills to read and write in English. Hence, at the end of the one-week program, participating children will be able to (i) read and write in English up to their age-appropriate level; and (ii) read and write in English up to their age-appropriate level.

In 2016-2017, DASwk, its collaborators and funders conducted a once-a-month literacy program on Sundays in Bahasa Melayu (BM) and English among Orang Asli Temuan children in their own villages at Kampung Kachau Luar, Ulu Semenyih and Kampung Gabai, Dusun Tua. Both villages are in the state of Selangor. Poor and erratic attendance of these children impacted its learning outcomes. The participants were either working, looking after their younger siblings or looking for food or things to sell from the surrounding jungles. In 2018, the team organized two one-week literacy camps for Bahasa Melayu held at a venue outside the Orang Asli children’s village to ensure full and continuous attendance. These camps, conducted in stay-in and away-from-home format, aimed to provide an intensive and immersive environment for the mastery of reading and writing in BM among the targeted children and youths.

In 2018 too, two one-week camps were organized for the Penan children residing at Tegulang and Metalun, Murum, Sarawak.

The next section will provide a brief description of the Orang Asli and Penan communities.

2.3 Orang Asli of Selangor

The Orang Asli subgroup selected for this literacy program is the Temuan community. The Temuans belong to the Proto Malay category, as illustrated in the snapshot below:
In 1991, the Temuan population totalled about 2,148, and in 2010, the population was about 19,343 (Endicott 2016: 3). In Selangor, the Temuan community is concentrated in two districts, namely Kuala Langat (downstream) and Hulu Langat (upstream), and distributed around 13 villages (Tvrdt & Jakobsson 2006). Traditionally, the Temuan ply the Langat river and made use of the river as the main transportation system. They settled in villages along the river, at the upstream (Hulu Langat) and downstream (Kuala Langat) of the Langat river. But as the river water level subsided, they practised a settled existence, subsisting as hill paddy farmers, fruit and vegetable growers, inland fishermen, hunting and trading in forest products. In recent times, the Temuans work as wage earners in oil palm, rubber, government agencies and private companies (Tvrdt & Jakobsson 2006).

According to Tvrdt & Jakobsson (2006), the most outstanding social problems of the Temuan community are relative poverty and low income. It is estimated that about 80% of the Orang Asli communities live under absolute poverty, which makes them the poorest of the poor communities in Malaysia. Various reasons were given for their state of poverty, among others: non-recognition of legal rights to their land; marginalization despite rapid progress in mainstream society; exploitation and environmental degradation; monetization of the economy causing dispossession of land and relocation.

There is thus a need for more sustainable and equitable development poverty eradication strategy, for example, aggressive programme of sponsorship in education, equitable programme of land ownership, compensation plan for land acquisition, empowerment and participatory programme, and contribution from the private sector or agencies that has exploited their environment (Tvrdt & Jakobsson 2006).

Kampung Kachau Luar is an Orang Asli village from the Temuan community, located at Semenyih, about 25 km from Kajang town. Many of the children here dropped out of school (nearest school is Sekolah Kebangsaan Ulu Semenyih, which is about 8 km from the village). Kampung Gabai is also an Orang Asli village from the Temuan community, located at Dusun...
Tua, Hulu Langat. It is about 50 km from Kajang town (location of both villages as shown below).

Kampung Kachau Luar has 35 households, with a population of about 138 people. Majority of its villagers are animists, with several Christian and Muslim families. Houses at Kampung Kachau Luar are single-story concrete houses. There are several abandoned houses. There is a community hall, which has a toilet and bathroom – all of which are not well-maintained. The toilet and bathroom have water problem. There is a surau (village mosque) as some of the households are Muslims. Most of the households, however, are animists, and there are also several households who are Christians.

Kampung Gabai has 26 households, and about 150 people. Most of the families do village work, such as collecting forest products (buluh/bamboo, petai, fruits, rattan, bamboo shoots etc.), farm produce (durian, rambutan, vegetables) and bee rearing. Kg Gabai has been in existence since 1983, and most of the residents are related to one another, except for several people who come from elsewhere but married to Gabai villagers. Here at Gabai, there is a surau (village mosque) but no balai raya (community hall). Water supply is from the river, and there is electricity (metered). About half of the population have no toilets.

The education level for both Kampung Kachau Luar and Kampung Gabai is lower compared to the mainstream education level of non-Orang Asli. While more children of Kampung Kachau Luar go to school, the opposite happens for Kampung Gabai. Most children do not go to school. An in-depth household study could be conducted to understand the reasons why these Orang Asli children do not want to go to school. The reasons could include the living conditions, lifestyle, perception, attitudes as well as the school environment.

Nevertheless, one structural constraint could be the possession of formal identification documents. One pertinent issue connected with the lack of schooling among the Temuan children is identity cards (IC/MyKad) and birth certificates (as stated in the SUHAKAM Report 2011). For example, more than 20% of the villagers at Kampung Gabai do not have MyKad and/or birth certificates. Parents do not have IC, do not register their marriage, and pregnant mothers do not have ‘Buku Merah’ (Red Book) – a book to record their checkups.
during pregnancy, and after the birth. Why does this happen? Because there were women who gave birth in the village even though there was no midwife available. They gave birth by themselves with the help of other women, or sometimes, they didn’t have time to go to the hospital. To get IC or even birth certificate is a tedious affair. The parents have to bring the child to the Department of Orang Asli Development (JAKOA) in Kajang in person because they have to sign or have their thumbprints taken. Without IC or formal identity documents, these Orang Asli adults and children could not leave their village without fear. One teenage girl said she does not leave the village and has never been to school because she has no formal identification papers.

Both Kampung Gabai and Kampung Kachau Luar are surrounded by beautiful scenery – the Titiwangsa range. Kampung Gabai is located near the Gabai Waterfalls, while Kampung Kachau Luar is in the vicinity of Broga Hills. The Langat river with its tributaries such as Sungai Semenyih and Sungai Lui, is the major source of water supply. However, the Pangsun Dam, Langat Dam and Semenyih Dam have brought changes to the livelihood and lifestyle of the Temuan community. In the midst of lush greenery, abundant water supply and rich forest, the Temuans are living in poverty, marginalised from mainstream society, and placed under the care of JAKOA, which is said to be the ‘father’ of the orang asli people.

But in such a fundamental matter as issuance of birth certificates and identity cards, the Orang Asli community is facing a major obstacle. Many of them have no formal identification papers.

Many of the orang asli community have low level of education or no education at all. Many of the children registered for school, but do not attend school. There are those who do not register at all and have never stepped foot in a school (as in the case of Kg Gabai). Many of the students who went to school dropped out at a very early age (as in the case of Kg Kachau Luar).

In a study conducted by Doris et al. in 2012 in three Orang Asli villages (Kg Sungai Lalang Kachau Dalam, Semenyih, Selangor; Kg Sungai Ruil and Kg Pos Menson, Cameron Highlands, Pahang; and Kg Kerawat and Kg Sg Lalang, Simpang Pulai, Perak), it was found that the residents of these three villages have not been intensively exposed to training and education, especially in entreprenuerial development (Doris et al. 2012: 43).

2.4 Penans of Murum, Sarawak

The Penan children who participated in the literacy for social inclusion programs organized by DASwk come from Tegulang and Metalun, Murum, Belaga District, Sarawak. Both Tegulang and Metalun are resettlement villages for Penan and Kenyah communities who were affected by the construction of the Murum Dam which flooded their homes and lands. The project began in 2008 and was completed in 2013.

The map below shows the location of the two schools the Penan children in these villages attended – Tegulang Primary School and Metalun Primary School. Tegulang Primary School is more than five hours from its nearest city, Bintulu where part of the road after Anding is untarred logging track, as with the road from Tegulang to Metalun Primary School which would take more than two hours in good weather.
The Murum Hydroelectric Dam is located at the upstream of Rajang River, Belaga District, and in the middle of the Penan and Kenyah community’s villages, who had been dependent on the forest for their livelihood. Its construction resulted in the relocation of 353 Penan and Kenyah families into seven villages with longhouses, six for Penan and one for Kenyah communities (Sarawak State Secretary Office 2016).

According to Langub (2008, cited in Chemsian Konsultant Sdn Bhd, Undated: C2), there were about 13,000 Penans in the whole of Sarawak. With the Baram River acting as the boundary, the Penan community is divided into two groups – West Penan and East Penan. The Penans who are residing around the Danum and Plieran Rivers are grouped under the West Penan category (Needham 1972, cited in Chemsian Konsultant Sdn Bhd, Undated: C2). The Penan community in the Belaga District has been residing at the valleys of Danum and Plieran Rivers since the 19th century (Brosius 1992, cited in Chemsian Konsultant Sdn Bhd, Undated: C2).

2.5 The Sounds of Letters: SMARTER*Phonics™ & Foniks*PINTAR

Due to time and infrastructural constraints, the literacy programme implemented among the Orang Asli Temuan children in Selangor in 2016 could not replicate the one-week programme conducted by DASwk in Sarawak. In addition, most of the Temuan children did not go to school or were dropouts. Hence, instead of a one-week training camp, we had a one-day (Sunday) once-a-month session for several consecutive months. Hence, the intensity and effectiveness of the programme conducted among the Temuan children in Selangor would not be as substantive and sustainable as the one-week programme conducted in Sarawak.

At Kampung Kachau Luar, Semenyih, we conducted four sessions of SMARTER*phonics for English (February, March, April & May 2016), and four sessions of foniks*PINTAR for Bahasa Melayu (June, July, August & September 2016). At Kampung Gabai, Dusun Tua, we conducted five sessions of foniks*PINTAR (February, March, April, July & August 2017).
SMARTER*phonics™ (and foniks*PINTAR) is a structured, gradual, repetitive approach, using phonics and multi-sensorial methods, and designed to enable students to sound out letters by segmentation and blending.

What is phonics?

Phonics refers to the relationship between letters and the sounds they make. This knowledge is essential to a child’s ability to sound out, or decode, and to spell, or encode words. Phonics also includes the rules in this relationship.

Children are taught sound-letter (or specific letter combination like /kh/, /ng/) correspondence so when they hear a letter sound, they can match it to the letter or letter combination and when they see a letter or specific letter combination, they can say its sound. They are taught the principles of blending from left to right where the sound of the first letter or letter combination merges seamlessly into that of the following letter or letter combination. This is decoding, sounding out while reading a word. The children are taught specifically the principles of segmenting where when they hear a word, they identify the letter sounds in sequence from left to right, match them to their letters or letter combinations and to write them down. This is encoding, writing a word that is heard. The children then use these processes of decoding and encoding to read and write. Repeated practice soon cultivates accuracy and fluency.

This is the first important step in learning to read. Phonics is a way of teaching children to read quickly and skillfully (Department of Education, UK 2013).

Why phonics?

Research shows that when phonics is taught in a structured way – starting with the single letter sounds and progressing through to blending and segmenting of CV, VC, CVC and longer words (C – consonant, V – vowel) and then to phrases, short sentences and passages – it is the most effective way of teaching young children to read. It is particularly helpful for children aged 5 to 7. Almost all children who receive good teaching of phonics will learn the skills they need to tackle new words. They can then go on to read any kind of text fluently and confidently, and to read for enjoyment. Children who have been taught phonics also tend to read more accurately than those taught using other methods, such as ‘look and say’. This includes children who find learning to read difficult, for example those who have dyslexia (Department of Education, UK 2013).

Effective phonics instruction is important because letter-sound knowledge is the foundation needed to build up reading and writing abilities (The Conversation 2018).

Research has also shown that the phonics method (using letter sounds) is effective for early and struggling readers. This phonics method is vouched for in the world-renowned Orton-Gillingham reading programs (The Academy of Orton-Gillingham Practitioners and Educators Undated). The U.S.’s National Reading Panel (2000) vouched for the superiority of phonics and phoneme manipulation in teaching any young children of any age group to learn to read and write in English and other alphabetic languages. Various brain research have provided evidence that phonics training increases activity in the areas of the brain specialized for reading (McCandliss 2010; Boets et al. 2013; Dehaene 2013).

For SMARTER*phonics™ and foniks*PINTAR, learning to read the phonics way is aided by the use of bottle caps with letters (consonants and vowels) written on each of them, and tactile mats, both to facilitate brain activity and corresponding psychomotor movements, as shown in Photos 1 and 2:
As mentioned above regarding the one-week intensive reading camp conducted by DASwk using this innovative, highly structured, phonics-based and multi-sensory reading programme (SMARTER*phonics™) with nine-year old children undergoing remedial education in their schools, they were able to read at their age-appropriate level at the end of the camp and two months after the camp. This shows that the innovative phonics-based reading programme which uses bottle caps as a physical manipulative aid that DASwk
developed could be an effective programme to nurture and enhance decoding skills of beginning and struggling readers.

Program Structure

This literacy reading programme (SMARTER*phonics™ for English and foniks*PINTAR for Bahasa Melayu) has been developed to build reading skills of children in Primary 1 to Primary 3. Based on a gradual approach, each student will learn to recognise letters (consonants and vowels) by their individual sounds (phonics) through the encoding and decoding process, and to blend these individual sounds so as to form parts of a word, then, a word. Bottle caps are used to present vowels, consonants and their combinations in a gradual, cumulative, progressing with increasing difficulty and complexity in four levels as follows:

Level 1: C, V, CV, CVC, and VCV words (C – consonants, V – vowels)
Level 2: CVC, CVCC, and CVCVCV words. Short phrases and sentences
Level 3: CVV, CVCVV and words with ‘ng’. Short phrases and sentences
Level 4: Words with ‘ny’. Short passages.

The appropriate words, phrases, sentences and story lines in the form of short passages will be constructed on the vowel/consonant combinations into a phonics-, multi-sensorial- and multimedia-based reading programme. Each level of reading skills will be represented by one set of book and its accompanying workbook and worksheets in both print and multimedia formats.

For SMARTER*phonics™ programme, the complementary learning aids are:

a. a set of story-based Fitzroy books
b. a laminated abc card
c. a word list (CV, VCC, VC & CVC syllables words; CCVC, CVCC, CCVCC words & words with double ls (ll); Bossy r words; Magic-e words; Two- & three-syllable words; Vowel team words; Diphthong words; y as long vowel i, e, a)
d. a set of bottle-caps representing each letter (26) in the alphabet
e. a tactile mat
f. a white board and whiteboard markers
g. pocket chart with letter cards
h. an exercise book
i. a skipping ropes and hula hoops

For foniks*PINTAR programme, the set of story-based Fitzroy books and the word list are replaced by a set of ten books in Bahasa Melayu (each book defined by differentiated progressive levels). This set of foniks*PINTAR books is developed by the President of Dyslexia Association of Sarawak (DASwk), Ong Puay Hoon.

The main learning-to-read activity is interspersed with physical and movement activities that include brain gym exercises, rope skipping, foot drills, hula hooping and ball games, story-telling sessions, which entail drama performances and singing sessions.

To assess students’ progress, a pre-test is taken by participants before the commencement of each programme and a post-test at the end of the programme. The outcomes of these assessments will be displayed in a graphical manner.

Each student-participant receives a bag that contained the following:

a. one exercise book with songs and stories pasted
Each participant is required to bring this kit when we have our monthly reading sessions, and to have his/her own set of writing materials (pencils, colour pencils, ruler, eraser). The monthly sessions start at 8.30am, followed by tea break at 10am, and lunch at 12.30pm, and ending by about 3.30pm.

3 Results And Discussion

This section will present pre- and post-test results for English and Bahasa Melayu for Orang Asli Temuan children in Selangor and Penan children of Murum, Sarawak.

The pre- and post-test in Bahasa Melayu has six sections:

- arrange letters from a-z
- write letters from a-z
- reading the given words in one minute
- reading the given words without time limit
- spelling
- comprehension

The pre- and post-test in English has nine sections:

- arrange letters from a-z
- read letters from a-z
- write letters from a-z
- read DOLCH sight words
- spell DOLCH sight words
- read CVC and other phonetic words
- spell CVC and other phonetic words
- read non words
- comprehension

For the Orang Asli Temuan children, there will be two sets of data:

a. monthly sessions in 2016-2017: pre- and post-test results for English and Bahasa Melayu for Kampung Kachau Luar, Semenyih (Graph 1 & Graph 2) and the pre- and post-test results for Bahasa Melayu for Kampung Gabai, Dusun Tua (Graph 3).

b. two one-week foniks*PINTAR camps (Camp 1.0 & Camp 2.0) in 2018: pre- and post-test results for Bahasa Melayu (Graph 4)

For Penan children, there will be one set of data:

a. two one-week foniks*PINTAR camps (Camp 1.0 & Camp 2.0) in 2018: pre- and post-test results for Bahasa Melayu (Graph 5)
3.1 Pre and Post-Test Results in English, Kampung Kachau Luar, Semenyih (2016)

Graph 1 above presents the results for both pre- and post-tests in English conducted at Kampung Kachau Luar. A total of 28 participants took the pre-test in February 2016, which was the first session of the programme, and 16 participants did the post-test conducted in May 2016.

Overall, a comparison of the average pre-test and post-test results for English indicate a great improvement for all the nine sections tested. For example, the average number of letters that the 28 participants could arrange correctly was 19.9 letters for pre-test and 26.0 letters for post-test. For number of letters that the participants could read, the average score for pre-test was 22.3 and for post-test, the score was 24.7. For reading CVC words and other phonetic words, the increase in average score was quite dramatic. The pre-test average score was 13.7 words and the post-test score was 30.9 words. The reading age, however, for the participants aged between 6-19 years old was only 5.4 years for pre-test and 6.0 years for post-test.

Graph 2 below shows the Kampung Kachau Luar pre-test and post-test results for Bahasa Melayu. The pre-test was conducted in June 2016 while the post-test in September 2016. As the participants had done the test in English, for the pre-test in Bahasa Melayu (BM), we skipped the items for arranging and writing the letters from a-z (*menyusun huruf a-z dan menulis huruf a-z*). Twenty participants did the BM pre-test, while 15 participants took the BM post-test.

The scores in Graph 2 indicate a slight improvement in average scores for the BM pre- and post-tests for the items ‘*membaca dalam 1 minit*’ (1 minute reading), ‘*membaca tanpa had masa*’ (reading without time limit) and ‘*kefahaman*’ (comprehension).

For the English pre-test, the average score for arranging letters a-z was 19.9, and for post-test, the average score was 26.0 (Graph 1). Comparing with the post-test score for Bahasa Melayu, the average score was 23.2 (Graph 2). While the score is higher than the pre-test
score, it has decreased when compared to the post-test score, considering that the English post-test was done in May, and the BM pre-test was taken in September.

For writing the letters a-z, the English pre-test average score was 22.3 and post-test score was 24.7 (Graph 1). For the BM post-test, the average score was 23.9 (Graph 2), depicting a similar pattern with the item arranging letters a-z. The average score indicates that there are some participants who are still struggling with letter recognition.

![Graph 2 Pre and Post-test results for Bahasa Melayu (BM), Kg Kachau Luar, Semenyih (2016)](image)

### 3.2 Pre- and Post-Test Results in Bahasa Melayu, Kampung Gabai, Dusun Tua (2017)

The pre-test was carried out in February 2017, the first session of the programme, and the post-test in August 2017. Graph 3 below presents the average scores for both pre- and post-test results for the six items tested.

Twelve participants took the pre-test for Bahasa Melayu. Only four (33%) out of this 12 participants go to school. One out of this four school-going students scored zero for all the six items tested. This student is eight years old and attending a primary school. One teenager who had never gone to school could arrange and write the letters from a-z (25 out of 26 letters correct). However, for the other four items, her scores were very dismal.

Out of 12 students who took the pre-test, eight of them scored zero for all the six sections tested. The average score for arranging letters a-z was 7.3 and for writing the letters a-z was 7.2. The score for one-minute reading was 5.7, while spelling was 2.3.

All but three of the 12 students could not read the two passages for comprehension. Only one student out of the 3 students could read on her own without the help of the tester. This student is 12 years old, Primary Six, and could read very well as well as understand the passages.
The post-test results show that there is significant improvement between pre- and post-test average scores for three items tested, that is, arranging letters from a-z (from 7.3 to 17.7), writing the letters from a-z (from 7.2 to 16.3) and comprehension (from 1.4 to 6.4). The students might not be able to read the passages and they needed the facilitators’ help to read. Nevertheless, they seemed to understand the passages. For reading within one minute, the score results remained the same (5.7) while for spelling, there is a decrease from an average score of 2.3 to 1.3.

Overall, the average score results for pre- and post-test results for the Kg Gabai students are impressive considering the fact that most of these students do not go to school at all.

**Graph 3** Pre- and Post-test results for Bahasa Melayu, Kg Gabai, Dusun Tua (2017)
3.3 One-Week Bahasa Melayu Literacy Camp for Orang Asli Temuan Children (March & August 2018) and Penan Children (May & July 2018)

Two Bahasa Melayu (BM) one-week literacy camps, titled 'Empowering Children of Two Marginalized Communities through Literacy for Social Inclusion and Mobility' were held on 16-22 March 2018 (Temuan Camp 1.0), at Kem PLKN Millennium, Beranang, Selangor, while the second camp was held on 18-24 August 2018 (Temuan Camp 2.0). This programme is an extension to the once-a-month literacy program conducted by DASwk in 2016 at Kampung Kachau Luar, Semenyih, Selangor (English and Bahasa Melayu program) and 2017 at Kampung Gabai, Dusun Tua, Selangor (Bahasa Melayu [BM] program).

For the Penan children, Camp 1.0 was held on 13-19 May 2018 while the second camp was held on 2-7 July 2018.

This one-week literacy camp, conducted in stay-in and away-from-home format, provided an intensive and immersive environment for the mastery of reading and writing in BM among the targeted children, using the foniks*PINTAR reading programme.

Graph 4 presents the pre-test, progressive and post-test results for the two one-week foniks*PINTAR camps for Orang Asli children (Temuan Camp 1.0 & Camp 2.0), while Graph 5 presents the results for Penan children (Camp 1.0 & Camp 2.0).

Graph 4 Distribution of skills attainment for pre-test and progressive test 1 (Temuan Camp 1.0) and progressive test 2 and post-test (Temuan Camp 2.0)
3.4 Reflections and Conclusion

Both the SMARTER*phonics™ and foniks*PINTAR programmes focus on reading using the phonics method and based on a multi-sensorial approach. Children are thus exposed to a variety of ways of learning to read, spell and write using all the five senses plus one, that is, their brain. In the process, these children learn that reading is actually fun! They are encouraged to use bottle caps to recognize letters by name and sound; use tactile mat to trigger nerves on their fingers when they write letters and spell words on the mat; sky-write to visualize the letters in abstract form; learn hand-leg-eye-ear-mind coordination. Graphs 1-5 show that there is improvement and progress in reading, spelling, writing and comprehension. More significantly, there is positive difference between pre-test and post-test. We can infer from this that the monthly sessions as well as the one-week camps have generated more positive results.

But much more needs to be done to make this progress sustainable. This sustainability will not happen without continuity in school and in the home.

To have quality education (as stipulated in the Education Blueprint) is the basic foundation to improve quality of life and sustainable well-being. At the international level, enrolment rate to primary schools in developing countries have reached 91%, nevertheless, it is disheartening to note that some 57 million children of school going age are not going to school.

Malaysia’s Orang Asli and Penan children are included in this statistic of non-school going children.

The importance of the right to education represents the connectedness between all human rights (UNESCO 2014 in Ong et al 2016). The right to education of all children, youths, young adults and adults is endorsed and supported by the Universal Declaration of Human Rights 1948 and the Convention on the Rights of the Child 1989. The education received
should enable the children to develop their talents and potential, as well as shaping their
caracter, so that they can improve their life (UNESCO 2000: 8) and well-being and be an
asset to their community, society and nation.

Orang Asli and Penan children have the same aspirations as non Orang Asli children.
They want to go to school, but a myriad of factors acts as obstacles to encourage them from
going to school. They too desire comfort and happiness, growth and development in their
midst. One important institution that can help them realise their aspirations is education. As
stated in the SUHAKAM report, there are many obstacles hindering the Orang Asli (and
Penan) children’s path to education and attainment of a quality of education worthy of their
aspirations. The government, Federal and State, schools as well as non-governmental
organisations, could think of other ways to encourage Orang Asli and Penan children to go
to school and stay in school. If Orang Asli and Penan children do not want to go to school, then
could there be a way where ‘the school goes to the Orang Asli and Penan’?

The once-a-month sessions with the Orang Asli children of Kampung Kachau Luar and
Kampung Gabai as presented above has this objective in mind, that is, to bring the ‘school to
the Orang Asli children’. The improvement in reading as shown by the pre- and post-test
results indicate that these Orang Asli children can learn and are willing to learn given the
conducive environment and appropriate teaching-learning methodology.

Through the one-week foniks*PINTAR literacy camps for the Orang Asli and Penan
children, the ‘school’ is brought to the children, albeit not in the comforts of their respective
villages. Instead, we brought them to a neutral place where they could focus on the
programme and make new friends. The feedback from these two one-week camp participants
was very favourable. It not only improved their reading abilities through the usage of phonics,
but more significantly, their ability to read has fostered their confidence and impacted the way
they see themselves.

There will be a third camp for the Orang Asli Temuan children to be held on 12-18
August 2019 at UKM Bangi. This camp will be an English camp based on the
SMARTER*phonics™ programme. About 16 children from Kampung Kachau Luar, most of
whom had attended Camps 1.0 and 2.0, have registered for camp 3.0. It is hoped that camp 3.0
will enhance and develop further their phonetic awareness and reading skills in English, as
well as strengthening their self-confidence and self-esteem.

Acknowledgements

Gratitude and expression of thanks to the:
US Embassy, Kuala Lumpur (funding for project Literacy for Social Inclusion 2016-2017);
EDGE KL Rat Race 2017 (funding for project Empowering Children of Two Marginalised
Communities through Literacy for Social Inclusion and Mobility 2018, research code: RE-
2018-002); JAKOA; Dyslexia Association of Sarawak; Institute of Ethnic Studies (KITA),
UKM; LESTARI-UKM (research code KRA-2017-020); Multimedia University Melaka;
Islamic Outreach ABIM; Kem PLKN Millennium, Beranang; Kolej Dato Onn, UKM; Majlis
Kebajikan Sosial Sarawak; Sarawak Energy Bhd. (SEB); Jabatan Pendidikan Negeri Sarawak,
Parents, teachers, students and children from both Penan and Temuan communities; and to all
our assistant trainers, facilitators, volunteers and sponsors.
References


[11]. Google Map to Kg Gabai and Kg Kachau. 2017. https://www.google.com.my/maps/dir/The+National+University+of+Malaysia+Bangi+Selangor+Semenyih,+Selangor+Broga,+Semenyih,+Selangor+Air+Terjun+Sungai+Gabai/@3.0320924,101.6949171,11z/data=!3m1!4b1!4m26!4m25!1m5!1m1!1s0x31cdc926aaaaaaab:0xed49c9d40b6f25632!2m2!1d101.7774225!2d2.929997!1m5!1m1!1s0x31cdce7fd6c57495:0x8d2167eda5ade6e312m211d110.12947411151m111s0x31cdd1eb38b51a5:0x469f949590d58312m211d10.909028912d3.16609213e0?hl=en Retrieved on: 12 May 2017.


Memorandum Terbuka Masyarakat Penan Murum, Daerah Belaga, Bahagian Kapit, Sarawak kepada YAB Datuk Seri Najib Tun Razak dan YAB Pehin Seri Hj Abdul TAib Mahmud. 25 September 2012.


Biodata of Authors

**Ong Puay Liu**, Ph.D., Professor (Anthropology of Development) and Principal Fellow, Institute of Ethnic Studies (KITA), UKM. Research interests include community development, ethnic relations, tourism matters, education for social inclusion.

**Ong Puay Tee**, Ph.D., Senior Lecturer, Faculty of Business, Multimedia University Melaka. Research interests include management and leadership studies.

**Ong Puay Hoon**, Ph.D., President of Dyslexia Association of Sarawak, Kuching, Sarawak

**Ng Kum Loy**, MA, Dyslexia Association of Sarawak, Kuching, Sarawak
Persuasive Communication in Pluralistic Communities in The Perspective of Islam

M. Nasor
{nasor@radenintan.ac.id}

Universitas Islam Negeri Raden Intan, Bandar Lampung, Lampung, Indonesia

Abstract. A pluralistic community is a community that consists of various groups, races, ethnicities, nations, and others. Its existence must be guided so that the community could possess the loving and kind characters, opposing evil, and avoiding violence as stated in the Islamic teachings. Universal Islamic values regulate relationships based on aspects of mutual respect, non-coercion, principles of justice, humanity, togetherness, and brotherhood. Islam as a social religion strongly supports the existence of efforts to establish a strong relationship between human dignity and worthiness. For this reason, it seems that persuasive communication is needed which can reach the psychological aspects of various sections of the community. This method will be easier to bring effective results through the commitment of each group regarding faith and humanity with the limits of their rights and obligations. That situation can foster motivation and confidence to achieve unity and benefit of the community guided by religious and humanitarian values.

Keywords: Islam, Persuasive Communication, Pluralistic Community.

1 Introduction

A pluralistic community is a community that consists of various ethnicities, cultures, religions, and customs that can live together. Maulavi Muhammad Ali explains that the existence of the Medina community was a community consisting of Muslims and Jews as well as others as a nation that lived mixed and mingled with others.\(^1\) The diversity of the people of Medina can also be seen in the diversity of sexes, ethnicities, races, and nations. The Medina community consisted of Muhajirins, Ansars, non-believers, pagan tribes, and Jews.\(^2\)

Pluralistic communities live in a heterogeneous and complex life which indicates that they consist of various groups. Each of these groups has a variety of tribes that are supposed to live in harmony and unity, but in different views, it causes people to be diverse and different. The human backgrounds are varied due to a binding different set of ideologies, as explained Surah Yunus verse 19:

\[
\text{وَمَا كَانَ النَّاسُ إِلاَّ أُمَّةً واحِدَةً فَاخْتَلَفُواْ وَلَوْلاَ كَلِمَةٌ سَبَقَتْ مِن رَّبِّكَ لَقُضِيَ بَيْنَهُمْ فِيمَا فِيهِ يَخْتَلِفُونَ}
\]

\(^1\) Maulavi Muhammad Ali, Muhammad The Prophet (Lahore: Iradahi al-Adabiyati, 1950), 121.
\(^2\) Zainal Abidin Ahmad, Piagam Nabi Muhammad SAW Konstitusi Tertulis Pertama Di Dunia (Jakarta: Bulan Bintang, 1973), 93.
Meaning: Mankind were but a single [religious] community; then they differed. And were it not for a prior decree of your Lord, decision would have been made between them concerning that about which they differ.3

The verse above, according to Abdullah, shows that at the beginning, the people lived in harmony, united in one religion, and came from one community. But then they split into several groups. As a result, a variety of beliefs that cause division arose. There are those who follow the teaching of Allah and there are those who deny it.4 The reality of human life in the world is described as a group of people who truly obey the teachings of religion and there are a group of people who defied it. In other words, there is indeed a group of people who declare themselves to be Muslims and there are groups who claim to be the followers of other religions.

Medina community whose life was very pluralistic is the essence of a prone to conflict community if it was left without any guidance towards harmonious life and mutually respectful to one another. Sumardi relates that the plural community of Medina led by the prophet Muhammad SAW was given the freedom to implement a system of values for its citizens.5 This condition is the obligation of the preachers to foster and develop it towards a better and conducive direction. The prophet Muhammad (PBUH) after moving to Medina had carried out a lot of teachings focused on the development of the social system of community in various elements of life. Mahmud described the progress of the prophet Muhammad in fostering the community brought positive aspects to the order of social life so that he was known as a reformer for the correct system of social order.6

The success in supporting the community is inseparable from his expertise in implementing persuasive communication to build more advanced and civilized communities in the frame of unity. The community group guided by the prophet was a group of Muslims who applied the amar ma'ruf nahi munkar (commanding the good and forbidding the evil) and always paid attention to the values of virtue. Those values certainly brought them to a high level of solidarity and loyalty to jihad in defending the truth. Such a personality is needed to lead to the welfare of the community in the frame of unity. It was a civilized community with people who can live together in togetherness.7 Another characteristic of a civilized community is a community that is submissive and obedient to the law and regulation.8

Such a characteristic of the community is the basic idea in fostering a pluralistic community with a loving, kindness, and commanding the good and forbidding the evil characteristics. All of that is impossible to achieve properly without the character of the prophet Muhammad who put forward persuasive communication. He has a gentle character that can touch aspects of human psychology. Arnold explains that the policy developed by the prophet Muhammad in fostering a pluralistic community through persuasive communication

---

3 Departemen Agama, Al-Qura’an Dan Terjemahnya (Jakarta: Yayasan Penterjemah/Penafsir Al-Qur’an, 1971), 308.
4 Abdullah al-Ahsan, Ummah or Nation?, Identity Crisis in Contemporary Muslim Society (The Islamic Fondation, 1992), 12.
8 Ahmad Baso, Civil Society Versus Masyarakat Madani (Bandung: Pustaka Hidayah, 1999), 21.
was kind and gentle.\textsuperscript{9} The formulation of the problem is: how is the application of persuasive communication in a pluralistic community from an Islamic perspective?

2 Research Methodology

This type of research is literary research. This type of research is carried out by reading and studying books by quoting from various theories and opinions that have a relationship with the focused problems. The writer examined studies, information, and data related to persuasive communication in Islam used to foster a pluralistic community. The data sources of this study are primary and secondary data. The primary data sources are books related to Islamic persuasive communication in pluralistic societies. The books are \textit{Sirah Nabawiyah} by Ibn Hisham, \textit{al-Sunnah Mashdaran li al-Ma'rifah wa al-Hadharah} by Yusuf Qardhawi, Classical Islam by GE Von Grunebaum, The Preaching of Islam by Thomas W. Arnold, and the Social Contract and Islamic State by Muhammad Isya Ayash. The secondary data sources are data based on other literature related to persuasive Islamic communication in pluralistic societies namely: Persuasion, Reception, and Responsibility by Charles U. Larson, Ummah or Nation? Identity Crisis in Contemporary Muslim Community by Abdullah al-Ahsan, and Communication Intercultural: A Guide to Communicating with People Different in Culture by Dedy Mulyana, To analyze the data through a historical approach, the past events related to persuasive Islamic communication in fostering a pluralistic life community were studied. The discourse analysis was also used, namely, a research approach to see the development of discourse which includes speeches and all kinds of texts in a broad sense.

3 Research Results and Discussion

3.1 The urgency of Persuasive Communication in Fostering Pluralistic Communities

Persuasive communication as the main variable has an important position for the successful implementation of community development. Through this communication, one can channel and explain policy rules by paying attention to one's psychological aspects. The goal is that the community as an object of guidance can understand clearly without any misunderstanding. This communication can be easier to understand so that the community will also be easier to apply it in their lives. It is necessary for the first master and understands the various methods and principles of persuasive communication. This is so that the implementation of communication can be carried out in achieving high effectiveness and satisfaction. The persuasive communication techniques must be considered by the persuader (people who do persuasion). Techniques in the persuasion process seem to be able to raise opportunities for people to be persuaded ethically and rationally. This is very important for the recipients to know the hidden agenda of persuaders to be ready to reject it. The recipients

\textsuperscript{9} Thomas W. Arnold, \textit{The Preaching of Islam} (Jakarta: Wijaya, 1985), 4.
should be critical of the evidence presented to them. It is important to gather information from all parties in debate and will only hold the final decision if all data has been obtained.\textsuperscript{10}

In persuasive communication techniques, the persuadee is not just conveying information but wants a voluntary awareness to make changes in attitudes and behavior. Such communication technique is called persuasive communication. The term persuasive comes from the English word, namely persuasion, and the word comes from the Latin word, \textit{persuasio}, which means inviting and convincing. What is meant by persuasive is an action based on psychological aspects that can arouse individual awareness. Thus, it can be said that persuasive communication is the delivery of messages to others that aim to change attitudes and behaviors by focusing on human traits so that these changes can go according to the awareness and willingness of individuals.\textsuperscript{11}

There are several techniques for managing messages used in persuasive communication, namely:
\begin{enumerate}
\item Association techniques, the messages are delivered together with interesting objects.
\item Integration Technique, the communicator integrates themselves with the subject communicatively.
\item The reward technique, to influence others by promising hope.
\item The order technique, an effort to arrange the messages to be pleased to hear.
\item The Red-herring technique, the art of winning with arguments to weaken opponents.\textsuperscript{12}
\end{enumerate}

Various persuasive techniques above are very important to be observed in the delivery of the messages. The audience often receives complex and diverse messages from various directions. Thus, the messages delivered are not determined or focused by just one element but will be related to other elements. The better the synergy of the element, the easier to convey the message and it will even be easier to absorb the meaning contained in the message delivered. Regarding the synergy of togetherness in persuasive communication, there will be no dependence on one element in communicating. Thus, there will be no more assumption that successful communication is not only located or dependent on the communicator, the communiant, the message, and the media. The integrated involvement of the existing elements will complement each other in the process of persuading someone. So that the idea or content of the message can be perceived properly by the recipient by involving all elements so that the person feels actively involved and participates in the persuasion process. Through the direct and active involvement of all elements, it will be easier to persuade those who ultimately agree to the contents of the message sincerely and not because it is forced by any party.

\section*{3.2 The Application of Persuasive Communication in the Pluralistic Community in Islamic Perspective}

Pluralism is a historical reality that has a solid foundation, undeniable, and has noble values for the welfare of the community. The values of pluralism explained by the religious figures through persuasive communication to foster the community in the frame of unity in an Islamic perspective can be traced as follows:

\textsuperscript{12} Nasor, 14.
a. The community that Upholds Faith

In pluralistic life, besides holding firmly to *aqeedah* (creed) and faith, it is also allowed to engage in human relations. Life in the common ground of *aqeedah* must be used as a basis for a relationship outside of the matter of religion since it is permissible to interact about the problems of social life that do not distinguish sex, ethnicity, religion, customs, nation and many other. Ahmad states that plurality is a reality that has become the will of God. Nations and tribes are created so that they should know and appreciate each other.\(^{13}\) The prophet Muhammad built the people of Medina which consisted of various groups; they are the Muslim community, *Mushrikin* community (paganism), the Jewish community, and the Christian community.\(^{14}\) In addition, the people of Medina were consisted of several groups, namely: Muslims that consisted of Jews and Ansar, Auws and Khazzraj people who had just converted to Islam (even though some of them opposed Muslims), people the Auws and Khazzraj who were still adhered to the pagan belief and did not become Muslims for long duration, Jews consisting of the Banu Nadzir, Banu Qoinuqa, and Banu Quraidhah tribes.\(^{15}\) The Medina Charter regulates the problem of tolerance beginning with the sentence in the name of God, the benevolent, and beneficence. Muhammad as the messenger of God with the people of Quraysh and Yathrib in Medina as the followers and the people who followed him joined together and struggled with them.\(^{16}\)

b. The community that Upholds the Law

Life in diversity can run well when people realize that they cling to the law for justice. The fair dimension of law enforcement is a prerequisite for fostering the community by laying the foundations of order that covers all components of the community. Fairness or justice has an important meaning for the community which is to strengthen the bond and eliminate tribal fanaticism between groups. Justice is a parallel action in the citizens' conformity to their rights and obligations. According to Candra, paying attention to the principles of human rights (obligations) is not only became the most important aspect in a country's legal system that must be stated in the constitution but also demanded overall recognition at the level of its implementation in politics, constitutional, legal, and justice.\(^{17}\) The mission of the prophet Muhammad in carrying out the values of justice in the Medina Charter article 2 stated that the Muslims must be fair in paying the fine for murdering someone (*diyat*) and redeeming prisoners so that no party is harmed. Article 13 states that Muslims should be fair in opposing the perpetrators of crime, injustice, and sin. Article 17 states that the non-Muslim groups, Jews, and their allies receive equal protection and equality as Muslims.\(^{18}\) Living together tolerantly is the result of the hard work of previous religious figures to build a possibility to develop a more tolerant and open community.\(^{19}\)

---

Justice is the basic right of every human being, both Muslim and non-Muslim, in order to obtain protection in living together. Justice must be upheld because it becomes the main aspect that requires its citizens to do justice in completing their lives together. Enforcing justice means holding, upholding, and fulfilling a mandate of fulfilling the rights of others. The prophet Muhammad built the aspects of life concerning ethics, morality, rights, and obligations, and blending with the community. Guidance should provide opportunities in various activities to groups to carry out communication and interactions that have psychological bonds with each other. The way of communication should be the communication that can touch the psychological nature of multi-cultural people so that they can establish relationships and achieve the win-win solutions and not the win-lose condition. It means that our partners are not harmed and can get justice.

c. The community that Upholds Noble Characters (Akhaqul Karimah)

Guidance on pluralistic life knows no boundaries between the diversity of human life. The diversity of beliefs, customs, and others should be respected as well as to forbid fighting among the members of the community. The existing guidance is also directed at upholding the moral virtues to create unity, peace, and mutual respect in order for the tolerance to rise. Imam Al Gazali says that the formation of moral character shapes the Islamic soul, strives hard, and truly upholds personality.21 Syaiful tells us that the awareness of the religious community is the main key for the continuity of harmony and carrying out their respective religions.22 People want to live together with other people when there is awareness of the treatment or good morals towards fellow human beings regarding all things.

Brotherhood in people’s lives is the principle of the formation of ukhuwah (brotherhood) and solidarity which does not look at ethnicity or culture must be based on aklaqul karimah (noble characters). For the brotherhood to eliminate conflicts, build a community full of love, and help to realize public welfare must be based on noble characters (aklaqul karimah). The existence of brotherhood is an element that must be developed so that it becomes a good personality or character in life. Humans will be trustworthy, have good manners, and willing to defend the truth provided that there is brotherhood based on aklaqul karimah. A strong formation of brotherhood is based on the noble characters that bound the Muhajirin and Ansar, who have different tribes and customs, and other differences.23

4 Conclusion

A pluralistic community is a community that accepts and respects differences. The community itself is the result of a persuasive communication approach, namely a community that is full of love, mutual respect for diversity, accepting diversity, and building harmony in shared life by paying attention to psychological aspects.

The application of persuasive communication in the pluralistic community based on the Islamic perspective is to guide the community to uphold the faith, the law, and the akhaqul karimah (noble characters). Such a community will prioritize equality, freedom, justice, and

21 Imam Al-Ghazali, Illya’ Ulum al-Din (Bairut: Dar al-Fikr, n.d.), 90.
cooperation to achieve prosperity. The success cannot be separated from the existence of a foundation to live together in accordance with the rules or agreements that have been determined. This all creates a tolerant, just, and harmonious pluralistic community as well as a community that upholds brotherhood, unity, and free from discrimination.

References

Communicating Digital Disruption by An Online Newspaper in Thailand

Jonathan Rante Carreon¹, Wenwen Tian²
{carreonjrc@gmail.com¹, wenwen.tian@mail.kmutt.ac.th²}

Faculty of Liberal Arts, Huachiew Chalermprakiet University, Samutprakarn, Thailand¹, School of Liberal Arts, King Mongkut’s University of Technology Thonburi, Bangkok, Thailand²

Abstract. This study investigates how digital disruption is communicated to the public by the Thailand’s leading English newspaper, The Bangkok Post Online Newspaper. Informed by Carreon and Piyamat (2018), 292 news articles that were reported from 1 January 2010 to 31 December 2018 composed of 245,296 words were examined for keywords (Scott, 1997) employing a mixed method analysis, using the free corpus tool AntConc 3.5.7 (Anthony, 2018). The investigation was run by comparing words with high absolute frequencies against their frequencies in the British National Corpus (BNC) using log-likelihood (see Rayson & Garside, 2000 for details of log-likelihood uses). Any words with log-likelihood (LL) values greater than 100 were considered keywords. The resulting keywords were iteratively thematized (e.g. Krippendorff, 2013) by each of the researcher, and the degree of inter-rater agreement for accuracy and reliability in categorization is expressed as Cohen’s kappa value. The analysis yielded 81 keywords composed of six themes of words relating to: (1) business and monetary issues (N=27; 33.33%), (2) digital facilities and channels (N=19; 23.46%), 3) stakeholders (N=12; 14.81%), 4) digital disruption indicators (N=11; 13.58%), (5) time and location (N=8; 9.88%), and (6) informational dimension of language (N=4; 4.94%), with the analysts’ categorization having an almost perfect level of inter-rater agreement (Cohen’s kappa=0.84).

Keywords: Digital Disruption, Keyword Analysis, Newspaper Communication, Online Newspaper.

1 Introduction

The turn of the century has witnessed a shift in the medium by which information is communicated by newspaper dailies to their readers from the traditional paper-based format to online newspapers. The metamorphosis is inevitable due to massive influx of information to be published, time constraints posed by laborious paper-based preparations, and increasing cost of production but also due to recent advances in computer technology. Such radical metamorphosis to digital innovation indicates that most paper-based newspapers have been bracing for the impact of the phenomenon of digital disruption (e.g. Skog, Wimelius & Sandberg, 2018).

Generally, digital disruption is often framed as a “type of environmental turbulence induced by digital innovation that leads to the erosion of boundaries and approaches that previously served as foundations for organizing the production and capture of value” (Wimelius & Sandberg, 2018, p. 431). More succinctly, it is concerned with business-model
innovation that enables entrants to enter markets with cheap, easy to use, but low-performing products (Christensen et al., 2015).

Most research studies conducted on digital disruption were conducted in Western countries and pivot on the impact on business (Bharadwaj et al., 2013) and how digital disruption is redefining industries (e.g. McQuivey, 2013; Bradley et al., 2015; Karimi & Walter, 2015). For instance, Bughin and Van Zeebroeck (2017) found that digitization adversely affect the profits of the traditional business operators described in two loop effects: (1) digital entrants competing with traditional business operators through disruptive practices, and (2) traditional business operators responding to disruption and creating more intense competition with each other. Through digital disruption, firms rely on web-based distribution channels (Oestreicher-Singer & Zalmanson, 2013), which may drastically increase their profit margin by reducing production costs (Rothmann et al., 2014). Moreover, there is an enhancement of new product image and value which may not be achieved using the traditional means (Pagani, 2013), and digital disruption-connectivity and the diffusion of power (e.g. Schmidt & Cohen, 2010). Despite the benefits digital disruption offers to businesses, Grover and Kohli (2013) posited that it also imposes tremendous challenges on established firms which are readily observed in cases where non-digital products and services sold by the incumbents are irresponsible to a digitized environment (Lucas & Goh, 2009; Oestreicher-Singer & Zalmanson, 2013).

In health, research studies implicating digital disruption of national electronic health records and moral orders governing the production, ownership, use of and responsibility for health records were also common arguing that disregarding these disruptions may alienate key stakeholders (e.g. Garrety, McLoughlin, Wilson, Zelle, & Martin, 2014).

Examining newspaper industries, Weber and Monge (2017) argued for the inclusion of hyperlinking as an integral component of a shift from print-based organizations to multimedia information providers from 1997 to 2007 and found that traditional newspapers which delayed or undermined hyperlinking practices may result in an increased likelihood of failure later.

In Asia, the limited research studies on digital disruption mainly analyzed its impact on running businesses such as in the music industry (e.g. Wikstrom & DeFillippi, 2016), banking industry (e.g. Tornjanski et al., 2015), managers’ perception and response to digital disruption (e.g. Molla et al., 2016).

In Thailand, the few research studies on digital disruption were mainly focused on promoting security and cultural awareness (e.g. Fung et al., 2008; Hongladarom, 2016), and managing its impact (e.g. Common, 2018).

While it is quite evident that the number of research studies on digital disruption has been an increasing, these studies mainly highlighted the positive and adverse impacts of digital disruption on businesses. It was also noted that information on digital disruption and its applications came from the industries and manufacturers or from the stakeholders of these businesses with research data gathered either by interviewing or through questionnaires. Research studies examining data on digital disruption that were actually presented to readers such as via newspapers and other publications of national and international circulations were undermined and warrant investigation. Thus, information on digital disruption presented to readers is worthwhile to examine since the phenomenon has already gone far, yet it is still unknown if what was communicated to the public was enough, useful, appropriate or relevant.
2 Research Objective and Conceptual Framework

The ultimate goal of this paper is to examine digital disruption information presented to the readers by *Bangkok Post Online Newspaper*. It seeks to answer the lone research question: *What information is presented in the news articles relating to digital disruption?* To answer this research question, a corpus-based analysis examining “keyness” in text (Scott & Tribble, 2006) is employed. Keyness is “a quality that words may have in a given text or set of texts, suggesting that they are important and they reflect what the text is really about” (Scott & Tribble, 2006, pp. 55-56). They can also be defined as “words which appear in a text or corpus statistically significantly more frequently than would be expected by chance when compared to a corpus which is larger or of equal size” (Baker, Hardie & McEnery, 2006, pp. 97-98). Put another way, the corpus-based analysis of keywords includes the comparison of the unknown corpus against a comparator corpus to identify which words “occur statistically more frequently” in either of the corpora (Baker, 2006, p. 125).

Informed by this corpus-based approach to data, Carreon and Piymat (2018) examined the contents of an online newspaper in Thailand that are related to digital technology and digital age. They reported 34 keywords classified into five categories: (1) words relating to digital technology and its applications, (2) words relating to business activities and monetary issues, (3) words relating to digital technology potential stakeholders, (4) words relating to digital technology impact, (5) words relating to location and time, and (6) words relating to informational dimension of language. Their research, however, only examined data taken from one year duration of data. We argue that this data provided some insights on digital technology and digital age, it quite limited to make stronger arguments on the phenomenon of digital disruption. Thus, from a similar thread of investigation, this current research enterprise examines diachronic data of online news articles that spans for more than eight years. Research studies that investigate keywords may shed some light on the specific content of the unknown text (e.g. news articles) and may indicate which information has been prioritized in writing this text.

3 Methodology

3.1 Data and Data Collection

Due to the scarcity of research studies examining the phenomenon of digital disruption as presented in news articles of Thai newspapers, a corpus of news articles was sought as data. Moreover, it was found that newspapers are the most common type of publications read by Thais (Statista, 2018). The authors argue that due to the advent of advanced digital and computer technology, most readers may have switched already to reading online news articles.

Using the search word digital disruption 292 news articles, composed of 245,296 words, that were reported 1 January 2010 to 31 December 2018 were downloaded from the *Bangkok Post Online Newspaper*. The *Bangkok Post Online Newspaper* was chosen mainly because it is an English-written newspaper that has the highest number readers (Thongtep & Pratruangkrai, 2016). Moreover, online newspapers are one of the fastest sources of information available to public. Therefore, they seem appropriate as data source given that the point of interest in this research is digital disruption – a phenomenon linked to online activities.

3.2 Data Analysis
To identify linguistic keywords, two steps were followed using the software *AntConc 3.5.7* (Anthony, 2018): (1) computation of absolute word frequencies and (2) computation of relative word frequencies. Word with high absolute frequencies can provide some useful information about what a text is all about, but in many cases the words with the highest absolute frequencies are similar across different texts simply because these words (e.g. articles, conjunctions and prepositions) are most commonly used in English language (see Carreon & Svetanant, 2017; Carreon & Watson Todd, 2013). Thus, it is more insightful to consider the relative frequencies of words that are obtained by comparing the corpus data to a benchmark of general English language use, such as the British National Corpus (BNC), using log-likelihood (for details of log-likelihood uses, see Rayson & Garside, 2000). This comparison takes into account relations between frequency and typicality among words between two corpora (Stubbs, 2001).

Any keywords with a log-likelihood (LL) value of greater than 100 were counted as keywords. Using the concordance produced by each of these keywords as guide, they were iteratively categorized into the following six themes:

1) Words relating to business and monetary issues  
2) Words relating to digital facilities and channels  
3) Words relating to stakeholders  
4) Words relating to digital disruption indicators  
5) Words relating to time and location  
6) Words relating to informational dimension of language

The first five of these categories shed light on the purposes of this study as they can be associated with types of digital technology and its influence that were chosen to be communicated to the public through online newspaper. Words relating to informational dimension of language can be understood by referring to Biber, Conrad & Reppen’s (1998) informational dimension of language which depicts the authors’ underlying perspectives of potential future directions of digital disruption in Thailand as well as in the world.

Then, the two researchers worked independently to categorize the keywords into these six themes. For reliability check, two researchers’ categorizations of keywords were compared using Cohen’s kappa. The Cohen’s kappa is a statistical coefficient that represents the degree of accuracy and reliability in a statistical classification and measures inter-rater agreement by classifying items into mutually exclusive categories. The following guidelines suggested by Landis and Koch (1977) can be used to interpret the results:

<table>
<thead>
<tr>
<th>Kappa Statistic</th>
<th>Strength of Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 0.00</td>
<td>Poor</td>
</tr>
<tr>
<td>0.00-0.20</td>
<td>Slight</td>
</tr>
<tr>
<td>0.21-0.40</td>
<td>Fair</td>
</tr>
<tr>
<td>0.41-0.60</td>
<td>Moderate</td>
</tr>
<tr>
<td>0.61-0.80</td>
<td>Substantial</td>
</tr>
<tr>
<td>0.81-1.00</td>
<td>Almost perfect</td>
</tr>
</tbody>
</table>
4 Results And Discussion

4.1 Absolute frequency analysis

Table 1 Words with the highest absolute frequencies

<table>
<thead>
<tr>
<th>Words</th>
<th>Frequency (f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>the</td>
<td>13108</td>
</tr>
<tr>
<td>to</td>
<td>8268</td>
</tr>
<tr>
<td>and</td>
<td>7536</td>
</tr>
<tr>
<td>of</td>
<td>6273</td>
</tr>
<tr>
<td>in</td>
<td>5156</td>
</tr>
</tbody>
</table>

In Table 1, firstly, the high frequency of the articles *the* (f=13108) shows that many long running sentences were used in the data where *the* used as markers of specific references (Quirk, Greenbaum, Leech & Svartvik, 1995; cited in Nickalls, 2011). Secondly, the frequent use of the prepositions such as *to* (f=8258), *of* (f=6273), *in* (f=5156) and *for* (f=2888) function to link nouns, pronouns, or noun phrases to some other parts of the sentences. For instance, in the corpus, *to* is either used as preposition to express direction or motion or direction toward something or as a marker of an infinitive verb (e.g., *to a bank branch*, *to change*); *in* is used to indicate either unspecific times, an area or a place (e.g., *in December*, *in 2017*, *in new technology*, *in Thailand*); and *for* is used to tell about the use of something, an example, a reason or purpose (e.g., *for example*, *for accumulative buy*, *for start-ups*). The high frequency of the conjunction *and* (f=7536) in the corpus shows common use of conjoint words (e.g., *connectivity and efficiency*, *users and transactions*). The high frequency of the auxiliary verb *is* (f=2722) indicates that the information presented in the news is current or foreseeing the future (e.g., *the new wave of digital disruption is about to hit the country; is adapting to the changing behaviour of the customers*).

However, these words basically reflect how general language was used to present information about digital disruption. It is difficult to reach stronger conclusions on how some specific language were presented in the corpus. Thus, it is necessary to further investigate the relative frequencies words by comparing the absolute frequencies against frequencies in the BNC using log-likelihood. The keywords with the highest log-likelihood values are given in Table 2 below.

4.1 Relative frequency analysis

As noted by Scott (1997), the content of a particular text is reflected by linguistic keywords through their high frequency.
The words with high relative frequencies or keywords are different from the most frequent words, and these keywords reflect the concerns of the Bangkok Post news more accurately. These keywords are iteratively categorized into the identified six themes: 1) words relating to business and monetary issues, 2) words relating to digital facilities and channels, 3) words relating to stakeholders, 4) words relating to digital disruption indicators, 5) words relating to time and location, 6) words relating to informational dimension of language. The reliability of these categorizations were rated to have almost perfect agreement (Cohen’s kappa= 0.84) or a perfect overall inter-rater agreement of 96.30%. The highest-ranked keywords for each theme are presented in Table 3 below.

Table 2 Words with the highest relative and high absolute frequencies

<table>
<thead>
<tr>
<th>High relative frequency words</th>
<th>High absolute frequency words</th>
</tr>
</thead>
<tbody>
<tr>
<td>will</td>
<td>year</td>
</tr>
<tr>
<td>digital</td>
<td>services</td>
</tr>
<tr>
<td>Thailand</td>
<td>data</td>
</tr>
<tr>
<td>business</td>
<td>bank</td>
</tr>
<tr>
<td>technology</td>
<td>company</td>
</tr>
</tbody>
</table>

Table 3 Keywords categorized by theme (f=frequency=; %= percentage)

<table>
<thead>
<tr>
<th>Categories</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and monetary issues</td>
<td>27</td>
<td>33.33</td>
</tr>
<tr>
<td>Digital facilities and channels</td>
<td>19</td>
<td>23.46</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>12</td>
<td>14.81</td>
</tr>
<tr>
<td>Digital disruption indicators</td>
<td>11</td>
<td>13.58</td>
</tr>
<tr>
<td>Time and location</td>
<td>8</td>
<td>9.88</td>
</tr>
<tr>
<td>Informational dimension of language</td>
<td>4</td>
<td>4.94</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>81</td>
<td>100</td>
</tr>
</tbody>
</table>

The highest-ranked keywords for each theme with examples of use are given in Table 4 below. For the sake of the space, four examples of the highest-ranked keywords are chosen to illustrating each theme.
Table 4 Keywords categorized by themes (f=Frequency; LL= Log-likelihood)

<table>
<thead>
<tr>
<th>#</th>
<th>Keywords</th>
<th>f</th>
<th>LL</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>business</td>
<td>925</td>
<td>+2119.29</td>
<td>business activities, business incentives</td>
</tr>
<tr>
<td>2</td>
<td>bank</td>
<td>513</td>
<td>+1276.84</td>
<td>bank accounts, non-bank operators</td>
</tr>
<tr>
<td>3</td>
<td>baht</td>
<td>501</td>
<td>+5391.8</td>
<td>baht in investment, baht devaluations</td>
</tr>
<tr>
<td>4</td>
<td>industry</td>
<td>451</td>
<td>+909.58</td>
<td>high-tech industry, music industry</td>
</tr>
</tbody>
</table>

**Business and monetary issues**

<table>
<thead>
<tr>
<th>#</th>
<th>Keywords</th>
<th>f</th>
<th>LL</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>digital</td>
<td>1599</td>
<td>+13077.64</td>
<td>digital access, digital age</td>
</tr>
<tr>
<td>2</td>
<td>technology</td>
<td>814</td>
<td>+3225.13</td>
<td>technology adoption, technology-enabled networks</td>
</tr>
<tr>
<td>3</td>
<td>services</td>
<td>585</td>
<td>+1227.11</td>
<td>cloud services, banking services</td>
</tr>
<tr>
<td>4</td>
<td>data</td>
<td>526</td>
<td>+1264.75</td>
<td>big data analysis, data center</td>
</tr>
</tbody>
</table>

**Digital facilities and channels**

<table>
<thead>
<tr>
<th>#</th>
<th>Keywords</th>
<th>f</th>
<th>LL</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>company</td>
<td>505</td>
<td>+564.13</td>
<td>company plans, company strategies</td>
</tr>
<tr>
<td>2</td>
<td>companies</td>
<td>478</td>
<td>+1105.17</td>
<td>traditional companies, IT companies</td>
</tr>
<tr>
<td>3</td>
<td>Thai</td>
<td>411</td>
<td>+3337.02</td>
<td>Thai business, Thai consumers</td>
</tr>
<tr>
<td>4</td>
<td>customers</td>
<td>375</td>
<td>+1387.5</td>
<td>Thai customers, target customers</td>
</tr>
</tbody>
</table>

**Stakeholders**

<table>
<thead>
<tr>
<th>#</th>
<th>Keywords</th>
<th>f</th>
<th>LL</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>new</td>
<td>962</td>
<td>+471.28</td>
<td>new business, new digital-related skills</td>
</tr>
<tr>
<td>2</td>
<td>need</td>
<td>382</td>
<td>+166.07</td>
<td>need for radical transformation, need to adapt</td>
</tr>
<tr>
<td>3</td>
<td>growth</td>
<td>339</td>
<td>+769.4</td>
<td>growth and investment, growth and innovation</td>
</tr>
<tr>
<td>4</td>
<td>development</td>
<td>335</td>
<td>+278.03</td>
<td>economic development, technological development</td>
</tr>
</tbody>
</table>

**Digital disruption indicators**

<table>
<thead>
<tr>
<th>#</th>
<th>Keywords</th>
<th>f</th>
<th>LL</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>year</td>
<td>799</td>
<td>+566.95</td>
<td>last year, this year, year ahead</td>
</tr>
<tr>
<td>2</td>
<td>Bangkok</td>
<td>491</td>
<td>+4283.14</td>
<td>in Bangkok, Bangkok Bank</td>
</tr>
<tr>
<td>3</td>
<td>next</td>
<td>294</td>
<td>+110.6</td>
<td>next decades, next destinations</td>
</tr>
<tr>
<td>4</td>
<td>global</td>
<td>289</td>
<td>+1231.1</td>
<td>global level, global trend</td>
</tr>
</tbody>
</table>

**Time and location**

<table>
<thead>
<tr>
<th>#</th>
<th>Keywords</th>
<th>f</th>
<th>LL</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>said</td>
<td>2064</td>
<td>+2085.8</td>
<td>Mr. Sakorn said, said the bank analyst said</td>
</tr>
<tr>
<td>2</td>
<td>will</td>
<td>1721</td>
<td>+659.39</td>
<td>will allow, will be fully adopted to</td>
</tr>
<tr>
<td>3</td>
<td>says</td>
<td>307</td>
<td>+199.11</td>
<td>says a tech expert, Mr. Bhurit says</td>
</tr>
<tr>
<td>4</td>
<td>issued</td>
<td>303</td>
<td>+1059.81</td>
<td>issued a new strategic plan, issued an administrative plan</td>
</tr>
</tbody>
</table>

Table 3 and Table 4 show that among the first five themes, two themes dominated by words relating to digital technology business and monetary issues (33.33%) and words related to digital facilities and channels (23.46%). Therefore, in the collected online news articles, it is common to find words such as business activities, business incentives, bank accounts, non-bank operators, baht in investment, baht devaluations, high-tech industry, media industry, digital access, digital age, technology adoption, technology-enabled networks, cloud services, banking services, big data analysis, data center. These two themes displayed clear indications of the content of the news articles presented to the public.

They are followed by words relating to stakeholders (14.81%), such as company plans, company strategies, traditional companies, IT companies, Thai business, Thai consumers, Thai customers, target customers and digital disruption indicators (13.58%), such as new business, new digital-related skills, need for radical transformation, need to adapt, growth and investment, growth and innovation, economic development, technological development. These words are less frequent than the word related to the first two themes in spite of the massive impact of digital technology to end users. Thus, it can be interpreted that the online
news publishers tend to highlight information that are straightforwardly related to digital disruption rather than its applications and impact. As a result, the words relating to stakeholder and digital disruption indicators are given less importance.

Words relating to time and location (9.88%) and words relating to informational dimension of language (4.94%) show the genre of news report in terms of contexts of the news, the people involved in the news, and the future perspectives and concerns of digital disruption in Thailand, respectively. For instance, the high frequency of said ($f= 2064$) in the corpus reflects the unique feature of newspaper register as mostly remarks of people involved in the news were directly quoted (e.g., Mr. Sakorn said, said the bank analyst said).

5 Conclusion

The ultimate goal of this study is to investigate what digital disruption information is communicated to the public by The Bangkok Post Online Newspaper. The main findings suggested that information about digital disruption presented on the online version of The Bangkok Post is dominated by words relating to digital technology concerning business and monetary issues and digital facilities and channels. Less information is presented regarding stakeholders and digital disruption indicators. The main findings about digital disruption on business and monetary issues and digital facilities and channels are in line with Tornjanski’s et al., (2015) finding regarding banking industry and Wikstrom & DeFillippi’s (2016) results about music industry. The language use in these two themes indicates that digital disruption serves to disturb or redefine industries and business in areas of banking and industries (e.g. McQuivey, 2013; Bradley et al., 2015; Karimi & Walter, 2015). These results are also in concord with Carreon and Piyamat’s (2018) findings, which have strong implications on the type of information prioritized and presented to the public. While information dissemination on the ‘digitalized’ businesses, facilities and channels is important, given the role of newspapers as agents of dissemination, the wide readership of online news and the public trust they enjoy, newspapers, such as the Bangkok Post Online, are useful channels to inform the public about indispensable information on opportunities as well as potential impacts of the phenomenon of digital disruption.

The main limitation of this research study is its limited data and focus mainly on keywords from one diachronic onset of newspaper. Future research studies on digital disruption may examine data taken from different sets of newspapers of digital disruption news in one country or from different countries for a comparative study. It is also interesting to look at the sources of information cited by the news writers. Most importantly, potential impacts to the reading public may also be investigated through surveys or interviews. We hope that this corpus-based investigation of online newspaper articles sheds some light on how digital disruption as a trendy phenomenon of social significance can be examined and understood from a corpus linguistic perspective.

References


Authors’ Biodata

**Dr. Jonathan Rante Carreon** is the Associate Dean of the Faculty of Liberal Arts and the Head of the Office of the International Relations of Huachiew Chalermprakiet University and holds PhD in Applied Linguistics and PhD in Linguistics. His research interests include, (Critical) Discourse Analysis that examines data from online sources employing Corpus Linguistics tools.

**Dr. Wenwen Tian** is a lecturer at King Mongkut’s University of Technology Thonburi in Thailand and holds PhD in Applied Linguistics. Her main research interests are Discourse Analysis, Academic Supervision, Teacher Development, and Intercultural Communication. Over the last 19 years, she has worked as a teacher of English and a coordinator for international affairs in China, Thailand and Saudi Arabia.
Promoting Intercultural Communication Competence in the 21st Century: A Case Study in Thai Academic and Social Contexts of Learning and Using EFL

Noparat Tananuraksakul1, Suthida Soontornwipat2
{noparat2000@yahoo.com1, Suthida_6@hotmail.com2}

Rangsit University, Thailand1, Huachiew Chalermprakiet University 18/18 Bangna-trad Road, KM 18, Bangplee Samutprakarn 10540, Thailand2

Abstract. This paper seeks to propose the way in which Thai university students' intercultural communication competence in the context of learning and using EFL can be promoted through an intercultural course. The primary objective is to examine if students majoring in English and passing the intercultural communication Course can develop the competence or not. Intercultural communication competence was defined with its features, and the Intercultural Communication Course was outlined in order to shed light on this study. Qualitative data collected from twelve English major students who passed the Intercultural Communication Course and continued their academic journey revealed positive outcomes.

Keywords: Intercultural Communication, Intercultural Communication Competence, EFL Context.

1 Introduction

The current era of globalization has proved to reinforce temporary and permanent human mobility as sojourners and immigrants for specific purposes such as higher education, intermarriage, work and travel. It also increases more opportunities for contact between culturally different others, known as intercultural communication (IC). As argued by Tananuraksakul (2014, p.144), IC is not a simple process since interlocutors must be competent in both linguistic and cultural knowledge so as to create shared meaning and succeed in their communication goals. As such, it is crucial for today’s generations from Baby Boomer to X to Y to Z and to C to attain intercultural communication competence (ICC).

As a matter of fact, Griffith et al. (2016) report that a critical life skill that can predict achievement in the 21st century workforce is ICC because it is an ability most organizations view essential for global missions. In the United States, one of the marketable and native English speaking countries that offer recognized international education along with exchange programs and study abroad experiences, tertiary institutions have thus placed emphasis on ICC and preparation for their students to be competent in IC. University students’ ICC learning

1 She is an Assistant Professor in the Department of English and holds a PhD in Linguistics, Macquarie University, Australia. Her research interest varies from English language teaching to social psychology of global English use to mediated communication and to intercultural communication.
outcome then becomes a crucial measurement for overall institutional achievement. The higher students gain learning outcome in ICC, the more marketable indicator of student is.

It is evident that IC is associated with using foreign languages (Piller, 2007) and English is mostly a common or adopted medium in almost all social contexts (Phan Le Ha, 2005), which inevitably entail non-native and native English speakers. Questions regarding how tertiary students in non-native English speaking countries can learn or acquire ICC and what culture(s) they should learn or acquire arise. Countries where citizens use and learn English as a foreign language (EFL) are norm-dependent rely on the norms originally produced by native English speakers and in general they do not develop or produce a new variety of English (Kachru, 2017). Many countries such as Indonesia, Thailand and Vietnam are countries that fall into this category.

In the case of learning EFL in Thailand, individuals growing up in a monolingual society use Thai, their mother tongue, in and out of the classroom while other languages are foreign to them. On the one hand, they mainly use English for specific purposes such as foreign trading, international diplomacy, gaining access to scientific, technological and literacy materials (Changlek & Palanukulwong, 2015). On the other hand, they are required to study English from primary to tertiary levels due to its global status. In addition, English has greater linguistic and cultural differences from their mother tongue. Such differences and rare intercultural interactions in daily life make even more difficulty in development of this foreign language competence.

Therefore, intercultural learning in the EFL classroom in Thailand is viewed important. Exposure to intercultural interactions through student mobility (Aba, 2015), assigning intercultural engagement for academic purposes (Tananuraksakul, 2012) and possessing intrinsic or instrumental motivation (Dörnyei & Clément, 2001) are found to help enhance foreign language learners to develop their linguistic and cultural competencies. Deardorff (2006) supports this notion that language is only a tool individuals use to interact with their interlocutors from culturally diverse backgrounds and develop their competence in IC; it does not guarantee achievement in such interactions. Aba (2015) additionally argues that there is a close relationship with students’ competence in IC and foreign language proficiency.

Therefore, it is necessary for foreign language teachers to obtain basic insights from cultural anthropology, culture learning and IC so as to promote IC in their classroom through discussions that encourage students to think, interpret and analyze.

Past studies indicate EFL teachers’ awareness of interdependence between language and culture as well as the importance of ICC as a key competence in the current century. Promoting IC in their classroom is seen pivotal. For example, in Turkey, Eken (2015) and in Thailand, Cheewasukthaworn and Suwanarak (2017) similarly found that EFL college lecturers were aware of raising IC knowledge in their classroom because it was an effective and beneficial teaching method to improve their English teaching, yet they did not know how or what activities can help enhance their students’ ICC. In Poland, Chlopek (2008) proposed intercultural activities in culturally homogeneous classroom of EFL, where teachers “must begin with the students’ own cultural background and the cultures that students have direct contact with and then expand from that point until all world cultures have been covered” (p.12). In a Vietnamese context, Tran and Seepho (2016) integrated intercultural content into an English communicative language course in order to explore EFL learners’ (from primary school to university) attitudes towards intercultural communicative language teaching (ICLT) and their ICC development. The preliminary results indicated positive directions.

ICC as an outcome of intercultural learning can supplement the development of EFL students’ linguistic ability (Davis, Cho & Hagenson, 2015) and seems to be a good way to
promote tolerance, acceptance, understanding, and respect of culturally different others (Chlopek, 2008). However, there is no study into promoting ICC through teaching IC as a separate course to English major students. This paper seeks to propose the way in which Thai university students’ ICC in the context of learning and using EFL can be promoted through an intercultural course. The primary objective is to examine if students majoring in English and passing the IC Course can develop ICC or not.

2 Promoting ICC In Thai Academic And Social Contexts Of Learning And Using EFL

In Thailand, Bennui and Hashim (2014) found in their study that Thai people prioritize British and American English rather than other English varieties. In fact, they are the target language norms for teaching EFL in other contexts (Wornyo & Klu, 2018) so as to create mutual intelligibility for the purpose of International communication (Farrell & Martin, 2009). In addition, language and culture are seen intertwined. British and American cultures should thus be taught to EFL students without ignorance of learning other native and non-native English speaking backgrounds, especially the ones students have more direct contact.

In line with Hismanoglu’s (2011) argument about the natural consequence of globalization that renders IC and ICC essential in the field of foreign language teaching, the Department of English, Faculty of Liberal Arts at Huachiew Chalermprakiet University offers the IC Course as one of the core courses to English major students. The researcher was assigned to instruct this course in 2018 during January and May. The course was designed to help students: 1) develop cultural understandings, positive attitudes toward cultural differences, and IC skills needed to function appropriately and effectively within diverse societies; 2) explain the nature of language, principles governing the use of language, and culture reflected in language; 3) analyze and explain the problems that occur in IC; 4) identify or provide some solutions to problems in IC; and 5) communicate effectively in IC.

Since English has earned its global status and has reinforced IC in many contexts, which involve both non-native and native English speaking interactants, it is appropriate to study these two areas from a perspective of anthropology, the study of humankind that helps increase our understanding of ourselves and of each other. As a result, 15 weekly teaching plans for this course are outlined from a perspective of anthropology and cross-cultural communication (Tananuraksakul, 2017). Each week students are encouraged to participate in group discussion and compare their native culture to others, evaluating and interpreting the comparative results. The understanding is expected to render them culturally relativistic rather than ethnocentric. The former views all cultures as unique values; the latter considers their own culture better than others’. The following shows some examples of weekly teaching plans and topics of students’ presentations pre-approved by the researcher:

Week One: Introduce some arguments of the spread of English and its global status as well as a framework from anthropological perspective. The introduction will help students understand how English has spread throughout the globe and become recognized worldwide. They will also understand use of English in different contexts and be aware of language barriers and psychological impacts that they may experience when stepping into a context of IC and cross-cultural communication.
Sample Discussion Questions: 1) Do you personally think English will still dominate the world in the next decades? Give your reasons why or why not. 2) In the contexts of English as a lingua franca, who do you think has the most advantage in communication and why do you think so? 3) What would be barriers when people from culturally diverse backgrounds communicate in ‘world Englishes’?

Week Two: Introduce the definition of culture, characteristics of culture, influence of culture over communication and thought patterns. Some of these aspects of culture, such as beliefs, cultural values and patterns of thought are of particular essence for learners of EFL to be aware of and understand. The reason is that they will be able to analyze and interpret more positively towards culturally different others’ ways of thinking and behaving that are not easy to understand.

Sample Discussion Questions: 1) In what way does culture affect your ways of thinking? 2) How does globalization affect you culturally and/or socially? 3) If you are awarded a scholarship to pursue your higher education in an English-speaking country, what types of barriers do you think you will be facing? Explain how and why. 4) If you work with a British or an American in a multinational company, explain how different thought patterns between you and the British or the American may cause you difficulty.

Week Three: Introduce a brief history of making of the UK and how it transmits to core British values that characterize “Britishness”. The values are defined from perspectives of the governments and academics. These core cultural values will assist students to understand more of the British ways of thinking and behaving.

Sample Discussion Questions: 1) Do you think there are some other values British people may live by? 2) Have you had trouble in understanding a British’s behavior? If yes, can you explain by now why he or she behaved that way? What will you react or respond if you have the same experience? 3) Due to the values of achievement, choices and competition, do you think British people also value privacy, time and adherences to rules and regulations? Explain why or why not.

Week Four: Introduce the definition of lifestyle, which is part of an external aspect of culture. It then explores common leisure activities the British enjoy. Students will understand how the activities reflect their ways of living.

Sample Discussion Questions: 1) What do you think have impacts on British people’s ways of life? Do you think its geography, climate and religion are the impacts? 2) Lifestyle is expressed in both work and leisure behavior patterns and on an individual basis in activities, attitudes, interests, opinions, values, and allocation of income. Can you explain how British lifestyle reflects on the people’s identity? 3) Do you think there are other kinds of sports the British also play? Describe those sports. 4) Does going to a pub convey parts of the life in your country? Explain how it conveys.

Week Five: Address some of the social aspects of the UK, which reflects on the society as a whole and how its members live together, and also some other social aspects that have recently had a great impact on the British society.

Sample Discussion Questions: 1) Do you personally think the UK is a good place to live? Explain why or why not. 2) Are there any aspects of the British society similar to or different from any of you? Explain how it is similar or different. 3) Have any of those similar aspects influenced over the society you live? Explain how they have influenced so. 4) If you have an
opportunity to visit the UK, how would you face a language barrier there? 5) Why do you think the UK is a developed country?

**Week Six:** Introduce traditional holidays that have been influenced by the predominant religion and have been celebrated throughout the UK, festivals and traditions that the British enjoy celebrating, and some important customs that are British common rules. The festivals, traditions and customs reflect on the UK identity.

**Sample Discussion Questions:** 1) Are there any British customs you think people in your country should adopt? Give reasons why. 2) Have any British customs and traditions influenced over your culture? Explain how they have influenced so. 3) Are there any festivals and holidays in your country influenced by religions? 4) What are those festivals and holidays? How do the people in your country celebrate them? 5) Do you share any superstitions and taboos in common with the British? Explain what those are. 6) Do you find any of British festivals, holidays, common important customs and superstitions bizarre? Explain why or why not.

**Week Seven:** Introduce a brief history of making of the US along with basic cultural values and beliefs that the mainstream in this country lives by. These basic values and beliefs will help students understand more of the Americans’ ways of thinking and behaving in general.

**Sample Discussion Questions:** 1) Since Americans are hard workers in nature and enjoy freedom, dependence on themselves and comfortable lives, do you think there are some other cultural values they may live by? Explain what they are. 2) Why do you think America has attracted many people around the world to immigrate to this country? 3) If you immigrate to the US, will you find it difficult for you to live there? Explain why or why not. 4) Which of the basic cultural values and beliefs do you appreciate? Explain why. 5) Which of the basic cultural values and beliefs have misled people in your country to adopt?

**Students’ Presentations:** 1) non-verbal communication in different cultures; 2) cultural values and beliefs in European countries; 3) Hispanic cultural values and beliefs; 4) cultural values and beliefs in ASEAN countries; 5) the notion of ICC; 6) students’ intercultural interview project.

### 3. Definition Of Key Term

In order to shed light on the study whether the IC Course can help promote English major students’ ICC, in this study ICC refers to one’s ability to interact effectively and appropriately with culturally different others in a foreign language (Byram, 2000) that is English. The concept of effective and appropriate interactions in ICC comports with Spitzberg and Cupach’s (1989) general communication competence in that an individual is not only effective communicator who can succeed in his or her goals but also an appropriate communicator who can exhibit accepted and expected behaviors in a social situation. Being an effective and appropriate communicator with culturally different others requires English language competence and intercultural competence.

In this study, features of both language and intercultural competences are adapted from Tran’s (2015, p.30) doctoral study. The former includes linguistic, sociolinguistic and discourse competences. Since the students are senior and major in English, they are assumed to have different levels of English competence to interact with culturally different others. The
latter are attitude, knowledge, awareness and skills. Attitude refers to positive feelings and thinking about cultural differences and culturally different others without judging others based on one’s own cultural standards, known as cultural relativism. Due to the EFL context itself, enthusiasm for learning about other cultures and confidence in IC engagement should characterize EFL students’ ICC. Knowledge is cultural aspects one has learned or acquired while awareness refers to knowledge that cultural differences exist. Skills are one’s ability to analyze and explain the problems that occur in IC as well as identify or provide some solutions to problems in IC. All of these intercultural features assist individuals to exhibit their behaviors appropriately in IC.

4. Procedures Of The Study

The present study started with participant selection and recruitment. The target group was those English major students enrolled in the IC Course with the researcher during January and May in 2018. They were in their third year during the time of study, but during the recruitment they were in their fourth year voluntarily participated in virtual interviews through either Facebook Messenger or Line during February 1-11, 2019. The interview data were then translated into English and grouped into common categories or themes.

A number of 12 students answered these interview questions in Thai that sought to find out their ICC: 1) what have you learned from the IC course 2) how has the knowledge you learned helped you equip with communication with culturally different others? 3) Have you had enthusiasm for learning more about other cultures? 4) Do you gain more confidence in intercultural contact? Why or why not? 5) Have you learned that every culture can be different and that none of the culture is better than others?

5. Findings And Discussion

The virtual interviews from 12 participants were commonly grouped into three themes reflecting ICC they developed through the IC Course. Theme one is about knowledge and awareness of cultural differences; the following themes are attitudes and skills.

Theme One: Knowledge and Awareness of Cultural Differences

Despite the length (9 months) almost all students finished the IC Course, they still remember what they have learned from the class, building up their background knowledge or schema. Most students referred their schemata to the phenomenon of English use in many contexts which can be more understood through Kachru’s (2017) argument on the term ‘World Englishes’, which he coined in the 1980s. The term has been the most influential model containing three concentric circles and descriptions regarding the use and spread of English. First, the Inner Circle is the world of English historically spoken as a mother tongue or English as a native language (ENL). Australia, Canada, New Zealand, the United Kingdom and the United States fit into this group. Second, the Outer Circle refers to a large number of formerly colonized territories including Bangladesh, India, Malaysia, Nigeria, Sri Lanka, Singapore and the Philippines, and people in these countries use English as a second language (ESL). They provide norm-developing varieties of English, a localized norm that has well established linguistic and cultural identity. Third, the Expanding Circle regards EFL societies.
English in this particular Circle has become the most popular foreign language taught in the school systems (Bolton, 2006: 299).

Two students particularly were able to draw these schemata when taking other classes in different semester. Students 1 and 9 shared in parallel that they could apply how English globally spread in the forms of three Concentric Circles and the concepts of World Englishes to the Principles in Teaching English Course. Student 1 explicitly stated that the effects of IC in World Englishes also helped her understand this subject better. During her study of the English for Tourism Course, the IC Course also enabled her to perceive that:

understanding cultural differences between a host and guests from other countries allows the host to behave in a way appropriate to the guests and this will lead to an impressive visit to Thailand. Those aspects of culture particularly include cautions of non-verbal communication usage, i.e. gestures, postures and proper distance during interactions.

Students 2 and 5 realized why people from different nations have imbalances of English competences. Student 2 additionally explained that “I learned that some countries were colonized by America and Britain and forced to use English … That explains why people from the Outer Circle can speak English more fluently than the ones from the Expanding Circle”. Students 7 and 12 learned more about “a variety of English… different English accents from the three Circles”. The latter considered being colonized had a good advantage in acquiring English.

Apart from the phenomenon and spread of English use, many students also referred their schemata to cultural values, beliefs and thought patterns. Student 2 recalled the differences in thinking and perceiving the world between people from high context culture and low context culture and said:

I learned from this class why individuals from high context culture tend to communicate indirectly as compared to low context culture… passive learners…why Americans are more opinionated, reliant on themselves than Asian people who tend to go around the bush in order to get things done… it’s about differences in cultural values and thought patterns. In general, the Westerners are individualistic and embrace ambiguity tolerance while Asians are collectivistic and prefer to avoid uncertainty. I also learn that the Brits are a bit more like Thais in terms of indirect communication as they value politeness and courtesy.

Students 6 and 8 “learned about other nationals’ cultures”. The latter elaborates on this “I learned that differences in cultural values, religious beliefs and lifestyles cause people from different nations to think and behave differently. For Student 4, “each nation has its own customs and beliefs, and in order to work together successfully we need to understand the differences”.

Students 2 and 3 shared the same experience in analyzing cultural differences as they said “questions for discussion shaped up my thinking and analysis better”. The former elaborated that “I learned different angles about the analysis from my classmates as well”. Student 10 realized that “effective communication with culturally different others requires competences in both language and culture”.

Students 6 and 8 “learned about other nationals’ cultures”. The latter elaborates on this “I learned that differences in cultural values, religious beliefs and lifestyles cause people from different nations to think and behave differently. For Student 4, “each nation has its own customs and beliefs, and in order to work together successfully we need to understand the differences”.

Students 2 and 3 shared the same experience in analyzing cultural differences as they said “questions for discussion shaped up my thinking and analysis better”. The former elaborated that “I learned different angles about the analysis from my classmates as well”. Student 10 realized that “effective communication with culturally different others requires competences in both language and culture”.

Students 6 and 8 “learned about other nationals’ cultures”. The latter elaborates on this “I learned that differences in cultural values, religious beliefs and lifestyles cause people from different nations to think and behave differently. For Student 4, “each nation has its own customs and beliefs, and in order to work together successfully we need to understand the differences”.

Students 2 and 3 shared the same experience in analyzing cultural differences as they said “questions for discussion shaped up my thinking and analysis better”. The former elaborated that “I learned different angles about the analysis from my classmates as well”. Student 10 realized that “effective communication with culturally different others requires competences in both language and culture”.
The analytical findings show that 11 students learned about and were aware of different aspects of cultures and the way in which English governed the world, suggesting that they developed cultural understanding and nature use of English in different social contexts of ENL, ESL, EFL and ELF. These suggestions further imply that in the context of learning and using EFL, the IC Course can promote students’ ICC.

**Theme Two: Attitudes**

Almost all students earn positive attitudes after taking the IC Course since they have more enthusiasm for learning about other cultures and confidence in IC engagement. They also practice cultural relativism. Student 10 “felt more enthusiastic to learn about other cultures because he wanted to succeed in IC, and intercultural learning allowed him to see the world in a wider perspective”. Student 1 explained in detail:

> I am more enthusiastic to learn about various cultural aspects because all cultures are shaped by history, geography, politics and government, so judging others based on our own standard or culture is not suggested. I have more curiosity for cultural learning in the real world of workforce. One thing I can’t forget is about culture being dynamic and it is so true that today’s world has kept changing. If I ignore this fact, I will be outdated in many ways.

It appears that knowledge and awareness of cultural differences assist students in enhancement of self-confidence. Student 8 particularly mentioned that “as I don’t have any bias of cultural differences, I feel confident to communicate with culturally different others”. I am also confident in IC. Although Student 9 could not speak English fluently, she thought she felt more confident as she used the language more in the real world. Students 3, 4, 5 and 7 similarly said “I felt more confident to communicate with culturally different others because I am aware of their core cultural values and beliefs…what is appropriate or inappropriate”. For Student 1, she found she gained confidence during the job training. Her job assignments were to correspond and meet with foreign investors and service foreign customers. She further explained that “I found myself to be more confident because I have cultural knowledge and understand that no single culture exists in this world and that each is unique”.

Some other students gained confidence through the interview assignment. Student 6 stated “I got the courage to initiate interviews with foreigners”. Students 2, 11 and 12 thought “I gain more confidence in speaking in English due to the interview assignment. Student 2 elaborated “at first, I was bashful to interview foreigners. When I started the interview, I gained the courage and enjoyed talking in English more.” For Student 11, “once I was successful with the first interview, I felt proud of myself and looked forward to interacting with other foreigners”. For Student 12, as a part of the course assignment:

> I had a chance to interview someone from Japan who had unique characters … everyone could tell this person is from Japan. I became interested in Japanese culture as I wanted to learn more about its non-verbal communication… why it’s a taboo to point a finger. I think understanding culturally different others helped me gain confidence in IC. Plus, I could see that the interviewee was willing to talk to me and welcomed my questions.

Student 10 is the only person who thinks he still lacks confidence despite his enthusiasm for intercultural learning. He said “for one thing I am bashful, have no courage to speak in
English. In fact, I’m afraid of face loss”. His perceptions align with Tananuraksakul’s (2012, p. 90-91) study into Thai EFL learners’ encounters of IC in Thailand particularly their security and dignity that face and facework were key behavioral patterns in Thai culture. In fact, Student 10 experienced communication apprehension, normally stemming from shyness. The apprehensive feeling in turn affected his risk-taking and self-confidence.

Knowledge and awareness of cultural differences also assist students in enhancement of cultural relativism. Student 1 thinks:

> every culture is unique, so there’s no better culture than others. When I went out for lunch with a French friend, both of us had the same dish of chicken with rice served with a bowl soup. The way we had the dish differed. I ate rice and chicken alternatively with the soup while she finished her soup first. I noticed how she looked at me with amusing face.

Student 4 shared that “the differences convey beauty that stimulates me to learn more about other cultures”. Cultural differences should be acceptable for IC.” For Student 7, “every culture is unique, none of culture is better than others.” Student 2 explicitly shared that:

> this class helps me understand culturally different others better. None of culture is right or wrong. Everyone is brought up according to his/her own culture transmitted from generations. I have more positive thinking about foreigners’ different communication behaviors”.

Student 3 said “I had more interest in learning about similarities and differences between us and them because understanding how others think and behave is the way to show respect and this makes me confident to interact with foreigners”. Student 9 thought she felt more enthusiastic to learn about foreign cultures since awareness of cultural differences was seen a tool to help her adjust her life in the current era. She exemplified a personal situation at a McDonald’s in a foreign land. “Immediately, I could see the physical setting, the atmosphere and condiments provided differ from what we had back home. The local people talked loudly in their group, unlike ours. At first, I thought they were rude but I realized that was the way it was. We behaved differently and that should be accepted in that manner”.

The analytical findings above suggest that the students developed positive attitudes toward cultural differences and culturally different others without judging others based on their own cultural standards because four students expressed their enthusiasm for further intercultural learning, 11 students felt more confident to engage in IC, and six students exercised cultural relativism. The analysis can further implies in accordance with Chlopek (2008) that the IC Course can be a good way to promote not only EFL learners’ positive attitudes toward cultural differences and culturally different others but also their tolerance, acceptance, understanding and respect of culturally different others. While enthusiasm and confidence characterize EFL learners’ positive attitudes, the notion of face and facework as well as communication apprehension can impair EFL learners’ confidence.

**Theme Three: Skills**

Only Student 2 manifests her IC skills since she was the only person who had IC encounters during her job training with a multicultural company in Thailand. She shared explicitly:
I am able to apply the cultural knowledge I learned in this subject in my daily life and workforce. During my cooperative education last year, I had to interact with foreign executives and international customers who used car rent services at the company I had the job training in Thailand. [On the one hand] I found that I needed to adjust to IC within the organization and cope with the customers’ cultural and linguistic diversity so as to ensure intelligibility. There was another French trainee who clearly relied on her own idea and was unable to understand the notion of respect for seniority in Thai culture. [On the other hand] I found myself to be more confident because I have cultural knowledge and understand that no single culture exists in this world and that each is unique. With this thinking in mind, I am able to accept, adjust and behave in an appropriate way although it took me some time. Many customers asked about my name after I finished my training. Personally, I think this subject is very useful and students should prioritize it because we live in the perceived shrinking world.

The findings reveal one student who appeared to develop IC skills because she was able to analyze and explain the IC problems that occurred in the company as well as identify or provide some solutions to the IC problems. Adjusting herself to the new environment was her solution. This analytical finding was parallel with research outcomes of Aba’s (2015) and Tananuraksakul’s (2012) in that exposure to IC could develop EFL learners’ ICC. The analysis further implies that the IC Course can promote EFL learners’ ICC.

6. Conclusion

This qualitative study by means of virtual interviews on Facebook Messenger and Line seeks to examine whether the IC Course offered to English major students of Huachiew Chalermprapkiet University can promote their ICC. The analytical results garnered from twelve students were commonly grouped into three themes suggested that they developed 1) cultural understanding and nature use of English in different social contexts of ENL, ESL, EFL and ELF; 2) positive attitudes toward cultural differences and culturally different others without judging others based on their own cultural standards; and 3) skills to analyze IC problems and identify solutions to the IC problems. These suggestions can further imply that in the context of learning and using EFL, the IC Course can promote: 1) English major students’ ICC because they appear to attain abilities to interact effectively and appropriately with culturally different others (Byram, 2000) in English; and 2) their positive attitudes toward not only cultural differences and culturally different others but also their tolerance, acceptance, understanding and respect of culturally different others. Enthusiasm and confidence characterize EFL learners’ positive attitudes, but the notion of face and facework as well as communication apprehension can impair their confidence.

Although the study is limited by its nature of qualitative research approach that involves a small number of participants, the empirical outcomes provide insights and directions for future research. A longitudinal study with students who pass the IC Course and experience more in IC is recommended. Another recommendation includes a quantitative survey.
Adknowledgements

I would like to express my gratitude to all of the participants who spared their precious time for sharing their views of learning the Intercultural Communication Course with me and their experiences in intercultural communication in the real world.

References


Malay Rejection on Elimination of All Forms of Racial Discrimination

Suyatno Ladiqi¹, Aizatul Anis binti Zuhari²
{yatno.ladiqi@gmail.com¹, aizatulanis@gmail.com²}

University Sultan Zainal Abidin, Terengganu, Malaysia¹²

Abstract. After the change of the new government on last year on 14th General Election in May 2018, Malaysia is facing with a new administration, ideas and form of government after sixty years in the hand of previous government called as the Barisan Nasional (BN). After given the mandate by the Malaysian, the new government under the role of Pakatan Harapan (PH) wanted to ratify the international convention known as International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) under the United Nation (UN) that promotes states to eliminate all form of discrimination in the government ruling. However, the ratification of ICERD has created major wrath of the Malays and Bumiputras due to inconsistency in certain aspects of special privilege and rights of the Malays and Bumiputras embedded in Article 153 of the Constitutions. ICERD imply negatively to the ‘Social Contract’, Islam as the national religion of the state and the constitutional monarchy system in Malaysia. This can be sum up as the effort of the Malay to protect its ‘Ketuanan Melayu’ as their identity. This paper is meant to study the pros and cons of the ICERD towards the people and also to analyze the reactions of the Malays especially towards the ICERD issues.

Keywords: Ketuanan Melayu, ICERD, Article 153 of the Constitutions, Malaysia.

1 Introduction

What is ‘Ketuanan Melayu’? “ Tak kan Melayu hilang di dunia”- Hang Tuah (The Epic of Hang Tuah)

Never should the Malay feel lost (Hilang) in the world is the famous saying from the prominent ‘Laksamana’ known as Malay warrior who lived in Malacca during the 15th century had motto possess the cosmopolitan spirit of the wise and pacifist Tuah (Farish Noor, 2009). The Ketuanan Melayu is best to understand as Malays and Bumiputeras are the people of the land or original people along ratifying the political power and certain special privileges to the Malays and Bumiputeras. However, this does not mean that the other races right are denied. All of the government subsidies, initiatives and budget are given equally. The Chinese and Indian are freely to build their temple, school and live freely in the land with guaranteed of the security. Although the idea itself predates Malaysian independence, the phrase Ketuanan Melayu did not come into vogue until the early 2000s decade. The misinterpretation of the terms leads to an understanding of discriminations and inequality in rights and power of the non-Malays. This would spark the fire of racial issues. Malaysian should learn from the history how Malays right deprived and take the toleration of the Malay rulers as a key to allow understanding ICERD in western perception, ICERD does give a great platform for equality
for the state. However, in the Malaysian context, it goes against what embedded in the constitutions and social norms. Since Merdeka, Malaysia did not sign ICERD and the only country define racial religions which the Malays are defined in the Federal Constitution as Muslims, Malay, and Malay-speaking. The major reason why the public opinion of Malaysia rejects the ICERD are first because of religions, second because of what it called the ‘Social Contract’ and lastly about the Ketuanan Melayu.

2 Literature Review

Gross violation of human rights such as discriminations and failure of the state to ensure the administration policy to not contradict with the concept of human rights is today has become common issues in the world. Many of the discrimination are the results of interstate conflicts and international views that particularly happened in most in a developing country. In the Nature and Causes of Racism and Racial Discrimination, a journal by Michael Banton stated that the idea of racism has been of great rhetorical power in assembling universal activity for political change in Southern Africa. It has instigated more than seventy-five percent of UN part states to progress toward becoming gatherings to the 'Worldwide Show on the Disposal of All Types of Racial Separation'. Antidiscrimination laws are intended to secure specific classes of individual’s specific social circles from activities which have either the reason or the impact of disabling the activity of their human right (Banton, 1992). Many scholars focused on public opinion that directed to issues of discrimination against transgender people in the context of healthcare can lead to poor health outcomes and facilitate the growth of health disparities (Vijay, 2018).

An article from the Factors Associated with Medical Doctors’ Intentions to Discriminate Against Transgender Patients in Kuala Lumpur, Malaysia found that transgender people are frequent targets of discrimination. Discrimination against transgender people in the context of healthcare can lead to poor health outcomes and facilitate the growth of health disparities. This study explores factors associated with medical doctors’ intentions to discriminate against transgender people in Malaysia. Also, most of public opinion of Malaysia directed on the issues of racial discrimination in hiring fresh degree graduates in Malaysia through a field experiment in a journal entitled Discrimination of high degrees: race and graduate hiring in Malaysia, which then analysed differentials in call back for interview attributable to racial identity, while controlling for applicant characteristics, employer profile and job requirements which found that find that race matters much more than résumé quality, with Malays – Malaysia’s majority group – significantly less likely to be called for interview. Other factors, particularly language proficiency of employees, language requirements of jobs and profile of employers, influence employer biases. Applicants fluent in Chinese fare better, and Chinese-controlled and foreign-controlled companies are more likely to favor Chinese résumés, indicating that cultural compatibility explains part of the discrimination (Lee and Khalid, 2015).

Moreover, in the journal of Discrimination of high degrees: race and graduate hiring in Malaysia explain that in the last twenty years, economic and social policy in Malaysia has been dominated by discrimination in favor of the Bumiputras and against the Chinese and the Indians (Lee and Khalid, 1991). In no other area of public policy has reverse discrimination been more acute than in higher education. The paper shows that past and present educational policies in Malaysia have resulted in allocative inefficiency while the distribution of incomes.
has widened (Tzannatos, 1991). Furthermore, on international levels, the public opinions only
directed on the knowledge and support for an ASEAN Community in Indonesia, Malaysia,
and Singapore. Thus, there are no such efforts to clarify the public opinion on the issues of
international conventions or the most frequently debated on the International Convention on
the Elimination of All Form of Discriminations (ICERD). The quite related and similar issues
on ICERD can be found in journal Racial Vilification And ICERD In Australia which talks
about Australia which is presently far from compliance with the requirements of Article 4a of
the Convention on the Elimination of All Forms of Racial Discrimination. The State Acts,
while covering some aspects of Article 4a, do not comprehensively cover the requirements,
and are additionally handicapped by the fact that only some of the States have enacted them,
and their application necessarily ends at State borders. The legislation that would go the
furthest to bring Australia into compliance is the Racial Hatred Act.

However, this Act has substantial shortcomings. Community fears about the effect of such
an Act may further reduce its compliance with the requirements of the Convention. The
Australian public needs to be fully informed about the Act, and the necessity for the Act, so
that community concerns do not cause the Act to be further weakened, and so there is no
community backlash to the implementation of such legislation (Johns, 1995). In fact, there is
no specific research has been done to study the ratification of international conventions which
go against the constitutions, social contract, and society of Malaysia. Thus, this research is
solely valid and have not yet been justified by any publications.

3 Methodology

The methodology adopted for this paper is purely from secondary sources. The data was
obtained completely from reliable and trustworthy sources such as literature, books, journals,
and other internet sources during the completion of this research on the Malay Rejection of
ICERD in Malaysia. The methodology used is the qualitative method which involves the
collection of the previous articles and other relatable sources for the research purposes which
have been summarised and interpreted into new writing based on the gathered sources.

4 Discussion

Malay responds with “Sarang Tebuan Jangan Dijolok”

Just like the beehive, if you hit it the whole squad will come out and attack. This what it
means by Malay saying “Jangan Tebuan Jangan Dijolok”. The most recent issues hit the wall
was the ratification of the International Convention on the Elimination of All Forms of Racial
Discrimination (ICERD) is a United Nations convention which obligates its members to
eliminate any form of institutional discrimination that is against humanity and to promote and
encourage universal respect for and observance of human rights and fundamental freedoms for
all, without distinction as to race, sex, language or religion. Understanding this in western
perception, ICERD does give a great platform for equality for the state. However, in the
Malaysian context, it goes against what embedded in the constitutions and social norms. Since
Merdeka, Malaysia did not sign ICERD and the only country define racial religions which the
Malays are defined in the Federal Constitution as Muslims, Malay, and Malay-speaking.
Malaysia is unique in recognizing Islam as an official religion, inhibiting the spread of other religions to Muslims, recognizing Islam and Bumiputera privileges, scholarships and so on. This contradicts the spirit of ICERD. However, after the 14th general election lead to the formation of the new government where the issues of equality hit up in media as the new government lead by 'Pakatan Harapan’ a political coalition ready to ratify the ICERD. Minister in the Prime Minister's Department, P Waytha Moorthy, reportedly said the government would ratify or confirm six forms of the international agreement including ICERD in the first quarter of next year. This sparks wrath of the Malays and pushed to the government to reject it.

Finally, Prime Minister Tun Mahathir Mohamed agree to not ratify the ICERD. However, the Parti Keadilan Rakyat (PKR) president Datuk Seri Anwar Ibrahim described it as reasonable for the government to postpone the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (Astro Awani, 2018). The word 'postpone' used by him does not satisfy the Malays and this resulted in the ‘Himpunan Aman Bantah ICERD’ or called ‘white demonstration’ on 8th December 2018. A massive rally involving PAS and UMNO members was held in the capital to object to the proposed ratification of the ICERD. PAS president Datuk Seri Abdul Hadi Awang said the gathering was aimed at declaring Malays and Islam's objections to the Federal Government's action which allegedly wanted to ratify or ratify ICERD. Meanwhile, Ahmad Zahid said UMNO would support the rally on Dec 8 and wanted a gathering of Ummah members to combine UMNO and PAS members in every state in the Peninsular. He said if there was no declaration from the government to reject the ICERD, the Malays across the country would rise up against the matter. Adding up, he claims that in the English dictionary, the words 'amuk' were borrowed from Malay showing that the Malays could rage if their rights were challenged. The gathering or also known as Himpunan 812 is a set of historical giants that never happened in Malaysian history where over a million Malays and Bumiputeras gathered on the streets. Many are surprised by this resurrection. In fact, they view the views of the Malays and do not expect the Malays to come down and be united. The gathering was a success and ended up in peace.

What are the lessons from the gathering? The issues affecting Islam and the position of the Malays and Bumiputeras are very sensitive. This fact fails to be understood by non-Muslims until they take the light on the actions that suffocate these two sensitive matters: Humiliation against the Prophet, the Yang di-Pertuan Agong, Islamophobia and Melayufobia is more fertile among non-Muslims in our country as the Malay Muslims are the majority. The disbelief and insecurity of the Muslim Malays are increasingly burning. The Malays have come to realize that the political dispute that has taken place so far has been a disadvantage. This is evident when two Malay Malay parties, namely UMNO and PAS and other parties are willing to cooperate and support to oppose the ICERD ratification. Since then, the unity and cooperation between these Malay Islamic parties have become stronger and more mature (Hespaini, 2019).

**Why Does The Malay Reject ICERD?**

The first major reasons why Malaysia did not ratify the ICERD are because of religion, Islam. Malaysia is unique in recognizing Islam as an official religion, inhibiting the spread of other religions to Muslims, recognizing Islam and Bumiputera privileges, scholarships and so on. Malaysia is an Islamic country that Article 3 (1) of the Federal Constitution provides that Islam is the religion of the Federation. However, at other times, other religions can be practiced peacefully and peacefully in any part of the Federation. Article 11 (1), the Federal
Constitution provides that: "Every person is entitled to profess and practice his religion and, subject to Clause (4), extend it." Based on this provision, it is clear that Muslims are entitled to profess and practice the Islamic religion as a way of life. Clause (4) states that the law may be made to control or restrict the development of any other faith or belief in the religion of the Muslims. Islam is given the privilege and privilege of the Constitution. However, Islam does not restrict the right to freedom of religion for other faiths (Zamanai, 2018). However, it does not mean that freedom is absolute because it is still subject to Article 11 (4) which restricts the spread of non-Muslims among Muslims. Freedom of human rights is also guaranteed by the Constitution under Part II. However, it is subject to certain conditions such as public order, public health, and moral principles as well as public rights (Zamanai, 2018). The spirit of ICERD which celebrates the freedom of religions whereas embedded in the ratification of the ICERD would terrorize the positions of Islam in the constitutions which drag many Malays reject the ICERD. Malaysia was shaped as a Muslim country, not a secular country. Thus, the position of religion is prioritized.

Second, Malaysia has a unique system called 'social contract'. Along the way of reaching the independent, the rulers are aware of the differences by trying to tolerate cultural and identity issues. They understand that it was impossible to send all the non-Malays back their homeland but at the same time, thus, the idea of the Social Contract refers to trade-off through Articles 14–18 of the Constitution, pertaining to the granting of citizenship to the non-Bumiputra of Malaya (particularly Malaysian Chinese and Indian), and this was carried over to Article 153 when Malaysia was formed on 16 September 1963, which grants the Malays special position in the country. The social contract embedded few of matters which are: (1) The Constitution explicitly grants the Bumiputra reservations of land, quotas in the civil service, public scholarships and public education, quotas for trade licenses, and the permission to monopolize certain industries if the government permits. In reality, however, especially after the advent of the Malaysian New Economic Policy (NEP) due to the racial riots of the May 13 Incident which occurred in 1969 when Malays held only 4% of the Malaysian economy, Bumiputra privileges have extended to other areas; quotas are set for Bumiputra equity in publicly traded corporations, and discounts for them on automobiles and real estate ranging from 5% to 15% are mandated. (2) The Constitution also included elements of Malay tradition as part of the Malaysian national identity. The Malay rulers were preserved, with the head of state, the Yang di-Pertuan Agong, drawn from their ranks. Islam would be the national religion, and the Malay language would be the national language. The justification of the 'social contract' in a way can be seen as racist. But, as mentioned above it talk about equity rather than equity. Tunku Abdul Rahman sees the weakness of the Malay people resulted from British break a ruling principle had to make Malays less in their own land. The same equality cannot be given as a huge gap in the economy was serious and this would disadvantage the Malays. A legacy of the British colonial system “break and rule” was the division of Malaysians into three groups according to ethnicity. The Malays were concentrated in their traditional villages, focusing mainly on agricultural activities and living in poverty, in the other hand the Chinese dominated Malaysian commerce and developed as part of the larger bamboo network, a network of overseas Chinese businesses operating in the markets of Southeast Asia that share common family and cultural ties. Educated Indians took up professional roles such as those of doctors or lawyers, while the less well-off worked the plantations. and keep harmony.

To sum up, the ratification of ICERD is strongly inconsistency with the religion, social contract and Ketuanan Melayu concept. The major issues are religion, as Malaysia is an Islamic country and there are some contradictions in the ICERD articles. Islam prohibits the
LGBT practice while the ICERD speaks for freedom of ideas which nurturing the LGBT. Furthermore, the social contract of Malaysia has stated some special rights in the constitution in Article 153 the special rights of Malays and Bumiputra. Looking in ICERD perspective, Article 153 is seeming to discriminate other races which special privileges are given to the Malays and Bumiputra. However, this concept had been agreed in the social contract thus clearly shown that the ICERD is contradicting to the social contract and constitutions. Furthermore, the word Ketuanan Melayu is closely related to the ICERD as it portrayed as just to protect the rights of Malay and can be translated as discrimination. However, its just matters of idea believing that Malaya is the people of the land and did not have such a big degree to discriminations. Thus, the ratification of ICERD is against the constitution and contrary to the Malaysia social context. Thus, the public opinion of Malaysia agrees and has driven the government to not ratify the CVERD.

5 Conclusion

The real question is does really Malaysians living in inequality? Looking in Forbes magazine reported in Malaysia’s 50 Richest views the top 10 richest men in Malaysia are held by many non-Malays putting Robert Kuok at the top of the list. In fact, numbers of the religious institution of non-Muslim rise up to 45% and mosque as to 55% which is relevant as Islam as the religion of the country (Abdullah, 2009). For many years since the independent, the rights of non-Malay are secured in the constitution to reach the equity but the Ultrakiasu thinkers still want more and even try to liberalize every aspect of the state. Taking Singapore as an example which In Article 152 of the Constitution of Singapore entitled ‘Minorities and special position of Malays’, it is stated that it shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore and the Government shall exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of Singapore, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language’ (Hassan, 2013). Sadly, and quite obviously, Article 152 has not actually made much of a difference to the development of the Malays in Singapore. The truth is Article 152 is nothing but purely symbolic. Sure, the national anthem is still in the Malay language.

Moreover, Malaysia really wanted to secure its identity as the state are pluralistic and multicultural in character. Thus, many Malays did not agree as this seems like a threat to towards their identity. Preservation of identity has become even more challenging with the rapid of globalization. Also, the public opinion of Malaysia strongly put the domestic law first
rather than the urge in international law which shows its strong sovereignty. The self-
determination of Malaysia also showed by the public opinion which rejects international
matters which inconsistency with the norms. Also, Article 153 is one of the main points that
address the special rights of Malays and Bumiputra inconsistence with ICERD. Article 153
was created to protect the rights and superiority of Malays and Bumiputra without
discriminates other race rights. Thus, it concerns the concept of equity in the circle if fairness
rather than equality which stressed equality. Not all rights can be counted in terms of equality.

To sum up, the public opinion of Malaysia had finally reserved the sovereignty and self-
determined of the state. Even though the many aspects of the ICERD is correct, but Malaysia
just loves to be in its own way. Plus, there are no such discrimination or human right issues in
Malaysia thus this may become proof that its domestic regulation operated at its best.

Acknowledgement

This paper is collaboration research at the Faculty of Law and International Relations,
Universiti Sultan Zainal, Malaysia. The authors thank stakeholders of faculty who supported
finishing and presenting the paper to the conference.

References

Books

Articles
(Accessed 20 Jun 2019)
[5]. Vijay (2018). Factors Associated with Medical Doctors’ Intentions to Discriminate Against
Transgender Patients in Kuala Lumpur, Malaysia. Retrieved from
Journal


The Katingan Conservation Program for Borneo as A Sustainable Development Strategy at Katingan Regency, Central Kalimantan

Syamsuri
{syam_najwa@yahoo.co.id}
Faculty of Social and Political Sciences, University of Palangka Raya, Indonesia

Abstract. The largest capital of development is sourced from natural resources, therefore, to guarantee the continuous development, the management of natural resources and environment should be carried out professionally and wisely while still taking into account the conditions of the environment and available natural resources in accordance with the concept of sustainable development. The sustainable development strategy in the Katingan Conservation program for Borneo is an effort to improve development through improving the economy and people's welfare while maintaining the preservation of natural resources and the environment. The purpose of this paper is to describe and analyze a sustainable development strategy model through the Katingan Conservation Program for Borneo in Katingan Regency, Central Kalimantan. With a qualitative descriptive approach where data collection is carried out by observation, interviews and documentation, the results of the research show that the strategy concept undertaken is through environmental sustainability strategies, economic sustainability strategies and socio-cultural sustainability strategies.

Keywords: Sustainable Development, Conservation Of Natural Resources And Environment.

1 Introduction

Development is an effort made to improve the needs of the present and future society by utilizing existing resources effectively, efficiently, proportionally and equitably, especially towards the environment. Natural resources as the main source of development must be managed properly so that sustainability can be maintained. In the Brundtland Report from the United Nations, 1987 it has been stated that sustainable development is a principle development process to meet current needs without compromising the needs of future generations.

However, the occurrence of natural disasters such as land fires, floods, volcanic eruptions and so on, will be directly or indirectly affected to the increasingly reduced potential and environmental quality, thus, affect the situation and the need for development that exploiting (uncontrolled) natural resources. This is characterized by environmental imbalances, decreased natural carrying capacity, climate change and erratic weather, and environmental conflicts. This condition then leads to a domino (repressive) impact on the lives of living things on earth (environment).
Based on data from the Forum for the Environment (WALHI) that in 2015 there were 11,996.22 Ha of Forests and Land experiencing fires which then caused air pollution with an average Particulate of 10 / PM10 estimated at 1,800 in the period August-October 2015. This condition also led to problems include health, mobility and transportation, education to the economy. Then the deforestation area is also caused by investment policies and regional development. The latest data showed that the land controlled by the corporation was recorded at 15,356,800 Ha, 83.76% or ± 12,862,855.7 Ha. Katingan Regency has an administrative area of 17,800 km2 consisting of 13 sub-districts and 154 villages with a population of 162,837 people if not managed properly by conservative approach, there will be significant problems with the destruction of forests and existing ecosystems.

Based on the above situations, it is necessary to create a policy to overcome and protect the environment and preserve the existing natural resources, so that they can be utilized sustainably, and can be done by a conservation program. This program does not mean eliminating the rights of the surrounding community as the owner of the area, but they can still utilize the natural resources that exist around the area to meet their needs and improve the welfare of their communities wisely and wisely while paying attention to its conservation and sustainability.

The aim of Katingan Conservation for Borneo is to create sustainable development and improve the economy and welfare of the people while still paying attention and maintaining the importance of Katingan Regency as a biodiversity storage area, the world's lungs, water sources for various interests, and as an important example of the Kalimantan region's ecosystem that has not been disturbed. The program is part of the strategy of Sustainable Development which is carried out in order to preserve the environment and the natural balance that gives benefit for the development as well as the continuity of living things. Therefore, this study will elaborate and analyze the sustainable development strategy through the Katingan Conservation program for Borneo in Katingan Regency.

2 Research Methods

Researcher used a qualitative descriptive approach in finding and analyzing data in this recent study. In-depth data is collected from informants who are considered to know, understand and participate in the implementation of the program (purposiv method) through this approach. To obtain complete data, the researcher use data collection techniques through observation, interviews and documents. It was continued by data analysis using interactive model data analysis techniques with the stage of data reduction, data display (data display), and conclusions.

3 Results And Discussion

Development is a planned and directed process in order to meet the needs of the community through various development activities by taking into account the ability and availability of resources as one of the important aspects which is then inherent to the concept of Sustainable Development so that no part is being sacrificed in the development process, because development should be an effort made to achieve a better pattern of life in society (Nia, et.al., 2009: 161). In line with the above objectives, Salim (1990) suggests that
sustainable development aims to improve the welfare of the community, meet human needs and aspirations.

In achieving the goals of a development, it is necessary to have a mechanism, tools and a wise strategy so the objective of a development can be realized. In order to achieve sustainable development goals through the Katingan Conservation program, there are three strategies implemented, namely ecological sustainability strategies, economic sustainability strategies and social-cultural sustainability strategies. It is in line with the previous study from Susiana (2015) that suggests the concept of sustainable development needs to connect three development paradigms, which are economic, social and environmental context.

3.1 Environmental Sustainability Strategy (Ecological Sustainability)

The sustainable development strategy that maintaining environmental sustainability is one of the concerns in the Katingan Conservation program for Borneo. The program is trying to maintain the existence and natural wealth owned to meet the needs and welfare of the people proportionally and directed, especially in realizing the goals of Katingan Smart, Healthy and Open. This is in line with the concept of ecological sustainability expressed by Djajadiningrat (1992) that stated ecological sustainability aims to guarantee the existence of the existence of the earth, so that there is need for action, maintenance policies. These efforts can be in the form of increasing the carrying capacity, assimilation power, and the sustainability of the use of renewable resources. Another study from Erwin (2015) added that conservation of natural resources can be done through the protection of life support systems, preservation of flora and fauna and their ecosystems and sustainable use of natural resources.

The form of the program carried out in this strategy is to map and protect the area and provide assurance of space use and investment plans, develop and implement environmental rehabilitation programs, especially the recovery of the functions of Bukit Baka and Bukit Raya National Park (TNBBBR), Sebangau National Park (TNS), community-based protected forests, improve environmental management and control of environmental damage and pollution, increase community capacity in managing biodiversity resources, as well as collaborative policies on environmental awareness.

Based on the mapping carried out on protected forest areas that are included in national parks, the government of Katingan Regency sets the Bukit Raya-Bukit Baka and Sebangau National Parks as areas that cannot be used for industry, plantations and mining. As stated by Fauzi (2004), the concept of sustainability through an environmental sustainability approach is an environmentally sustainable system that must be able to maintain constant resources, avoid exploitation of natural resources and function of environmental absorption. This concept also concerns the maintenance of biodiversity, the stability of air space, and other ecosystem functions that are not included in the economic sources category.

Moreover, the government also develops ecotourism according to the uniqueness of the region, such as created the Botanical Gardens in Bukit Batu area and the establishment and preservation of local wisdom which has long been maintained by local communities as sites and sites that must be maintained. Local wisdom that is owned by the community is as part of the effort to maintain the sustainable environment.

3.2 Economic Strategy (Economic Sustainability)

A development approach with a pattern of economic sustainability is an effort to ensure economic progress in the concept of sustainability and to direct existing activities appropriately. This is what will then be achieved in sustainable development in Katingan Conservation for Borneo. Communities nearby the conservation area can still utilize the
available resources as long as not damage the environment by implementing conservation awareness. The utilization of natural resources is not only to meet the consumptive needs of the local community but also the government (and the community) by develop tourist destinations, such as Bukit Batu natural tourism, climbing tours at both National Parks of Bukit Raya and Bukit Bulan in the South, as well as Riam Mangkit tourism destination. In addition, cultural tourism is also being developed, such as mass Tiwah ritual and mamapas lewa festive. Those activities will directly or indirectly increase the income of the surrounding community.

Another strategy that is done is develop the creative industries of the community, including the fields of agro-industry and agribusiness, such as processed rattan and handicrafts and other commodities. According to Fauzi (2004), economic sustainability is a development that is able to produce goods and services continuously to maintain the sustainability of government and avoid the occurrence of sectoral imbalances that can damage agricultural and industrial production. In this regard, the government has an obligation to facilitate and advocate through the provision of funding, infrastructure development, promotion such as on the website.

In order to accelerate the implementation of the program, the government also cooperates with private sector nearby the conservation areas, such as Ulin Forest in the area of PT. Dwima Jaya Utama, Bukit Bakaka Protection Forest at PT. Hutan Mulya and Fruit Endemic Forest at PT. Fitamaya Asmapara. The form of involvement undertaken is to build infrastructure towards existing conservation areas such as road construction, provision of transportation equipment for the community and assistance in the construction of village infrastructure and facilities. The involvement of the private sector in the program not only participates in conservation programs but also by open access for the community which will then have an impact on economic growth and passion and other social development.

3.3 Socio-cultural Sustainability Strategy

The flow of globalization and modernization that is difficult to stem is a big challenge for the region and society, because it will have an impact on the socio-cultural conditions of the community. The Katingan Conservation program for Borneo does not anti-globalization and modernization, but it is suggest on how the socio-cultural activities of local communities as a local wisdom can support the development of the community is maintained and sustainable. Therefore, this program is not only limited to Conservation Areas but also relates to the social and cultural dimensions of the region as well as cultural conservation so that there is no extinction in the social and cultural patterns of society. Socio-cultural sustainability is not only seen from the aspect of sustainability value alone, but also to the stability of society, patterns of interaction and fulfillment of basic needs, maintenance of cultural elements and participation of local communities and the role of the private sector. The Universal Declaration of Cultural Diversity (UNESCO, 2001) explores the concept of sustainable development by stating that cultural diversity is important to humans as well as the importance of biodiversity for nature. Thus, development is not only understood as economic development, but also as a tool to achieve intellectual, emotional, moral, and spiritual satisfaction.

The government as an element that has formal power to maintain and maintain the socio-cultural community also seeks to see the unique potential of community culture that can be developed into a special attraction for tourists. The efforts made were inventorying sites and cultural heritage and establishing existing Customary Forest areas by the government along with communities, traditional leaders and religious leaders to be used as protected and
preserved cultural heritage. Then preserve local wisdom that is held for generations such as tajahan, kaleka, sapundu, pahewan and patahu. Another strategy that is also carried out is by increasing the role of the surrounding community and the private sector, especially companies around the region. In addition, the government continues to make persuasive efforts to increase community participation, namely through various activities, including festivals, rituals, or cultural activities and involving them in the policy process.

4 Conclusion

The sustainable development strategy carried out in the Katingan Conservation Program for Borneo in Katingan Regency through the Environmental, Economic and Socio-cultural approaches is as a program that is not only to improve the economy and welfare of the community but also as an effort to protect and conserve natural and environmental resources continuously. The environmental sustainability strategy is carried out by establish restriction on plantation or mining industry in conservation areas, such as Bukit Baka National Park and Bukit Raya (TNBBBR) and Sebangau National Park (TNS). The economic sustainability strategy is carried out by developing natural tourism destinations, cultural tourism, developing creative industries by utilizing local potential and developing infrastructure supporting the economic activities of the community. The socio-cultural sustainability strategy is carried out by protecting and preserving sites and cultural heritage, preserving local wisdom and establishing Customary Forest areas and persuasive efforts through local festival activities and traditional rituals. Through this program, it is expected that the ecosystem and the survival of living things, both flora, fauna and humans themselves as actors and connoisseurs of a development remain balanced and the sustainability between development, natural resources and the environment is created, thus delivers benefit to the society.

Reference

Understanding and Promoting The Student Support Program in International School, Doha, Qatar

Sarita Kumari Singh
{saritasingh_mahi@yahoo.co.in}

Academic Support Coordinator of Student Support Program, Step One International School, Doha, Qatar

Abstract. This paper explores the facilitation of students who need support during the school hours and explores how this process might impact on overall inclusion of additional educational support needs (AESN) in a school. The main aim of this study is to find out effective teaching strategies of main stream teachers to teach AESN students through implementation of student support program. The rationale for this study is searching good strategies as the common perception of teachers is that AESN students cannot learn in inclusive setup through implementation of student support program. This is a qualitative study that was conducted in a school in Qatar. This is a case study of Student Support Program (SSP) implementation involving Classroom observations, senior management team (SMT) meeting and parents meeting as tools to collect the key information. The findings of the study show that SSP is an essential and significant program for AESN students at the observer’s school. For implementation of SSP program, the Student Support Team used one-to-one teaching strategies, structured teaching, Visual Learning strategies, Differentiated Teaching strategy and adaptive teaching strategies. The findings of this study could possibly motivate mainstream teachers in inclusive education in Qatar to teach AESN students.

Keywords: Additional Educational Support Needs (AESN), Student Support Program (SSP); Student Support Team (SST); Special Education Needs (SEN); Academic Intervention Plan (AIP); Gifted and talented Program (GTP); English as a Second Language (ESL); teaching strategies; main stream; inclusive education.

1 Introduction

The beginning of this study lays in the concern that often full participation of students, who need support, in the inclusive classrooms does not always happen. During my learning and teaching practice in Qatar, I found that many teachers have a lot to say on what works for inclusion and what does not. However, they accept that it is a challenge to teach additional educational support needs (AESN) students during teaching a general lesson. Therefore, observer engaged herself to develop a concrete structure of Student Support Program (SSP) for direct promotion of inclusive education.

In Qatar, many AESN students are not in a situation to cope in mainstream school, due to the insufficiency of infrastructure within the classrooms. Hence, AESN students do not benefit fully during main lessons. Additionally, in their daily lives, AESN students get only a limited concrete experience of core subjects. There is indeed a difference between making a policy...
and turning it into daily practices for teachers, school administrators and local communities. Implementation details may be left for administrations and educators to figure out, effectively leaving the reform process half-way through (Hess, 2013:5). Observing that policies often do not get implemented as planned, or not with the desired outcomes, governments, experts and international organizations have come to acknowledge the need to focus more on implementation processes (Gurria, 2015:6; Wagstaff, 2013:7; Pont, 2008:8; OECD, 2016:9). Challenges to implementing ‘Student support Program’ include co-ordination issues, inadequacy of organizational resources, qualified teachers and resistance against reforms.

However, the main problem in my work place is that it provides only worksheets based knowledge to AESN students. This is hardly adequate when hands-on and practical work has a high success value in day-to-day life. Qatar has signed the ‘United Nations Convention for Persons with Disabilities (CRPD)’ on 30th March 2007. In this policy it was clearly aimed to promote, protect and ensure the full and equal opportunity of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. In spite of this policy, in practice it is less effective in my school, therefore it was strongly in favour of promoting ‘Student support Program’ for AESN students.

In my organization, my responsibilities were to promote Student Support Program (SSP) up to primary level. During my classroom visit and observation, I realized that students are uninterested during the lesson as they had difficulties in the understanding of theoretical concepts. While struggling to provide appropriate teaching strategies to the teachers, I felt this is an interesting topic for my paper as it joins me directly with my professional area. Since, I have the opportunity to gain experience of the practices which are used in Qatari International School classrooms to teach AESN students; I feel it will add some new understanding to enhance my professional skills in order to meet these challenges in future. Another significant rationale for this study was the common perception prevalent in Qatar that AESN students cannot learn in inclusive setup effectively.

The key word of above question is ‘Student Support Program.’ According to my school policy on student support program (2016- 2017:1), students get support through four programs categorised as ‘Student Support Program’: Gifted and Talented Program, Special Education Needs, Academic Intervention Program and English Second Language program. The other key word is ‘strategies’ which are defined by Howley et al. (2003) as structured teaching which are indeed effective. The aim of this study is to find out the effective strategies adopted by teachers in the practice of inclusive education. Some sub-questions I used for this study are:  
1. What are school policies for implementing Student Support Program?  
2. What are the influencing factors in teaching AESN students?  
3. What do teachers plan for a particular lesson of AESN students before taking the class?  
4. Which teaching aids and appliances are used frequently to enable learning take place?  
5. How do my school teachers teach or what are the strategies/approaches to teach AESN students to learn and understand the particular topic?

The study will provide a ‘sense of inescapability’ because its aim is to develop and practice innovative ideas in the field of Student Support Program in my school. The study findings will help me to: gain insights and ideas for implementation Student Support Program; obtain effective strategies for teaching AESN students. The findings of this study will be useful for support program professionals; educators; and further research in the relevant field.

2 Literature Review
To analyse my research question, ‘Understanding, promoting and implementation of students support program’ in my school, it is important for me to find out what significant works had been done in this field previously. For my Literature Review, I was inspired by Mertens, and McLaughlin, (2005). They suggested the Literature Review provides an essential resource for planning, conducting, interpreting, and reporting research in special education. The approach, which I chose for searching the relevant literature, is also motivated by Bell’s (1999) suggestions for splitting the topic into its major components differently; hence, my literature review is split as follows: Student Support program; Gifted and Talented Program, Special education, Academic intervention program and English as a second language program. Teaching strategies and inclusive classrooms are the main components of my research topic.

2.1 Definition of Student Support Program and Related Terminologies

Apart from the definition of Student Support Program, there are many terminologies used for this study, AESN policies, Student Support Team (SST) are some central terms to be used as they are basically linked with Student Support Program.

2.2 Student Support Program

The Student Support Program (SSP) at my school is an additional academic support program which nurtures the students having learning difficulties, disabilities, and cognitive, social and behavioural gap during the school hours. The Student Support Program (SSP) is categorized into four types: - Gifted and Talented Program (GTP), Special Educational Needs (SEN), Academic Intervention Plan (AIP) and English as a second language (ESL).

2.3 Gifted and Talented Program

The Student Support Program document describes Gifted and Talented Program (GTP) as: ‘A program designed for students exhibiting higher academic capabilities in the classroom. It is designed to ensure that our most able learners are given the challenge, encouragement and assistance they need to achieve success and to create additional enrichment opportunities for them to develop and demonstrate their abilities. Students referred to this program will pass through a selection process, which consists of academic evidence and an interview with selected students. Students will be assigned extra tasks, such as extension worksheets or, mini-group projects’ (SIS- SSP- Doc 1- 18/19:1).

2.4 Special Education Needs

The Student Support Program document defines Special Educational Needs (SEN) as: ‘A program designed to accommodate students with special needs in their learning process. Students referred to this program, must have a referral form and a medical document stating classification of disability. After all required information has been gathered (from observations, parent and teacher meetings), students in this program are subject to an individualized education plan (IEP) for each term. The IEP will consist of their goals, objectives and time frame in accordance with their specific needs. Progress will be closely monitored. The pull-out and push- in session(s) will be scheduled according to the student’s specific needs.’

2.5 Academic Intervention Plan
A program designed for those students that need a one-to-one approach to reach the age appropriate academic year level as their peers. Students referred to this program are performing at an alarming readiness level for the age appropriate expected standard, in more than one English instructed subject. For example, they do not have the proper foundation to demonstrate academic capabilities corresponding to the age appropriate year level as their peers. Students will be subject to an academic intervention plan (AIP), which consists of specific subject goal, objectives and time frame in accordance to meet the students’ needs. The students’ progress will be closely monitored. Pull-out or push-in session(s) will be scheduled according to the students’ specific needs.

2.6 Special Education Needs

The Student Support Program document defines Special Educational Needs (SEN) as:

A program designed to accommodate students with special needs in their learning process. Students referred to this program, must have a referral form and a medical document stating classification of disability. After all required information has been gathered (from observations, parent and teacher meetings), students in this program are subject to an individualized education plan (IEP) for each term. The IEP will consist of their goals, objectives and time frame in accordance with their specific needs. Progress will be closely monitored. The pull-out and push-in session(s) will be scheduled according to the student’s specific needs.

2.7 Academic Intervention Plan

A program designed for those students that need a one-to-one approach to reach the age appropriate academic year level as their peers. Students referred to this program are performing at an alarming readiness level for the age appropriate expected standard, in more than one English instructed subject. For example, they do not have the proper foundation to demonstrate academic capabilities corresponding to the age appropriate year level as their peers. Students will be subject to an academic intervention plan (AIP), which consists of specific subject goal, objectives and time frame in accordance to meet the students’ needs. The students’ progress will be closely monitored. Pull-out or push-in session(s) will be scheduled according to the students’ specific needs.

2.8 English as a Second Language

A program designed for students who are not at the proficiency English level as their corresponding year level. Students in this program will improve their writing, reading, spelling and comprehension skills in English language. They will be assigned to three different levels in accordance to their capabilities. The ESL services will be delivered through pull-out as well as push-in program to meet the needs of the student.
2.9 Teaching strategies and approaches

Teaching strategies and approaches play an important role in teaching for AESN students. In the context of Qatar, the syllabus must be finished within an academic year. It is a bit difficult for teachers. Nevertheless, in such adverse conditions the teacher should follow some specific teaching strategies in the classroom to cope up with the individual diversity among the students. The Student Support Program Module is, ‘an achievable teaching approach designed to help users learn about the students who may need support’ (SSP Module, 2016-2017:1).

Fig 1. Student Support Program Module

2.10 Inclusive Education

In inclusive education, the inclusive classroom is a place where all students come for the same purpose and they sit together and learn together. Here, not a single child is denied education because of barriers caused by disabilities and ‘every child has fundamental right to education, and must be given the opportunity to achieve and maintain an acceptable level of learning’ (The Salamanca Statement, 1994). Reaching educational access to their neighbouring school is the right of every child. The Salamanca Declaration also directed the participating Governments that they should make the greatest possible effort to remove the barriers in accessing proper education (UNESCO, 2002). Falvey and Givner (2005) describe inclusive schools ‘we must create, cherish, and nurture schools that include and effectively educate all student’ and it is the school’s responsibility ‘to ensure that all students have access to meaningful learning’ (Falvey and Givner, 2005:59).

2.11 Psycho-Social attitudinal effects on Student who may needs support

The teacher’s attitude is very important because it could prove to be a negative barrier toward how they practice with AESN students and it is a very important dimension of the inclusive movement. In inclusive education, teachers have high expectation of AESN students. According to Gottfredson (1986) the lower expectation is the result of cultural and social isolation rather than being labelling as special group status. He further adds that in mainstream schools children in special groups get the opportunity to live and study in a broader peer group and thus their social isolation is reduced. The consequences of these arguments are that in an
inclusive classroom the teacher’s’ expectation is high. Therefore, to achieve this high expectation they have to adopt effective teaching strategies.

3 Research Methodology

The research methodology enlightens the research questions of the study and the reasons why qualitative approach guides this study. The chapter describes the paradigms, different components of research design, instruments and explains why the case study method was selected for this study and offers details of the problems encountered while following this method and during data collections. Finally, the chapter covers the ethical considerations and limitations of the study. While selecting research questions for this study I considered all the problems that arose during my practice in my school. On the one hand, Lowe says ‘your research should also make a contribution to your own personal professional development or contribute to the development of professional practice within your organisation’ (Lowe, 2007: 27). On the other hand, Dawson (2002) says that a good research question is one that motivates the researcher in the whole process of the study and retains the researcher’s interest in it till the end of the project. While implementing the student support program in my school; I found that implementation of above program was a great challenge for me. Therefore, I selected research questions which are as follows:

‘What are the effective strategies for implementation of students support program?’

Paradigm is a path of looking at the world and it is collection of certain philosophical assumptions that guide and direct thinking and action (Mertens, 2005: 7). Furthermore, Denzin and Lincoln (1994) describes paradigm as a ‘basic set of beliefs that guide action’. In the field of research, two major paradigms are popular and widely used that is positivism and constructivism. The positivism approach uses the quantitative methods whereas the constructivism supports the qualitative approach. Although, I focused on constructivism for this study, I would like to describe some important facts about positivism. Signing of the United Nations Convention on the right of Person with Disabilities (CRPD) Qatar states that ‘Paradigm Shift in attitude and approaches to person with disabilities and the person with disabilities are not viewed as object of charity, medical treatment and social protection; but rather as subjects with rights and its informed consent as well as being active member of society. Due to paradigm shift this convention gives universal recognition to the dignity of person with disabilities (2007:53). So, it is considered very unrealistic to think of people as an object as most part of human behaviour is not measurable by scientific tools.

Qualitative methodology describes mainly four research methods: ethnographic, phenomenog-raphic, grounded theory and case studies. I chose case study for my paper because of the limited amount of time. The research design below involves five steps as suggested by Yin (2003). But for my study I considered four steps which are as follows:

1. Determining and explaining the nature of the research question.
2. Selection of case
3. Procedure of data collection
4. Data collection

For case studies, the four instruments described by Creswell (2007): - interviews, observations, documents, and audio-visual materials. For my study I selected observation,
direct participant observations. The research tool was developed around two unconditional questions, namely ‘what are specific strategies for implementations of SSP?’ And ‘how is this specific strategy most effective’. In qualitative study; classroom observation is an important method for data collecting. Opie (2004) states that ‘observation allows the researcher to observe what is actually happening rather than relying on perceptions of what is happening which might result from, say, interviewing’. Observation is most important in the case AESN students during classes because disabilities and learning difficulties pose particular challenges in the environment. It gives opportunities to observe how ASEN students participate during lessons. Above view inspired and I selected participant observation for my study.

An ethical issue is very common in a research. Therefore, this is an important part of study. Robson (2002) gives meaning of ethical he suggested ‘you follow a code of conduct for the research which ensures that the interest and concerns of those taking part in, or possibly affected by, the research are safeguarded’ (2002: 18). In this study there were some main ethical considerations that guided the whole plan. The main concern was to ensure that the all participants were willing to do voluntary participation without any pressure and they were free to withdraw themselves from the study whenever they wished. Finally, all processes of the study were transparent to the participants and I promised to send a soft copy of findings to them if they were interested.

4 Data-Analysis

4.1 Teaching Approaches

From my point of view teaching is a challenging job but do advocacy of collaborative approaches; as Wiersema’s (2000) discussion is that ‘collaborative learning is a philosophy of working together, building together, learning together, changing together, and improving together’. Furthermore, ‘I think they benefit from one to one work when SST can go and help them individually and quite structured teaching’ which is also supported by Literature Review (Page no.-11). I found that physical arrangement of the classes was less structured in such a way that AESN students were neglected. For example, unstructured structured study materials or students friendly furniture. Last but not least, the present research findings revealed the strength of collaborative approaches of GTP, SEN, AIP and ESL (Page no. -12) “a collaborative teaching approach designed to help users learn about the AESN students.”

4.2 Some challenging aspects in implementation of SSP program

The study found that Student Support Program has strong theoretical framework. However, the findings show that students faced problems during learning in mainstream classroom. During observation, I found that there is a need of practical implementation of SSP to find how this challenging environment can be improved effectively. Being a coordinator of student support program, I am quite positive that it will be possible to minimise the challenges of AESN students. I found from my experience that teachers should have techniques and willingness to teach the AESN students but they need knowledge and special training. Additionally, the finding shows that AESN students are deprived of the incidental learning from the surrounding environment. Therefore, removal of such barriers would be a major support to minimize challenges faced by AESN students. Puri and Abraham (2004)
described as follows: ‘Removing the barriers of the teaching system, by providing facilities related to the curriculum, by the use of modern technology like computers using specialized software; providing awareness, sensitivity and solutions for teachers; removing the barriers of the examination system by providing means of free and fair evaluation of the students’ knowledge irrespective of his/her sensory/physical status and removing the barriers of attitude developed due to lack of awareness’ (Puri and Abraham, 2004:27). As a coordinator of Student Support Program, I agree that such challenging topics give double responsibility to student support team to give special attention while teaching. In my own professional experiences I find that it is not very difficult to teach AESN students. I have been witness to many of students showing remarkable performances after getting support.

4.3 Inclusion: Aspects of inclusion for AESN students

My own experience as a teacher, I found that teaching AESN students in inclusive classroom was easy. On the contrary, during class observation, I found that the class room teacher as well as the student support team (SST), found it was so hard. The study of Falvey and Givner (2005) also supports my views. Inclusive education is about embracing everyone and making a commitment to provide each student in the community, each citizen in a democracy, with the inalienable right to belong. Inclusion assumes that living and learning together benefits everyone, not just children who are labelled as having a difference’ (Falvey and Givner, 2005:55). Personally, I am also in favour of the inclusive education system for AESN students because ‘every child has a fundamental right to education, and must be given the opportunity to achieve and maintain an acceptable level of learning’ (The Salamanca Statement, 1994).

4.4 Perception/ Attitude Teachers

Although, mainstream is a challenging teaching concept for teachers who do not have special training, nevertheless, it also depends upon the attitude of the teacher. When I was doing observation, I found teachers had a negative attitude towards teaching students who need support. I believe that ‘Everybody has their difficulties. It just happens that the students that you are teaching have difficulties in learning process. When you are teaching, if you can encourage a relationship where the kids are constantly telling you, giving feedback to you what they find difficult — then you start understanding how teaching and learning happens’. Therefore, findings of the present study revealed the strength of positive attitudes.

5 Conclusion

The findings of this study illustrate that AESN students have right to reveal equal opportunity in the school. The findings also illustrate how student support team work one to one with them. Additionally, there needs to be a positive attitude of the teachers. Moreover, the finding of this study showed that Students Support Program (SSP) are still challenging for teachers. For teaching AESN students there are some different teaching approaches and strategies which have proved to be effective. The collaborative approach, structured teaching approach, adaptive teaching approach and one to one approach are commonly used teaching strategies. Finally, the finding of this study shows new things such as ‘practical implementation’ of Student Support Program which is extremely helpful vertical alignment of
whole school. Overall, the finding of this research show those AESN students can be taught in inclusive classrooms with some adaptation in teaching materials, teaching aids and appliances and with the help of the teaching approaches and how important it is for a school to maintain good teaching to enable all their students to achieve good results.

The findings of the study are useful for the teachers who teach AESN students at the same time it may be useful for student support team (SST) themselves. The results may increase their self-confidence in teaching. However, I feel there is still a need for a large scale study on the same topic of ‘teaching strategies for students who need support’ to teach them that a general theory can be achieved. This research opens the doors to identify the barriers and challenges in teaching AESN students. Hence, challenging topics of this area can be identified and their solutions found with the help of this research. However, I would like to give the following recommendations:

a. Mainstream teachers need more training in teaching in inclusive setup.

b. Head should promote action research as being essential bearing in mind the outcomes which will enable more inclusive teaching for AESN students.

References:

Journals:
[2]. Gottfredson, L. s. (1986) Special Groups and the Beneficial Use of Vocational Interest Inventories in: W.
[7]. UNESCO (1994) The UNESCO Salamanca Statement and Framework for Action on Special

Internet Sources:


Role of Peer-Group in Selective Exposure About Pornography through Internet Among Teenagers of Modern Islamic Boarding School in Tangerang City

Her Sanyoto¹, Inge Hutagalung²
{deeng.sanyoto@tanihub.com¹, inge_hutagalung@yahoo.com / inge_hutagalung@mercubuana.ac.id²}
Universitas Mercu Buana, Indonesia¹,²

Abstract. Understanding how vital peer group can influence teens to seek of sex information, it would be interesting to have a study what is the role of peer group among teens on selective exposure of pornographic information through internet. This research involved students from an Islamic boarding school in Tangerang city as informants. Tangerang was chosen because it is located near Jakarta, the capital city which placed fifth in the list of cities that accesses most the "sex" keyword. Argumentation of researcher to choose Islamic boarding school is to know whether peer group could affect the process of selective exposure on pornographic information among students, instead of tradition of obedience and discipline of Islamic boarding school. The framework of thinking in this research is based on the constructivist paradigm. A qualitative approach was applied in this research. The data collection techniques used in-depth interview method. The result of the study shows that peer group does not play a role in the process of selective exposure on pornographic information in Islamic boarding school instead other factor that affect the student are the normative belief based on parenting system and rules of the Islamic boarding school.

Keywords: Pornography, Group Support, Rules of Islamic Boarding School.

1 Introduction

According to a survey conducted by Google Trends in 2010, Indonesia placed fifth in the list of countries with the most search of the keyword "sex". The survey also reported that DKI Jakarta, the capital city of Indonesia, contributes the most searches for this particular keyword in Indonesia (news.mypangandaran.com, 18 April 2019).

The Ministry of Communication and Informatics (Kominfo RI) also reported that Indonesia has more than 62 millions internet users. It is approximated that 80% of internet users are aged 15-30 years old, and 85% to 97% of them accesses pornographic content(s). According to the Indonesian labor law, a minor is categorized as a teenager when they reach the age of 16-18 or if they have already been married and owns a place of living. From these reports and definitions, it could be concluded that teenagers are the dominant users of pornographic contents (beritasatu.com, 18 April 2019).

In addition to the Kominfo RI's survey, the survey conducted by the Indonesian Commission for Child Protection (KPAI), that involves 4,500 middle-schoolers and high-schoolers as respondents, also revealed that 97% of the students have accessed pornographic contents. Other similar survey had also been conducted, such as the one done by Yayasan
Anak, which shows that 85% of students in Jabodetabek have accessed pornographic contents (beritasatu.com, 18 April 2019).

Furthermore, as discussed previously, Indonesia placed fifth in the list of countries with the most search of the keyword "sex". Jakarta, the capital city of Indonesia, also placed fourth in the list of cities with the most "sex" keyword search, just below three other cities: Delhi, Hanoi, Mumbai. This fact is concerning because after further research was conducted, students are the biggest user of pornographic contents (kompasiana.com/25 Juni 2015).

Pornography has a severe adverse effect because pornography could increase the number of sexually active teenagers. This increase in the number of sexually active teenagers also created other problems such as unwanted pregnancy and abortion, which is seen as the solution to unwanted pregnancy. Abortion is a risky process, especially the effect it can cause to the reproductive system. Abortion could cause medical complication such as hemorrhage, infection, and poisoning caused by the tools/substances used to do abortion. The injury to the genitalia and permanent damage to the reproductive system from abortion could cause infertility or even death (Damayanti, 2007; Supriati & Fikawati, 2009).

Pornography could also negatively affect brain growth of the person who accesses it. Pornography has a severe adverse effect because it can damage five brain part, especially prefrontal cortex which is located near the frontal bone, continuous excessive stimulation without filter from pornography could permanently damage this logical part of the brain. This could lead to some symptoms such as boredom, the feeling of isolation, anger, feeling pressured, and tiredness. Other than that, another concerning effect of pornography is how it can negatively affect students' academic performance, study skills, and decision-making skills (Republika.co.id, 23 April 2019).

Taking into account the adverse effects of pornography, a particular question of “Why teenagers keep accessing pornographic information?” emerged.

Some research articles by Anisah, Hutagalung, and Mahsiani (Anisah, 2016; Hutagalung, 2017; Mahsiani, 2018) stated that teenagers access pornographic information because they find it hard to find information about sex. To ask their parents about sex is seen as a taboo thing to do, and there is an embarrassing aspect when asking their teachers. Because of this, students try to find information about sex through pornographic contents on the internet with their peer group.

Furthermore, research articles by Dohyun and Hutagalung (Ahn, 2010; Hutagalung, 2016a) stated that the decision process of accessing pornographic information which is facilitated by peer-group pressure is in line with the thought of Littlejohn (Littlejohn & Foss, 2009) on information processing system; individual decisions are not only affected by self-cognitive system but also external aspects such as peer-group pressure.

For teenagers, their closeness level with their peer-group is exceptionally high. Aside from the fact that their peer-group relationship could substitute their family relationship, peer-group could also be the main source of a particular teenager affection, sympathy, understanding, experience-sharing, and a place for teenagers to achieve autonomy and independence (Hutagalung, 2018; Sarwono, n.d.)

Understanding how vital peer-group could be in affecting the teenager's decision-making process, it would be interesting to investigate what is the role of peer-group on teenager's pornographic contents selective exposure. This research involved students from an Islamic boarding school in Tangerang city as respondents. Tangerang was chosen because it is located just near Jakarta, the city which placed fifth in the list of cities that accesses the "sex" keyword the most. This research also chose Islamic boarding school to see better the peer-group factor.
on pornographic contents selective exposure, because Islamic boarding school has a culture of obedience and discipline.

2 Literature Review

2.1. The Selective Exposure Theory

Festinger's dissonance theory has established that one form of communicational behavior that an individual could engage in to alleviate dissonance is to search and reject information (selective exposure). Through the selective behavior hypothesis, Festinger predicted that every individual will reject information that could cause dissonance, and will prefer to look for information that will support their beliefs.

In another word, it could be said that there is two central aspects inside the selective exposure concept: the ability of an individual to select information(s) that is in-line with their beliefs (selectivity) and the ability of an individual to reject information(s) that contradicts their beliefs (avoidance).

In its core, selective exposure could be seen as an individual's process of selecting wanted or unwanted information. Nowadays, information is more and more available and individual will select whichever information they would or would not access (Fischer, Peter, 2011).

Festinger's (1957) selective exposure hypothesis puts individual psychological condition as the main motivator for why someone handles information selectively. This hypothesis put an individual as an active information processor that has an inherent ability to select or reject information in order to achieve cognitive alignment. This condition could be seen to have a similarity with the cognitive dissonance theory (as the main building blocks for selective exposure) that is known as a theory that has individualism aspect to it, where dissonance happens individually (Littlejohn & Foss, 2009; Miller, 2005).

If Festinger (Festinger, 1957) emphasized the psychological aspect (beliefs), other researchers tried to prove other aspects outside the psychological one as the trigger for selective exposure. A set of research was conducted by some expert to prove that selective exposure is not caused only by the psychological aspect. The message and the social aspect could also affect the selection or avoidance of information(s) (Hutagalung, 2018).

This finding is in line with the previous theoretical thought by communication experts, such as McQuail and Festinger (Festinger, 1957; McQuail, 1996). The main takeaway is that these experts stated that inside an information processing system, an individual is not only affected by internal (self) cognitive system but also external factors such as the social environment or the characteristics of the message. Individuals, in their process of information processing, is not only affected by internal psychological factor but is also affected by social interaction, which is what social beings do.

In this case, individuals will try to achieve cognitive balance by avoiding or reducing the dissonance. When particular information has no social support/endorsement, then an individual will tend to avoid and reject this information because it could trigger cognitive dissonance. And vice versa, if an information that is already rejected by an individual but being endorsed by the group this individual is in, the individual could change their belief and accepts their previously rejected information, all of this is done to achieve cognitive balance with the group (Festinger, 1957; Griffin, 2009; Littlejohn & Foss, 2009; Zillmann & Bryant, 1985).
From this explanation, it could be seen that group support/endorsement of information could potentially affect the change of an individual's beliefs, other than the selective exposure factor.

2.2. The Social Identity Theory

The social identity theory explained how an individual's behavior could be influenced by a group this particular individual is in. This theory is formulated to explain why and how individuals identify themselves with particular social groups; this theory also provides an explanation of how this identifying process could affect an individual's perception and behavior. According to the social identity theory, a person is not a mere "self" but rather some few personal selves, depending on how many this individual's social circles. The different social context could trigger individuals to think, feel, and behave differently (Tajfel, H., & Turner, 1979).

Furthermore, when social identity is functioning, the individual will try to behave in accordance with their social group subjective norms.

Groups tend to share some rules or standards, which are norms that are applied to different aspects of human behavior. When someone joins a particular social group, whether they realized it or not, they actually agree on some set of rules or standards created by the group. This condition creates subjective norms, the individual beliefs of what does important people in their circles expect from them. Emerging from the subjective norm, someone will also have normative belief, an individual's belief of how their important referent (family, friends, or reference group) will support their behavior that is in-line with the subjective norm, and vice versa, behavior that contradicts the subjective norms will not be supported by their referent. The consequences of not adhering to the subjective norms are moral consequences (ostracized, ridiculed, excluded from the group) and legal consequences (Fishbein, M., & Ajzen, 1975).

Scientific researches on the effect of group norms on individuals behavior had already started since 1930, especially with the findings presented by Muzafer Sheriff (1936, 1937). Sheriff's research was addressing the autokinetic light effect. From his experiment, Sheriff concluded that groups tend to agree on something and then defends that agreement, even if the agreement was false or is not true at all. Sheriff's research also explained how group pressure has a very big influence on how individuals assess the information they are receiving. Sheriff's research shown how the social environment affected the individual's judgment on stimuli given in the experiment. Social environment will create an internal reference point or anchor point, which could decide which behavioral changes that would be accepted or rejected by an individual (Griffin, 2009; Severin & T ankard Jr., 2001).

A study was conducted in the 1940s by Paul Lazarsfeld et al. in the Bureau of Applied Social Research in the Columbia University strengthen Sheriff's findings. Lazarsfeld's research original purpose is to understand the voters behavior in Erie County, Ohio, in the 1940's Roosevelt and Wilkie election (Lazarfeld, Berelson, and Gaudet, 1968), and voters in Elmira, New York, in the 1948's Truman and Dewey election (Berelson, Lazarsfeld, and McPhee, 1954). This research finds that mass media had a relatively low impact in changing voters opinion compared to the internal self factor or the group influence factor. This research has shown that there is a strong tendency for an individual to vote the same candidate as their primary group did. Family is one of the most critical components in the primary group; 75% of the first voter in the Elmira study gave the same vote as their father. People also tend to give the same vote as their workgroup. Berelson, Lazarsfeld, and McPhee (1954) stated that
this strong consistency as "Political Homogeneity in Primary Groups" (Severin & Tankard Jr., 2001)

3 Methodology

The framework of thinking in this research are based on the constructivist paradigm. A qualitative approach was employed in this research. The data collection techniques used in-depth interview method. This method was chosen because pornography is a sensitive and personal issue.

The informants or the interviewee for this study are teenagers from an Islamic boarding school in Tangerang city. Tangerang was chosen because it is located just near Jakarta, the city which placed fifth in the list of cities that accesses the "sex" keyword the most.

4 Results and Finding

4.1 Results

There were six informants in this study. For presentation purposes, all six informants used agreed initials, four of the informants were male with the initials of TN, HS, AL, and AM, the rest two informants were female with the initials of RT and DW.

4.1.1. Understanding of Pornography

In the context of this study, all informants stated that pornography is information about sexuality and women’s body exploitations. Here is a statement from one of the informants:

"Pornography is information about sexuality. Pornography often exploited women’s body parts. I am also confused by the fact that pornography uses women as the object for pornographic information. In my understanding, pornography is prohibited by the government. My religion and my parents also prohibit me from accessing pornography, even though I am not sure why they (the parents) did that. I think there are a lot of sexual problems related to the teenager biological development that our parents or teachers could help us answers." (Informant TN).
4.1.2. Pornography Information Source

In the context of this study, the informants acquire pornographic information through internet, smartphone, or even from conversations with their friends. Here is a statement from one of the informants:

"I acknowledge that pornography is prohibited, but we (students) still need information about sexuality. Honestly, I realized the danger of pornographic information, but my peers often talk about pornography when we gathered together. If I do not join the group conversation, I would be embarrassed and my peers would avoid me, so I also look for pornographic information to fit in. I look for pornographic information on the internet. Even the Indonesian government has already banned pornographic sites. Usually the internet cafe's workers still have a way to access it (pornography)" (Informant AL).

4.1.3. The Curiosity About Pornography

In the context of this study, all male informants (TN, HS, AL, AM) stated that they have some curiosity about pornography, while the two female informants strongly expressed their disgust toward pornographic contents and do not have any curiosity about pornography, here is a statement from one of the male informants:

"I would really like to know more pornographic information. There are a lot of sexual things that happened to me, but I do not have the answer to it. I got ignored when I asked my parents and are embarrassed when asking my teachers. So, for me, the solution is to talk with my peers, we talked about random stuff, but the most essential part is our experience sharing" (Informant AM).

Meanwhile, here is a statement from one of the female informants:

"I don't want to watch pornography; It disgusts me! Me, as a woman, felt ashamed and insulted seeing pornographic information. I often think about why only women that are objectified in pornography? Why do they want to do it? My point is, I am not interested and do not want to know about pornography. Sex issues is a natural thing for me, where everyone would encounter in their adult age. No need to 'learn' about it." (Informant DW)

4.1.4. The Benefit of Pornographic Information

In the context of this study, there are two main opinions from the informants. Our female informants do not see any benefit in pornographic information, while our male informants expressed that pornographic information has its value, especially in giving them education about sexuality. Here are both statement representing both sides of opinion:

"Pornographic information has no benefit at all. Pornography is prohibited by law; my parents do not allow me to look for pornographic information. (my) Religion is also condemning pornography. So, I think there is no benefit at all coming from pornography; it could instead poison and destroys the young generation" (Informant DW).

"Pornographic information is very beneficial. A lot of information regarding physical development and sex that we can learn from pornographic information: we, as the young generation, especially males, experience the puberty phase which resulted in physical changes, but there is no information source that could explain why these changes happen and how should we respond to it. My friends and I realized that pornography could make us addicted; we talk about this (effect) a lot in our group conversation" (Informant HS).
4.1.5. Peer-Group Support Towards Pornography Selective Exposure

In the context of this study, informants stated that peer-group has its role in the process of selection or avoidance of pornography, here are the statements from the informants:

"As I said previously, one reason for me to look for pornographic information is peer-group. My peer-group where I hang out often talk and discuss pornography so I would need to look for pornographic information in order to keep up with the discussion. I get embarrassed when I am not up-to-date with pornographic information." (Informant AL).

"Peer-group is the place for me to get together with my friends, expressed my feelings, and it's a part of me now. For me, the group decision has to be followed. Regarding pornographic information, if my peer-group endorsed it, then I as a member will also look for pornographic information, and vice-versa. I think that obedience to peer-group is a must” (Informant AM).

4.1.6. The Compliance Toward the Boarding School Rules About Pornography

In the context of this study, the informants agreed on how they are very complying towards the boarding school rules about pornography. They understand fully what is prohibited and what is allowed to do in their school, and will adhere to it. Here are some of their opinions:

"As I said, group rules have to be followed. Other than peer-group, there is also a bigger group, the community of my boarding school. My Islamic Boarding School has a clear law about pornography, and that's the law that I will adhere to. Because peer-group is only temporary, but my boarding school will be a group that is permanent because it's a part of me and when I graduated, the diploma will be a symbol for that permanency” (Informant AM).

"If I had to choose whether to follow peer-group rules or the boarding school rules. Of course, I would choose to follow the boarding school rules. Why? Because I think peer-group is also a part of the boarding school. This means that the boarding school rules would influence the rules inside the peer-group. Peer-group has to be in-line with the boarding school. Because obviously, if I am not adhering to the boarding school rules, I would get kicked out. And I don't want that; my primary purpose is to get an education in this boarding school, not to make a peer-group” (Informant AL).

4.2 Findings

From the previous section, we can see that the informants have already understood the concept of pornography. Their understanding is in-line with the Indonesian law of Undang-Undang Pornografi No. 44 Tahun 2008, which states that pornography is information which contains lewdness or sexual exploitation that contradicts the society norms.

There is also the source of pornographic information for the informants, mainly from the internet and conversation inside the peer-group. Because there is limited information about sexuality, many teenagers are in confusion to find a place to ask and have difficulty accessing the right sources of information about sex. In order to acquire reliable answers about their sexual questions, amid the controversy over whether sex information is needed for adolescents, teenagers tend to seek sex information from peer-groups and the mass media.

For teenagers, their closeness to peer-groups is very high because, in addition to how peer-group ties could temporarily substitute family ties, they are also a source of affection,
sympathy, and understanding, teenagers can share each other experiences inside their peer-
groups, the peer-groups is also a place for teenagers to achieve autonomy and independence.
So it is not surprising that teenagers have a tendency to adopt information they got from their
friends, without the need to have more reliable information from reliable sources - this
behavior is also applied to pornographic information seeking.

Furthermore, the physical development that teenagers are experiencing triggers them to
find out about the changes happening inside them, especially sexual changes. The physical
development is indicated by how a teenager’s reproductive organs have begun to function. For
male, testosterone is produced by the testicles continuously. For females, the hormones they
produced is the estrogen and the progesterone hormones, both produced in ovarium cyclically.
These sex hormones cause secondary sexual development and create sexual drive. This drive
is the reason why teenagers seek sexual information.

Is pornographic information useful for teenagers? From the result of this study, there are
two thoughts addressing this question; the male informants stated that pornographic
information is useful, and the female informants stated otherwise. The researcher for this study
argues that the benefit felt by male informants is because they got sexual information from
pornography. As we know, society sees that giving sex information to teenagers is taboo. The
discussion about sex is taboo or not appropriate to be done in our culture because sex is
personal. There is also the assumption that if teenagers have enough information about sex,
especially reproductive health services, they would be motivated to do sexual activity and
early promiscuity. Talking about sex with teenagers is equal to asking them to try.

Meanwhile, the researchers see that the reason of why the female respondents claim that
pornographic information has no benefit at all is that the female respondents are trying to fight
the women’s body exploitation in pornographic information. Because as we understand,
pornography often exploited women’s body part to stimulus sexual desires.

As stated previously, peer-group is a source of pornographic information for teenagers.
The researchers argue that peer-group will form a group identity. To improve the sense of
social identity, the formulation of rules and collective agreements is carried out, which is
called norms. These norms are needed by group members in the society to protect themselves
from the violation of rights by people or groups or other parties, protect themselves from
accidents, protect themselves from embarrassment and et cetera.

Furthermore, norms that are formed inside their social group creates subjective norms, the
individual beliefs of what does essential people in their circles expect from them. In the theory
of planned behavior (Ajzen, 1991), it is stated that an individual's subjective norms will create
normative beliefs, the beliefs that when somebody does not adhere to their group norms/rules,
they are punishable by social consequences or moral consequences. Research articles
published by David, Dohyun, and Hutagalung (Ahn, 2010; David, 2005; Hutagalung, 2016b)
strengthen Ajzen (1991)'s theory of how group norms could affect selective exposure.

The social identity theory could be used to help explains how the group support/pressure
could affect beliefs. Through the social identity theory, Tajfel and Turner established that
membership in a group creates in-group/self-categorization. Tajfel and Turner defined a social
group as two individuals or more, which have shared social identity or see themselves as a
member of the same social category (Tajfel, H., & Turner, 1979).

Sheriff (1936, 1937)'s research which is also known as the autokinetic light effect
Solomon Asch (1995)'s research about the creation of group norms could also show that an
individual tends to depend on other people/group in order to have a belief. Both pieces of
research done by both expert proved that group has a very significant influence in the belief-
forming process. Group pressure has a very significant effect on belief settlement of an
assessment or an individual decision-making process, even if there is information that contradicts this individual's logical thoughts (Severin & Tankard Jr., 2001).

From the exploration of past researches previously discussed, it can be concluded that the group has a role in selective exposure. The pressure created by groups towards an individual belief(s) is very depended on how close the individual with the group and how big is the individual's need to belong in that group. The closer and the needier an individual is, the more significant the group influence their beliefs.

The result of this study shows that the informants agreed on how peer-group could create group norms, but if the group norms contradict their boarding school rules, the informants will choose to adhere to the boarding school rules instead. This is possible because the informants have a closer attachment and more significant needs with the boarding school compared to their peer group.

In the case of pornography, when reality (in this case the boarding school) is in-line with the belief that someone has regarding the selection or the avoidance of pornography, then their belief would not change. Vice versa, when the reality sees pornography as usual but belief rejected pornography; then belief could change. The change of belief is depended on how close the interactional relationship between an individual and its reality. The closer the relationship, the faster the belief(s) change, and vice versa. The change that happened is a means to achieve cognitive balance.

5 Conclusion

This research was grounded on the starting point of "What is the peer-group role in the process of pornographic information selection and avoidance by teenagers in a modern Islamic Boarding School?"

Pornography was used as a research object because of how pornography is a serious problem in Indonesia, which has iceberg property, which, in turn, requires special attention. Teenagers were used as respondents because teenagers are the most significant population that is targeted by pornography industries.

The result of this study shows that peer group pressure has a low impact on an individual selection or avoidance of pornographic information, compared to the pressure from the boarding school as a study group. According to the researcher, the existence of the selection or avoidance of pornographic content which is based on the boarding school group influence for an individual is a way for this particular individual to achieve balance with their social environment. Because deviation from a group often causes punishment, whether moral/social or legal.

The result of this study is in accordance with the original thought of Festinger about the cognitive dissonance theory (the basis of the selective exposure theory) which stated that group has a vital role in the process of cognitive dissonance. According to Festinger, a group could be the source of information which causes dissonance (dissonance-arousing information) or even to reduce dissonance (dissonance-reducing information). In order to achieve consonance, people tend to select the information that is in-line with group decision and avoid information that their group will probably reject.

The result of this study also strengthens the theory of consonance and dissonance which popularized by McQuail (McQuail, 1996), which is a model that illustrates how an individual could have a tendency to avoid media sources that have the possibility to increase dissonance
accept media sources that have the possibility to increase consonance. And as a social being, individuals will process information by incorporating both self cognitive system and the social environment around them.

References

The Role of Authentic Green Bureaucracy in Green Village Innovation Plan in Yogyakarta Special Region (Daerah Istimewa Yogyakarta)

A. T. Sulistiyani1, Sutarno2, Prabang Setyono3, R. D. Wahyuningsih4
{atsulis@yahoo.co.id1, nnsutarno@mipa.uns.ac.id2, prabangsetyono@gmail.com3, rutiana.uns@gmail.com4}

Abstract. Green village is one residential innovation form that should be supported by bureaucratic role, particularly The Department of Environment (Dinas Lingkungan Hidup) of Yogyakarta Special Region. Government spirit is increased to develop green village as the ideal settlement. Pattern relationship between bureaucracies will encourage the formation of bureaucratic atmosphere in developing green village. Government should facilitate the green village development and support the local environmental cadres as motivator. This paper discusses the roles of authentic green bureaucracy in facilitating green village innovation program in Yogyakarta Special Region. This research was performed with qualitative approach and document analysis. This document aims to find out the roles of authentic green bureaucracies to develop green village innovations in Yogyakarta Special Region. The authentic role of green bureaucracy done by The Department of Environment covers planning but in limited ways. The green village planning role is too macro. The authentic role of The Department of Environment of Yogyakarta Special Region should be developed to become bureaucracy which is environmentally friendly in a whole and continuously. That ability can be achieved by improving the conceptual capability versus operational technique, coordination and supervision ability as well as discretion ability..

Keywords: Green Village Innovation, Authentic Green Bureaucracy, Bureaucracy Roles, Innovation Plan.

1 Introduction

In general, development always takes resources. Each development is followed by a great deal of resources to fulfill the requirement of construction and production process which are started from consumption need. Thus, development is often stumbled by a contradiction fact where in one side it leads to a better condition but it also causes environmental degradation in the other side. Regardless, development always puts economy as the commander that economic growth comes first than environmental conservation. The important fact of sustainable development which puts forward nature conservation should be popularized. In
fact, environmental development paradigm which has been understood has not been realized in general yet.

Although conceptual and science awareness has developed really fast yet the implementation effort for environmentally-friendly-development goes really slow. Political environment in government bureaucracy is still on theory perspective in considering environmental problems. Leonard (2018) ever said that political ecology has focused on theoretical perspectives. In Indonesia, on the level of bureaucracy politic, environmental perspective has been expressed through campaigns of legislative candidates and region head prospects, as well as in speech material of bureaucrats. The realization effort of environmental development in urban and rural areas are still really limited. Environmental quality can be improved if government bureaucracy is able to perform distribution and management for urban green space. Danjajiet all (2018) explained that systematic distribution and management strategy of urban green spaces has proved to have positive impact (positively influenced) on aesthetic features of urban environment. However, indeed, there are a lot of factors which are hampering to reach urban green space. In order to cope with this problem, according to Poor and Thrope (2017), pro-environmental behaviour is capable of moderating the barriers.

In policy level, regulations have had partiality to the importance of environmentally-friendly-development. Meanwhile, on the implementation, they have not been able to execute the spirit of environmental conservation with real movements. The formalization of programs and activities has been able to be formulated in every regions yet has not gained the action awareness from the bureaucrats. Program formulation which expresses the spirit of environmental conservation is green village. Government bureaucracy should develop the spirit of green bureaucracy in a long term. Thus, sustainable development can be realized in a long term. Balasubramaniam (2018) conveyed that long-term development is a process of accumulation and sound management of a portfolio of assets-manufactured capital, natural capital, human and social capital.

Green perspective bureaucracy concerns on the innovation such as green villages. This innovation is basically complex (Kristina, 2010). According to Fredayani (2018), one type of village innovation is 3G Village (Glintung Go Green) which is a solution in achieving the goals containing in SDG’s program. Another village innovation, stated by Puspitasari (2014), is a Gayamsari Green Village Program that prioritizes friendly environmental development. All provinces conduct village development program including Special Region of Yogyakarta (DIY). It has 45 green villages in all over DIY.

Local government which has multisectoral bureaucracy structure requires clear roles of the bureaucracy in developing green village. Roles between actors in public bureaucracy are really important, as has been conveyed by Johnstone at al. (2017) that multilateral actor-to-actor (A2A) networks are substantial. However, the problem on green village does not only need supports from the bureaucracy role but also from society participation. Negative impacts emerge from settlements. Green village program aims to maintain settlement environment in clean, healthy, manage and green condition. Society has to contribute through their care for public space, open green space, and settlement facilities as public goods. Related to society awareness, Halimatussadiah, et.all. (2017) said that people have willingness to pay for a public good. Problems which are encountered by bureaucracy related to the context of green village is that they have not been able to determine the active roles. This article discusses the authenticity of bureaucracy roles in green village program in DIY.
2 Research Method

This study used qualitative and quantitative descriptive approach by prioritizing data of information, words and explanations obtained from primary and secondary resources. The unit of analysis of this research were government institutions. Local government institutions being analyzed were Yogyakarta Special Region Government related to the development substance of green village innovation. The institution which became the focus of the analysis was The Department of Environment, which had the authority to develop green villages. The data collection technique was done by interviewing 10 staffs as key informants of bureaucrats in the Department of Environment, as well as documentation, by observing scripts, strategic plan and green village review. They key informants consisted of 6 males and 4 females. The perceptions about the authentic role of green bureaucracy was obtained from 30 respondents. Their perceptions were calculated using percentage. The analysis used in this research were descriptive qualitative and quantitative by establishing the illustration of authentic roles of green bureaucracy.

2.1 General Bureaucratic Role

Bureaucracy is a place to cover government activities, development and public services. Bureaucracy is also a tool or medium used by government to execute visions, missions and goals of a country. Therefore, bureaucracy in visual is performed in the form of government institutions. The static form of bureaucracy is shown through organizational structure. The dynamic form of bureaucracy is expressed through visions, missions, goals, policies, work plans and programs, descriptions of job desk and function as well as apparatus. Meanwhile, the technical form of the operational can be seen from the activities of the apparatus in performing the job desks and functions. Eme and Emeh (2012) said that bureaucracy is that apparatus of government designed to implement the decisions of political leaders. Gonçalves (2013.p.606) stated that bureaucracy have highlighted the ways in which the production, circulation, interpretation, and archiving of written documents contributes to the production of state power, control, and authority. In brief, bureaucracy is apparatus composition which gets the mandate to support the operations of all political policies. It is true if bureaucracy is to be said as a tool to reach political goal. Thus, bureaucracy is located on the second layer after political leader.

Bureaucracy has strategic plan in government, development, and public service. The role carried out by bureaucracy in general covers administrative and substantive roles. Substantive role, according to Eme and Emeh (2012.p.34) is policy formulation and implementation responsibilities. In the context of bureaucracy according Vanhoonacker, Dijkstra and Maurer (2010.p.21), substantive role also has an important role in formulating the questions and sharpening the arguments. Policies formulation is the follow-up action in delivering political mandate received from legislative. Government regulation documents, development plans, public service system and procedure are the real form of administrative roles. Administrative roles are presented as the role of administrative actors (Vanhoonacker. Dijkstra.And Maurer.2010.p.4). In order for the program run effectively, according to Gonçalves (2013.p614-615) District Councils were expected to play a key role in monitoring financed projects, role in providing information, and local commission for the evaluation of projects. Harvey in Schiller and Maria. (2017.p.1665) explained that the role of the state in such a neoliberal framework is to preserve an institutional framework appropriate to such practices.
According to Budisetianto and Andreas (2015. P.1), the administrative role of bureaucracy is the role of communication and the ability to present.

Most often, role is determined by position and status, the role of central bureaucracy is certainly bigger but macro compared to province and regency/city. Bureaucracy has position which is determined formally and regulated by regulations. Moreover, the nomenclature of an institution has illustrate the formal status and position in its relationship with government system. Bureaucracy status or position is an important variable in considering the role. David (2016.p.15) conveyed that the role this variable plays in other venues. As has been stated, the primordial role played by institutional aspects, reflected in the proposition „where you stand depends on where you sit” (Cézar. 2017. 205). Bureaucracy on the low level encounters problems in public direct service. Meanwhile, bureaucracy on the high level has more jobs on arranging policies. David (2016.p.4) stated that the role of street-level bureaucrats has shown influence to the provision of public service programs. The amount of street-level bureaucracy really depends on the extent of the leader’s discretion. Although government bureaucracy has been entering modern management era where everything is advanced, yet the primordial role cannot be removed. Bureaucracy position and status really determines role. The roles of the low line bureaucracy position are determined by the level of the discretion by leaders. The extent of the discretion determines the coverage of the role played. Meanwhile, the roles of the low line bureaucracy have influence on the continuity of service operations and the execution of programs. The continuity of the low line bureaucracy will be determined by the result of the performance evaluation. According to Bowornwathana and Poocharoen’s opinion, their performance evaluation is seen from their goal achievement(2010.p.314). It means that through observation on the roles done by bureaucracy, the work can be evaluated.

2.2 The Authenticity of Green Bureaucracy Roles

Authenticity can be seen from two aspects, which are the purity of human resources spirit in one side, and administrative originality aspect. The purity in performing bureaucracy role shapes the characters in taking decisions, implementing policies, establishing networks, management and evaluations. Developing straightness in individual to behave and act with sincerity is the practice of authenticity. Good intention to finish every responsibilities, functions and jobs dynamically is really important. Authenticity in relation to leadership appears as the premise of being true of one’s self as sincere, honest, and integrated person (Ford and Harding, 2011). Authentic leadership has been admitted as a psychological influence on giving positive impact towards working performance (Nelson, et. al., 2014).

Although the authentic role of green bureaucracy has been admitted to be important, yet it is still not easy to be implemented. Leader’s policies and behaviors really determine the success of bureaucracy authentic role. Avolio& Gardner (2005) said that in general, all suggest that authenticity has its starting point with the leaders themselves, through their self-awareness, self-acceptance, self-knowledge, faith, actions and relationships, promotion of authentic relationships with their followers and associates, supported by transparency, trust, integrity and highmoral standards. Other opinion has been delivered that being authentic means “be true to yourself” (Wong& Cummings, 2009; Walumbwa et al., 2008; Avolio& Gardner, 2005).

Dickinso, (2011.p.9) put a definition of authenticity, as a means of encapsulating all of these individual constructs and discussing the dynamic way in which they intertwine to become the relationship. The definition delivered by Dickinso is authenticity in context of developing network role. Authenticity is not easy to be shaped, except through a long and
gradual process with good comprehension for many aspects. Smith (1991); Dickinso, (2011.p.9) also mentioned that authenticity as a reflexive process, whereby, the concepts of trust, longevity and knowing are incrementally built up through multiple iterations over time. Based on this opinion, the purity of human resources spirit in implementing bureaucracy roles are determined also by the process in organization. In the other side, bureaucracy is also related to document authenticity. Gonçalves. (2013. p.620) proposed that authenticity is obtained by special treatment of the written document. According to Budisetianto and Andreas (2015. P.3), authenticity principle in Public Administration in national and even international context needs to be more improved. The focus of this research is to analyze the authenticity of bureaucracy roles, not document authenticity.

The concept of authenticity comes to be operational when it is linked to the role carried by bureaucracy. Brumbaugh (1968.p.2) stated that authenticity concept to make it empirically operational is to link it to role theory. A bureaucracy ought to be able to ensure the amount of role authenticity which can be done that it leads to the achievement of the goal. In the other side, bureaucracy should ensure whether there is role deviation which does not fit the goal or not. The authenticity of bureaucracy role is a continuum line which can be measured start from the extreme pole of the most deviant behavior until the extreme pole of the most authentic behavior. Conveyed by Brumbaugh (1968.p.2), authenticity may be conceptualized as some points on the role distance continuum ranging from behavior perceived as expressing complete embracement of a particular role through behavior perceived as expressing complete alienation from a particular role. This authenticity coverage is related to human inherence, morality, mentality, values and behaviors. Besen.et.al. (2017.p.2) conveyed that it is based on the assumptions of authenticity and strong ethical/moral values. Identification of the main task and function of bureaucracy should be undertaken in order to find out the bureaucracy roles. The types of program and activity, budget support, as well as the frequency of activity and program are able to express the authentic role of bureaucracy.

The types of the main role of bureaucracy are conceptual, implementation management, operational and evaluation. In order to gain the authenticity of bureaucracy roles, tracking inside the form of operational activities is required. Visually, the authentic role of bureaucracy should be able to be tracked in the most technical, operation and real form. The authenticity concept is an effort to provide more clearly to the latter and the end to facilitate its empirical operationalization. Meanwhile, research which is done related to the authenticity of bureaucracy role requires verification towards the object. In order to obtain valid data, it is important to observe the effects caused. According to (Lynch. 2000.p.40) validating authenticity entails verifying claims that are associated with an object-in effect. Identity expression in form of self-image will determine public image. Meanwhile, vision, personality, values, competency, performance, and origin determine authenticity. Likewise, public image is shaped from external behavior, as the following Hitzler model:

![Image and Authenticity](image.png)

Picture 1. Image and Authenticity
Source: Hitzler (2017.p.35)
The authenticity of bureaucracy role cannot be separated from the bureaucracy’s internal and external behavior in performing management roles of the organization. The authenticity of conceptual roles cover planning and formulation of public policies, implementation roles cover process management, operational roles cover technical follow-up, while monitoring and evaluation roles cover supervision, validation and assessment, which are done proportionally according to bureaucracy function allocation.

Green bureaucracy has role sensitivity which prioritizes the presence of green, balanced and sustainable internal and external environment. The purity of green bureaucracy role is inspired in daily activities. In formal and informal, bureaucracy shows commitment toward the importance of preserving environmental conservation. Spirit of programs is not always only for the sake of formal goal, but to control the effects toward environment. Authentic roles of green bureaucracy cover the ability in planning, the spirit to implement environmental conservation through the execution of bureaucracy task and function proportionally, realizing bureaucracy program and activities synergized with environmental safety, preventing the occurrence of negative impact from program and project as well as recovering from damage. Green, healthy and organized environment is public good which has to be established, preserved, and conserved. Bureaucracy ought to has authentic role along with the vision, mission, and goal. A green bureaucracy is able to actualize authentic role toward internal and external environment. The authentic role of green bureaucracy can give exemplary to society. Therefore, society has the awareness of the importance of green, clean, healthy, and organized environment. According to Yao (2015,p15.) explained that one of the goal is coordinated exploration of past policy actions and possible future trajectories.

2.3 The Green Village Innovation Plan in Yogyakarta Special Region

Authentic role of bureaucracy is required in green village program. Honesty, sincerity, and integrity should be the main principles of government bureaucracy in order to develop bureaucratic climate. Green bureaucracy can build green villages. Green bureaucracy has environmental perspective. Environmental bureauayscale can comprehensively carry out green village plan innovation. Innovation is very important as the learning process (Van Auken, 2008). Regional innovation system relates to creating framework which aims on systematic promotion of learning process (Barasa, et. al., 2017). Innovative villages are those that can use their own resources in different or new ways with technology and local wisdom for the society prosperity. Green village innovation can improve the quality of environment. According to Sutiyo and Nurdin (2015), innovative village can assist villagers solve their livelihood problem.

3 Finding And Discussion

The DIY government has laid a strong foundation in planning innovation. DIY Government Policy in planning emphasizes synergetic processes between parties, so that there is effective participation. The development planning process also applies a measurement system so that policy consistency occurs. In addition, planning also considers the completeness of the elements of planning and innovation.
Table 1 Development Planning Indicators

<table>
<thead>
<tr>
<th>Strategic target</th>
<th>Performance indicators</th>
<th>Target for 2017 (%)</th>
<th>Program realization</th>
</tr>
</thead>
<tbody>
<tr>
<td>The realization of synergic, measurable, consistent, complete, participatory and innovative regional development planning.</td>
<td>Percentage of planning synergy</td>
<td>95</td>
<td>105.26</td>
</tr>
<tr>
<td></td>
<td>Percentage of planning measurement</td>
<td>90</td>
<td>111.11</td>
</tr>
<tr>
<td></td>
<td>Percentage of planning consistency</td>
<td>90</td>
<td>111.11</td>
</tr>
<tr>
<td>development planning.</td>
<td>Percentage of complements of planning</td>
<td>92</td>
<td>108.70</td>
</tr>
<tr>
<td></td>
<td>Percentage of participation in planning</td>
<td>90</td>
<td>111.11</td>
</tr>
<tr>
<td></td>
<td>Percentage of innovation planning</td>
<td>95</td>
<td>105.26</td>
</tr>
</tbody>
</table>

Source: Lakjip DIY (2017:26)

Based on the data above, the plan performance of Special Region of Yogyakarta achieves excellent rank. The 95% of plan performance target was already very high, even the performance achievement is much better in the amount of 105.26%. This research explored the role of green bureaucracy in green village innovation plan.

The authentic roles of green bureaucracy cover planning of programs which are environmentally-friendly. The Department of Environment has performed green village innovation activity facilitated by Regional Development Expenditure Budget. Budget allocation shows that dominantly, green village plot demonstration activities worked continuously in two years, however it did not receive allocation anymore in 2015-2016. The continuous vision of green village program was disconnected. In order to keep the continuity of green village program, environmental cadres were formed. However, explicitly, the existence of environmental cadres could not be seen. The formation of environmental cadres only worked for a year and there was no continuity. Meanwhile, green village empowerment was initiated in 2016 with a very limited proportion. The authentic role of The Department of Environment of Yogyakarta Special Region to support green village innovation.

![Picture 2. Bureaucratic role in green village innovation](image-url)
The role of The Department of Environment in planning is presented on the availability of strategic plan document, vision, mission and goal. Formally, planning role is fulfilled. Substantially, planning role which is composed in village innovation, particularly green village is still partial. Green village program is still very minimal. Based on in-depth-interview, the bureaucracy does not understand well the values of itself. Misunderstanding of green bureaucracy concept can be seen from the activity of each division which does not have direct relationship with green innovation. The data of each division can be seen in the following table:

<table>
<thead>
<tr>
<th>Division</th>
<th>Activity</th>
<th>%</th>
<th>Relationship With The Green Village Innovation (Direct/Semi/Indirect)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub division of Conservation</td>
<td>35</td>
<td>43.20</td>
<td>semi direct</td>
</tr>
<tr>
<td>Sub division of Environmental Damage Control</td>
<td>18</td>
<td>22.22</td>
<td>indirect</td>
</tr>
<tr>
<td>Sub division of Development of Human Resources and Environmental Institutions</td>
<td>8</td>
<td>9.88</td>
<td>Direct</td>
</tr>
<tr>
<td>Sub division of Environmental Arrangement</td>
<td>5</td>
<td>6.18</td>
<td>Indirect</td>
</tr>
<tr>
<td>Sub division of Environmental Studies</td>
<td>3</td>
<td>3.71</td>
<td>Indirect</td>
</tr>
<tr>
<td>Sub division of Air Pollution Control</td>
<td>7</td>
<td>8.64</td>
<td>Indirect</td>
</tr>
<tr>
<td>Sub division of Water Pollution, Soil and Hazardous and Toxic Control Materials</td>
<td>5</td>
<td>6.17</td>
<td>Indirect</td>
</tr>
<tr>
<td>Number of activities</td>
<td>81</td>
<td>100</td>
<td>9.88% direct, 43.20 semi direct</td>
</tr>
</tbody>
</table>

Source: Dokumen Kinerja Pengelolaan Lingkungan Hidup Daerah, DIY, 2017

Based on the data, there were only 9.88% activities which had direct relationship to green village innovation program. Furthermore, there were 43% of semi direct activities related to green village innovation. Meanwhile the indirect activities related to green village innovation were 46.92%. The program portion was very small compared to other activities. Based on in-depth-interview, the activities were not specific for green village innovation program. For instance, Water Pollution, Soil, and Hazardous and Toxic Control Materials were only for specific area and not for the village. Conservation was implemented for critical area but not for the village and so on.

The Department of Environment are facilitating the formation of autonomous waste management community and improving waste management with 3R concept (Reduce, Reuse, Recycle) in society base. Autonomous waste management community and 3R concept implementation only become the small part of green village curriculum. These two strategies are not enough to support and facilitate the development of green village optimally.

Facilitating the development of green village should had been put in the strategy in order to create coherency between strategy formulation with program formulation by identifying authentic green bureaucracy innovation.
It shows that the authentic role of The Department of Environment of Yogyakarta Special Region as bureaucracy which is environmentally-friendly is still limited. The barriers are difficulty in coordination among bureaucracy, limited budget allocation, lack of integration for green village program, ego in each division, and the absence of advocates for green village innovation. Thus, in order to undertake the authentic role of green bureaucracy, there should be improvement in planning role. In planning role, improvement should be done in the ability of macro conceptual approach and micro technical operational. The Department of Environment needs to improve the quality of the village green innovation plan comprehensively. The data show that bureaucratic needs to understand green village innovation comprehensively. Thus the ability to make the proper plan can be achieved, interaction among stakeholders and the technical approach can be improved.

### 4 Conclusions And Recommendations

The authentic role of green bureaucracy in green village innovation carried by The Department of Environment of Yogyakarta Special Region has not been fully executed. Limitation in planning, designing, information and technical formation of the implementation of green village innovation indicates the limitation in concept comprehension of green village. Therefore, the authenticity of green bureaucracy of The Department of Environment of Yogyakarta Special Region has only been performed in only small part.

In order to perform improvement for the authentic role of green bureaucracy, these following efforts are required.

a. Strengthening the concept comprehension of green village innovation.

b. Strengthening the planning ability of green village innovation until the formation of guidance/technical direction can be documented well.

c. Repositioning the authentic role of The Department of Environment to the conceptual level and doing coordination with the related parties.

d. Improving the authentic role of green bureaucracy requires improvement in conceptual versus operational technique ability, coordination and supervision ability as well as discretion ability.
Reference:


Reality Construction of Gamers in Online Media (Case Study : Kompas.Com)

Hafizh Faikar Ramadhan¹, Euis Komalawati²
{ insanethory1212@gmail.com¹ e_komalawati@yahoo.com²}

Universitas Indonesia, Indonesia¹, Institut Ilmu Sosial dan Manajemen Stiami, Indonesia²

Abstract. Gamers as a term for online game players initially had a negative stigma as a lazy and antisocial group. But along with the industrial revolution 4.0, many studies have shown changes in the stigma of gamers in the community. Changes in the pattern of thinking or the view of society towards gamers is not separated from social construction. Peter L. Berger and Thomas Luckmann view social reality as a dialectical process that passes externalization, objectivation and internalization. This research is to find out the reality construction of gamers in kompas.com online media. With the Pan & Kosicki framing method, the analysis unit of this study is 5 article text gamers news on kompas.com. The results showed kompas.com frame the reality of gamers in a positive stigma in the discourse of promising professional opportunities, opportunities for e-sports athletes, and the phenomenon of the opening of current study programs in universities.

Keywords: Construction of Reality, Gamers, Framing.

1 Introduction

The term "game" was first introduced by Edward U. Condon in 1940. At that time game was created to prove that computer capabilities can exceed human capabilities. This first game was very simple, namely by competing with computers to take matchstick alternately with certain rules until the winner is the one who does not take the last matchstick. This first game was exhibited at the World's Fair at Westinghouse and the result was 90% of the games won by computers.

Moving on from Edward's game which succeeded in attracting the enthusiasm of the participants at the prestigious exhibition, other games began to be developed, but due to inadequate technological limitations, the development of the game was still very limited.

A big jump in the game world occurred in 1964. A scientist named John Kemeny introduced the first Basic Programming Language. A language that facilitates communication between humans and machines. Simplification of binary is a word that is quite easy for ordinary people to understand. This is where countless new games are created and continue to grow along with the development of technology to date.

The long journey of game development is certainly not possible if the game is not able to attract the interest of users and developers. According to Ernest Adam(2010), "A game is a

1 https://theflame.unishanoi.org/lifestyle/2015/05/12/history-of-video-games/ , accessed on June 23 2019 at 19.30
type of play activity, conducted in the context of a pretended reality, in which the participant(s) try to achieve at least one arbitrary, nontrivial goal by acting in accordance with rules”. Based on that understanding, we can see that users / gamers from a game will be required to complete at least one challenge with certain rules. What makes the game unique and fun is that after one challenge is complete, the level of gamers will increase and presented with the next challenge that is more complicated. Unlike other media such as radio and television, in the game, gamers communicate directly with the "environment" deliberately created by game developers thus they drift away and feel themselves as if they were right there.

The nature of game like that raises the phenomenon of ‘second self or second life’, which means, the player has a personality or life both after his real life which is commonly called virtual life (Henry, Khamadi 2016). Furthermore, the game itself is able to present the simulation world (simulakra) for the players. In the world of simulation, there is no reference between signs and reality in the real world. Simulation is the second reality which refers to itself (simulacrum of simulacrum). Simulation does not have a direct relationship with the world of reality. Language and signs in simulation as if become the real reality, it is artificial reality. The reality of a simulation creation at a certain level will be seemingly (trusted) as well as real and even more real than the real reality. Simulation creates another reality beyond factual reality (hyperreality). In this sense, simulations create new realities or rather imaginary realities that are considered real3 (Bagong Suyanto, 2010).

Seeing the phenomenon above, it is not uncommon for gamers to become addicted. Kusumadewi (2009) mentioned the most common threat when a person is addicted is his inability to regulate emotions. Individuals often feel the feelings of sadness, loneliness, anger, shame, fear of going out, being in a situation of high family conflict, and having low self-esteem in their real life. This affects relationships with other people. Addicts also have difficulty distinguishing between games or fantasy and reality. Therefore, it is not surprising if the public gives a negative stigma towards gamers, whether it is said to be anti-social, lazy, and so on.

In the era of industrial revolution 4.0 today, the development of the game is increasingly stunning, both in terms of graphics and gameplay. The entry of games in the online world has led to possible unlimited interactions between gamers around the world, coupled with the development of games on smartphone media, making it possible to play anytime and anywhere. These things certainly increase the risk of more severe addiction to gamers. Strangely, the negative stigma that emerged in the community towards these gamers actually declined, even tending to give a positive stigma.

The positive stigma can be seen from the results of surveys in 11 countries carried out by the official AliWere YouTube account which is displayed through infographics4. The results show that today terms like nerd or geek that represent gamers, fans of comics and films are now also seen as positive nicknames. Gaming activities are also now considered as something cool and fun, which simultaneously increases the ability to lead, the ability to think critically, to motor skills such as spatial attention and hand-eye coordination.

Contrary to gamers who are often described as lazy and obese, the study found that at least 40% of gamers like to do sports activities. Then gamers who are screened as loner and rarely socialize, the results of these studies actually show the opposite, even willing to

---

3 The theory of Simulacra is also in line with Jean Baudrillard's book, Simulacra and Simulation, terj. ShailaFaria Glaser (Michigan)
sacrifice playing time for social activities such as hanging out and birthday events for example.

Changes in the pattern of thinking or the view of society towards gamers is not separated from social construction. The term social construction or reality became famous since first introduced by Peter L. Berger and Thomas Luckmann through their book entitled: *The Social Construction of Reality, a Treatise in the Sociological of Knowledge* (1996). The two sociology scientists describe social processes through their actions and interactions, where individuals create continuously a reality that is owned and experienced together subjectively.

This social basis of theory and approach is the modern-transition society in America around the 1960s, where the mass media had not yet become an interesting phenomenon to talk about. Thus, the theory of social construction of the reality by Peter L. Berger and Thomas Luckman do not insert mass media as influential variables or phenomenon in social construction of reality.

Along with the development of the times, in the book *Construction of Mass Social Media* (2015), the theory and social construction approach to reality by Peter L. Berger and Thomas Luckman have been revised by looking at variables or mass media phenomena to be substantial in the circulation of information quickly and widely thus social construction can take place very quickly with an even distribution.

As one of the most popular mass media in Indonesia; Kompas also took part in social reconstruction. Moreover, since 2008 Kompas has spread its wings on the online media scene with the name kompas.com thus the news or articles displayed are easier to consume. We can see this in the research of Slamet Dodi Kresno regarding corruption cases involving the Director of Police, Inspector General Djoko Susilo who allegedly received bribes of Rp.2 billion. The study was conducted by Robert N. Entman's framing or framing analysis method. Based on Robert Entman's framing analysis, the reality reconstruction process can be seen in two major dimensions, namely issue selection and emphasis or prominence of certain aspects of reality / issues. Based on the results of research conducted on Kompas.com news, two aspects were highlighted in the news, namely the issue of law enforcement and social politics.

Regarding the community’s view of gamers, Kompas.com also contains articles related to this. If we enter the keyword “gamers” in the search column, you can find more than 68,500 results. Framing of these articles contributed greatly to the social construction that occurred in Indonesian society regarding their views on gamers.

Based on the explanation above, this study intends to find out how the reality construction of gamers in kompas.com online media through the framing approach.

## 2 Theoretical Review

The construction of reality gamers in online media uses the Reality Construction approach proposed by Berger and Luckmann. According to this theory social reality uses several concepts and terms (key words), namely externalization, objectivation, and internalization. Externalization is an attempt to pour out human beings into the world, both in mental and physical activities\

Externalization is social interaction between humans and existing social structures. In externalizing each individual takes into account typifications. Typification is the basis of how

---

others are understood and treated in social interactions. Social change occurs when the externalization of individuals undermines the already established social order, replaced by a new order. Of all that, if we look for the basic assumption of externalization, people are formed because of humans\(^6\).

While objectivation is a process of self-manifestation (disclosure of subjective reality) into the forms of available activities that can be known by others as elements of the shared world. An example of an objective is, when someone is angry throws a gun. The act of removing weapons is interpreted by others as an objective reality that the person is angry. Being internalized is the understanding or direct interpretation of an objective event as a disclosure of meaning. Or understanding the subjective processes of others becomes meaningful to us.

This duality is used by Berger and Luckmann to build the basic premise of social construction theory over reality. The reality faced by humans can be returned to the dialectic between the animal side and its social side. First of all, it is certainly a factor of the human organism. The next question is how is social order enforced? Where is the origin of social order actually? In Bergerian's perspective, social order is a human product, or rather, an ongoing human production.

Social order is the result of externalization processes, not something that originates biologically, or derived from biological data in the embodiment of empiricism. Social order is not part of the "nature of things", nor is it derived from "natural laws". Social order exists only as a product of human activity. But social order is inseparable from biological factors, however, between them there is a dialectical process that never ends. In this way, Berger and Luckmann In order to understand further about the formation of social order, a theory of institutionalization is needed\(^7\).

3 Research Methodology

This study uses the constructivism paradigm which views the reality of social life as not a natural reality, but is formed from the results of construction. Therefore, the concentration of analysis in the constructionist paradigm was to find out how the event or reality is constructed, in what way the construction is formed. In the study of communication, this constructionist paradigm is often referred to as the production paradigm and the exchange of meaning. It is often opposed by the positivist paradigm or the transmission paradigm\(^8\).

Data collection method was descriptive qualitative method. According to Taylor & Bogdan (1984), qualitative data is in the form of descriptive, which can be in the form of oral or written words about observed human behavior. In this study, the data used as a reference for research was written data or articles related to gamers on kompas.com

Furthermore, to analyze existing data, the researcher chose to use the Zhongdang Pan and Gerald M Kosicki framing analysis model that defines that framing is a process of making a message more prominent, placing more information than others thus the audience is more focused on the message, (Eriyanto , 2009). In addition, the researcher determined using the Zhongdang Pan and Gerald M Kosicki models because the four framing analysis device structures were syntax, script, thematic, and rhetorical to help a related theme in a news construction element.

\(^6\) Ibid
\(^7\) Ibid
\(^8\) Ibid
## 4 Data Findings

The following is a framing analysis of 5 articles about gamers posted on kompas.com.

### Table 1. Analysis of Framing First Article

<table>
<thead>
<tr>
<th>Framing Device</th>
<th>Finding Result</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Syntactic Structure</strong></td>
<td>Title: For &quot;Gamers&quot;, Take a Look at the Current Study Programs at Several Indonesian Campuses&lt;br&gt;Lead: Study programs related to &quot;Game&quot; is current study programs</td>
</tr>
<tr>
<td><strong>Script Structure</strong></td>
<td>The entire news content is almost complete, in this article it is explained why the Game Development Department is important, in which Campus Game Developer study program is opened, what is learned and what are the advantages and specialties of each campus</td>
</tr>
<tr>
<td><strong>Thematic Structure</strong></td>
<td>1. Industrial Revolution 4.0&lt;br&gt;2. Fields with rapid development in the Industrial Revolution 4.0 is Games&lt;br&gt;3. The education industry provides study programs related to Game production&lt;br&gt;4. Whatever students get from the study program and which campus provides the study program</td>
</tr>
<tr>
<td><strong>Rhetorical Structure</strong></td>
<td>Use of the phrase &quot;Current Study Program&quot;</td>
</tr>
</tbody>
</table>

Source: the article was published on kompas.com on June 15, 2019

---

### Table 2. Analysis of Framing Second Article

<table>
<thead>
<tr>
<th>Framing Device</th>
<th>Finding Result</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Syntactic Structure</strong></td>
<td>Title: The Five Largest Income Gamers in Indonesia&lt;br&gt;Lead: Playing games is no longer just for fun but is able to provide income</td>
</tr>
<tr>
<td><strong>Script Structure</strong></td>
<td>The entire contents of the article only explain how much and what tournament is won by each game player and how much money is earned without explaining how and why they can win the tournament</td>
</tr>
<tr>
<td><strong>Thematic Structure</strong></td>
<td>1. Game players can now make fantastic amounts of money&lt;br&gt;2. Currently games is used as a sports branch known as e-sport&lt;br&gt;3. The game players who managed to make a lot of money and tournaments won</td>
</tr>
<tr>
<td><strong>Rhetorical Structure</strong></td>
<td>Use of the phrase &quot;e-sport athlete&quot;</td>
</tr>
</tbody>
</table>

Source: the article was published on kompas.com on April 25, 2019
### Table 3. Analysis of Framing Third Article

<table>
<thead>
<tr>
<th>Framing Device</th>
<th>Finding Result</th>
</tr>
</thead>
</table>
| **Syntactic Structure** | Title: 200 Gamers Ikuti Ajang NXL Mobile Esports Cup 2019  
200 Gamers Join the 2019 NXL Mobile Esports Cup |
| **Script Structure** | Lead: Winning e-sport = make the country proud  
Opinion of Mr. Charles as Commission 1 of the DPR RI |
| **Thematic Structure** | Almost the entire contents of the article cite the opinion of Mr. Charles about the involvement of Indonesian gamers in the 2019 NXL Mobile Esport Cup event and his hopes |
| **Rhetorical Structure** | Use of the phrase "Make the name of the country", and use the word "positive" repeatedly |

*Source: the article was published on kompas.com on March 18, 2019*

### Table 4. Analysis of Framing Fourth Article

<table>
<thead>
<tr>
<th>Framing Device</th>
<th>Finding Result</th>
</tr>
</thead>
</table>
| **Syntactic Structure** | Title: Jokowi is curious to Gamers of "Mobile Legends, Jess No Limit"  
Lead: Gain income by becoming a gamer is an opportunity in this era |
| **Script Structure** | Opinion of Jokowi |
| **Thematic Structure** | In the paragraph by paragraph the journalist narrates in detail about Jokowi's speech at the 2018 Young on Top National Conference at Balai Kartini followed by quoting Jokowi's statements which essentially assume that in this era young people must take advantage of opportunities, one of which is earning income as gamers |
| **Rhetorical Structure** | The repeated use of the word "opportunity"  
Jokowi's remarks: Just like me, at first I would nag when my children play games, I'd say, 'Hey, what are you playing all day?' But apparently playing Mobile Legends but can bring money. This is what is called opportunity |

*Source: the article was published on kompas.com on August 25, 2018*
Table 5. Analysis of Framing Fifth Article

<table>
<thead>
<tr>
<th>Framing Device</th>
<th>Finding Result</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Syntactic Structure</strong></td>
<td>Title : Efforts to popularize gamers as the chosen profession in Indonesia</td>
</tr>
<tr>
<td></td>
<td>Lead : How the government made parents aware that this entertaining sport (e-sport) can be used as a profession</td>
</tr>
<tr>
<td><strong>Script Structure</strong></td>
<td>Opinions from Representatives of Surakarta Youth &amp; Sports Service and Government (Jokowi)</td>
</tr>
<tr>
<td><strong>Thematic Structure</strong></td>
<td>1. Playing games in the country is still considered entertainment only and not useful</td>
</tr>
<tr>
<td></td>
<td>2. With the emergence of e-sports, games can be used as a profession</td>
</tr>
<tr>
<td></td>
<td>3. Excerpt from Suhanto's representative about the program to introduce e-sport with assistance from the government</td>
</tr>
<tr>
<td></td>
<td>4. Support from the government and institutes can make parents better understand e-sport.</td>
</tr>
<tr>
<td><strong>Rhetorical Structure</strong></td>
<td>Repeatedly emphasized on &quot;Guidance to Gamers&quot; and &quot;Parental Awareness&quot;</td>
</tr>
</tbody>
</table>

Source: the article was published on kompas.com on October 25, 2017

5 Analysis And Interpretation

In social life, humans interact with each other. Social interaction between online gamers applies to existing social structures. Social interaction in the structure of society is a form of externalization. In externalizing each individual takes into account typifying. Gamers in social interactions have typifications that are understood in society in various types. In the beginning, gamers were understood as a game to kill time and cause addiction to other deviant behaviors. This understanding results in the treatment of gamers with a negative stigma.

Along with the development of 4.0 technology, bursting in every line of life is no exception for gamers. The development of types of games and technology gave birth to different typifications for gamers as a new opportunity in an era of disruption that changed the old system in new ways. This change in typification gradually changes the social order and stigma about gamers, as a result of social change.

Objectivation of gamers is a process of self-manifestation (disclosure of subjective reality) into the forms of available activities that can be known by others as elements of the shared world. In framing by kompas.com, the manifestation of gamers' actions was appointed as a new opportunity in the era of 4.0 industrial revolution, gamers were manifested as promising e-sports athletes and new professions that challenged universities to open "current" study programs.”.

The original gamers' meaning had a negative understanding and stigma at first, framed by kompas.com with things that were different from the initial stigma. The process of
internalization, that is, the understanding or immediate interpretation of the concept of gamers in our society initially leads to the expression of groups that tend to be negative. But the subjectivism process that is computed in kompas.com about gamers shows the diversity of subjectivity, which in social interaction brings together two or more subjectivities. Internalization which is the earliest base in the understanding of the social reality of gamers that is composed by kompas.com as a "contemporary" thing and a promising new profession, peaking up to a certain degree of internalization supporting the process of socialization.

The social process of maintaining the reality of gamers is carried out, among others, by socializing identity. The identity of gamers formed through kompas.com online media was identified because there was a distinction between self and significant others. The function of the other, in addition to asserting identity, is also to reaffirm the reality that is maintained. The most common reality maintenance procedure occurs through conversation. In this case, daily conversations are presented by Kompas.com through narratives about gamers.

Conversations about gamers appeared in kompas.com framing, in the first article the essence of the presence of "contemporary" study programs was due to the phenomenon of gamers. In the second and third articles framing about gamers appointed in the Gamers narrative is no longer a mere game that consumes time but gamers as e-sport athletes who affirm the gamers phenomenon in a positive context. In the fourth and fifth article Gamers was dubbed as a promising profession. Kompas.com frames framing gamers by strengthening speakers from public policy makers both the DPR and the President. In his narrative, relationships are developed between the significant others with self - both interact dialectically in line with the subjective reality that is confirmed together resulting in the identification of gamers in positive meaning.

This conversation flows with the support of language factors which are the linguistic objectivity factors that transform the flow of experience into a cohesive order. Language becomes a tool for actualizing intersubjective experiences. The phrases compiled by kompas.com that gamers are "present", "e-sport athletes", "raise the name of the country" and "opportunity", have succeeded in transforming the meaning of gamers who were originally interpreted lazy and antisocial into gamers in a positive context.

One of the successes of socialization is determined by the level of social structure, in this case the taking of resource persons from the legislative structure encourages the transformation of the meaning of gamers.

6 Conclusion

Based on the results of the research and discussion, the framing gamers in kompas.com show that the objective reality of gamers is manifested through externalizing gamers' activity in a positive stigma, as a promising profession opportunity, as a phenomenon of e-sport athletes to opportunities in universities to open up current study programs. The reality of gamers is a social reality that has objective and subjective dimensions. This dialectical process through internalization is absorbed by individuals as a subjective reality. This dialectical process that continues and consists of three moments: externalization, objectivation and internalization.
References

Innovation Adoption and Communication Strategies in Implementing The Smart Governance Program (Case Study of Simpus Utilization at Bogor City Community Health Center)

Ade Tuti Turistiati1, Wulan Furrie Lenggana2
{ade.tuti@amikompurwokerto.ac.id, wulanlenggana77@gmail.com2}

Communication Science Study Program, Universitas Amikom Purwokerto, Indonesia1, Communication Management Study Program Faculty of Social Sciences and Management, Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia2

Abstract. This research aims to analyze the adoption of SIMPUS innovation carried out by the Bogor City Health Office for Community Health Center (Puskesmas). Sistem Informasi Manajemen Puskesmas (SIMPUS) or Community Health Center Management Information System has become one of the most prospective smart governance programs in Bogor City. The qualitative research method was used through case studies with an in-depth interview, observation, and literature studies. The results of this study indicated that SIMPUS innovation is useful for Puskesma for systematizing patient data. However, the benefits have not been optimized for both health care providers (Puskesmas) and the community (patients). It was found at least three obstacles in SIMPUS implementation: 1) the internet as an important means to run SIMPUS is not yet available or the signal is not even good for some regions/locations, 2) lack of budget/funds available to procure SIMPUS working equipment, 3) lack of skillful human resources. The communication strategy is carried out in a top-down manner from the City Government, the Health Office, and then the Puskesmas employees. However, subordinates also often provide input and advice to their superiors because they know better about the practice in the field (bottom-up). Interpersonal communication channel was also found important for maintaining the internal relationship among SIMPUS users.

Keywords: Smart Governance, Communication Strategies, Innovation Adoption, SIMPUS.

1 Introduction

A smart city is more than a trend. Cities are digitally transforming to improve governance and social aspects of society life. The actual values that shape smart cities are based on a balance of factors such as smart environmental practices, smart governance, smart living, smart mobility, smart people, and smart economy. These principal key elements work together to exploit the technologies that help bring about the realization of a smart city [1]. Smart governance is the main key to implementing a smart city.

The goal of smart governance is to create effective, efficient, communicative governance of regional government. It is a continues improvement of bureaucratic performance through integrated technology innovation adoption [2].
In 2017 the Indonesian Government through the KEMKOMINFO Jakarta held a movement of 100 smart cities throughout Indonesia. Bogor City was chosen as one of 25 cities that became a pilot project to become a smart city. Regional Organizations under the Mayor of Bogor then determined the quick win pilot project proposed to make Bogor City as a smart city. Quick win selected pilot projects in the health sector, one of which is SIMPUS (Puskesmas Management Information System). Puskesmas is Society Health Center where are available in each region of the city.

SIMPUS is an integrated and multi-user information system that is prepared to handle the entire management process of Puskesamas. SIMPUS utilizes information technology to support health services in the digital era. In SIMPUS there is an E-SIR (Electronic Healthy Bogor Referral Information System) [3]

The population of Bogor City in 2016 was 1,064,687 people consisting of 540,288 men and as many as 524,399 women. Compared to 2015, the population of Bogor City in 2016 increased by 16,765 people, an increase of 1.60% [2]. With the rapid growth of the population of Bogor City, systematic efforts are needed in the health sector.

According to the Mayor of Bogor, Bima Arya in the Pikiran Rakyat newspaper online, the government of Bogor City has not maximally realized the concept of a smart city. Bima Arya stated that the obstacle was due to a lack of human resources who mastered information technology expertise. In the internal environment, Civil Servants are not easy to find people who understand IT. [4]

In line with Bima's statement and based on the researchers’ observations, the existence of SIMPUS has not been evenly distributed well in health centers in the city of Bogor. Many people are still waiting in line to register manually to get services at several health centers in the city of Bogor.

Previous relevant researches got quite similar findings. One of the factors that caused the ineffective Puskesmas (SIMPUS) management information system was due to the low involvement of Puskesmas employees [5]. Nisaa identified the factors that led to low involvement of employees and organizations, and analyze alternative steps of the Brebes District Health Department (Brebes DKK) to increase the involvement of Puskesmas employees. In fact, Wibowo stated that Community Health Centers as providers of health care facilities are required to provide health services that are fast, precise and accurate. Therefore, Puskesmas must take advantage of information technology in meeting the demands of these services. [6]

Rusmiarti evaluated the process of adopting work culture by civil servants using the Everett M. Rogers Innovation Diffusion Process theory. The evaluation aims to make the process of diffusion of innovation run continuously until there is a change in the behavior of civil servants. This study used a qualitative approach, with a case study research strategy. The results of the study revealed that the use of communication channels, dimensions of the time period and leadership behavior and commitment was important for civil servants in adopting, changing their mindset and behavior in accordance with the prevailing work culture. Evaluating communication channels for the diffusion process of innovation influenced the achievement of organizational goals [7]

The Diffusion Theory Innovation of Rogers basically explains the process of how an innovation is delivered (communicated) through certain channels all the time to a group of members from the social system. This is in line with the notion of diffusion from Rogers, namely "as the process of innovation is communicated through certain channels over time among the members of a social system." Further explained that diffusion is a form of communication that is specifically related by disseminating messages in the form of new
ideas, or in Rogers' terms diffusion involves "which is the spread of new ideas from the source of creation or the creation of its ultimate users or adopters."[8].

Members of the social system can be divided into adopter groups (recipients of innovation) according to their level of innovation (speed in receiving innovation). One group that can be used as a reference is grouping based on the adoption curve, which has been tested by Rogers (1961) in [8]. The description of adopter grouping can be seen as follows:
1. Innovators: About 2.5% of individuals who first adopted innovation. Characteristics: adventurers, risk takers, mobile, smart, high economic ability.
2. Early Adopters (Pioneers): 13.5% are pioneers in receiving innovation. Characteristics: exemplary (opinion leaders), respected people, high access inside.
3. Early Majority: 34% of the initial followers. Characteristics: full consideration, high internal interaction.
4. Late Majority: 34% who become the final followers in receiving innovation. Characteristics: skeptical, accepting due to economic considerations or social pressure, too cautious.
5. Laggards (Old-fashioned / Traditional Groups): The last 16% are conservative / traditional. Characteristics: traditional, isolated, limited insight, not opinion leaders, limited resources.

Based on the description above, the purpose of this study was to analyze the adoption of SIMPUS innovations carried out by the Bogor City Health Office for Puskesmas, find out the obstacles that occur in the use of SIMPUS, and find out communication strategies in implementing and optimizing the use of SIMPUS by Puskesmas in Bogor City.

2 Methods

Operationally this research used qualitative research methods with a case study approach. A case study is used as a comprehensive explanation relating to various aspects of a person, a group, an organization, a program, or a social situation studied, sought and studied as deeply as possible. Case studies have a detailed understanding of a social unit in a certain period of time. Case studies [9] are an empirical inquiry that investigates phenomena in real life, where boundaries between phenomena and contexts do not appear explicitly so that multiple sources of data as evidence can be utilized. As an inquiry, case studies do not have to be done for a long time and do not have to depend on ethnographic data or participant observation.

The key informants of this study were selected purposively based on the criteria set as follows:
1. Informants who directly experienced situations or events related to the topic of research.
2. Informants were able to explore and explain the process of utilizing SIMPUS in the Bogor City Health Center.
3. Informants were willing and had sufficient time to be interviewed and provide information.
4. Informants agreed to the results of this study were published.

In this study researchers conducted in-depth interviews with 2 key informants and 5 informants who are the users/patients of Community Health Center (Puskesmas) at Bogor city. The interview approach was conducted in an unstructured manner, where the researcher selected a list of questions or topics to be discussed. The researchers conducted participatory
observation which was collecting data through observation of the object by being in the situation and communication activities carried out by the informants. The study of documents was carried out by the researcher on documents or articles related to previous relevant research, documents in the form of reports on the implementation of smart governance in the city of Bogor, and audio recorded during the interview.

Researchers used technical data analysis in accordance with the opinion of Creswell in conducting qualitative data analysis, i.e. researchers are bound to processes that move in the analytic cycle. The data analysis technique was taken by the researchers through 4 stages, namely starting from the stage of providing data, reducing or selecting data, displaying or presenting data, and drawing conclusions [10].

3 Results And Discussion

3.1 Adoption of SIMPUS Utilization Innovations at the Bogor City Health Office

In 2017 the Indonesian Government through the KEMKOMINFO Jakarta held a movement of 100 smart cities throughout Indonesia. Bogor City was chosen as one of 25 cities that became a pilot project to become a smart city. The Bogor City Government finally brought in a supervisor who collaborated with IKTI (Information Technology Consultant Association). Supervisor and IKTI explained and guided the Bogor City regional device on how to form a smart city.

The technical guidance was conducted eight times and was followed by all the DPOs (Regional Device Organizations) which were under the Mayor of Bogor City. From these stages the OPD must determine the quick win pilot project that was proposed to make Bogor City a smart city. Quick win was selected as pilot projects in the health sector, one of which is SIMPUS (Puskesmas System). In SIMPUS there is E-SIR (SIM referral to hospital).

"SIMPUS is the champion to make Bogor City a smart city." ¹

Bogor City Government after doing 8 times technical guidance and then presenting at the KEMKOMINFO. As a result, the Bogor City government was included in the top 10 smart cities in 2017. Smart city and smart governance are not only problems of system or use of applications using computer devices but also good behavior of the apparatus and the community in making it happens.

"Smart city is not only about people can operate computers but also they do things wisely. This means that the adoption of innovation such as SIMPUS is not only employees can use the application but also how people serve the community well and politely." ²

The Health Office and Community Health Centers in Bogor City area accepted SIMPUS as a useful innovation. The community also received the benefits of service more quickly. According to the Republic of Indonesia Decree No. 932 of 2000, the puskesmas carried out health management in three functions, namely the functions of patient management, institutional management, and system management. Quality information in patient management provides data certainty for more accurate and effective efforts for patient health and treatment. SIMPUS makes people easier and faster to access services because this system,

¹ Interview result with Y, Diskominfostandi of Bogor City, dated 22 November 2018
² Interview result with Y, Diskominfostandi of Bogor City, dated 22 November 2018
is already online from registering, checking, and getting the drug (pharmacy). Patients only need to mention the name that matches their ID card. If the name is the same as somebody else name, it can be confirmed by the patient's address or date of birth. SIMPUS shortens patients waiting for queues and services.

The Puskesmas employees as implementing parties have different reactions to SIMPUS innovations. They can be categorized into what Rogers called adopters of innovation. Some adopter categories are based on the first time that Puskesmas employees used SIMPUS innovations, namely innovators, early adopters, early majority, late majority, and laggards. The characteristics of adopters that exist in employees of Puskesmas in Bogor City in accepting and using SIMPUS innovations are as follows:

<table>
<thead>
<tr>
<th>Adopter</th>
<th>Rogers Adopters</th>
<th>Conditions at the Bogor City Health Center</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Innovator</strong></td>
<td>About 2.5% of individuals first adopted innovation. Characteristics: adventurers, risk takers, mobile, smart, high economic ability.</td>
<td>Superior and structural officials at the Health Office and Puskesmas understand the need for speed in services, especially those who understand the importance of systemization in services.</td>
</tr>
<tr>
<td><strong>Early adopters</strong></td>
<td>Pioneer / Pioneer: 13.5% are pioneers in receiving innovation. Characteristics: exemplary (opinion leaders), respected people, high access inside.</td>
<td>Employees who have an educational background in the field of computers or those who like and can be applications on a computer. In general, employees are young between 25-35 years old.</td>
</tr>
<tr>
<td><strong>Early majority</strong></td>
<td>Early Followers: 34% of those who become early followers. Characteristics: full consideration, high internal interaction.</td>
<td>Employees who have educational backgrounds outside the computer field are eager to learn new innovations that can simplify their work.</td>
</tr>
<tr>
<td><strong>Late majority</strong></td>
<td>Final Followers: 34% who are the final followers in receiving innovation. Characteristics: skeptical, accepting because of economic considerations or social pressure, too cautious.</td>
<td>In general, civil servants who have approached retirement age and lack the skills to operate computers but are still required to operate SIMPUS.</td>
</tr>
<tr>
<td><strong>Laggards</strong></td>
<td>Traditional / Traditional groups: The last 16% are conservative / traditional. Characteristics: traditional, isolated, limited insight, not opinion leaders, limited resources.</td>
<td>In general, civil servants who have approached retirement age and do not have the skills to operate computers.</td>
</tr>
</tbody>
</table>

Source: Interview with W on December 18, 2018

According to Y, the public's reaction to SIMPUS's existence was very positive:

“SIMPUS make our job faster because if there is a referral to the hospital you don't have to wait for referral manually. In SIMPUS, there is an E-SIR, which is
a hospital reference if they want to get surgery, they just need to be on the phone and were sent to hospital.\(^3\)

The Health Office has Public Relations who inform the public about the existence of E-SIR (Electronic Referral Information System) by the way they make banners or in the form of brochures. SIMPUS itself is actually a development for recording and reporting patients. SIMPUS has actually been piloted in several Puskesmas in the city of Bogor since 2014. In 2018 the number of Puskesmas in Bogor City that has used SIMPUS reaches 80%. SIMPUS is a system created for the interests and needs of the Puskesmas. The community receives a positive impact. They do not need to long queue because the data is already systemic and online. The condition is that the patient has a KTP.

### 3.2 Obstacles in the Implementation of SIMPUS

SIMPUS operation requires high mbps or strong internet network (minimum 30 mbps). If the internet network is less than 30 mbps the process of using SIMPUS is often slow and error.

"Every Puskesmas must have 5 computers for registration, general practitioners, dentists, midwives, and pharmacies. Some health centers that use SIMPUS well are in East Bogor, Central Bogor, Tanah Sareal, Cipaku. In West Bogor Health Center like Sindangbarang there is no internet so it has not used SIMPUS. In Semplak Sub district the internet is not yet strong because it uses a network that does not support SIMPUS. In addition, the Puskesmas building made of good concrete is also often on and off."\(^4\)

<table>
<thead>
<tr>
<th>Human Resources</th>
<th>Infrastructures</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees who are approaching retirement age and are less / unfamiliar to operate computers consider SIMPUS burdensome</td>
<td>Some Puskesmas do not have good networks (internet) and there is even no internet access because the Puskesmas building is old and cannot be connected to the internet.</td>
<td>The budget for buying a computer device is not yet available so the Puskesmas does not have a computer device</td>
</tr>
<tr>
<td>Employees who are capable of running SIMPUS are limited</td>
<td>Computer devices those are sometimes problematic.</td>
<td>Lack of budget to hire IT personnel who can help them operate the SIMPUS program or when SIMPUS has problems.</td>
</tr>
<tr>
<td>Puskesmas need employees who understand the SIMPUS application and computer systems that are employed and paid for by the Puskesmas income.</td>
<td>Lack of computer devices</td>
<td></td>
</tr>
</tbody>
</table>

Source: Interview with W on December 18, 2018

Patients who receive services from Puskesmas stated that SIMPUS will only beneficial for them if the internet connection is running well. If for some reason, the internet connection drops, in trouble or very slow respond, the services of Puskesmas is worse.

---

\(^3\) Interview result with Y, Diskominfostandi of Bogor City, dated 22 November 2018

\(^4\) Interview result with Y, Diskominfostandi of Bogor City, dated 22 November 2018
“We have to wait for long time process… one to two hours just because registration is done manually.”

Problems that occurred just because of the internet problem are not often solved quickly due to unskilful employees who operate the system/program.

“It’s ok …sometimes internet might be drop …let say because of the bad weather… but it should be solved quickly.”

All informants (patients) expected services of Puskesmas using SIMPUS getting much better and faster in the future. Not only the SIMPUS but also the man behind the system which is expected to be excellent in services.

3.3 Communication Strategy in Utilizing SIMPUS at Bogor City Health Office

Since the beginning of Mayor Bima Arya administration in 2014, Bogor Communication and Information Technology have built an information system in all fields including SIMPUS. SIMPUS is discussed with the OPD (Regional Device Organization) then with the Health Office. After being agreed upon, SIMPUS was distributed to Puskesmas in the Bogor City area. Bogor City has 26 health centers spread in 6 sub-districts [11]

SIMPUS is basically an internal system of Puskesmas to make it easier for Puskesmas officers to do their jobs. This system has an impact on service to the community.

The communication strategy carried out by the Bogor Health Office on the Puskesmas in the Bogor City area besides structurally (top down) also through the interpersonal communication channel. Communication strategy refers to a way or approach to overall communication in order to achieve goals. Various approaches can be made depending on the situation and conditions [12].

According to Mohr and Nevin communication strategies are as a combination of communication facets which include the frequency of communication, communication formalities, content of communication, communication channels [13].

In communication strategies need to consider various components of communication because those components support the communication process. Communication strategy is a management activity to communicate so that it can lead to an understanding in preparing a long-term plan. Interpersonal communication is considered to be very effective because the communication process is direct and dialogue. The interpersonal communication channel was used as one of the communication strategies at the stage of creating knowledge and disseminating information in the innovation adoption process. Change agents and leaders (opinion leaders) play an important role in the stage of creating audience knowledge of the program. Leaders are used to bridge differences and social distance between change agents and target targets. In the stage of positive behavior persuasion the target is influenced by the relative benefits of the innovation. While in the implementation phase the acceptance of innovation by the target is based on collective decisions/authority made by several individuals in a system that has certain power, status or technical expertise.

---

5 Interview with U, patient at Merdeka Puskesmas, dated 30 November 2018
6 Interview with E, patient at Atang Senjaya Puskesmas 30 November 2018
5 Conclusions

The adoption of SIMPUS innovations is generally well accepted by users, namely *Puskesmas* as well as patients who receive services from *Puskesmas*. There are 2 dominant adopters of SIMPUS, the early majority and the late majority. Early majority are employees who have non-computer educational backgrounds but eagerly to learn new innovations that can facilitate their work. Late majority in general are civil servants who are approaching retirement age and lack of the skills to operate computers but are still required to operate SIMPUS. The implementation of SIMPUS has benefits for *Puskesmas* and the community. However, the utilization is not optimal because of several obstacles. Barriers that occur because of the lack of skillful HR in operating SIMPUS, lack of facilities and infrastructure, and the budget that is not yet available. The communication strategies to implement SIMPUS are a top down instructed or directed from superiors to executors. In this case, starting from Mayor, Communication and Information, OPD, Health Office, to *Puskesmas*. As implementers, *Puskesmas* can provide input and advice to the Health Office because they face more practice in their workplace (bottom up).

Acknowledgement

This research was supported by STIAMI Institute of Social Sciences and Management. We thank our colleagues from LPPM (Research and Community Services Institution) who provided workshops in qualitative research methods and academic writing.

References


Local Social Capital for Community Empowerment
Poor Rural (PNPM-MD) in Kalumpang District
Mamuju Regency

Umi Farida
{um_i_farida@stieamkop.ac.id}
STIE Amkop, Makassar, Indonesia

Abstract. This research is to understand, map and encourage community empowerment programs (PNPM-MD) by making maximum use of social capital in the community. This type of research is descriptive qualitative which aims to obtain a clear picture of the strategy for empowering the rural poor through the use of local social capital in Kalumpang District, Mamuju Regency. The results showed that poverty alleviation in Kalumpang District was implemented through a series of stages called the PNPM Mandiri Rural (PNPM MD) cycle, starting from poverty reflection, self-help mapping, establishing a medium-term poverty reduction program plan. The characteristics of the social capital of the Kalumpang sub-district community have grown and developed long before the PNPM program was implemented. The characteristics of social capital include trust, established networks, established values and norms, participation and pro-active action. The existence of this social capital contributes positively to the existence of a poverty reduction program through PNPM-MD which emphasizes community participation in various activities.

Keywords: Poverty, social capital, community empowerment.

1 Introduction

This Kostov and Lingrad (2001) stated that rural development in the future requires a new approach. Strengthening social capital in rural development can be seen as a very important reform of the approach. If rural development is not accompanied by strengthening institutions and organizations (Tjondronegoro, 1977), most community participation in rural areas (Sajogyo, 1974), and people's economic empowerment (Mubyarto, 2002), then whatever rural development programs or projects run by the government, will be difficult. achieve the expected results.

Economic experts in developed countries believe that the key to strengthening social capital lies in developing a network of relationships between the components of trust, networks, and cooperation. However, this is considered to be relatively superficial and has not touched directly on the roots or essence of strengthening social capital itself. In the context of community empowerment, the core of social capital is cultural values. Strengthening social capital needs to be initiated by strengthening local cultural values. In addition to cultural values, elements of social capital that are considered important to be developed in empowering rural communities are the competence of human resources or human resources
human capital), strong social management and civil society organizations (civil society), a non-imbalanced social structure, strong local leadership. strong, strong moral and legal systems, and good governance.

The concept of social capital is one of the important components to support the human development model, because in this model humans are placed as an important subject that determines the direction of development. Participation and the capacity to organize themselves are important so that society can play a role in the human development model.

1.1 Poverty

Poverty is defined as the inability to meet the minimum standard of living (Kuncoro, 2000: 103). However, the problem is actually not that simple, because poverty cannot be measured only by physical conditions, but is multicomplex and multidimensional in nature, among others, relating to social welfare, access to resources, education, health and protection of law and political rights. Therefore, in identifying poverty at least two approaches are used, the first emphasizes the notion of subsistence, namely "subsistence poverty", while the second understands poverty in a relative sense, namely poverty as "relative deprivation" (Mas'ood; 1999: 136).

The subsistence approach considers poverty as a matter of inability to obtain the level of income needed to meet basic needs for food, clothing and several other basic needs. In other words, subsistence poverty is really absolute poverty. A person is said to be absolutely poor if his income level is lower than the absolute poverty line, or the amount of his income is not sufficient to meet the minimum living needs as reflected by the absolute poverty line. Absolute poverty is generally juxtaposed with relative poverty. Relative poverty is a condition of comparison between income groups in society, namely between groups that may not be poor because they have an income level higher than the poverty line, and groups of people who are relatively richer (Kartasasmita, 1996: 235).

The process of poverty that occurs in society can be understood based on its causes, namely natural poverty and artificial (artificial) poverty. Natural or natural poverty arises from the scarcity of natural resources, such as barren land, absence of irrigation and scarcity of other infrastructure. Meanwhile, artificial poverty is mostly caused by the emergence of institutions that make community members unable to evenly control existing economic resources, facilities and facilities. This kind of poverty is also known as structural poverty, because equal access to economic resources is hindered by existing structures in society (Mas'ood; 1999: 138).

Sumodiningrat (1998: 27) states that based on the causes, poverty can be divided into three definitions, namely natural poverty, structural poverty and cultural poverty. Natural poverty is a condition of being poor because they are originally poor, because they do not have adequate resources, both natural resources, human resources and other resources, so they cannot participate in development.

Structural poverty is rooted in unbalanced development results and results that have not been evenly distributed, which is characterized by unequal ownership of resources, unbalanced community capacity and inequality of opportunities in development, which causes imbalance in income gains and an unequal community structure. Meanwhile, cultural poverty refers to the attitude of a person or society that is caused by their lifestyle, life habits and culture, in which they already feel sufficient and do not feel deprived.

The criterion used by the Central Bureau of Statistics (BPS) to measure the poverty line is the minimum expenditure needed to meet daily needs. This minimum need for life is measured by spending on food equivalent to 2100 calories per capita per day plus expenses for non-food
needs which include housing, various goods and services, clothing and durable goods. In 1993 the minimum expenditure figure as the absolute poverty line was set at an average of Rp. 27,905 per capita per month for urban areas and Rp. 18,244, - for rural areas (Kartasasmita; 1996: 235).

1.2. Social Capital

Francis Fukuyama (1995) illustrates social capital in trust, believe and vertrauen, which means that the importance of trust is rooted in cultural factors such as ethics and morals. Trust arises so that the community shares a set of moral values, as a way to create public expectations and honesty. He also stated that local associations and networks do have a positive impact on improving economic welfare and local development and play an important role in environmental management. James S, Colement (1998) asserts that social capital is a tool for understanding social action theoretically combining sociological and economic perspectives. This understanding is emphasized by Ismail Serageldin (1998) that social capital always involves society and makes society appear not only from market interactions and having economic value.

Ismail Serageldin provides a classification of social capital, including:
- Social capital in the form of long-lasting but unidirectional social interactions, such as teaching and commerce, while social interactions with reciprocal relationships such as social networks and associations.
- Social capital in the form of social interaction effects is more durable in unidirectional relationships such as trust, respect and imitation, while in the form of reciprocal relationships such as gossip, reputation, pooling, social roles and coordination, all of these contain high economic value.

1.3 Community Empowerment

The notion of empowerment can be understood through a human-centered development approach which aims to achieve community independence. The placement of the human aspect in this approach is the main focus and the main source of development, so that society is not only seen as the object of development but also the main subject or actor of development and the role of the government in this case as a facilitator that facilitates the growth of community initiative and independence. In this regard, Bookman and Morgen say that empowerment as a concept that is currently popular refers to an effort to foster a desire for someone to actualize oneself, perform upward mobility, and provide psychological experiences that make a person feel empowered (Hendytio and J Babari, 1996: 177 ). In the discussion on empowerment, several types of capital have been discussed, such as physical capital, natural capital, financial capital, human capital and social capital. All of this capital has an important role in empowerment, but as has been stated in the discussion on integrated community development, it is known that empowerment activities cannot always be carried out simultaneously. The series of empowerment activities needs to be carried out systematically and complement each other.

The purpose of empowerment must be interpreted as an effort to improve the capacity of society in all aspects. However, there are certain aspects that are considered to be strengthened first so that society can develop other aspects. From a review of the weakness of physical capital as an entry point for empowerment programs and an analysis of the negative impacts of economic capital assistance, the two types of capital are not appropriate to be used as basic capital in empowerment. Apart from these two types of capital, there is natural capital, human capital and social capital. Human capital and social capital are inseparable parts even though
the resulting output is different. Human capital can be seen from the output in the form of knowledge, skills and ability to act. Social capital is a very abstract capital and its output can only be seen in the form of action-reaction between people.

In the context of empowerment, the explanation of social capital is very relevant to answer the question of who will do the empowerment, what is done and how they do it. Ife and Tesoriero (2008: 363) say that:

“All community development should aim at building society. Community development involves developing social capital, strengthening social interactions in society, bringing them together and helping them to communicate with each other in a way that can lead to genuine dialogue, understanding and social action”.

From Ife and Tesoriero’s explanation regarding social capital in community development, it can be seen that social capital is capital that can be used as a driving force in empowerment. Social capital provides support for the community to take action collectively and in return. Apart from being a capital that can drive empowerment, social capital is also empowerment itself. According to Ife and Tesoriero (2008: 35) "part of building social capital is strengthening 'civil society'. Civil society is a term used for formal or semi-formal structures that people form voluntarily on their own initiative, not as a consequence of a specific program or direction from the government.”. To further understand the strengths that exist in social capital, a study of the notion of social capital, its dimensions and elements is intended to provide an overview of the importance of social capital in empowerment.

The National Program for Independent Rural Community Empowerment (PNPM MD) in Mamuju Regency began in 2007 which at that time was a change from the District Development Program (PPK) which was undergoing an introduction period or the Socialization phase in 2002. The National Independent Community Empowerment Program was directed to increase effectiveness poverty reduction and job creation by involving elements of the community from the planning, implementation, to monitoring and evaluation stages. Through a participatory development process, critical awareness and independence of the community, especially the poor, can be developed, so that they are not only objects but also subjects in poverty reduction efforts. The National Independent Community Empowerment Program fully adopts the mechanisms and procedures for the District Development Program (PPK) which have been successfully implemented so far. In KDP, there are several activities that are funded, such as the construction of physical facilities that have both short and long term impacts on improving the economy and the welfare of local communities. For example construction of roads, bridges, markets, village irrigation, power plants, and others.

The existence of the National Independent Rural Community Empowerment Program (PNPM MD) in Mamuju District, especially in Kalumpang District, has received support from various parties and provides great appreciation and hope. Given the condition of Kalumpang District, it is a reflection of the poor, whose lives are left behind, isolated and isolated compared to people in other areas in Mamuju Regency. Geographical situation that is difficult to reach because it is in a mountainous area and is located at the end of Mamuju Regency.

In this study, the focus of the study is to analyze the extent to which the use of social capital in community empowerment programs, especially in PNPM-MD in Kalumpang District, Mamuju Regency, by using the parameters of participation in social / work organization networks, mutual trust, and adherence to norms.
2 Method

The research method used in this research is qualitative, using research instruments of interviews, questionnaires and focus group discussion (FGD).

The initial instrument of this research is to describe a number of indicators and parameters of Social Capital, namely:
1. Participation in social organization networks / work.
2. Trust between people,
3. Adherence to norms

The research location used in this study is in Kalumpang District, Mamuju Regency. The characteristics of the selected research locations were adjusted to the research objectives, namely the rural areas inhabited by the rural poor in Kalumpang District, as well as the implementation location for the PNPM-MD program in Mamuju Regency.

3 Result and Discussions

3.1 Overview of Kalumpang District, Mamuju Regency.

Mamuju Regency consists of 142 villages and 11 sub-districts, with a population of approximately 336,879, - people / 86,623 heads of families (KK). The livelihoods of most of the residents in this Regency are fishermen, farmers, plantations and civil and private servants. As many as 50% of the households in this district are classified as poor / poor households (RTM). The poorest village in the district is Sandapan Village, Kalumpang Subdistrict, with the number of poor households up to 85% and an average income of Rp. 15,000 per day. Most of the community (80%) has a junior high school education (SLTP). While accumulatively, the poorest sub-district in this district is Kalumpang district.

3.2 Social Capital in Community Empowerment Programs

In general, the implementation of PNPM Mandiri in Kalumpang District has been going well, starting from the socialization process to the community, planning activities which include the exploration of ideas in each hamlet down to the village level, Inter-village deliberations at the District level, implementation of infrastructure development activities, maintenance processes. existing infrastructure, down to the factors that influence the implementation of public infrastructure development in Kalumpang District.

This section will describe in more detail how the use of social capital in the implementation of the National Program for Rural Community Empowerment (PNPM-MD) in Kalumpang District, as for the subject, namely:

Participation in Social/ Work Organization Networks.

This indicator can be seen from the willingness to build a network of cooperation among others, openness in social / work relationships or networks, activeness in conflict resolution, activeness in maintaining and developing social / work relationships or networks. Based on the results of interviews with the PNPM Mandiri District Facilitator, Mamuju Regency said: "The people in Kalumpang sub-district are very enthusiastic in building cooperation with village institutions in order to make the PNPM MD program in Kalumpang District a success. We, as facilitators of the empowerment program, are very grateful because the people here
are very participatory and open, all of this is good for the success of the empowerment program in Kalumpang sub-district "(Interview Results, January 18, 2018, 10:15 a.m. local time).

The results of the interview with the Secretary of Kalumpang District, Mamuju Regency said: "The existence of the National Program for Independent Community Empowerment (PNPM Mandiri) in Kalumpang District has brought many significant changes, especially in improving the quality of community human resources. Specifically, it is hoped that the learning process of democratic politics for the community will occur. It is proven that the community is able to analyze, is able to express opinions, discuss, and supervise and control every activity that is carried out "plus 99% of the people in Kalumpang District are happy with the presence of PNPM Mandiri in Kalumpang District because this Government Program has proven to prosper the community. (Interview Result: Secretary of Kalumpang District, 17 January 2018, 10.45 WIT)

From what the informants said above, it can be said that the benefits and strengthening of social capital, particularly in the form of participation in various activities in the National Independent Community Empowerment Program (PNPM Mandiri) in Kalumpang District, have shown encouraging results, which can be seen in the participation provided by community, especially in every activity organized by the PNPM Mandiri management, both from the sub-district and those in the village where they live, as quoted in the results of an interview with the Head of the Kalumpang District Inter-Village Cooperation Agency (BKAD) as follows:

"The PNPM Mandiri program is very helpful for the poor, especially in very remote areas in Kalumpang District, for example in the implementation of PLTHM (Turbine) electricity lighting and the construction of clean water sources, community participation, especially mothers through SPP funds" (Interview Results, Date 17 January 2018, 12.05 WIT.)

Trust between Fellow

One of the indicators of social capital in community empowerment programs is the level of trust in others, the level of trust in prevailing norms, the level of trust in community leaders, trust in government, trust in group leaders and other group administrators. From the results of monitoring and interviews with several informants and respondents. In general, respondents answered that they really believed in the community empowerment program that was being promoted by the government. Including the community believes in program administrators and also in the rules and norms that apply. This is reinforced by an explanation from one of the traditional leaders of the Kalumpang community, namely Mr. Eli, who stated that:

"We, the people of Kalumpang, are very grateful for the government for helping to empower the community through this PNPM MD program. Our region is quite isolated and there are still many poor people. We believe that this program will receive support from the community and will help prosper the Kalumpang community "(Interview Result, January 2018, 12:15 pm)

Community trust in community empowerment programs, PNPM-MD is increasing with the approach pattern of program implementers who approach the community directly, even living together with the community. Based on the results of an interview with one of the PNPM-MD facilitators, that:

"As facilitators, of course we have to provide a lot of assistance to the community, starting from developing what they have, living with them, and learning with them, so that what is the role of the community in implementing this program can be accommodated, so that later the community will have a sense of mutual cooperation. , Concern for the results of the program
Adherence to norms

This social capital indicator can be seen in the level of compliance with adopted norms, the level of trust in the prevailing norms, the level of obedience to government regulations.

In village meetings, which are village community meetings as a means of socialization or dissemination of PNPM Mandiri Rural information, the decisions that are produced in inter-village deliberations are a statement of the capacity or willingness of the village to comply with and implement the provisions of PNPM Mandiri in Rural Areas, concepts and policies, planning activities with a pattern Initiating the Future of the Village (MMDD) as the basis for the preparation of the RPJMDes. During the meeting, the community agreed to obey and obey the rules and norms set out in PNPM-MD.

The results of interviews with community members Mr. Aris, who attended the PNPM-MD Musdes stated that:

“We as citizens should obey and obey the rules of PNPM-MD, because we know all of this is for our common good, hopefully this program can help improve the welfare of the community here” (Interview Results, January 19 2018, 11.00 a.m. local time).

4 Conclusion

The implementation of the PNPM Mandiri-based poverty reduction program in Kalumpang District, Mamuju Regency has been going well. The infrastructure facilities that have been built are felt to be very useful and help the people of Kalumpang District to live more properly.

In general, the villagers in Kalumpang sub-district have strong social capital. In rural communities that have relatively strong social capital, the level of community welfare tends to be high and the process of socio-economic transformation takes place faster. Several indicators of social capital in supporting the PNPM-MD program in a sustainable manner are strong or weak participation and solidarity, trust, adherence to the rules / norms that are the provisions of the local community empowerment program. Relatively sharp social capital can be clearly seen at the village community level.

The National Independent Rural Community Empowerment Program (PNPM MD) which was implemented in Kalumpang District did not experience so many problems because in terms of preparation and community participation in each activity process it was carried out jointly so that the results obtained could be maximized.

The development of a model for strengthening social capital requires a deep background understanding of strengthening values, small community-based community organization, sound social management, non-formal leadership, and good governance. Therefore, empowerment of rural communities through strengthening their social capital needs to be put in the frame of the transformation or development of rural communities in a sustainable manner.

References


[26] Laporan Akhir Pemb. Sarana Prasarana, TPK. Desa Karama
Resistance and Acceptance on the Diffusion of Global Norms of Child Participation in Indonesia

Fuat Albayumi1, M. Fahri Priambudi 2, Abubakar Eby Hara3
{fuat@unej.ac.id, mfahripriambudi@gmail.com, ehy-hara.fisip@unej.ac.id}

Department of International Relations, FISIP University of Jember, Indonesia1, 2, 3

Abstract. The definition of what is important and who needs to be protected in the world community always changes. In 1990, through the adoption of the United Nations Convention on the Rights of the Child (CRC), the world community is determined to protect and make children a comprehensive person, complete with a series of rights as human beings. The consequence of CRC is that children are deemed necessary to engage in decision-making processes whose outcomes will affect the growth of their self-development. The United Nations Children's Fund (UNICEF) as a UN agency dealing with child welfare issues and international non-governmental organizations (INGOs) working on the issue of children rights are important norm entrepreneurs in spreading this norm. This study aims to analyze the diffusion of norms of child participation in Indonesia by using the conceptual framework of Martha Finnemore and Kathryn Sikkink on norms diffusion and of Amitav Acharya’s concept on localization of norms. Using qualitative methods, this study found that within the Indonesian government, the diffusion of child participation norms has reached the final stage of norm diffusion, called internalization. In contrast, within Indonesian society the diffusion of the norms raises two types of resistance namely cultural and religious resistance

Keywords: Child rights; UN Conventions; global norms; Indonesia

1 Introduction

The world community always changes. The change made differences in the understanding of what is right and wrong, and who needs to be protected. For example, there has been changes in the concept of sustainable development in children's rights. In 1924, the international community began to recognize the need to ensure the safety of children, with the issuing of the Geneva Declaration on the Rights of the Child by the League of Nations [1].

After the Second World War, the United Nations established the United Nations Children’s Fund (UNICEF) to protect children affected by war. UNICEF extended its scope beyond the rights of European children when the UN Declaration on the Rights of the Child issued in 1959 [2]. The Declaration extends the right of the child in special protection to "develop physically, spiritually, morally, and socially in a healthy and normal way by respecting the liberty and dignity of the child" [1].

Child safety rights in conflict situations was raised in the First Additional Protocol to the Geneva Convention of 1977, which prohibited children under fifteen years old to get involved in conflict situations, and in particular, in the recruitment for armed groups. A more comprehensive regulation emerged from the adoption of the United Nations Convention on the Rights of the Child (hereafter CRC) in 1989 [1]. In addition, the Organization of Islamic
Cooperation (OIC) Summit 2010 in Libya produced Tripoli Declaration on Development of Children's Forum for OIC Member States [3]. A series of Declarations mentioned above creates a strong message that child rights and protection become a subject to many initiatives, from research and publications to global conferences and projects.

The CRC, is the first international legal instrument to recognize the formal right of children. It means that the child is a subject in the process of shaping the identity and in an environment in which he or she grows and develops. Therefore, it is important to arrange conditions for the voice of the child to be heard, facilitated, and accommodated by adults. Recognition of children's participatory rights is catalyst for increasing the contribution of children to their communities.

The CRC mandates participating countries to reconstruct the role and position of children in the structure of society and in its relationship with adults. This mandate enables countries to listen to what the child says seriously. Recognizing a right of the child does not mean aborting an adult's responsibility to the child. Instead, children should not be left alone in fighting for their rights. The implementation of CRC in the recognition of children rights needs a commitment of adults to share their authority, to cooperate in articulating the life of the child, and to make the child a partner rather than an object in development [3].

Indonesia as one of the many countries that ratified the CRC, is obliged to adopt the values and spirit contained in the convention into its national legislation system. The penetration of the idea of child participation was initiated by UNICEF as the main entrepreneur norm in Indonesia. Continuously and systematically, UNICEF since the 1990s has assisted Indonesian government and non-state actors in child-related programs [4].

Based on the 2010-2035 Population Projection, in that period Indonesia has a demographic bonus; a condition where the population dependency ratio is below 50 percent. This condition indicates a decrease in the number of child-aged populations and they become significant productive-age population. This opportunity should be maximized by improving the quality of children as the next generation of the nation. The fulfillment of the right of participation will produce critical, sensitive and potential children so that they can grow to become adults and active citizens contributing to the development of the nation.

Nevertheless, promoting the idea of children's participation is often taken un-serious by some Indonesians. It is seen as rhetorical or symbolic. Some people still consider children as persons who must have absolute obedience to adult and this cannot be compromised. People's perspectives generally regard children as objects, not subjects. This perspective is still dominant and is accompanied by the spread of terrors and threats in treating children [5]. As a result, the children become depressed and not free to express their opinion. This kind of attitude is in a direct contradiction with the underlying principles of child participation programs.

In some situation, many stakeholders in Indonesia (including the government, legislative members, law makers and society in general) have not made the issue of child protection as a priority. Initially the state's stance on this issue was often reactive and only attempts to 'extinguish the fire of problems', so that the state attitudes tend to 'satisfy' international demands and only provide non-systematic, and preventive ad-hoc solutions.

For sometimes, the state and other stakeholders considered the problem of children as not crucial, just something 'seasonal' and they only paid attention when there are certain cases. The issue of children was not a 'sexy' political commodity in a national legislation program, perhaps because legislators think children are not voters, unlike adults. The notion that the child protection agenda is a 'waste of money' because 'the indicators of success are difficult to measure' was often used as the reason for such neglectful behaviour.
However, the attitude of the government later changed. It not only accommodated but also implemented the norms. How this happened will be the focus of this paper. The dynamics of resistance and acceptance to the norms of children’s rights as illustrated above will be explored using a constructivist approach, particularly its concepts of the diffusion of norms. The norms diffusion relates to two mains issues namely the extent to which the idea of child participation evolved into norms, and then how the norms entrepreneurs advocate the diffusion of the norms in Indonesia.

2 Method

This study uses qualitative descriptive approach. The qualitative approach aims to understand the phenomenon holistically and thoroughly. This writing focuses on the diffusion of norms of child participation programs in Indonesia. This qualitative descriptive approach interprets and presents data related to the process of penetration and debate that indicate the occurrence of the diffusion of norms in Indonesia.

In this study, data obtained by literature study and refer mainly to the information in secondary sources and other relevant sources. Authors made also general observations by following news regarding children rights which enriched this writing. Data analysis used qualitative-deductive techniques which seeks to provide an in-depth understanding of a phenomenon.

This study uses a constructivist paradigm using the framework of Martha Finnemore and Kathryn Sikkink concerning the diffusion of norms. The concept of diffusion of norms emerging at the end of the Cold War is used to analyze how and why certain international norms were adopted by the countries in the world. Finnemore argues that the international norms promoted by international organizations can convincingly influence national policy by encouraging countries to adopt this norm in their national policies. The concept developed by Finnemore emphasizes the importance of the international environment in shaping the country's identity [6].

The international norm begins with the central idea possessed by numbers of individuals, organizations, or countries. The norms spreading worldwide normally go through the process called 'life-cycle norms', with three stages: (1) norm emergence, (2) norm acceptance, and (3) norm institutionalization [7].

In addition, this study will also use Amitav Acharya's framework of localization of international norms which include the acceptance, rejection and modification of the norms by local agents. Acharya’s concept is important to explain the gap in the CRC implementation of children rights norms in the government and the society level.

Acharya said that the acknowledgment of the norms and norms entrepreneurs by local institutions and structures is important in the process of accepting or rejecting the norms [8]. The importance of local institutions and structures is evident in the discussion of advocating children’s rights in developing countries. Following the increasing role of non-state actors in the penetration of norms, many organizations have emerged to assist and oversee the entry of the norms into the local bureaucratic system.

Localization will only occur when local practices and understanding are in line with interpretation of the norms by norm entrepreneurs and when society adopts legal products that then are implemented in accordance with international standards. Norm displacement occurs if the norm is not adopted into the system and the internalization process fails to gain significant
influence on the local actors. Resistance occurs if the norm gets full rhetorical support (at least from the government) [8] but cannot work because the local actors are deliberately impeding [9].

By using the above theories, the next section will discuss the diffusion of child participation norms in Indonesia, its acceptance at the government level, and its resistance among Indonesian society.

2 Result and Discussions

This study proves three important things. The first is the appropriateness of Finnemore and Sikkink’s diffusion theory of norms in understanding the acceptance of the norms of child participation in government level in Indonesia. International organizations (UNICEF) and non-governmental international organizations as norms entrepreneurs use norms of protection and child participation as platforms to teach what should be the interests of government and Indonesian society. The platforms resulted in the compliance of the Indonesian government over the ratification of the CRC. This is an entry point for the acceptance of the norms of child participation in Indonesia.

Second, it can be seen that at the level of government, Indonesia has reached the stage of norm internalization of child participation. A number of resistances still takes place, but such resistance does not interfere with overall acceptance of the norms. To understand fully, this study also included an Acharya concept of localization of norms to explain the accommodation and resistance to the diffusion of child participation norms.

Third, it is known that there is resistance in the Indonesian society toward the diffusion of norms of child participation. The resistance has two types of resistance: cultural resistance and religion-based resistance.

A. Conformity with the Diffused Norms

The 1945 Indonesian Constitution in article 28B of paragraph 2 states that, "Every child has the right to survival, to grow and to develop and to be entitled to protection from violence and discrimination". The State has endorsed legal products that ensure the implementation of child participation, such as Law no. 22/2002 and Law no. 17/2016 on Child Protection as the first law concerning to the entire operationalization of this program. The government initiates Child Friendly Nation program called IDOLA (Indonesia Layak Anak), which has a vision of a nation that can protect and support the rights of children [3]. In order to achieve this, the Ministry of Women Empowerment and Child Protection launched the Child Friendly City (KLA – Kota Layak Anak) program in 2015[4].

Furthermore, in the area of child participation, the government takes further action. Since the enactment of Law No. 22 of 2002 on Child Protection, the government experimented with initiating the formation of a forum for the participation of Indonesian children. This forum has been through a number of restructuring and evaluation, and then become the National Children's Forum (FAN-Forum Anak Nasional) since 2015. The FAN is funded by the Indonesian Ministry of Woman Empowerment and Child Protection and has branches called Regional Children’s Forum (FAD-Forum Anak Daerah) in each province. The Children's Forum was established gradually, from national to village level, even in some cases up to the level of the neighborhood (Rumah Tangga/RT) level [3].
However, the top-down legislation and initiatives that have been implemented do not mean that the diffusion of child participation norms has been well internalized in the public and private spheres [1]. In Indonesia, there is a gap between the state and society in the process of diffusion of norms of child participation. The next section will discuss this gap.

B. Internalization of Norm at the Government Level

The first stage in the diffusion of norms is the emergence norm. This stage is marked by UNICEF’s efforts through Innocenti of Research Center (IRC) as a center for research of children issues around the world. Through scientific publications on the rights of the child, UNICEF is able to disseminate information about those rights. There are some International Non-Governmental Organizations (INGOs) that interpret and dramatize this issue. The involvement of INGOs in the interpretation of norms in Indonesia is shown when the entrepreneur’s norms persuade the government and the people of Indonesia. This stage is referred to as framing the agenda [10].

The success of norm entrepreneurs on framing the agenda was followed by the next stage called norm acceptance. The tipping point phase occurred in 1990-1991 proved by Indonesia’s ratification of the CRC in September 1990. Since that, Indonesian government has made some adjustments in its legislative system in order to comply with the articles of the CRC, like the renewal of a number of laws.

From the periodic reports submitted to the UN Committee on the Rights of the Child, it can be seen that the progress achieved by Indonesia is quite rapid. This is a confirmation of the second stage characteristic in the theory of norm diffusion in Indonesia, namely the use of institutionalization and socialization mechanisms as the dominant mechanism of norm acceptance [11].

After going through the stage of norm acceptance, then Indonesia enter the stage of norm internalization. It can be seen that in Indonesia the norms of child protection and participation have been considered to be something taken for granted since 2015. This is evident from the institutionalization of the Children’s Forum, the Children Friendly City (KLA) program, and the preparation of periodic reports to the UN Committee on the Rights of the Child.

In line with Finnemore and Sikkink’s diffusion of norm theory, Acharya’s localization theory emphasizes the importance of institutional and local structures as norms entrepreneur. In Indonesia, UNICEF and INGOs are norm entrepreneurs in internalizing the norms of child participation that collaborated with local non-government actors NGOs) in guarding the entry of new norms into the local bureaucratic system [10].

C. The Resistance among Indonesian Society

Acharya as cited by Zimmermann [9] mentions that in the theory of localization, there are three possible outcomes of globalization of norms that will arise, namely localization, resistance, and norm displacement. From the discussion above it can be concluded that the diffusion of norms of participation of children has gained support from the government, meaning that the acceptance of norms of child participation in Indonesia has reached the final stage in Finnemore and Sikkink’s theory, namely norm internalization. The legislation process and bureaucracy have deliberately ‘adjusted’ and complied with the principles and spirit of CRC.

From this point, this study uses Acharya localization theory to analyze the resistance among Indonesia society on the diffusion of global norms of child participation. According to Acharya, the diffusion of the norms in internalization stage is in non-linear (straight) nature, but it moves in three possible alternatives: resistance, norm displacement, or localization [9]. There are some resistances in the Indonesian society as a result of the diffusion of norms of child participation.
There are two types of resistance, namely cultural resistance and resistance based on religious interpretations. The cultural resistance occurs because of traditional beliefs such as children will be cursed should they do not obey their parents. Religious interpretation-based resistance rises in accordance to the Moslem majority in Indonesia that believe children should not have their own right until they are *baligh* (adult). In tackling religious-based resistance, the norm entrepreneur needs to involve religious leaders such as the Indonesian Ulama Council (MUI) in internalizing the norms.

2 Conclusion

The diffusion of norms of child participation in Indonesia is done by the norms entrepreneurs, such as UNICEF and INGOs working on child issues. Through the Finnmore and Sikkink’s concept of diffusion of norms, it can be seen that in the Indonesian government, the norm of participation of children has reached the final stage; the internalization of the norms. This is proved by the existence many laws to fulfill and protect the rights of children and the institutionalization of networks to facilitate in children's participation.

In contrast, there is still several resistances in Indonesian society in internalizing the child participation norms. Resistance is categorized into two types, namely cultural and religious interpretation-based resistance. To overcome cultural resistance, journalists, culturalists, and artists need to be involved in building public opinion to be friendlier and accommodating to the rights of children. Meanwhile, to overcome the resistance that comes from the religious interpretation, the government and the norm entrepreneurs can collaborate with religious leaders such as the Indonesian Ulama Council (MUI) in the campaign to promote children's rights. Armed with a fatwa issued by the MUI, it is believed that the internalization of this norm will more successfully. However, the influence of the involvement of local actors and ulama in the internalization of children's participation norms, for sure, requires further research.

References


The Implication of School Based Management Towards Head Master Performance in District Level

Deti Rostini¹, Ricky Yoseprty², Lili Dianah³
{ yankty59@gmail.com¹, rickvyoseprty01@gmail.com², lilihdianah@gmail.com³}
Universitas Islam Nusantara, Bandung, Indonesia¹,²,³

Abstract. School-Based Management is a management model that gives autonomy to schools and encourages participatory decision-making that involves all school members. The school autonomy requires monitoring toward the principal performance in the ability to perform in school leadership. This study was conducted to assess the principal performance in managerial and supervisory capability. Research carried toward 66 principals in one of the districts in West Java. Technology to improve school / madrasah teaching and management. In supervision, the highest ability of the principal was in planning academic supervision programs in order to increase teacher professionalism, and the lowest ability was to follow up on the results of academic supervision in order to improve teacher professionalism.

Keywords: Performance, The Principal, School-Based Management.

1 Introduction

The principalism of school principals in managing schools is a key element in producing quality schools. To achieve the educational objectives, there is a need for cooperation between fellow school personnel (teachers, students, principals, administrative staff) and those outside the school that are related to the school. Cooperation in the organization of this school should be maximally (Suryosubroto, 2004: 16). School management or school management means managing the substances of education in order to run in an orderly, smoh, and completely integrated in a system of cooperation to achieve goals effectively and efficiently (Mulyasa, 2009).

MoNE establishes school management with School Based Management (SBM) concept. SBM is one of the compulsory strategies set as a standard in developing school management excellence. This assertion is set forth in Law. 20 of 2003 on National Education System in article 51, paragraph 1, that the management of the secondary education unit is implemented based on the minimum service standard with the principle of school based management. MBS is a management model that gives greater autonomy to schools, encourages participatory decision-making that directly involves all citizens of schools, employees, parents, and communities to improve school quality based on national education policy (MoNE 2007: 12).

1.1 School Based Management (MBS)
MBS is one manifestation of educational reform, which offers schools to provide better and adequate education for learners. Autonomy in management is a potential for schools to
improve staff performance, offer direct participation of relevant groups, and increase public understanding of education (Mulyasa, 2009). MBS is a model of school management by granting greater authority at the school level to manage their own schools directly. This great authority has several advantages such as: (a) school policies and authorities have a direct influence on students, parents, and teachers; (b) aims to utilize the resources and utilization of internal school resources; (c) effective in conducting student coaching such as attendance, learning outcomes, teacher morale and school climate; and (d) mutual concern for decision making, empowering teachers, school management, school redesign and planning changes (Nurkholis, 2003: 11).

SBM includes an inclusive of effective school elements, which are categorized into inputs, processes, and outputs. Educational input consists of resources and software and expectations as a guide for the ongoing process of education. Processes in education are the processes of decision-making, institutional management, program management, teaching-learning, monitoring and evaluation by emphasizing that the teaching-learning process has the highest level of importance compared to other processes. School output is a school achievement resulting from learning and management processes in schools. This output is in the form of academic achievement and non academic achievement (Depdiknas, 2007: 16).

To know the extent of managerial and supervisory implementation of the principal in the implementation of SBM, it is necessary to evaluate the performance of the principal. Performance appraisal is a formal system for reviewing and evaluating the performance of individuals or teams in performing their duties (Mondy, 2008). Or the process the organization does to evaluate the work of its employees (Liao et al., 2010). Performance appraisals involve performance evaluations based on judgments and opinions of subordinates, co-workers, superiors, other managers, and even employees themselves (Schuler & Jackson, 2006).

1.2 Principal Performance

Assessing the performance of the principal is important and challenging. This is necessary because the principal's performance assessment at the district level can measure and ensure accountability of principals in leading, managing and supervising schools so as to create schools that meet established quality standards. Assessment of the principal is important for improved principal accountability, good leadership execution, and provision of information resources or data that can be used for professional development as needed. The Foundation (2009) suggests that well-designed and well-designed school principals can be a powerful and constructive way to identify the strengths and weaknesses of school principals and encourage focus on action in improving better teaching and learning.

To know the extent of managerial and supervisory implementation of the principal in the implementation of SBM, it is necessary to evaluate the performance of the principal. Performance appraisal is a formal system for reviewing and evaluating the performance of individuals or teams in performing their duties (Mondy, 2008). Or the process the organization does to evaluate the work of its employees (Werther & Davis, 1996). Performance appraisals involve performance evaluations based on judgments and opinions from subordinates, co-workers, superiors, other managers, and even employees themselves (Schuler & Jackson, 2006).

Some comprehensive assessments are conducted using feedback approaches through interviews or surveys with teachers, parents, or students. Assessment should be able to identify and determine the association or relationship between leadership behaviors and teacher enhancement and student outcomes. The findings obtained can provide information related to the development and training to become a professional school principal.
Performance appraisals are performed by appraisers by collecting information on appraised formal performance appraisals to assess priceless performance by comparing them with performance standards periodically to assist HR management decision making (Wirawan, 2009).

Performance appraisal by Werther and Davis (1996: 342) has several objectives and benefits for the assessed organization and staff: (a) Performance Improvement, which allows employees and managers to take action related to performance improvement; (b) Compensation adjustment, which helps decision-makers to determine who is eligible to receive a raise or vice versa; (c) Placement decision, which determines promotion, transfer, and demotion; (d) Training and development needs, ie evaluating training and development needs for employees to optimize their performance; (e) Career planning and development, which guides to determine the type of career and career potential that can be achieved; (f) Staffing process deficiencies, which affects employee recruitment procedures; (g) Informational inaccuracies and job-design errors, which help explain what mistakes have been made in human resource management especially in the field of job-analysis information, job-design, and human resource management information systems; (h) Equal employment opportunity, which implies that the placement decision is non-discriminatory; (i) External challenges, that is to look at the influence of external factors from family, personal finance, health, and others; (j) Feedback, which provides feedback on personnel matters as well as to the employee itself.

2 Method

This study uses descriptive analytical methods that are quantitative. The research technique is done by interview and observation. Sample determination technique in this research use saturated sampling that is all member of population used as sample (Sugiyono, 2009:68). The research instrument is a list of performance appraisals conducted by an assessor from one district in West Java. The assessed principals are 66 principals of junior high schools in one district in West Java.

2 Result and Discussions

School Based Management is a strategy to create an effective and productive school. SBM is one form of educational reform that gives autonomy to the school to organize life according to its potential, demands and needs. Autonomy in management is the potential for schools to improve the performance of the educational staff, offering direct participation of related groups, and enhance people's understanding of education.

In the new paradigm of education management, schools have the authority to plan according to their needs (school-based plan). To improve the quality, schools must perform needs analysis, then develop quality improvement plans based on the needs analysis. Schools also have the authority to conduct internal evaluations to monitor the implementation process and the programs that have been implemented. The evaluation is usually called self-evaluation which must be done honestly, fairly and transparently in order to reveal the real information.

Implementation of MBS will be strongly influenced by several factors, both internal and external. In this research the implementation of MBS is influenced by the performance of
principals, including school management and supervision. MBS will be successful if supported by the principal's professional skills in managing the school effectively and efficiently.

In planning the school for various levels of planning, as much as 97% (64 votes) principals are considered to meet the expected performance, namely: (a) be able to compile documentation RKJM, CTR / RKAS agreed stakeholders, destination activities measurable, meet priorities, clear budget allocations, covering 8 (eight) SNPs and making program or EDS evaluation instruments; (b) able to formulate the vision of the school mission which is the result of a joint decision, serves as a determinant of the direction of development of a socialized school program; (C) ability to determine strategies for achieving each goal on compliance activities outlined in the indicators of achievement that are specific, measurable, realistic and timeless; (d) be able to complete the program with an evaluation plan, complemented by an instrument that measures the program's implementation and achievement. While 3% (2 people) considered less able to arrange the plan as expected. These results indicate that the principal of SMP Negeri in school planning ability has fulfilled the expected performance. Coaching is done on 2 (two) principals for school achievement can be improved.

Meanwhile, in preparing school planning for various levels of planning, as many as 97% (64 people) principals are considered to meet the expected performance, namely: (a) able to prepare RKJM documentation, RKT / RKAS agreed by stakeholders, measurable activity objectives, priority, clear budget allocation, covering 8 (eight) SNPs and making program evaluation instruments or EDS; (b) able to formulate the vision of the school mission which is the result of a joint decision, serves as a determinant of the direction of development of a socialized school program; (C) ability to determine strategies for achieving each goal on compliance activities outlined in the indicators of achievement that are specific, measurable, realistic and timeless; (d) be able to complete the program with an evaluation plan, complemented by an instrument that measures the program's implementation and achievement. While 3% (2 people) considered less able to arrange the plan as expected. These results indicate that the principal of SMP Negeri in school planning ability has fulfilled the expected performance. Coaching is done on 2 principals so that school achievement can be improved.

This result demonstrates the need for guidance on 11 principals, as successful change management and school development depend heavily on teamwork. Teamwork is a characteristic demanded by School Based Management, since the educational output is the collective outcome of the school's residents rather than individual outcomes. Therefore, the culture of cooperation among the functions within the school, should be a habit of everyday life of the citizens of the school.

The ability of school principals to create a conducive and innovative school environment and climate for the learning of learners, as many as 88% (58 people) principals are considered to meet the expected performance criteria of the principal, which are (a) able to become competitive examples of quality in encouraging improvement of academic and non-academic achievement of learners; (b) able to equip facilities and infrastructure to create conducive and innovative learning atmosphere for learners, the principal is able to create a beautiful, clean, shady, school environment that encourages learners, collaborates, develops school environment as media exhibition of creative works of learners; (c) able to facilitate activities to improve reading culture and writing culture of learners, schools should have library visit data, student lending, book renewal and reading materials, the availability of ICT-based learning resources, and publications of written materials; developing a writing
competition of school-level learners; (d) able to facilitate academic and non academic competitions for learners, the school must have documents of competition activities starting from the school level, the acquisition of award certificates, trophies, academic and non academic competition trophies. Whereas and 12% (8 people) are considered less able to create a conducive and innovative school culture and climate for the learning of learners.

It is necessary to coach the 8 principals in the ability to create school culture and climate, because the implementation of school-based management needs to be supported by a conducive school climate for the creation of a safe, comfortable and orderly environment so that the learning process can take place calmly and pleasantly. Such a climate will encourage the creation of an effective learning process, which emphasizes learning to know, learning to do, learning to be, and learning to live together harmoniously (learning to live together). Effective learning will stimulate the growth of independence and decrease dependence among the citizens of the school, be adaptive and proactive and have a high entrepreneurial spirit (tenacious, innovative, and risk-taking). For these purposes, schools need to be equipped by educational facilities and infrastructure, as well as adequate learning resources.

The ability of school principals to manage teachers and staff optimally, as many as 76% (53 people) principals are considered to meet the expected performance criteria of principals, namely (a) able to develop educator planning and educational staff, the principal must have a teacher- on an ongoing basis based on the results of performance evaluation as well as the results of monitoring of implementation and achievement data of coaching program involving the school development team and agreed by all educators and education personnel in the school; (b) able to carry out periodic guidance to improve the quality of school human resources, the principal should have a document on the implementation of teacher development activities by the principal, for example: minutes of the meeting, delivery of materials in the implementation of the training, and records of regular coaching activities, special coaching notes individually or group or enhancement of teamwork such as outbound training; (c) able to facilitate teachers and administrative staff to enhance competence development activities, principals should have data of principal's support in facilitating administrative staff to improve professional quality such as letters of duty to follow sustainable profession improvement activities, action research, innovation work, and allocate activity budgets ; (d) able to monitor and assess the application of training outcomes in school work, the principal must have a training program evaluation document or the development of the educator profession and education personnel describing the objectives, data on the evaluation of the achievement of objectives and the presence of follow up advice realized. While 24% (13 people) principals are considered less than optimal in managing teachers and staff.

The guidance was carried out on 13 principals in managing teachers and staff, as the education staff, especially teachers, was one of the strategic factors of a school. Therefore, the management of education personnel, from the needs analysis, planning, development, job evaluation, employment relationship, to the rewards, is an important claim for the principal. The development of education personnel should be done continuously, given the rapid development of science and technology.

In managing the acceptance of new learners, the placement and capacity development of learners, as many as 98% (65 people) principals are considered capable of meeting the expected performance in terms of: (a) able to prepare the planning acceptance, management and development competence of learners, have a document of new student acceptance program, student acceptance criterion, data of analysis result of learning of initial learner, academic discipline, and strategy documented in development of targeted and measurable
student competence in the last 2 years; (b) have a program of self-potential development and achievement of learners. Strategies that schools use creatively can enhance the collaboration of educators and education personnel, competence development and achievement of educators and tenders, development of competitiveness and achievement of learners in academic and non-academic fields; (c) able to facilitate activities to improve habituation through the cultivation of values. Strategies that principals use in developing homeland love, national insights, global insights, responses to national strategic issues or global strategic issues integrated into academic and non-academic activities in the form of programming, implementation and monitoring of implementation, and results achieved; (d) able to facilitate self-development activities for learners, educators and education personnel. The principal must have program targets, realization data of the implementation of self-development program of learners, educators and other education personnel data achievement program, and the existence of measurement data of the implementation and achievement. While 2% (1 person) is considered less capable in managing the acceptance of new learners, placement and capacity building of learners.

To implement school-based management effectively and efficiently, the principal needs to raise awareness, enthusiasm, learning discipline, exemplary and human relationships as a capital for the realization of a conducive working climate. Furthermore, the principal is required to perform his function as a managerial school in improving the learning process, by supervising the class, fostering and giving positive suggestions to the teacher. The principal must also exchange ideas, brainstorming suggestions, and comparative studies between schools to absorb leadership tips from other schools. From the results of the study, all principals of 100% (66 people) are considered capable of managing curriculum development and learning activities in accordance with the direction and objectives of national education.

This suggests that all school principals: (a) have been able to effectively guide the application of the principles of KTSP development in IHT activities, workshops, coordination meetings and MGMP / KKG activities; (b) able to control the implementation of the SBC based on the educational calendar, issue a decree on the division of teaching tasks, and apply academic rules; (c) able to facilitate the effectiveness of teacher work teams in order to improve the quality of learning; (d) able to develop innovative learning services through the development of renewable learning tools and resources; (e) able to facilitate learners in developing collaboration and academic and non-academic competition.

Ability to manage school resources according to effective, efficient and accountable management principles, 94% (62) of principals are considered to meet the expected performance criteria of principals: (a) able to direct the administration of records and archives effectively; (b) able to direct the administration of infrastructure facilities effectively; (c) able to direct the administration of personnel administration in accordance with the development of personnel development; (d) able to direct the management of financial administration in an effective, efficient, transparent and accountable manner; (e) capable of effectively directing the administration of learners; (f) able to direct the administration of the library administration effectively; (g) able to direct the management of laboratory administration. While 6% (4 people). Head of school dinggan not yet able to manage school resources according to effective management principle, efficient and accountable.

The need for guidance on these four principals, because the principal as an administrator has a very close relationship with various administrative management activities that are recording, preparation and documentation of all school programs. Specifically the principal must have the ability to manage the curriculum, manage the administration of facilities and infrastructure, manage the administration of archives and manage the financial
administration. These activities need to be done effectively and efficiently in order to support school productivity. For that the principal must be able to describe the above skills in operational tasks.

The ability to utilize information technology advancement for the improvement of learning and school management, as many as 71% (47 persons) principals are considered to meet the expected performance criteria of principals, namely: (a) able to develop effective administrative management system with the support of the application of information and communication technology, there is the application of ICT in the management of administration-administration letter, infrastructure, staffing, kepeserta education and finance; (b) capable of effectively managing instructional administration with support for the application of information and communication technology; (c) able to develop a library management system effectively with the support of the application of information and communication technology. While 29% (19 people) principals are considered less able to take advantage of advances in information technology for the improvement of learning and school management.

It is necessary to coach the 19 principals because in the era of globalization we are in an open society and full of competition. This means that society is in the best possible condition. The era of globalization is the era of communication, the era of technology is very fast and sophisticated. Therefore, both learners and educators must be digital literate.

The main activities of education in schools in order to realize the goal is learning activities, so that all activities of the school organization lead to the achievement of efficiency and effectiveness of learning. Therefore one of the tasks of the principal is as a supervisor that supervises the work done by educational personnel. Supervision is a specially designed process to assist teachers and supervisors in learning the day-to-day tasks at school, in order to use their knowledge and ability to provide better service to parents of learners and schools, and to make the school a learning community which is more effective (Mulyasa, 2009).

The ability of academic supervision is important because supervision is a process specially designed to assist teachers in learning the day-to-day tasks at school, in order to use their knowledge and ability to provide better service to parents of learners and schools, and to school as a more effective learning society.

In the ability to carry out academic supervision of teachers using appropriate approaches and supervision techniques, as many as 58% (38 persons) of principals are considered to meet the expected performance criteria of principals, namely: (a) able to hold initial meetings to capture data plan lesson and set the focus of supervision activities; (b) capable of carrying out monitoring activities of the lesson and making objective and selective notes as material for problem-solving supervision; (c) able to conduct reflection meetings, analyze observation records, and summarize observations; (d) able to together with the teacher to prepare recommendations for improvement follow-up in the form of item analysis, remedial and enrichment activities. While 42% (28 people) principals are considered less able to carry out academic supervision of teachers by using appropriate approaches and supervision techniques.

The guidance of 28 principals is important, because the supervision and control of principals on teachers, especially teachers, aims to improve the professional skills of teachers and improve the quality of learning through effective learning. Regular learning evaluation is not only shown to determine the level of absorption and ability of learners, but the most important is how to utilize the evaluation results to improve and improve the learning process in school. Therefore the evaluation function becomes very important in order to improve the quality of students and the quality of school as a whole and continuously.
For the ability to follow up the results of academic supervision in order to increase the professionalism of teachers, as many as 53% (35 people) principals are considered capable of meeting the expected performance criteria of principals, namely: (a) able to facilitate teachers in planning follow-up improvements in learning outcomes assessment system; (b) able to check the implementation of the recommendations by the teacher; (c) able to carry out guidance and teacher development as a follow up of supervision activities; (d) able to use supervised data for mapping the achievement of the program as a basis for subsequent cycle improvement. While 47% (31 people) principals are considered less able to follow up the results of academic supervision in order to increase the professionalism of teachers. The coaching of the 31 principals is very important, because the achievement of excellent quality schooling requires the ability of professional teachers. Increased professionalism of teachers will affect the learning process and learning outcomes of learners.

2 Conclusion

The principal's performance in managerial skills and principal supervision is central to improving excellent school quality, teacher professionalism, and excellent learner quality. The results of research on the principal of SMP Negeri in one district in West Java, showed the highest managerial ability in managing curriculum development and learning activities in accordance with the direction and objectives of national education, as well as the lowest managerial skills in Utilizing the advancement of information technology for the improvement of learning and management as / madrasah. While in the supervision ability, the highest ability of headmaster in planning academic supervision program in order to increase the professionalism of teachers, and the lowest ability in following up the results of academic supervision in order to increase the professionalism of teachers.

From the results of this study to the principal, it is necessary to supervise and continuous supervision of some principals who have managerial and supervision skills that are considered not meet the expected school performance criteria.

References


Conservation Models for Sayur Babanci as A Potential Culinary Tourism of Betawi

Lila Muliani¹, Munir Saputra²
{lilamuliani@gmail.com¹, muniraaa.ms@gmail.com²}
Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia¹,²

Abstract. This research objectives are 1. Identify strenghts and weakness of Sayur Babanci (SWOT analysis) 2. Propose some conservation models to develop Sayur Babanci. The result shows that 1. Indeed, Sayur Babanci is a traditional Betawi cuisine that almost extinct. This dish is not widely known by the society, especially by the younger generation. Restaurants or stalls that serve Sayur Babanci in Jakarta and the surrounding areas are very limited in number. 2. Indeed, Sayur Babanci have to be conserved as a traditional heritage of Betawi in term of culinary aspect. Sayur Babanci has many strenghts to be pointed as one of Betawi culinary icon which potential to attract tourist’s attention. It has good nutritional content, health benefit of the spices and herbs, and also high cultural and philosophical value. 3. Conservation models that appropriate for Sayur Babanci are developing standard recipes and documentation, designing comprehensive and creative story telling, transfer knowledge, and series actions of promotion.

Keywords: Betawi Traditional Food, Betawi Ethnics, Sayur Babanci.

1 Introduction

Traditional food is closely related to the tradition. All the aspects of traditional food is part of the cultural heritage of society. Each society has its own traditional culture, including traditional foods, with different types of ingredients, cooking techniques, and serving suggestions.

Term of traditional foods refer to the food that are passed through generations, have a distinctive taste that matches to local palate, have no contradiction with local belief and religion, and made from local ingredients which originating and easily found around the environment (Sastroamidjojo, S., 1995), traditional foods could also be symbol of pride for the local society (Salfarino, R., 2015)

Local food is associated with two descriptors of sustainable agriculture, which are environmentally friendly and supporting local economy (Saleh, I., 2012). Thus, the higher people’s interest and demand for the traditional food, local economy should be growing better since the materials and supporting material for the foods are coming from its local environment. More over, opportunity for the culinary businessess will be more developed.

Unfortunately, globalization and modernization are slowly reducing the people’s interest, especially the younger generation, towards traditional foods. Western food seems more appetizing and more desirable for the reasons of practical, modern, and prestigious. This kind of modernization and globalization could bring the traditions marginalized and slowly become
vanished. No doubt that in the current situation, most of the younger generation are more familiar to western foods rather than its own traditional foods.

In Jakarta, for instance. Betawi ethnic as indigineous people of Jakarta, actually has various of delicious traditional food. Ironically, finding Betawi traditional foods in its own place, Jakarta, is not as easy as finding western food. Restaurants or food stalls that specialized in serving Betawi traditional food is very limited in number, and the dishes that is served is less varied. That is the reason why most people only familiar to Nasi Uduk, Kerak Telor, and Soto Betawi. At the end, younger generations would never know the variety of Betawi traditional food.

About 76% in average, teenagers in Jakarta not really know about traditional food of Betawi, except the iconic dishes such as Kerak Telor and Soto Betawi (100 Mak Nyus Jakarta, 2015). Whereas, Betawi tradition has many kind of dishes with variety of tastes due to influences from several ethnics, from China, Middle East, Malay, India, to Europe, which somehow in the history have given „color” in many aspects of Betawi culture, including the aspect of culinary. Beside the foreign influence, some local culture of Indonesia are also contributed to color the original of Betawi culture. Sundanese culture found to be the most influence.

One of Betawi traditional food which has uniqueness that represents the combination of several ethnic groups is Sayur Babanci. This dish could be categorized as a rare food since it is very hard to be found nowadays. Not even all Betawi people familiar to Sayur Babanci because as we know, Betawi ethnic has a very wide area deployment which can not be limited to the administrative area. Currently, Betawi ethnics spread to the Depok, Bogor, Bekasi, Cikarang and Karawang regions, which are now part of the West Java province, to Tangerang, which is now in the province of South Tangerang (Tangsel) and Banten province.

In fact, many of our traditional foods, not only Betawi, lately become rare and difficult to be found, or even some might become extinct. It is admitted that younger generation now mostly will choose fast foods rather than traditional foods (Nurhidayar, 2012). If this kind of situation continues, sooner of later Sayur Babanci could be dissapeared from its own home.

In tourism point of view, traditional foods could be one of the simplest way for tourists to explore the culture and heritage of a country. Food is also representing the geographic, history, culture, and habit of indigenous society. Food acts as a national identity (Reza, 2014). According to Inskeep, E. (1991), the quality and uniqueness of a food should become promotion tool for itself. The historical and cultural values are interesting for tourists. Traditional food must be served in the best quality so that tourists can taste and enjoy it.

This current fact becomes a strong reason to immediately do the action for conservation of Sayur Babanci. That is why the author concern to conduct research on The Conservation Models for Sayur Babanci as A Potential Culinary Tourism of Betawi, with the following formulas:
1. Identify strenghts and weakness of Sayur Babanci (SWOT analysis)
2. Propose some conservation models to develop Sayur Babanci

2 Method

This research is using qualitative approach which according to Anselm Strauss and Juliet Corbin is a reasearch that build the theory with no statistical procedure analysis. This research collects datas from various sources through interviews and observations, as well as such other
Grounded theory method used in this research enable researcher to analyze and interpret the datas to build the theory. The word theory is not only to examine the existing theories like in other research approach, but also to build a new theory. And grounded theory method applied to develop new theories from the datas obtained during the research.

To obtain theories that grounded, researchers have to work in the field during the study. Interview, observation, and other tools that is used to gain the datas should be recorded in detail. In this research, primary datas collected from direct observations, in depth interview, and FGD (Focus Group Discussion) with the experts and Betawi culinary practioners. While secondary is gathered from various documents. In depth interview with experts and practitioners in Betawi culture and culinary would provide more comprehensive inputs and suggestions to analyze the SWOT properties.

3 Result And Discussion

3.1. History and Philosophy of Sayur Babanci

Sayur Babanci is one of Betawi traditional food. It is verified since this food already meet the criterias to be categorized as traditional food that mentioned by Sastroamidjoji, S. (1995). The first criteria is passed through generations. According to the result of FGD, Hj. Cucu Sulaicha – one of the culinary practicioner who is very familiar to this food – Sayur Babanci is a special dish for Lebaran Day in her big family. Her parent always cooked Sayur Babanci to celebrate the Eid Al-Fitr. Then, she continued the tradition to her own family. The same experience is also told by Hj. Anisa Diah Sitawati – another Betawi culinary practicioner.

The second criteria is having a distinctive taste that matches to local palate. In the past, Sayur Babanci is a very popular dish that always comes during Lebaran. This food categorized as fancy food because it contains beef which always been a food with relatively high in price. The third criteria is having no contradiction with local belief and religion. It is obvious that Sayur Babanci has no contradiction to Islam religion since Betawi people majority are moslem. No prohibited ingredients which categorized as haram and it is served in Lebaran Day, one of the biggest and holy moslem day.

The last criteria is made from local ingredients which originating and easily found around the environment. This criteria is also fulfilled because some ingredients used in Sayur Babanci are very unique and not easily found in other traditional dishes, they are temu mangga, botor, kedaung, and tai angin. These four ingredients are very typical and contributed to the special palate of Sayur Babanci.

Sayur Babanci might not as popular as Sambel Godog atau Sayur Godog that is commonly served as Lebaran menu in most Betawi people’s home. This dish might only found in some parts of Betawi area. As we know, Betawi ethnic group has a very wide distribution area. According to Yahya Andi Saputra – expert of Betawi culture and heritage – at least there are three divisions of Betawi area, based on location and characteristic of the people, that are Betawi tengah/middle Betawi, Betawi pesisir/coastal Betawi, and Betawi pinggir/suburban Betawi. The different character of the people in each division is certainly affected by culture, eating habit, and its indigenous dishes.
As mentioned by Anisa Diah Sitawati, Sayur Babanci is very familiar to people who lived around Cempaka Putih, Kemayoran, Kota, and Tanah Abang. Betawi people outside those areas might not know about this dish. It represents the comfort food of Betawi tengah people.

Although it is called Sayur Babanci (sayur means vegetables in Indonesian), this dish does not contain vegetables at all. Anisa Diah Sitawati said that Sayur Babanci also known as Ketupat Babanci or Ketupat Sayur Babanci because it is always served with ketupat as Lebaran’s special dish.

In a bowl of Sayur Babanci, we could find at least three different cultural influences, which are Malay, Middle East, and local Betawi culture. Coconut milk that is used as the ingredient represents Malay culture, spices such as cumin represents Middle East, and distinctive spices such as temu mangga, botor, kedaung, and tai angin represent the Betawi culture.

Beef is the main ingredient of Sayur Babanci, cooked with various spices and herbs. Some people say that the word Babanci is given because of the „behavior” of this food which difficult to be identified. It is not gulai, not also kare nor soto (Indonesia Kuliner, A., 2016). Hj. Cucu Sulaihca mentioned that the word Babanci is given because this dish uses young coconut meat that is commonly used for sweets, such as drinks or puddings. Another version said that the word Babanci might be derived from combination of Babah – Cici or Babah – Enci, because some people assumed that Sayur Babanci was once cooked by Chinese descent.

Sayur Babanci has high philosophical values. One of them could be seen from its function as a typical dish that is always served in Lebaran day. It is a mandatory to enjoy Sayur Babanci with ketupat. This fact describes that Sayur Babanci was representing Moslem Betawi society because ketupat is a symbol of celebrating Islamic great day that has become a tradition since the reign of Demak was led by Raden Patah in the 15th century.

Ketupat itself is a symbol of apology and blessing since in tradition it is served in the Eid Al-Fitr, the victory day, after moslems having 30 days of fasting. In the Eid Al-Fitr all moslem should forgive each other. All the mistakes will be forgiven so everyone is back in pure and free from sins. Ketupat is also described as a symbol of retaining the lust and representing pure concience. The complicated woven of ketupat wrapper is reflecting various kind of human’s mistakes. The white color of rice cake inside is a reflection of cleanliness and purity of the heart after forgiving others (Rianti, dkk., 2018).

High philosophical values also comes from the coconut fruit that is used in Sayur Babanci. Coconut tree is one of the plant that symbolizes the prosperities, because once it is fruiting the yield are quite alot. Almost every part of the coconut tree can be utilized. From all the ingredients of Sayur Babanci, four of them come from coconut tree. They are young coconut meat, coconut water, coconut milk, and grated coconut. Those four coconut ingredients not only contribute to enrich the delicious taste of Sayur Babanci but also prove that Sayur Babanci is indigenous food from Betawi. In the history, Betawi land that geographically located near the beach is overgrown with coconut trees and that is why this land called Sunda Kelapa.

3.2 Nutritional Content and Benefit of Sayur Babanci

The taste of Sayur Babanci is as delicious as other traditional food of Betawi. Perfect blend of sweet, hot, and savory taste has created a faultless combination. Sweet tones from coconut water, young coconut meat, and coconut milk are blent with the hot of chili and spices and the savory of coconut milk and grated coconut.

The combination of spices creates complexity but harmonious blend of flavor. The use of spices in sufficient amount could be a secret recipe for delicacy but it could also be a flavor
The composition of spices is not appropriate. Too many spices or disharmonious combinations of spices used in a dish will make the food tastes like jamu (herbal drinks).

Among all the ingredients used in Sayur Babanci, there are four names that are less common to the kitchen of most people. They are temu mangga, botor, kedaung, and tai angin. Although those names sound strange, there are no strange tastes detected in Sayur Babanci. This is because of the right composition and proper cooking technique. Botor, kedaung, and tai angin must be roasted first before they are grounded and mixed into the dish.

To roast those ingredients, patience and experience are needed. Roasting means cooking without oil. People with no experience in roasting could make the spices burnt and become bitter. Of course it will also affect the taste of the dish. For Sayur Babanci, roasting process is also done for grated coconut before it is grounded. Roasting process will change the color of grated coconut to brown.

Talking about the benefits of Sayur Babanci, it not only generates delicious taste, but also provides good nutrients. Beef as a main ingredient is a source of protein and fat with quite complete amino acid composition. That is the reason why beef is one of the qualified protein sources. Our body needs protein for growth and development. Beef also rich in iron (Fe) that is needed to prevent anemia. Coconut milk is a source of fat, coconut water supplies minerals and carbohydrates, and the young coconut meat is a good source of fiber.

Beside its delicious taste, Sayur Babanci also provides good nutrients. Not only to generate the flavor, herbs and spices contain several active compounds that act as antimicrobial, antioxidant, and other benefits that are good for health. People can easily find scientific references about benefits of herbs and spices that are commonly used in the kitchen.

Talking about the herbs and spices used in Sayur Babanci ingredients, kedaung, botor, and tai angin are not as popular as others. The seed of kedaung is commonly used in herbal industry as jamu. It has antibacterial properties and is commonly used in herbal medicine to treat infections and stomach disorders. Botor is the name for kecipir (winged bean) seeds. It is commonly used as medicine for ear inflammation, cough, rheumatic, malaria, poor digestion, and high blood sugar level (Cardjito, M., dkk., 2017).

3.3 Formulating the Right Conservation Models

To obtain a better picture of conservation models that suit to Sayur Babanci, SWOT analysis is required to capture the strengths, weaknesses, opportunities, and threats of it. The formulations in this SWOT analysis are concluded from the result of literature study and FGD that had been conducted with competent experts as source persons. The following are the results that are formulated by the author:

Strengths:
1. Delicious and have good nutritional contents
2. Having cultural and philosophical value
3. Unique with distinctive taste of typical herbs and spices of Betawi
4. Mixture of 3 different cultural backgrounds

Weaknesses:
1. Using a lot of herbs and spices so it gives the impression of complexity and impractical

To reverse these ingredients, patience and experience are needed. Roasting means cooking without oil. Just like people roast coffee beans before grounding, some spices and ingredients also need to be roasted. Roasting process will change the color of grated coconut from light colored to brown. Roasting process also changes the texture of the spices.

Besides its delicious taste, Sayur Babanci also provides good nutrients. Beef as a main ingredient is a source of protein and fat with quite complete amino acid composition. That is the reason why beef becomes one of the qualified protein sources. Our body needs protein for growth and development. Beef also rich in iron (Fe) that is needed to prevent anemia. Coconut milk is a source of fat, coconut water supplies minerals and carbohydrates, and the young coconut meat is a good source of fiber.

Talking about the benefit of Sayur Babanci, it not only generates delicious taste, but also provides good nutrients. Not only to generate the flavor, herbs and spices contain several active compounds that act as antimicrobial, antioxidant, and other benefits that are good for health. People can easily find scientific references about benefit of herbs and spices that are commonly used in the kitchen.

Talking about the benefit of Sayur Babanci, it not only generates delicious taste, but also provides good nutrients. Not only to generate the flavor, herbs and spices contain several active compounds that act as antimicrobial, antioxidant, and other benefits that are good for health. People can easily find scientific references about benefit of herbs and spices that are commonly used in the kitchen.

Among 16 herbs and spices used in Sayur Babanci ingredients, kedaung, botor, and tai angin are not as popular as others. The seed of kedaung is commonly used in herbal industry as jamu. It has antibacterial properties and is commonly used in herbal medicine to treat infections and stomach disorders. Botor is the name for kecipir (winged bean) seeds. It is commonly used as medicine for ear inflammation, cough, rheumatic, malaria, poor digestion, and high blood sugar level (Cardjito, M., dkk., 2017).

3.3 Formulating the Right Conservation Models

To obtain a better picture of conservation models that suit to Sayur Babanci, SWOT analysis is required to capture the strengths, weaknesses, opportunities, and threats of it. The formulations in this SWOT analysis are concluded from the result of literature study and FGD that had been conducted with competent experts as source persons. The following are the results that are formulated by the author:

Strengths:
1. Delicious and have good nutritional contents
2. Having cultural and philosophical value
3. Unique with distinctive taste of typical herbs and spices of Betawi
4. Mixture of 3 different cultural backgrounds

Weaknesses:
1. Using a lot of herbs and spices so it gives the impression of complexity and impractical
2. Difficult to find
3. Not widely known by most people
4. The recipe is not easy to be found and the references are limited

**Opportunities:**
1. Potential to be one of Betawi culinary icon with philosophical value behind.
2. Potential to get tourist’s attraction because of the use of various herbs and spices, including the rare ones, and all the benefits inside. This could be packed into a nice story telling.

**Threats:**
1. Must be able to compete with western food, especially among the young generation that has lack of information about the variety of Betawi traditional food.
2. The availability of its distinctive and rare herbs and spices in the market.

Referring to the SWOT analysis above, some steps to do to preserve the availability of Sayur Babanci in the society are:
1. Establish standard recipe as a guidance in documenting the recipe and step by step to make Sayur Babanci. This standard recipe should be published to the public so everyone could make it as a trustworthy reference.
2. Regularly conduct the transfer knowledge activities on how to make Sayur Babanci using the published standard recipe. It is intended to make as many as people aware about Sayur Babanci. One of the activity that should be match to the goal is cooking demo or training. And at a time doing sampling to the audience, so everyone can taste the delicious of Sayur Babanci.
3. Creat an interesting story telling to describe the uniqueness of Sayur Babanci that have philosophical values and consists of various herbs and spices that have good benefit for health. This story telling should be published in various media channel in a creative, innovative, and up to date packaging to attract the young generation as target market.
4. Promote Sayur Babanci as one the icon of Betawi traditional food by introducing it to every major cultural event held in Jakarta.

Conservation models that formulated above are in line with the form of cultural conservation concept by Imvarica, F. (2013), which are Culture Experience and Culture Knowledge. Culture Experience is a conservation concept conducted to suitable to applicate Culture Experience concept. Experiencing the live cooking technique, seeing and smelling the aroma of herbs and spices used for Sayur Babanci, will be an exciting experience.

While, Culture Knowledge is a pace taken to educate the public by creating a cultural information centre to provide information for tourism. In this Culture Knowledge concept, conservation models that suitable for Sayur Babanci is creating complete documentations that not only contain of recipe but also an interesting story telling. This documentation should be made in creative and innovative packaging to grip attention from younger generation.

However, all that conservation efforts will be useless and imposible to be done only by the author of this article. Conservation actions could not last longer and develop optimally without full support from the government and the society. The role of the government is crucial in supporting this conservation steps. For instance, by encouraging the restaurant’s owner, Betawi’s food stalls, and hotels in Jakarta to provide Sayur Babanci in the menu list.
The sustainability of Sayur Babanci is depend on the people who still want to enjoy it. But, how to make people enjoy it if they didn’t know anything about this particular dish? We certainly need to introduce and promote Sayur Babanci to be known by society. Increasing the interest of Sayur Babanci will effect the availability of its unique spices and ingredients on the market and at the end will increase the restaurants or stalls that serve it as their regular menu. Just like the law of supply-demand theory, the supply will be increasing as the demand increase.

Following are the conclusions of the research above:

1. Indeed, Sayur Babanci is a traditional Betawi cuisine that almost extinct. This dish is not widely known by the society, especially by the younger generation. Restaurants or stalls that serve Sayur Babanci in Jakarta and the surrounding areas are very limited in number.
2. Indeed, Sayur Babanci have to be conserved as a traditional heritage of Betawi in term of culinary aspect. Sayur Babanci has many strenghts to be pointed as one of Betawi culinary icon which potential to attract tourist’s attention. It has good nutritional content, health benefit of the spices and herbs, and also high cultural and philosophical value.
3. Conservation models that appropriate for Sayur Babanci are developing standard recipes and documentation, designing comprehensive and creative story telling, transfer knowledge, and series actions of promotion.

However, those conservation models could not be done optimally by one or two persons only. Conservation of the heritage will be effective if the object is still being used (Pitana, I.G., 2003). That is why Sayur Babanci has to be loved and enjoyed by as many people. Sayur Babanci have to be one of Betawi’s favorite food for many people, just like Nasi Uduk or Soto Betawi. To make Sayur Babanci will not be forgotten, its presence must continue to be available in the society. Support from the government, in this case is local DKI Jakarta government through Dinas Pariwisata, is extremely needed as: Motivator. To give motivation and burn the spirit of retaining the culinary heritage of Betawi traditional cuisine to all the restauranteur in Jakarta to serve Sayur Babanci as one of their restaurant’s menu. Facilitator. To give the opportunity and facility for Betawi society to conduct activities in supporting the conservation actions for Sayur Babanci, such as developing book of Betawi traditional recipes, organizing cooking demonstration and socialization of Sayur Babanci to the society.

4 Conclusion

Following are the conclusions of the research above:

1. Indeed, Sayur Babanci is a traditional Betawi cuisine that almost extinct. This dish is not widely known by the society, especially by the younger generation. Restaurants or stalls that serve Sayur Babanci in Jakarta and the surrounding areas are very limited in number.
2. Indeed, Sayur Babanci have to be conserved as a traditional heritage of Betawi in term of culinary aspect. Sayur Babanci has many strenghts to be pointed as one of Betawi culinary icon which potential to attract tourist’s attention. It has good nutritional content, health benefit of the spices and herbs, and also high cultural and philosophical value.
3. Conservation models that appropriate for Sayur Babanci are developing standard recipes and documentation, designing comprehensive and creative story telling, transfer knowledge, and series actions of promotion.

However, those conservation models could not be done optimally by one or two persons only. Conservation of the heritage will be effective if the object is still being used (Pitana, I.G., 2003). That is why Sayur Babanci has to be loved and enjoyed by as many people. Sayur Babanci have to be one of Betawi’s favorite food for many people, just like Nasi Uduk or Soto Betawi. To make Sayur Babanci will not be forgotten, its presence must continue to be available in the society. Support from the government, in this case is local DKI Jakarta government through Dinas Pariwisata, is extremely needed as:

1. Motivator. To give motivation and burn the spirit of retaining the culinary heritage of Betawi traditional cuisine to all the restauranteur in Jakarta to serve Sayur Babanci as one of their restaurant’s menu.

2. Fasilitator. To give the opportunity and facility for Betawi society to conduct activities in supporting the conservation actions for Sayur Babanci, such as developing book of Betawi traditional recipes, organizing cooking demonstration and socialization of Sayur Babanci to the society.

Acknowledgement

This study would not have been possible without the financial support from Management of Institut STIAMI and LPPM STIAMI as this is one of the research funded by Hibah Penelitian Internal Institut STIAMI, 2018-2019 period.

Highly appreciation and thankful also for Bang Yahya Andi Syaputra, Mpok Annisa Diah Sitawati, dan Nyak Cucu Sulaicha as source persons that shared all the information and data needed for this study.

And I am grateful for the support from Dr. Euis Komalawati, S.Sos, M.Si as Dean of FISMA and Dr. Cundo Harimurti, S.T., M.Si. as Head of Hospitality Study in Institut STIAMI so author could complete this study within the specified time period.

Special thanks also for Pak Murnir, as a partner in this study, and of course to all the colleagues, Bu Fajar, Bu Heni, Bu Niny, and Pak Firman in Hospitality Study of Institut STIAMI.

References


The Utility of Information on Selective Exposure of Pornographic Information through Internet on Student of Islamic Boarding School in Tangerang City

Rio Pambudi Dalimunte¹, Inge Hutagalung²
{riopambudi89@gmail.com¹, inge_hutagalung@yahoo.com / inge_hutagalung@mercubuana.ac.id²}

Universitas Mercu Buana, Jakarta, Indonesia¹,²

Abstract. This study wants to see the role of the utility of information on pornography among students in XYZ modern Islamic boarding school in Tangerang. This study uses a constructivist paradigm as a basis for thinking. The research method is a case study design using a qualitative approach. Data collection techniques using in-depth interview methods. This type of interview allows researchers and informants to have a dialogue, and questions that have been prepared previously can be modified according to the informant's response. The results of the study showed that pornographic information could help students to have more understanding about reproductive health, and strengthen attitudes to reject pornographic information. Pornographic information is only useful to the increase knowledge related to sex education and not to be an indication of how to carry out sexual activities. Furthermore, the student stated information on important pornography, and was close to everyday life and they were very curious about pornography. However, all these things are only limited to understanding and knowledge about sex, not for sexual behavior. This is due to the upbringing of the Islamic boarding school which requires the student to submit and obey the rules of the Islamic boarding school.

Keywords: Pornography, Utility of Information, Regulation of Islamic Boarding School.

1 Introduction

Based on the 2015 Google Trend survey it is known that Indonesia is the fifth largest country in the world accessing pornography with the keyword "sex" on internet search engines. As for the city where the word 'sex' is accessed, Jakarta occupies the 4th position under Delhi, Hanoi and Mumbai. What is of concern, when examined more deeply, it turns out that the biggest accessors of pornographic material are students (Hutagalung, 2018a).

From the results of a survey conducted by the Ministry of Health, a picture shows that teenagers in Indonesia have indeed been exposed to pornographic information. Namely, from 1,411 respondents who are students in the South Jakarta area and Pandeglang Regency, Banten, 97 percent of students are known to have access to pornographic information (jakarta.tribunnews.com, March 2019). Meanwhile, the 2018 Ministry of Women's Empowerment and Child Protection (KPPPA) survey showed surprising results. As many as 97 percent of 1,600 children in grades 3 to 6 in elementary school have been exposed to pornography. This survey was conducted in eight provinces throughout Indonesia (Jawapos.com, March 2018)
To overcome the problem of pornography web, until November 2018 as many as 106,466 sites containing pornographic content were blocked by the Ministry of Communication and Information. The total numbers of pornographic sites that have been blocked are 883,348 sites since 2010 (Press Release No. 322 /HM/KOMINFO/12/2018).

Pornography has a serious negative impact because it can damage the brain and psychological individual. Not only the impact on individuals who are pornographers, pornography addiction also causes adverse impacts on the environment such as increasing cases of violence and sexual harassment as well as the destruction of order and norms in society (Seminar on the Impact of Pornography on Reproductive Health, 2019). The Indonesian Child Protection Commission (KPAI) recorded the number of complaints on child cases during 2018 of 4,885 cases. The pornography and cybercrime cases were in third position with the total of 679 cases. Children exposed to pornography through social media usually lead to sexual abuse and rape. Boys dominate as perpetrators compared to girls (Indonesian Child Protection Commission, 2018).

The question that arises in addressing this condition is why teens often access pornographic information?

Research Rachmaniar and colleagues (Rachmaniar, 2018) and Mariyati (Mariyati & Aini, 2018) describe that adolescence is a time of very crisis. At this time the foundation of reproductive health for a lifetime. This period is a period where sexuality appears in the form of physical and psychological changes. The psychological changes known as puberty appear in the form of psychological things such as feelings, emotions and awareness about sexuality and interest in the opposite sex. At this level, adolescents try to find sexual information to meet the desires and needs of the opposite sex sexuality.

On the other hand, Anisah’s research (Anisah, 2016), Hutagalung (Hutagalung, 2017), and Mahsiani (Mahsiani, 2018) explained that adolescents often look for pornography information because teenagers have difficulty finding sources of information on sexuality. To ask parents about sexuality is very unlikely because it is considered taboo, asking teachers about sex information would be embarrassing. As a result, adolescents look for sexuality information on pornographic information through mass media, especially on social media.

Research related to the utility of information among adolescents has often been done by experts. Several studies have been conducted by Beyens (Beyens, 2014), Tserkovnikova (Tserkovnikova, 2016), Alexandraki (Alexandraki, 2018), Hutagalung (Hutagalung, 2018a) related to the utility of pornographic information on the information selection process among adolescents. Based on previous research searches, researchers see a gap to conduct research related to the utility of pornographic information on the process of information selection among modern boarding students. Namely, whether the search for pornography information via the internet still has uses for teenagers in Islamic boarding schools related to increased knowledge about sex. This is interesting to study considering the pattern of fostering of Islamic boarding schools that are centered on the rules of boarding schools that are very strict, and boarding schools have the view that the issue of sex is sacred and should not be arbitrary access to information about sex.

As the focus of research selected teenagers from XYZ modern Islamic boarding schools in the city of Tangerang. The argument for choosing Tangerang is because Tangerang is the city at the border of the capital city of Jakarta that based on the 2015 Google Trend survey is the fourth city in the world to access pornographic information on the internet.
2 Literature Review

2.1. Selective Exposure Theory

Cognitive dissonance theory is a theory that places individuals as active actors in the communication process. Namely, that when dissonance arises then people tend to avoid information that is contrary to beliefs or attitudes, and choose information that is in accordance with beliefs and attitudes. In other words, people will make the selection and rejection of information known as selective exposure.

There are four theories that explain selective exposure, namely reinforcement theory, cognitive dissonance theory, uses and gratification theory, mood management theory. Each theory provides a different explanation of why selective exposure occurs. This study underlies the analysis of selective exposure from the perspective of cognitive dissonance theory. The reason for the selection is that the theory of cognitive dissonance is the first theory that describes the phenomenon of selective exposure.

Previously, experts only realized that people have the power to reject and select information related to their opinions or beliefs, without realizing that this condition is a phenomenon of selective exposure. This period is referred to as de facto selective exposure (Freedman, 1965; Zillmann & Bryant, 1985).

Literature search shows that the cause of selective exposure based on the perspective of cognitive dissonance theory involves three aspects, namely psychological, message and social aspects. Meanwhile, the theory of strengthening predisposition only involves one aspect, namely social, consisting of group norms. The theory of usability and gratification only involves one aspect, namely psychological, including the emphasis on the use of information based on meeting one's needs. Mood management theory also only involves one aspect, namely psychological, including mood.

Selective exposure (in the perspective of cognitive dissonance theory) was introduced by Leon Festinger as a person's ability to choose between information that supports and rejects conflicting information. Festinger (Festinger, 1957) asserted that selective exposure is an attempt to reduce or eliminate dissonance. When inconsistencies or dissonance occur, people will look for information based on their beliefs.

Over time, tracing the results of selective exposure research based on cognitive dissonance theory by experts shows that people do not always induce selective exposure based on belief. People may choose or consume information that is not appropriate (dissonant) as long as information has a usefulness (perceived utility of information). In this case the choice is explained as a result of the characteristics of the message itself. So the information chosen does not have to be information that is in accordance with beliefs, but also conflicting information as long as the information can fulfill the individual's usefulness of information (S Knobloch-Westerwick, Carpentier, Blumhoff, & Nickel, 2005; Silvia Knobloch-Westerwick, 2003).

Meanwhile, David (David, 2005) and Hutagalung (Hutagalung, 2018a) explained that people's choice of media or information is not only determined by individual factors (individual interests and needs), but also is determined by social structure, in the form of social norms (including appropriateness, politeness, trust and others) in a society. Individual choice and social structure must be seen as a 'duality' that influences one another. Individuals are formed by structure (social norms) and at the same time individuals can also change and shape the structures that exist in that society.
The discovery of the phenomenon of selective exposure cannot be separated from the long journey of mass media impact research. Mass communication research until around the 1950s had a tendency to pay more attention to the impact of the media on the audience, namely how the media influenced the audience and the impact of the media on their behavior. In the use of media and information, individuals are often assumed to be passive in receiving information rather than being actively seeking, selecting and filtering existing information. Over time, the research of Lazarsfeld (1944) and Hovland (1949) made theorists aware that audiences have resistance (rejection) of information. At that time, although they were aware that the audience carried out a selection process for information, the term selective exposure was not yet known. On the other hand, very little attention is paid to experts on the phenomenon of the choice and rejection of media and information carried out by individuals. Only after Festinger's explanation (1957) through the theory of cognitive dissonance, terminology related to the selection and rejection of media and information carried out by individuals is known as selective exposure (Baran, 2000; Zillmann & Bryant, 1985).

2.2. Utility Of Information Theory

Canon states that an individual's behavior in choosing and avoiding information is not merely caused by whether the information creates consonance or dissonance, but rather is triggered by the utility of the information for themselves. Canon is the expert who first emphasized the importance of utility/advantages as a basis for individual to choose and avoid information (Silvia Knobloch-Westernk, 2003).

In 1973, Atkin developed Canon's ideas regarding the utility of information in the information selection process (S Knobloch-Westernk et al., 2005; Silvia Knobloch-Westernk, 2003). Atkin emphasized that selective exposure is carried out by individuals to fulfill the usefulness of information.

In the process in fulfilling the utility of information, individuals not only conduct information selection that is useful or suitable with their belief, but also will conduct information selection that is detrimental to or contrary to belief. The information chosen does not have to be information in accordance with their belief, but also conflicting information provided that the information can fulfill the individual's use of information, namely the use of instructions, strengthening attitudes and how to do things.

The results of Festinger (1964), Cannon (1964), Freedman and Sears (1965), Freedman (1965a), Katz (1968), Cotton (1985), Frey (1986) also proved that people in selective exposure not only pay attention and choose information that is in accordance with beliefs, but will also pay attention and choose information that has utility (utility of information), even though the information is conflicting (dissonant) (Hutagalung, 2018a).

Researchers such as Levy and Windahl (S Knobloch-Westernk et al., 2005; Silvia Knobloch-Westernk, 2003) developed the Atkin idea. According to them, selective exposure is done to fulfill an individual's use of information. Selection is not determined by whether the information is appropriate or not in accordance with someone's dissonance, but rather because of the use of information. And that utility will increase is determined by three dimensions, namely magnitude/the perceived magnitude of challenges, the possibility of information will occur (loneliness / the perceived likelihood of their materialization), and immediacy in time (immediacy/i.e., proximity in time of their materialization). The larger the scale of information, the more likely the information is, the closer to information, the more useful information will be for an individual.
3 Methodology

This study uses the constructivist paradigm as the basis of the framework. The research method is a case study design using a qualitative approach. The technique of collecting data uses the method of in-depth interviews. This method was chosen because pornography is a sensitive and personal issue.

Furthermore, data analysis in this study uses technical inductive analysis, namely (1) after collecting data in the form of raw data from research results, such as interviews, documentation, field notes and so on, the data is reduced, through the editing process, grouping and summarizing data, compiling codes and notes about various things found, so that the themes, groups and data patterns are obtained. (2) Presentation of data, i.e. organizing data or interweaving groups of data together with other data so that all analyzed data is really involved in a single research process. (3) Withdrawal and conclusion testing: the conclusion takes place procedurally. The final conclusion in the form of scientific proportions regarding the phenomenon or reality under study, through consulting empirical findings by looking at the concepts or theories put forward earlier.

As a research informant selected students from modern Islamic boarding schools in Tangerang. In the context of this study, students are representative of adolescents. There are seven informants, that consist of four male gender and three female gender. Tangerang is selected because Tangerang is the city at the border of the capital city of Jakarta that based on the 2015 Google Trend survey is the fourth city in the world to access pornographic information on the internet.

4 Results and Finding

4.1 Results

The informants in this study were consisting of seven people. In the presentation of the results of this study, the five informants used initial names in accordance with the agreement, namely, four male gender (AH, SP, BP and IG) and three female gender (SP, DP, PW).

4.1.1. Understanding about pornography

In the context of this study, all informants stated that pornography is information related to sexual exploitation and obscenity. Following is the statement from one of the informants:

"I understand pornography as information related to sexual problems that are exposed vulgarly. Pornographic information is also often interpreted as obscenity. In my opinion, the interpretation of one person's obscenity with others will be different. For example, seeing a breast image for someone might be considered obscene, but someone else is considered usual image, and so on" (Male informant: BP).

4.1.2. The source of pornography information

In the context of this study, the informants obtained pornographic information from the internet, mobile phones, and from conversations with fellow friends. Following is the statement from one of the informants:
Information on pornography is usually obtained from the internet, or the information can be sent from friends through mobile phones. The information can take the form of pictures, films or caricatures. Sometimes, pornographic information can also be obtained through conversation with colleagues. In conversation, pornographic information is usually become a joke material” (Male informant: AH).

4.1.3. The curiosity about pornography

In the context of this study, all male informants (AH, SP, BP, IG) expressed their interest in pornography, while the three female informants (HP, DP, PW) did not have the desire to know about pornography. Here is the statement from one of the male informants:

"I really want to know pornographic information. The reason is, because pornography can give me a little knowledge about reproductive health and physical and psychological changes that I experience today" (Male informant: SP).

Meanwhile, statements from female informants, one of which is:

"I do not want to know pornographic information, because that information is prohibited by religion and the laws of the Indonesian government. I also don't want to know information that contains elements of obscenity” (Female informant: DP).

4.1.4. Advantages of pornographic information

In the context of this study, informants were divided in addressing the advantages of pornographic information. Female informants (HP, DP, PW) stated that pornographic information had no advantages at all, while male informants stated that pornographic information had advantages to increase knowledge related to sexuality. The following is the statement of one of the informants who represents the revelation of the use of pornographic information and the usefulness of pornographic information:

"Information on pornography has no benefit at all. And is misleading information because it encourages teens to engage in sexual activity and promiscuity. In other side, free sex is prohibited by religion" (Female informant: PW).

"The information on pornography is very useful. A lot of information related to physical development and on the functions including reproductive organs that I do not understand, such as how sex hormones in men are continuously needed by the testicles. How sex hormones can help push the inner part. In addition to the lack of understanding related to sexuality, information related to change is very difficult to find. Through information on pornography, some knowledge about sexuality can be obtained, even though pornographic information is conveyed vulgarly” (Male informant: IG).

4.1.5. The proximity of pornographic information in everyday life

In the context of this study, the informants stated that pornography is very close to everyday life. Pornographic information is everywhere. From wide screen films, television, comics, novels, newspapers, tabloids, magazines, VCDs/DVDs, cellphones, and internet sites, it shows that pornography is easy to find.

The informants also agreed to state that pornography can not only be displayed through images, but also through forms of writing, sound and gestures. Following is the statement from one of the informants:
4.1.6. Attitude reinforcement towards pornography

In the argument of this research, the informants discussed about the benefits obtained from pornographic information, it was realized that pornography encouraged adolescents to behave freely. Having sex before marriage can arise social problems such as pregnancy, abortion, sexually transmitted infections, HIV/AIDS, cervical cancer and others. Pornography encourages adolescents to apply sex permissively. Here is the statement from one of the informants:

"Pornography can be applied as an alternative source of information about sex and reproductive health. This is actually understandable considering the high curiosity from the adolescents, because teenagers are very curious about the changes and turmoil that is happening to them, especially those concerning sexuality. On the other hand, many parents are less able to provide an understanding of sexual behavior to children correctly. As a result, many teenagers are seeking knowledge of sexuality through pornographic information. However, I am aware that pornographic is a mislead information. Understanding the pornography message content actually strengthens my attitude to stay away from pornographic information” (Male informant: BP).

4.1.7. The role of Islamic boarding school in reinforcing attitudes towards pornography

In the context of this research, the informants agreed to state that whatever benefits obtained from pornographic information, it was realized that pornography encouraged adolescents to behave freely. Pornography encourages adolescents to apply permissively to sex. On the other hand, the rules of Islamic boarding schools further strengthen the attitude of the informants to reject pornography. Some statement from one of the informants:

"I realized that I could get a lot of sexuality information through pornographic information. I also realized that pornography had a negative impact on our generation, such as the existence of permissiveness regarding sexual behavior. However, I feel very fortunate to be able to study in the Islamic boarding schools, because the rules on Islamic boarding schools that would not allow the pornography is getting strictly prohibited while strengthening my attitude to oppose pornography” (Male informant: SP).

4.1.8. Obedience to the rules of pornographic boarding school

At the hearing of this study, the informants agreed to their statement about the rules of Islamic boarding school related to pornography. The issues that are forbidden in the Islamic boarding school regulations they will obey. Following is the statement from one of the informants:

"Although I can get a lot of sexuality information through pornographic information, however the Islamic boarding school regulations prohibit students from searching, downloading or collecting things related to pornography ... then I will comply with these
regulations. I did this as one of my forms of obedience to the boarding school institution where I studied. On the other hand, I am also aware that violations of all the rules of the boarding school will be penalized” (Male informant: IG).

4.2. Discussion

From the results of the study note that the informants understood pornography. The informants' understanding is in accordance with the meaning of the word Porne which means brothel and Graphos which means writing or drawing. The term porne itself then gradually develops meaning into something related to sex, especially the notion of shameful sex (obscene sex) or sex with violence (violent sex). Thus, pornography can refer to images or writing that are related to sex. In the Big Indonesian Dictionary, pornography is interpreted as an erotic depiction of behavior with paintings or drawings to arouse lust (Supartiningsih, 2004).

Regarding the source of pornography, the informants agreed to state that social media is the main source for accessing pornographic information, in addition to conversations with peer-groups. Today with extraordinary developments in the field of information and communication technology technology that is so sophisticated, has made people not only live in the era of 'communication revolution', but also wading through what is called the era of communication abundance or cornucopias of communication.

The abundance of communication in this life has an impact on the continuous explosion of information brought by the media to one's personal life space. This information seems to flow without time through various types of media. One of the information that flows is pornography. Ranging from feature films, television, comics, novels, newspapers, tabloids, magazines, VCDs / DVDs, cellphones, and internet sites present pornography shows that are directly or indirectly easy to find, both in large and small cities, even to the countryside though.

Furthermore, the results of research related to curiosity about pornography show that there are two opinions. All male informants expressed their curiosity about pornography. This is in accordance with the study of Gunarsa (Gunarsa, 2004) which states that adolescence is the age at which a person is searching for and forming his identity. At this time the foundation of reproductive health for a lifetime. This period is a period where sexuality appears in the form of physical and psychological changes.

If male informants have a curiosity about pornography, then it is different from female informants. Female informants have no curiosity about pornography. According to researchers, this happens because pornography is a form of exploitation of women (especially women's bodies). Women become objects and victims of pornography. Because pornography is made by and for men, and makes women as mere objects.

Meanwhile related to the benefits of pornographic information, male informants stated pornography was useful, and vice versa to female informants. According to the researchers, the findings of this study also reinforce the idea of Atkin (1973) as outlined in the theory of utility of information. Namely, that one's motivation in choosing and avoiding information is not caused by whether the information causes consonance or dissonance, but rather is triggered by the utility of information for someone. The utility of information can only be felt when a person has an orientation goal and an adjustment goal that will be achieved through the acquisition of information, both negative and positive information (threats or opportunities), because each information is believed to have benefits. Namely, that information can be used to meet one's needs for guidance (how to judge something),
reinforcement (reconfirmation of an attitude) and performance (how to do something). Because the selection and rejection of an information is based on the benefits, then in the process of fulfilling the need for individual information not only do the selection of information that is beneficial or in accordance with beliefs, but also will select information that is detrimental or contrary to belief.

In the case of pornography, teenagers actually need knowledge about sex, considering that sex is also related to the psychological development of adolescents. Through information about sex, adolescents can learn to take sexual decisions in an adult, guided and get an explanation of changes in the function of sexual organs as stages that must be passed in human life. In other words, knowledge about sex has benefits for adolescents to better understand what sex really is, and helps adolescents to go through any psychological developments related to the problem of sex itself. The utility of information perceived by adolescents to information about sex is what makes adolescents often choose information about pornography, although this information may be contrary to the beliefs held.

In the context of this study, the informants stated that pornography was very close to daily life. Pornographic information is everywhere. Changes in the approach of mass communication related to technological and informatics developments have resulted in an explosion of information that continues to flow into personal life. In the context of pornography, the change in communication approach from "one-for-many" to "many-for-one" and "many-for-many" communication models greatly accelerates the spread of information about pornography.

Furthermore, from the perspective of the public interest the existence of mass media in the community has a normative purpose as a steward of the interests of the community. Mass media has a close relationship with society precisely because mass media has an inevitable social function. The mass media is part of the community that has a role to serve the public in the delivery of information or news. But in reality many media do not carry out their social role because the goals of media organizations are more likely to be oriented towards pursuing business profits alone.

On the other hand, group support also plays a role in the process of selecting and rejecting pornographic information. The results showed that although pornographic information was felt by some informants to have the benefit of better understanding sexuality, informants stated that they would be subject to the rules of Islamic boarding schools. This can be understood because Islamic boarding schools are study groups for informants. As part of the study group, the informants will have normative beliefs based on group rules. In this case the rules are boarding schools. The strength of the influence of the environment/group on beliefs is very much determined by how closely and the individual's need to continue to establish communication with the group/existing social environment. The tighter and more necessary the stronger the influence of the environment/group on beliefs, and vice versa.

5 Conclusion

This research is based on the starting point that the utility of information plays a role in the process of selecting and rejecting information. By taking the case of pornography, this study seeks to draw conclusions whether the utility of information has a role in selective exposure. Pornography is taken as a research case based on the argument that pornography is one of the social problems in Indonesia with an
icberg phenomenon that requires serious attention. The reason for selecting adolescents as research informants is because adolescents are the largest population targeted for pornography.

In the case of pornography, teenagers actually need knowledge about sex, considering that sex is also related to the psychological development of adolescents. Through information about sex, adolescents can learn to take sexual decisions in an adult, guided and get an explanation of changes in the function of sexual organs as stages that must be passed in human life. In other words, knowledge about sex has benefits for adolescents to better understand what sex really is, and helps adolescents to go through any psychological developments related to the problem of sex itself. The use of information perceived by adolescents to information about sex is what makes adolescents often choose information about pornography, even though the information may conflict with beliefs owned.

Another factor that has a significant role in selective exposure is group support. In the case of pornography, group support influences the choice and rejection of information about pornography. Group support is an individual effort to achieve balance with the social environment. Because deviations from the group usually will often lead to sanctions, both social/moral to legal sanctions. In short, the interactions that occur in groups, both interpersonal and group, can influence beliefs. Beliefs are values that are believed and embedded in themselves, due to the communication relationships that exist between individuals and groups can change according to the subjective norms of the group.

People are instinctively attracted to things that are taboo, like pornography. In the context of adolescents, the need for information about pornography is not only due to interest in taboo, but also because of the encouragement and demands of biological and psychological development. This makes teenagers often try to find information about sex through internet to increase their self-knowledge.

References


Efforts to Reduce Production Costs Bag Recycling on Waste Bank (Case Studies in Rw 01 Kecamatan Mekarsari Cimanggis Depok)

Erni Prasetiyani¹, Martina Safitry², Ai Nety Sumidartini³
{erani@stiami.ac.id¹, martinasafitry75@gmail.com², answara06@yahoo.com³}
Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia¹,²,³

Abstract. The objectives of this activity are: 1). Creating new methods in an effort to reduce the costs of producing recycled bags produced, and 2). Making Waste Bank a sustainable business entity and contributing to the welfare of its customers in this case the surrounding community. The following are conclusion from the results of Community Service: 1). During this time Waste Bank Sehati produces bags involving external parties (maklon services) tailor bags to complete the final process of the bag after the basic woven bag is formed in a unit, so the production price becomes expensive, 2). Waste Bank Sehati has not fully implemented the standard production system and 3). Waste Bank Sehati didn’t activists to reduce production costs. After community service implemented at the Waste Bank Sehati, for the sake of the progress of the Waste Bank Sehati we recommend: Production planning must be arranged from the input to the output produced, the procurement of bag sewing machines and the recruitment of workers with experience in the bag industry is the main key if Waste Bank Sehati wants to advance and develop in the recycling bag industry, and in order to become a sustainable center for the people's economy, Waste Bank Sehati should more innovative to product design, market segment, and marketing strategy.

Keywords: Waste Bank, Production Costs Reduction, People's Economic Center.

1 Introduction

One areas that is fairly fast growing Waste Bank is Mekarsari Village, Cimanggis SubDistrict. There are 13 RW with 18 Waste Banks as follows 4 Waste Banks in RW 08, 2 Waste Banks in RW 12 and RW 01, the others are 1 Waste Bank.

From 18 (eighteen) existing Waste Banks, Community Service will be held at Waste Bank Sehati in RW 01. Waste Bank Sehati, one of the most active recycling collector activists, even has its own product in the form of bags made from coffee packaging waste, sachet. However, up to now the production of recycled bags has not been running as expected because of the high production costs constrained in the final production process. The production process according to Sofyan Assauri (2016: 123) is an activity that involves human resources materials and equipment to produce useful products. With the problem in the final process of finishing, this Community Service will provide solutions from several alternatives in an effort to reduce the cost of producing recycled bags. The targeted effect of the reduction in production costs is the selling price of recycled bags that are more affordable for the public.
The formulation of Community Service Issues consists of: 1). How is the production process in Waste Bank so far ?, 2). Does Waste Bank implement a standard production system to produce recycled bags produced ?, and 3). What efforts have been made to reduce production costs?

The objectives of this activity are: 1). Creating new methods in an effort to reduce the costs of producing recycled bags produced, and 2). Making Waste Bank a sustainable business entity and contributing to the welfare of its customers in this case the surrounding community.

The benefits of activities for Implementing Activities and Academic Sections are: 1). Creating new methods in an effort to reduce the cost of producing recycled bags produced, 2). As a people's economic center, it is hoped that Waste Bank can prosper the customers of Waste Bank Sehati, 3). With the new production system both managers and customers can work together to advance Waste Bank Sehati, and 4). Introducing the Stiami Jakarta Institute campus to the surrounding community, arousing a sense of campus friendship with the community and building the image of the institution of the Stiami Institute campus to the people Depok around.

2 Literature Study

2.1 Definition of Waste

According many sources, the meaning of waste is, as follows: 1). Waste is objects that not functioning or no longer used, and 2). Waste is a wasted material that or materials useless of human activities and natural processes that do not have economic value. (Environmental Terms for Management, Ecolink, 1996).

2.2 Waste management

Waste management is the collection, delivered, processing, recycling, or disposal of waste material. Depok as the supporting city of DKI Jakarta is one of the destinations for Jakarta residents who want to get a decent and ecologically better place to live. Based on data obtained from the Population Office in Depok in its official portal www.depok.go.id in 2011 the population in Depok city was 1,667,000 people, in 2016 there were 2,142,464 people. This rapid increase in population has resulted in the need for supporting activities to reduce the growth and development of the volume of waste. One of them is the creativity of converting recycled waste into goods that have economic value, which in turn can improve the local micro-enterprise as a center of the people's economy.

According to Law Number 18 of 2008 concerning Waste Management along with Government Regulation Number 81 of 2012 mandating the need for a fundamental paradigm change in waste management, from the gathering-transport-waste paradigm to processing that relies on reducing waste and handling waste. This activity aims to reduce the volume of waste and Reduce, Reuse and Recycle (3R) on all elements of the community to reduce waste, meaning that all levels of society, individuals, government and legal entities (Reiza Fitri Yulia: 2014).
3. Implementation Method

The implementation method is as follows: 1). Sehati Waste Bank Survey, 2). Survey of Tasikmalaya woven bag training ground, 3). Training at Priangan Craft (producer of pandanus woven bags, Tasikmalya), 4). Entrepreneurship training and product diversification, and 5). Determination of an efficient and effective production system.

4. Results and Discussion

4.1 Sehati Waste Bank Survey

The initial survey was carried out at the location of the Sehati Waste Bank Rw 01 Mekarsari Village, Cimanggis District, Depok City. Here recyclable waste is collected and then sent to collectors. While the coffee sachet waste which is the basic material for making bags is separated and valued at Rp. 500, - per kg.

This survey purpose to identify the problems faced by businesses making sachet coffee recycling bags. The results of the field survey, the producers had not been able to finish the product. Product constraints are not finalized due to the following: 1). Experienced human resources sewing bags not available, and 2). They have not sewing machine facilities suitable for sewing bags.

Base on the Waste obstacles from the Waste Bank Sehati, the researcher bridged by providing training in a standard production process for bags that are unique. Unique because this product is made from recycled waste instead of leather or materials that are easily done with ordinary sewing machines. Because of the uniqueness of this product, the researcher recommends a study tour to a bag manufacturer made from pandan leaves and mendong rope in the Tasikmalaya area. With the aim of being able to open the insights of Waste Bank Sehati activists about the bag production process and the diversification strategy of the recycled bag model which has been produced by Waste Bank Sehati.

4.2 Survey of Pandan Bag Tasikmalaya Production

At this phase, the researchers put forward a production method that had been applied at the location of the traditional bag craft training center originating from pandan leaves and mendong ropes, namely Priangan Craft which is located at Sukaraja Village, Sukaraja Village, Sub district Rajapolah, Tasikmalaya. The survey results from Tasikmalaya are as follows: 1). The cost of production of pandanus bags is strongly influenced by the quality of the auxiliary material attached to the product and the presence of additional accessories. Example: standard zipper Rp. 2,000, - while quality zipper no. 1 Rp. 5,000, - Rp. 10,000.0 standard wooden bag strap Rp. 6,000, - quality wooden bag strap no. 1 Rp 10,000, - 2). Before the production of a model a pattern is needed where this is not available at Waste Bank Sehati, 3). Use of high-quality auxiliary materials and additional accessories tailored to the requests / orders from customers, 4). Raw materials and auxiliary materials are obtained from suppliers, meaning that Priangan Craft is a pure bag industry and does not produce its own raw materials. Raw materials supplied, namely: a). Pandan: from Serang for Rp. 100,000 / cody, b). From Gombong Central Java at a price of Rp. 300,000, - / cody, and c). Mendong: From Tasik Malaya, Yogya, Jember, East Java, 5). Labor is paid per product that has been produced and adjusted to the level of difficulty. The tariff for making a bag ranges from Rp. 7,000 to Rp.
The products produced are very diverse according to the target market segment. For export segments and tourist destinations for foreign tourists (Bali, Lombok and Yogyakarta), all materials are of higher quality than for the domestic segment.

The description of the production process and post-production obtained from traditional bag craftsmen in Tasikmalaya is very suitable to be applied in Waste Bank Sehati.

4.3 Tasikmalaya Training

At this phase the research team and the core team Waste Bank Sehati (2 people) conducted a workshop with Priangan Craft craftsmen. Various kinds of skills from various aspects are obtained, including: 1) The production process, from making bag patterns to sewing bags, 2) Selection of raw materials and auxiliary materials tailored to market segments, and 3) Creating a bag that was monotonous and less attractive has become more varied and can be well received by the market.

4.4 Entrepreneurship training and product diversification

This training divided into 3 sessions, : 1). Introduction to Entrepreneurship, Giving materials tailored to the interests of trainees, and focusing on how to grow the entrepreneurial spirit to the participants. The themes raised in this session are: a). Motto of entrepreneurship, b). Entrepreneurial characteristics, c). Read business opportunities, and d). Tips still exist in entrepreneurship, 2). Business Opportunities and Reduction of Recycling Bag Production Costs, The contents of the material presented in this session are: a). The potential for waste is a source of income for housewives, b). Waste recycling products that are sustainable and have high selling value, such as compost, stationeries made from used cardboard, c). Tips for sustainable business strategy, d). Determination of selling prices of recycled products, e). Calculation of production costs, f). Waste Bank Sehati production process system, and g). Alternative production process flow to reduce production costs.

4.5 Newspaper Waste-Based Product Diversification Training

The research team invited a trainer, a successful housewives being entrepreneurs who produced newspaper waste-based products and owned the brand "Dhara Handmade". In addition to adding waste-based skills, the researcher also aims to provide motivation to manage the business so that it still exists based on Wiwik's mother's experience. Participants were given basic engineering training to roll newspaper with a piece of bamboo. With the right technique, paper rolls are produced that are not easily changed. These processed products can be used as basic materials for various products such as: fruit plates, placemats, baskets and etc.

4.6 Determination of an efficient and effective production system

With these limitations, the researcher gives several alternatives and gives a financial picture of the alternative methods of bag production offered.

4.7 The production process is fully carried out by Waste Bank Sehati

To produce their own bags, Waste Bank Sehati must have a special sewing machine for bags and the investment of this machine ranges from IDR 4,000,000 to IDR 5,000,000 (market price). Production costs starting from the raw material for sachet coffee packs of Rp. 500, - / kg. To complete the product until it becomes a bag that is ready to be sold to the final consumer, it is necessary to use indirect material as much as Rp. 12,000 / m2 (market price).
meter can be used for 2 bags of 25 cm, IDR 8,000 (market price), bag handles wood Rp. 7,500 (market price). The assumption of direct labor costs calculated per unit of bag produced is for weaving services and final settlement of Rp. 12,000. Overhead such as machine maintenance electricity and others Rp. 2,000, -.

Table 1. Calculation Illustrate

<table>
<thead>
<tr>
<th>Production Cost Each Bag</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw material</td>
<td>Rp 500</td>
</tr>
<tr>
<td>Indirect material</td>
<td>Rp 21,500</td>
</tr>
<tr>
<td>Labor</td>
<td>Rp 12,000</td>
</tr>
<tr>
<td>Over head</td>
<td>Rp 2,000</td>
</tr>
<tr>
<td>Total production cost</td>
<td>Rp 36,000</td>
</tr>
</tbody>
</table>

4.8 Semi-finished production process, final completion with maklon

A clone is giving orders to other parties who are more competent to do a job and then the work returns to the order giver.

Because of the limitations on the bag sewing machine, the second alternative is to make a maklon to complete the bag in bulk. A bag industry in Bogor gives a price of IDR 35,000 for a small bag and IDR 45,000 for a medium bag.

5 Conclusion

The following are conclusion from the results of Community Service: 1). During this time Waste Bank Sehati produces bags involving external parties (maklon services) tailor bags to complete the final process of the bag after the basic woven bag is formed in a unit, so the production price becomes expensive, 2). Waste Bank Sehati has not fully implemented the standard production system, parts of the system not yet exist include planning and production facilities such as sewing machine for bag not available, and 3). Waste Bank Sehati didn’t activists to reduce production costs, Waste Bank Sehati still relies on maklon services to complete the final bag process if there is an order.

Suggestion

After community service implemented at the Waste Bank Sehati, for the sake of the progress of the Waste Bank Sehati we recommend: 1). Production planning must be arranged from the input to the output produced. By planning carefully recycled bag production becomes more effective and efficient. One goal is to minimize the cost of producing recycled bags2).
The procurement of bag sewing machines and the recruitment of workers with experience in the bag industry is the main key if Waste Bank Sehati wants to advance and develop in the recycling bag industry, and 3). In order to become a sustainable center for the people's economy, Waste Bank Sehati should more innovative to: a). Product design, b). Market segment, and c). Marketing strategy.

Acknowledgments

Special thanks to the STIAMI Institute for funding this Community Service and to the Team of Lecturers and Waste Bank Sehati Team who have helped and supported the implementation of this Community Service to become a writing that can be a reference material to develop Waste Bank business in the future.

Reference

Potential of Pindang Bandeng as The Betawi-Tionghoa Acculturation Food Iconic Product

Rustini¹, Lila Muliani²
{niny_hiers@yahoo.com¹, lilamuliani@gmail.com²}

Institut Ilmu Sosial dan Manajemen Stiami, Indonesia¹²

Abstract. Pindang Bandeng for the Betawi people is a part of The Non-Material Culture Heritage owned by the Jakarta Capital Special Region which is now increasingly marginalized. The object of this Internal Grant Research is to increase the potential of Pindang Bandeng as a Betawi-Chinese acculturation food iconic. This Internal Grant Research used qualitative research which will result in findings without the assistance of statistical procedure or form of calculations in their analysis. This research was conducted using Purposive Sampling sample technique. The primary data of this research was carried out through Focus Group Discussion/FGD and in-depth interviews and observation. The data of this research was analyzed by Grounded Theory. While secondary data was taken from various written sources and documentation. The results of this research could be concluded that Pindang Bandeng could be raised its potential as the Betawi-Chinese Acculturation Food Iconic Product, wherein it was a food product of the blend of Betawi and Chinese cultures especially during Chinese New Year because it was identical with milkfish processed into Pindang Bandeng. Thus, Pindang Bandeng became an Icon of Chinese New Year celebration in Indonesia.

Keywords: Iconic Product, Acculturation, Betawi, Chinese, Grounded Theory.

1 Introduction

1.1 Research Background

United Nations Educational, Scientific and Culture Organization divided world heritage into two, namely world natural heritage and world culture heritage. Definition of world culture heritage in Indonesia was a region having an extraordinary universal value and a very important influence on the culture that is within the territory of the Unitary Republic of Indonesia and determined by UNESCO.

Furthermore, culture heritage was divided into two, namely material and non-material. Material culture heritage is things that can be touched and used (tangible). Meanwhile, the definition of Non-Material Culture Heritage according to the Ministry of Education and Cultural (Kemdikbud) was all practices, representations, expressions, knowledges, skills - as well as tools, objects (natural), artifacts, and culture spaces associated with them - recognized by various communities, groups, and in certain cases individuals as part of their culture heritage. Culinary was included in the category of Non-Material Culture Heritage.

In the Regional Regulation (Perda) of the Jakarta Capital Special Region Number 4 of 2015 in Article 1 number 26, it is stated that Culinary was all types of food characterizing
Betawi, wherein Betawi culinary was included in the element of Betawi Cultural Conservation Implementation mentioned in Article 9 of the same Perda.

In article 8 of the said Perda, the community was obliged to conserve Betawi culture and can participate in Betawi Cultural Conservation effort, especially in:

a. Inventoring the values of Betawi culture tradition;

b. Inventoring the culture assets and extracting the Betawi history;

c. Increasing Betawi Culture Conservation activity;

d. Disseminating and publishing the values of Betawi culture tradition; and

e. Facilitating the development of human resources quality in Betawi Culture Conservation

Pindang Bandeng, a Betawi culinary, for the Betawi community is a part of the Non-Material

Culture Heritage owned by the Jakarta Capital Special Region. It is now increasingly marginalized since it is less well known by the younger generation who prefer junk food as their favorite food.

Speaking about Pindang Bandeng Betawi, it could not be separated from Chinese New Year celebration in Indonesia. Since the 17th century, milkfish (Bandeng) has been used in Chinese New Year celebration in Indonesia as a celebration of welcoming spring. The Chinese New Year itself for Betawi community has been considered as their own culture, it was proven that the Betawi community called Imlek as “Lebaran China”. This happened because of the acculturation of Chinese culture with Local culture (Betawi).

1.2 Formulation of Problem

Can the potential of Pindang Bandeng be increased as a Betawi-Chinese Acculturation Food Iconic Product?

1.3 Research Purposes

The purpose of this research was to increase the potential of Pindang Bandeng as an Betawi-Chinese Acculturation Food Iconic Product culture.

1.4 Advantages of Research

The results of this research were expected to provide information and advantages for:

a. Practitioner (Tourism Industry)

Providing information for practitioners could be used as consideration in making long-term decisions in related fields.

b. The development of upcoming science/theory

This research was also expected to contribute to the development of science of subsequent researches.

2 Methods

2.1 Theoretical Concept

This chapter discussed concepts and theories relating to Iconic Product and Food Acculturation, which would provide a broader understanding of this research.
2.2 Iconic Product Concept

Iconic product is a product becoming an icon or a symbol as consumer's reminder of the symbols contained in the said product. While Icon is a symbol having similar appearance and the said symbol is not difficult for the wearer to recognize. Within icon, the relationship between the representmen and the object is embodied in the same quality. Meanwhile, the Iconic Brand is a brand owned by consumer who with the certain understanding and experience with specific brand, the said consumer becomes very close to the brand and even feels that the brand has become a part of him (Ahmad Hanfan, 2017).

According to Holt (2004), there are four main elements to create an iconic brand, namely:

1. The product performance must be received, preferably having good quality.
2. A meaningful culture story is made by community. This must be seen as something that is legitimate and respected by consumers for the stories received.
3. Some types of discrepancies between prevailing and hidden ideologies appear in society. In other words, there are differences in how consumers consume and how they have hope.
4. Actively involved in the process of making myths, ensuring the brand maintains its position as an icon. In this case, Pindang Bandeng has become an iconic product of the Betawi community when Chinese New Year. The existence of Pindang Bandeng in Chinese New Year celebration has become a part of the cultural of the Betawi community and it was incomplete without Pindang Bandeng decorating the dining table during the Chinese New Year celebration.

2.3 Acculturation Concept

Acculturation is a social process arising when a group of community with a particular cultural is confronted with elements of foreign cultural in such a way that the said elements of foreign culture are gradually accepted and processed into their own cultural without causing the loss of the local cultural itself (Koentjaraningrat, 1990).

The selection process of foreign culture elements by local residents occurs in the process of acculturation. An example of the selection process of foreign culture elements and developed into a new culture in terms of Pindang Bandeng was that this culinary has been used for Chinese New Year celebration since the 17th century in Indonesia, but in its own country, China, this milkfish not found.

Thus, this milkfish is as an alternative adapted to Betawi cultural.

The process of selective absorption and the rejection of elements of foreign culture by the community was occurred in a relatively long period of time, so that the process of cultural change through acculturation still contains elements of genuine local culture.

2.4 Methods

This research was a qualitative research using descriptive data can be written or oral words from people who were researched or observed. According to Anselm Strauss and Juliet Corbin (2015), qualitative research is a research resulting findings without the assistance of statistical procedure or form of calculation in their analysis.

This research was conducted using Purposive Sampling sample technique. Purposive sampling is withdrawal or sampling/research informant purposively, namely the determination of informant with certain conditions. In this research, the requirements of the informant taken were expert who had deep knowledge of Betawi typical traditional culinary. The key
informants in this research were Mrs. Cucu Sulaicha and Mrs. Anisa Diah Sitawati. Other informants were Mrs. Suzen HR Lumban Tobing, Mr. Yahya Andi Saputra and Mr. Heryus Saputra.

The primary data of this research was carried out through Focus Group Discussion/FGD and in-depth interviews and observation. The data of this research was analyzed by Grounded Theory. While secondary data was taken from various written sources and documentation.

The method used in this research was Grounded Theory, which was a research strategy wherein researcher "produce" general theory and abstract of a particular process, action, or interaction coming from the views of participants. This design requires a researcher to undergo a plurality of stages of data collection and filtering of categories of information obtained.

Grounded Theory develops a new theory from the data obtained, not testing the theory as was done in other research methods. To produce a grounded theory, a researcher must work in the field throughout the research. Methods of interviewing, direct observation, census data, questionnaire data, or other types of data must be recorded carefully and completely.

The stages of research in Grounded Theory were carefully designed to meet the criteria of the scientific method. The intended criteria was the existence of significance, compatibility between theory and observation, could be generalized, could be re-examined, the existence of pertinence and accuracy, and the said criteria can be proven.

The location of the research was conducted in Rawabelong, West Jakarta and surrounding areas. The choice of this location was based on the reason this area was indeed a center of milkfish at the time of the Chinese New Year. The Chinese night market filled with milkfish sellers was reported to have started since the 1960s.

3 Result And Discussion

3.1 Culinary History

In Indonesia, Pindang Bandeng culinary is not a new menu. For Betawi people, milkfish-based culinary is very popular and has become a favorite daily menu, so in several other regions in Indonesia. However, maybe many people do not know if the history of Pindang Bandeng is very long and Chinese culture is reported to influence the taste of this culinary.

In a Betawi shop or restaurant we can usually find this menu, such as at the Ketupat Sayur Restaurant H. Mahmud in Kebayoran Lama or at Kafe Betawi in malls.

In the tradition of Chinese people living in Indonesia, milkfish is always served during Chinese New Year celebration. Fish for Chinese is a symbol of prosperity and sustenance. The word "fish" in Chinese accent or pronunciation is the same as "Yu" which means sustenance. They hope that they will gain prosperity and sustenance in the new year. Meanwhile, burrs in milkfish symbolize the complexity of life. Therefore, we need to be careful in eating milkfish, as same as we go through this life.

According to historian J.J. Rizal, milkfish in Chinese New Year dish was only available in Indonesia. There was not available in China. Jakarta Chinese actually absorb milkfish from Betawi culture since the 17th century. He continued, the mentioning of "Lebaran China" as another name for Chinese New Year by the Betawi people showed the acceptance of Betawi people towards Chinese New Year itself, and even they joined in looking for Chinese New Year dishes. Thus, for Chinese people, milkfish was an alternative fish in Chinese New Year celebration.
For what is Chinese New Year milkfish? For pindang made. Why is milkfish in Chinese New Year celebration? According to Bang Rudi from the Betawi Cultural Institute (Lembaga Kebudayaan Betawi - LKB), because only milkfish that can live easily in the coastal waters of Jakarta. However, there were also fishermen who purposely raising milkfishes for a year and they sold them during the Chinese New Year. That was why the size of the milkfishes was large, at least 2 kilograms and even the largest one reaches 7 kilograms.

The matchmaking/acculturation of the two cultures between Betawi culture and Chinese culture has been held for a long time before the arrival of the Dutch who eventually ruled Indonesia for hundreds of years. The results of the said matchmaking could be seen for example in the culinary field. In the celebration of Chinese New Year, not only the Chinese ethnic who were busy welcoming the celebration of the said Chinese New Year, but the Betawi community were, too, especially the Betawi community around Kebon, Jeruk, Rawabelong and Palmerah. The Betawi community in the said areas was busy looking for the large milkfishes to be cooked as pindang, as if milkfish was a must item during the Chinese New Year.

The tradition occurred in some Betawi communities from generation to generation during the Chinese New Year was to deliver or "ngejot" milkfish to parent-in-law. In past, a son-in-law who did not deliver milkfish in Chinese New Year could be considered or labeled as a stingy son-in-law. On the other hand, the son-in-law delivered her parent-in-law with a large milkfish which if it carried up to "ngengser" (fell off) its tail, then the said son-in-law would be "disohor" or praised and proud of his parent-in-law. However, today, the tradition has begun to fade, since milkfish was mostly bought to be eaten with family or shared with neighbors.

According to Mrs. Cucu Sulaicha, in the past, milkfish was also used as a symbol/sign of liking a girl. A man who liked the girl would usually hang milkfish on a wooden fence or on a girl's house tree, if the hanged milkfish was taken by the girl's family, it meant that the girl's family accepted the man's intention. However, once again, this tradition was no longer prevail today, since if milkfish was hung on the fence it was not the person who will take the milkfish but the cat.

The region becoming the center of the sale of milkfish ahead of the Chinese New Year celebration was at Jalan Sulaiman, Rawabelong, West Jakarta. Milkfish sellers here were from various regions. They sold along the sidewalk of Jalan Sulaiman just before the Chinese New Year.

According to Yohannes, milkfish sellers in Rawabelong, people who bought milkfish were mostly Betawi people who were not Chinese descent. He continued, there were differences between Chinese people and Betawi people regarding milkfish. Chinese people usually use milkfish to worship such as "nyekar" while Betawi people bought it to cook Pindang Bandeng and eat it with their families.

Big milkfishes were the most delicious ones to cook as pindang. The big milkfish for Chinese people symbolized the prosperity and abundant sustenance. This large milkfish contained a lot of fat which would add the delicious of pindang sauce.

During the Chinese New Year, the large and high quality milkfishes could be easily obtained. Milkfish sold before the Chinese New Year was different from milkfish sold everyday. Chinese New Year milkfish were large in size, because the milkfish was kept purposely for a year and was sold just before Chinese New Year. While milkfish sold daily was small to medium-sized. At this time, many Betawi people came to buy milkfishes. Those who had a lot of money would buy as much milkfish as possible to cook on their own and certainly did not forget to deliver to their parent and beloved parent-in-law.
The history abovementioned showed that milkfish had a synergy in ethnic diversity in Indonesia. In this case, there was acculturation of Chinese culture and Betawi culture. The said acculturation was demonstrated in Chinese New Year celebration wherein the tradition of eating milkfish not only became the property of the Chinese ethnic, but also became a part of the Betawi ethnic.

3.2 Description of Culinary

According to the Indonesian Dictionary, the culinary word is related to cooking. But in general, culinary is a processed product in the form of dish and food. The difference between dish and food according to Bang Yoyo from LKB was in the complexity of the preparation. Culinary refers to preparation with various basic ingredients and its cooking process is long and eaten as heavy food.

Meanwhile, Food is usually processed quickly and eaten as a snack.

Pindang Bandeng as a Non-Material Culture Heritage is included in the Betawi dish category having various ways to cook it. In one Betawi community, they cooked it by burning/roasting ingredients but the other one cook it by sauting the ingredients.

Administratively, the Betawi region is divided into 3 parts, namely: Central Betawi, Edge Betawi and Coastal Betawi. According to Bang Yoyo which was based on the culture map, the Betawi tribe covers up to Batujaya (Karawang), Mauk, Gunung Sindur, Gunung Putri, Depok and Cibinong areas. Do not feel excluded if the Betawi community were displaced to those areas, since they were still included in the region of the Betawi culture map.

In this study, the Betawi region becoming a basic of this study was the Central Betawi region. The Pindang Bandeng recipe used in this study was based on a recipe that prevails in the Central Betawi region, wherein the processed seasonings was by burned/roasted first instead of sauted. The color of the blackish sauce on Pindang Bandeng came from sweet soy sauce. The sauce was rich of spices and made by a very diverse composition of seasonings, including shallot, garlic, red chili, cayenne chili, turmeric, galangal, ginger, lemongrass, salam leaf, tamarind, brown sugar, and vegetable starfruit.

Pindang Bandeng had completed tastes, namely spicy, sweet, salty and fresh sour. The sour taste of it came from vegetable starfruit. Instead of vegetable starfruit, we could use tomatoes. In addition, the nutrient content of milkfish was better than that of Salmon. The Omega-3 content of milkfish was six times higher than that of salmon. Also, the healthy fat content in the stomach of milkfish was considered high enough, so that milkfish could be the best choice as a consumption fish.

3.3 Preparation of Standard Recipe

Based on the recipe from Mrs. Cucu Sulaicha and and Mrs. Anisa Diah Sitawati, Pindang Bandeng dish was divided into two parts, namely ingredients and seasonings.

The recipe was as follow.

**Ingredients:**

- 1 kg fresh milkfish, clean it, cut each fish into 3 parts
- 2 tablespoons lime juice
- 1 tablespoon salt
- 1 tablespoon tamarind water
- 1 tablespoon brown sugar
- 4 tablespoons sweet soy sauce
- 5 vegetable starfruits, cut into 2 sections longitudinally
400 ml water

**Seasonings:**
5 shallots  
4 garlics  
5 large red chillies cut into 2 parts  
5 large green chillies cut into 2 parts  
10 red cayennes  
10 green cayennes  
2 cm turmeric  
2 cm ginger  
2 cm galangal  
3 stems of lemongrass, took the white part  
5 salam leaf

**Instructions:**
- Rub the milkfish with lime juice and half of salt. Let them marinate for 15 minutes. Set it aside.  
- Roast all seasonings until they are fragrant and blackish, lift.  
- Chop coarsely all seasonings.  
- Boil the water, add the roasted and roughly chopped seasonings, milkfish, remain salt, and sweet soy sauce. Mix well, boil again.  
- Add tamarind water and vegetable starfruits, mix well. Simmer until all ingredients are cooked. Lift.  
- Serve warm.

**3.4 For 8 servings**

**Presentation**

In this research, the potential of Pindang Bandeng was expected to become a Betawi-Chinese Acculturation Food Iconic Product so as it can be used as a typical food of Betawi culinary tourism and it is continue to be socialized to the community to be sustained.

According to Mrs. Cucu Sulaicha, in Betawi if you cook Pindang, it was milkfish; if you cook milkfish, it was Pindang. In other regions, if you cook Pindang, it could be various kinds of fish. Furthermore, in Betawi, spices to cook milkfish may not be sautéed or cooked by coconut milk but must be burned/roasted.

**Culinary Distribution Areas**

The Betawi community consists of three characters:

First, the coastal area raising a maritime culture. Second, the middle area raising a populist culture. Third, the edge area raising an agrarian culture.

For milkfish itself, the distribution areas are in Rawabelong, Cengkareng, Senayan and Mauk, Tangerang (Bang Rudi, LKB). But since milkfish is a fish easily live in the coastal waters of Jakarta, this fish is easy to find anytime, not only when Chinese New Year.
However, it is undeniable that when Chinese New Year the large-sized milkfish will emerge, since they are purposively kept for a year.

**Culinary Culture Values**

**Philosophy**

From the Betawi people side:

Milkfish is the choice for Betawi community to be made pindang since this fish is one of fishes easily lives in the coastal waters of Jakarta. On normal days we can find milkfish in traditional markets with a small size, while during Chinese New Year there are a lot of milkfish with large and super large sizes (around 2 - 7 kilograms), with price reaches up to 100,000 IDR/kg.

According to old people’s story, eating milkfish has its own philosophy. The milkfish was known having many burrs and if you eat milkfish, it was expected that you will get more sustenances. Furthermore, milkfish has a lot of fat, especially fish with large size, so if that fish were not consumed in a day, it can be stored for the next day. Fat in milkfish can preserve it from being thrown away.

Furthermore, milkfish was a favorite one in Chinese New Year dishes and it had a philosophy as a part of the natural elements must be exist and was a symbol of life-saving and youthful. In a deeper meaning it was a symbol of respect. A family member who did not deliver milkfish to older people such as parent and parent in-laws was considered as not to have a politeness.

Pindang Bandeng had more interesting philosophy. According to old people’s story, Pindang Bandeng was a dish to test a prospective daughter-in-law. During the Chinese New Year, the said prospective daughter-in-law who brought Pindang Bandeng to prospective male-in-law signed that she was very concerned with her parent-in-law. And the story of it was as follows:

First. Dilligent Test. To obtain a large and fat milkfish, we can obtain it in the morning. Thus, it was tested whether or not the prospective daughter-in-law woke up early. If she could not do it, she would not get the desired milkfish. Otherwise, she passed the first test.

Second. Persistence Test. It was not easy to cook Pindang Bandeng with an appropriate flavor on low heat. If the prospective daughter-in-law did it persistently and patiently with good result, she passed the test.

Third. Sensitivity Test. The sweet, spicy, salty and sour tastes of Pindang Bandeng must be appropriate. If the prospective daughter-in-law cooked it well, it meant the sensitivity of the woman was good. She passed the third test.

Fourth. Neatness Test. After the three tests above have been successfully passed, the last test was very determining. After the prospective daughter-in-law got large and fat milkfish, cooked it diligently in a right way with appropriate taste, then neatness in serving the dish was very important. The Finishing Touch in serving Pindang Bandeng dish would determine whether or not the prospective daughter-in-law was a perfect woman who deserves to be a daughter-in-law. If she did it neatly, she passed the test and vice versa.
Briefly, for Betawi community and its surroundings, it was not yet called Chinese New Year if there was no *Ang Pau* and *Pindang Bandeng*. *Pindang Bandeng* was a symbol of prosperity, while the way to cook it was a symbol of the soul maturity of the one who cook it.

**From the Chinese side:**

According to Yohanes, milkfish seller in Rawabelong, milkfish in Chinese New Year celebration in Chinese community in Indonesia were mainly used for worship namely, *nyekar*. Some of them cooked it to eat when the feast day. The bigger the fish purchased, the greater the sustenance expected to be obtained in the coming year.

Based on the Chinese beliefs believing in 12 zodiacs, generally they always provide 12 kinds of dishes and 12 kinds of cakes representing the said 12 zodiacs. The dishes served were usually the dishes having meaning related to prosperity, longevity, happiness and safety.

In the tradition of the Chinese living in Indonesia, one of the main dishes always available during Chinese New Year celebration was milkfish. Fish for them meant a symbol of prosperity and sustenance. The word "fish" or "Yu" in Mandarin accent meant sustenance. They hope that they would gain prosperity and sustenance in the newyear. Because of this, in many Chinese restaurants there was usually a goldfish aquarium symbolized sustenance covered by abundant gold.

In the tradition of Chinese-style large banquet, fish dish was always served at the end of it as a symbol of abundant sustenance in the future. Fish was served completely from head to tail. If there was an honor guest, the fish head would be directed to the guest. And if we attend a large banquet and find it directed to us, we do not need to be worry, since it is an honor to us.

**Culinary Culture Heritage//Maestro/Successor**

This research was conducted using informants with certain conditions, namely experts who have deep knowledge of Betawi typical traditional culinary. The main informants on this research were the Maestro, Mrs. Cucu Sulaicha and Mrs. Anisa Diah Sitawati, who have expertisement in the cooking field. They both join in the management of the Betawi Cultural Institute (LKB). Other informants were Mr. Yahya Andi Saputra, Mr. Heryus Saputra and Mrs. Suzen HR Lumban Tobing.

Another Betawi Maestro, Mr. Yahya Andi Saputra is a Betawi cultural researcher and administrator of the Betawi Cultural Institute (LKB) and chairman of the Jakarta Oral Tradition Association (*Asosiasi Tradisi Lisan* - ATL). Mr. Yahya, as we called him Bang Yahya, is also the author of Betawi books. His books are *Gelembung Imaji* (Kumpulan Puisi, 1999), *Beksi: Maen Pukulan Khas Betawi* (2002), *Upacara Daur Hidup Adat Betawi* (2002), *Sejarah Perkampungan Budaya Betawi: Demi Anak Cucu* (2014), *Sindir Sindir* (Kumpulan Puisi, 2016). Furthermore, other informants were Mr. Heryus Saputro, a senior journalist, humanist and book writer; and Mrs. Suzen HR Lumban Tobing, a Lecturer at the Jakarta Art Institute.
4 Conclusion

Chinese New Year Holidays for Chinese are considered not just ordinary annual ritual and culture, but also integrate with trust. Just like food for traditional or other religious ceremonies, the Chinese New Year's typical food is loaded with various kinds of symbolic meanings.

Chinese New Year in Indonesia has subjected acculturation/assimilation with local culture, in this case Betawi culture. It was proved by the mentioning of “Lebaran China” from the Betawi people for Chinese New Year. It meant that the Betawi people considered Chinese New Year was a part of their culture. Therefore, Betawi people also celebrated it, not just participated in the Chinese New Year night market and carnival, but many of them joined in celebrating and eating the Chinese New Year typical food since the mid-19th century.

It was no wonder if the milkfish was also present as a must culinary in the Chinese New Year tradition of Chinese in Indonesia. As a part of Indonesian culinary history, milkfish in Chinese New Year celebration were usually processed into Pindang Bandeng, which was a genuine dish from Betawi by using sweet soy sauce and has a plurality of fairy tales and stories. As a culinary dish, especially on Java, fish-flavored culinary in the Indonesian culinary tradition could be considered rare, unlike in other regions in Indonesia such as Sumatra or Sulawesi which have a number of fish-flavored culinary recipes. The pindang itself, for example, along in South Sumatra, tended not to use sweet soy sauce and was more strongly influenced by Malay culture. Pindang Bandeng in the style of Peranakan in Betawi was an assimilation/mixing of several cultures so as to produce unique culinary dish as a culinary culture heritage of the Betawi ethnic.

Accordingly, from the results and discussion above, it could be concluded that Pindang Bandeng could be raised its potential as the Betawi-Chinese Acculturation Food Iconic Product, wherein it was a food product of the blend of Betawi and Chinese cultures especially during Chinese New Year because it was identical with milkfish processed into Pindang Bandeng. Thus, Pindang Bandeng became an Icon of Chinese New Year celebration in Indonesia.

Acknowledgement

Bismillahirrahmanirrahim. All praise and gratitude for the presence of Allah SWT due to His Grace and Gift, I can finish this research well. This research is an Internal Grant from Institut Ilmu Sosial dan Manajemen STIAMI, Jakarta. This research entitled “Potential of Pindang Bandeng as The Betawi-Chinese Acculturation Food Iconic Product”.

All efforts I did in this research will be meaningless without the guidance, assistance, and support has been given by various parties. Therefore, the deepest gratitude I dedicated to Institut Ilmu Sosial dan Manajemen STIAMI, Jakarta, which has provided an opportunity to obtain the Internal Grant. And many thanking I dedicated to other parties cannot be mentioned one by one.

Finally, I realized that this research still having lack of disadvantages, hence I expected the constructive suggestions and criticisms to improve this research. Hopefully this research can be useful for readers, and can be used as a positive input for science in the field of tourism.
References

Books:

Internet Sources:
[1]. Https://Kbbi.Web.Id/
[5]. Https://Www.Kompasiana.Com/Mang_Kani/550d7f19a333112d1c2e3e8c/Bandeng-Imlek-Orang-Betawi
[6]. Https://Www.Kompasiana.Com/Estherlima/5528c421f17e610e058b45bb/Tradisi-Pindang-Bandeng-Imlek
Enhancing The Added Value of Akar Kelape Snack: An Effort to Improve Marketing Performance

Agus Cholik\textsuperscript{1}, Resista Vikaliana\textsuperscript{2} \{mascholikaja@gmail.com\textsuperscript{1}, resista@stiami.ac.id\textsuperscript{2}\}

Fakultas Ilmu Sosial dan Manajemen, Institut Ilmu Sosial dan Manajemen Stiami, Jakarta, Indonesia\textsuperscript{1,2}

Abstract. The purpose of this research is to generally aim at realizing culinary delights that are intended to be a typical Betawi culinary tourism destination, which is to make a standard recipe for Akar Kelape and to make Root Kelape products have high selling value. This research was conducted with qualitative approach. The presentation of Akar Kelape from the standard recipe which is the result of this research, can be used as a guide for culinary preservation, especially traditional Betawi cuisine. In this study, based on observations, the brand given to the predetermined standard recipe was Akar Kelape "Nyak Babe", a Betawi Typical Snack with the tagline "Right Treats at the Right Time". To further increase the selling value, a design for the Akar Kelape product packaging has been produced.

Keywords: Akar Kelape, Standard Recipe, Marketing Performance.

1 Introduction

Jakarta, as the capital city of Indonesia, is a tourist destination visited by both domestic and foreign tourists. Apart from being the country's gateway to other tourist destinations, these tourists have made Jakarta their main destination. Indonesian Central Statistics Agency/ BPS Data for DKI Jakarta Province as of August 2018, reported the number of foreign tourist visits. Cumulatively (January-August 2018), the number of foreign tourist visits to Indonesia reached 10.58 million visits, an increase of 12.30 percent compared to the number of foreign tourist visits in the same period in 2017 which totaled 9.42 million visits. This increase shows good opportunities in the tourism sector.

To further increase the number of tourist visits, the Government established culinary tourism destinations, which previously did not exist. This is based on what tourists are looking for the first time when visiting a destination is culinary [1]. Traditional Indonesian culinary delights are one of the most delicious in the world with complete spices. Within one province it consists of very diverse ethnic cuisines. In DKI Jakarta Province, the Betawi ethnic group is one of the ethnic groups who has several culinary riches. The existence of Betawi culinary, like other ethnic groups in Indonesia, accompanies the dynamics of people's lives, such as ceremonies and celebrations (Pridia, 2016).

Traveling is of course related to culinary activities or food and drink. In addition, the activity of buying souvenirs as souvenirs or souvenirs to take home. From monitoring via the internet, the following three places were obtained as souvenir centers for Jakarta 1. Jakarta Typical Souvenirs Center is located in Central Jakarta
2. Romlah Souvenirs Jakarta is located in South Jakarta
3. The Mpok Nini Warung. The Betawi Souvenir Center is located in Bekasi City

By looking at the number of tourists and the position that is only scattered in Central Jakarta, South Jakarta and Bekasi City, it is not easy to buy souvenirs for tourists. To maintain or preserve traditional Betawi culinary delights, an effort is needed to introduce it more widely to the community.

Betawi culinary souvenirs that are sold in Jakarta, including Roti Buaya, Kacang Ketapang, Dodol Betawi, Beer Pletok. There is a culinary that has the potential to be developed as a typical Jakarta souvenir, namely Kelape Root Cake. Therefore, in this study a standard recipe for Kelape Root was prepared and made packaging and other marketing elements so that the Kelape Root could become a typical Betawi souvenir product with high selling value.

The purpose of this research is to generally aim at realizing culinary delights that are intended to be a typical Betawi culinary tourism destination, which is to make a standard recipe for Akar Kelape and to make Root Kelape products have high selling value.

1.1 Intangible Cultural Heritage

Intangible Cultural Heritage based on the UNESCO Convention for The Safeguarding of The Intangible Cultural Heritage 2003: Intangible Cultural Heritage is a variety of practices, representations, expressions, knowledge, skills - as well as instruments, objects, artifacts and cultural spaces related to them - that society, groups and, in some cases, the individual is part of the cultural heritage. This intangible cultural heritage is passed down from generation to generation, being continuously recreated by communities and groups in response to their surrounding environment, their interaction with nature and their history, and providing a sustainable sense of identity, to appreciate cultural differences and human creativity.

Intangible Cultural Heritage is manifested in the following areas:

1. Performing Arts
2. Indigenous peoples’ customs, rites and celebrations;
3. Knowledge and behavioral habits about the universe;
4. Traditional skills.
5. Traditions and oral expressions such as language, ukno script, traditional games, rhymes, folk tales, mantras, prayers, folk songs and others.
6. Performing arts include dance, sound arts, music, theater, film and others.
7. The customs of the traditional community, rituals, and celebrations, for example, traditional ceremonies (life cycle ceremonies), social organization systems, traditional economic sisters and others.
8. Knowledge and behavioral habits about the universe, for example traditional knowledge, local wisdom, traditional blocking and others

Traditional skills and skills such as traditional technology, traditional architecture, traditional clothing, traditional accessories, traditional crafts, traditional culinary, traditional transportation media, traditional weapons and so on.

Indonesia's Intangible Cultural Heritage to be selected for proposal in UNESCO's ICH list must meet the following criteria:

1. A cultural identified of one or more Cultural Communities;
2. Cultural values that can increase awareness of identity (pengampu culture and society of Indonesia) and national unity
3. Having the uniqueness / uniqueness / rarity of an ethnic group that strengthens the identity of the Indonesian nation and is part of the community
4. A living tradition and memory collective relating to the preservation of nature, the environment, and is useful for humans and life;
5. Intangible Cultural Heritage has a socio-economic and cultural impact (multiplier effect);
6. Urge to be preserved (cultural elements / works and actors) due to natural events, natural disasters, social crises, (cultural crises,) political crises, and economic crises;
7. Become a means (and guarantor) for sustainable development; become a guarantor for sustainable development
8. The proposed cultural work must be representative of the province (the proposed type may consist of several similar cultural works scattered in areas within the province)
9. Do not submit cultural works that are extinct or no longer have supporting communities
10. Intangible Cultural Heritage whose existence is threatened with extinction
11. Intangible Cultural Heritage is prioritized in border areas with other countries;
12. Vulnerable to Intangible Cultural Heritage claims by other countries.
13. It has been passed down from more than one generation
14. Owned as wide as a certain community
15. No conflict with human rights and conventions in the world (laws and regulations in Indonesia)
16. Supporting cultural diversity and the natural environment

1.2 Preservation of Traditional Culinary Tourism

The definition of preservation, in the Big Indonesian Dictionary (KBBI), it is stated that it comes from the root word 'sustainable', which means that it remains unchanged forever. Then, in the rules of using Indonesian, the prefix and suffix have the meaning to describe a process or effort (verb). Thus, preservation can be interpreted as an effort or process to make something remain forever and unchanged. Can also be defined as an effort to maintain something in order to always remain as it is.

Local cuisine or local cuisine reflects the history and culture of an area and can be an attraction for tourists. Apart from providing good quality food for tourists, efforts should be made to promote the unique dishes of the destination which are favored by tourists, at least trying local cuisine (Inskeep, 1991). Each culture has its own peculiarities in eating activities, from preparing food ingredients, cooking, packaging, to eating. Given the importance of cultural values, the preservation of traditional culinary delights must always be pursued. It also needs to be passed on to the younger generation as cultural stakeholders. Sustainability cannot stand alone, because it is always coupled with development, in this case survival. Sustainability is an aspect of stabilizing human life, while survival is a reflection of dynamics. (Soekanto, 2003)

Winarno (1993) argues that traditional food is food that is thick with local traditions. Meanwhile, Hadisantosa (1993) defines traditional food as food consumed by specific ethnic groups and regions, processed based on recipes passed down from generation to generation. The materials used come from the local area and the food produced is also in accordance with the tastes of the community.

Culinary culture has been an area that has been neglected until recently[2]. However, culinary culture has always been an enduring part of culture and tradition. To put it in a different way, a cuisine in which the many different identities of a society are joined together
and national feelings are felt the most are a reflection of daily lifestyle, religious beliefs, customs, traditions and customs. So it can be understood that food is closely related to culture. Everyone will never forget the traditional food. Although the process of globalization and economic development is the cause of the shift in diet, people will always produce and seek traditional food to meet their daily food needs. This phenomenon is the basis for culinary business actors to serve a variety of traditional foods in big cities [3]. Because, they believe that people who migrate to the city will tend to look for traditional food in the area.

One of the best known cookies is Akar Kelape. Akar Kelape Snack is a cookie from Betawi and its surroundings. This cake is generally served with fried peanuts and rengginang during special events, such as during Eid or celebration. Despite the name, coconut root cake, this cake is not made from coconut root. The name "Akar Kelape or Coconut Root" is taken from its shape which is similar to coconut root. Even so, there is a part of the coconut that is used in the manufacture of this Akar Kelape Snack, namely the part of the flesh that has been processed into coconut milk.

2 Method

The preparation of this study used a qualitative research approach, using purposive sampling technique. Purposive sampling is the deliberate withdrawal or sampling of research informants, namely the determination of informants with certain conditions. In this study, the requirements for informants taken were experts or experts who had in-depth knowledge of traditional Betawi culinary delights. The key informants in this research were Anisa Sitawati and Cucu Sulaicha. Other informants were Suzen HR Tobing, Yahya Andi Saputra and Heryus Saputra. Data collection was carried out through focus group discussions/ Focus Group Discussion -FGD and in-depth interviews and observations. The research data were analyzed using Grounded Theory. The stages of this research were carefully designed so that they met the criteria of the scientific method. The criteria referred to are the existence of significance, conformity between theory and observation, can be generalized, can be re-examined, the existence of accuracy and accuracy, and can be proven.

3 Result and Discussions

3.1 Culinary History

The origin of the coconut root cake is unknown. Akar Kelapes seem to have to decorate the table, side by side with rangginang and fried peanuts onions, when Eid arrives. The founder of the Bekasi Community Kinship Board (BKMB) Bhagasasi, an organization for the gathering of Bekasi people, said that after onion fried peanuts, Akar Kelape is a must-have cookie.

3.2 Culinary Description

As an intangible inheritance, it is not only culinary but also in the form of expression and is considered to be endangered, so as a category of intangible inheritance, it must be the result of practice which is improved from time to time. This is a form of positive motivation so that there are no extinctions that occur in the Intangible Cultural Heritage, including in the arts, dances and theater. As a Betawi culture that is very close and thick with the presence of major
influences from China, as well as other cultures, a complete laboratory is needed to study all legalized menus. That is, not just researching but also socializing. Where the existence of Betawi culinary is a belt that connects, strengthens, and strengthens various things and becomes a culture and a community culture.

The same is the case with Akar Kelape. Akar Kelape is a pastry that comes from Betawi. The name of coconut root is taken from its shape which is similar to coconut root. The delicious and sweet taste is an additional attraction of this cake. This cake is made from white rice flour, coconut, sago flour and other ingredients. For the Betawi area and its surroundings, this cake is an obligation during Eid. The cake must come with hotcakes. Besides being served on holidays, this cake is also served at other celebratory occasions. This cake is generally served with rengginang and fried peanuts during special events, such as during Eid or celebrations.

3.3 Preparation of Standard Recipes

**Material Ingredient**
- 500 g of glutinous rice flour
- 100 g of corn starch
- 1 pack of instant coconut milk
- 2 chicken egg yolks
- 1 chicken egg white
- 200 g of sugar
- 1 tablespoon toasted sesame seeds, if desired
- 125 g margarine
- 60 ml of water

**The oil for frying**

**How to make:**
- Mix the glutinous rice flour and sago flour, stir until well blended.
- Add coconut milk, eggs, sugar, sesame, and margarine, mix well. Pour in water little by little until the mixture is evenly mixed and smooth.
- Enter the dough into the root mold of kelape.
- Heat a lot of oil in a large skillet, spray the mixture directly on the oil until frying immediately.
- Do not use the fire too big so that the coconut roots can dry up to the inside.
- Leave it until brownish yellow, dry and cooked. Remove and drain.

**Note:** the recipe is for 300 grams
3.4 Serving of Akar Kelape Snack

Figure 1. Ingredient Composition of Akar Kelape
Source: Primary Data, 2018

Figure 2. Akar Kelape
Source: Primary Data, 2018
After the standard Akar Kelape recipe has been prepared, the next step is to create a product that will be of high marketing value. For that, the steps taken are:
1. Creating a brand / brand
2. Make packaging

In this study, based on observations, the brand given to the predetermined standard recipe was Akar Kelape “Nyak Babe”, a Betawi Typical Snack with the tagline “Right Treats at the Right Time”. While the packaging is made of plastic (vinyl), as seen in the image below

![Figure 3 Packing Design of Akar Kelape](image)

Source: Primary Data, 2018

### 3.5 Culinary Distribution Area
The Betawi community consists of three characters:
- a. First, the coast which gave rise to maritime culture.
- b. Second, it is becoming a populist culture
- c. Third, the edge becomes an agricultural culture.

All 10 culinary studies fall into the middle category.
Bekasi is the largest producer of Akar Kelape, but along with the times, this cake is no longer mass produced.
3.5 Culinary Culture Value

Philosophy

- Betawi cuisine has become a belt that connects, strengthens and strengthens various cultures that are rich in historical values. Like the history of Kali Tirem or Biji Balang.
- Namely there is a Micro Cosmos and a Macro Cosmos which is symbolized by a triangle shape.
- Where there is a complementary connection between obedience to God Almighty. Including the symbol of the earth's alms that consists of pastries and culinary and there are codes to be conveyed.
- Where culinary is another picture of the balance of nature.
- Because culinary cannot be separated from the realm of the mind, namely the values that are transmitted in social life.
- Culinary is born because it cannot be separated from ingredients that are in the surrounding location. In addition, there is also a community creativity.

3.6 Meaning and Function (Uses)

There are several Betawi culinary categories that are already rare and are intended for culinary preservation. Among others, Sate Asem, Sengkulun, Sayur Babanci, and Porridge Ase). There are also those that are included in the category of potential development of Betawi souvenirs as souvenirs from tourists who come to DKI Jakarta, especially Betawi villages, namely Ginger Coffee and Coconut Roots. Finally, the culinary delights in the presentation are devoted to Betawi specialties with the aim of being one of the Betawi culinary tours. Among them are Pindang Bandeng, Sate Pentul / Soft, Laksa Betawi, and Selendang Mayang (which are currently being discussed).

In this study, Akar Kelape was researched to be developed into typical Betawi souvenirs as souvenirs, which made it easier for tourists to find Betawi souvenirs, in addition to raising the creativity and economic power of local residents to serve Betawi culinary. In particular, hotels and restaurants in DKI Jakarta Province make Betawi specialties become superior. One way is by making stands in strategic locations to introduce and preserve them for the wider community [3], [4].

3.7 Culinary Heritage / Maestro / Successor

Intangible cultural heritage such as this typical Betawi cuisine cannot be separated from the ingredients in the vicinity of DKI Jakarta Province. Then coupled with the creativity of the local community in making these culinary specialties were born. Where the spices or basic ingredients of one culinary with another have differences.

Akar Kelape, it must have differences, for example with similar culinary delights. In essence, human culture and civilization would not exist if there was no food. Because after all, eating and drinking has become a necessity for the community. This is what distinguishes culinary from outside Betawi with different names and ingredients.

4 Conclusion

The presentation of Akar Kelape from the standard recipe which is the result of this research, can be used as a guide for culinary preservation, especially traditional Betawi
cuisine. In this study, based on observations, the brand given to the predetermined standard recipe was Akar Kelape "Nyak Babe", a Betawi Typical Snack with the tagline "Right Treats at the Right Time". To further increase the selling value, a design for the Akar Kelape product packaging has been produced. To further enhance the development of Akar Kelape as a typical Betawi souvenir, it is necessary to formulate a marketing strategy for the Akar Kelape, especially the "Nyak Babe" brand of Akar Kelape, for example promoting through social media, marketing networks, and others.

References

Abstract. This study aims to examine the Selendang Mayang Beverage from a historical and contemporary perspective. A qualitative approach was conducted to do this research. The result of this research is the standard recipe of Selendang Mayang Drink than can be used as a guide for culinary preservation, especially traditional Betawi cuisine. Beside it, this research showed about historical perspective of Selendang Mayang Drink (culinary culture value, meaning and function, culinary heritage, etc) and also Contemporere perspective.

Keywords: historical, drink Selendang Mayang, Betawi.

1 Introduction

Each tribe has a unique culture that is characteristic to be studied and preserved. One of the distinctive features is the typical culinary of the tribe [1]. The Betawi tribe has a long process of being able to always exist [2]. The Betawi tribe has continued to develop from time to time, with cultural characteristics that are increasingly easy to distinguish from other ethnic groups [3]. For this reason, Betawi culture can become an unforgettable legacy by all levels of society in Indonesia, especially those in Jakarta.

One of the Betawi ethnic drinks is Selendang Mayang. Currently, its existence has begun to become extinct. Few people know the origin and even the way it is made and served. In fact, usually only a few of them transmit to future generations with family ties. This means that all activities related to taste are only known by a handful of parties who already know their parents.

This Selendang Mayang Drink has been gaining popularity since the 1940s. Even though it is classified as difficult to find, when stopping at the Kota Tua area and Situ Babakan there are still many who sell this Betawi specialty. It is difficult to find this Selendang Mayang Drink because some people in Betawi themselves still consider it an ancient drink.

In the Betawi Tribe tradition, Selendang Mayang Drink is usually served at weddings, as a menu for breaking the fast or a celebration event with Betawi cultural nuances. It is believed by the Betawi tribe to eat the Selendang Mayang drink to symbolize warmth and joy. Besides being refreshing, this drink can reduce hunger because it is made with rice flour as the base ingredient.

As an intangible legacy, not only culinary delights but also those in the form of expressions and considered endangered. Therefore, as one of the categories of intangible inheritance, it must be the result of a practice that is improved from time to time [4]. This is a form of positive motivation so that no extinctions occur in intangible cultural heritage. This
includes the arts, dance and theater. Betawi culture is very close and thick with the presence of contributions from other ethnicities, including Chinese, European and Arab [5]. So, for culinary purposes, a complete laboratory is needed to study all legalized menus.

The Betawi region is divided into three, namely North Betawi, Central Betawi, and South Betawi. The culinary study of Selendang Mayang Drink is in the middle/city. Culinary wealth as an intangible cultural heritage is another illustration of natural [5]. In essence, if you are going to cook there are several activities that must be done and procedures so that they have different characteristics from other regions [6], [7]. This means that culinary delights cannot be separated from the human mind because there are values that are transmitted in social life. Betawi culture is not yesterday afternoon's culture, the diversity and uniqueness of the culture proves that the Betawi people have a high level of life. Since the end of the last century and especially after independence (1945), Jakarta was flooded with immigrants from all over Indonesia so that the Betawi people - in whatever sense - lived as a minority. In 1961, the Betawi "tribe" covered approximately 22.9% of Jakarta's 2.9 million population at that time. They are increasingly being pushed to the outskirts of Jakarta, and are even busy being evicted and driven out of Jakarta. Although in fact, the Betawi 'tribe' has never been evicted or evicted from Jakarta. It is because the assimilation process of the various tribes in Indonesia has continued until now and it was through this long process that the Betawi "tribe" was present in the archipelago. With the cultural wealth possessed by the Betawi people, it is necessary to preserve this culture, given the nature of the people who do not care about their own existence [3].

Based on this, this study aims to examine the Selendang Mayang Beverage from a historical and contemporary perspective. This research is considered important to do, because the Selendang Mayang Drink has advantages and uniqueness, so that it can become an intangible cultural heritage of Betawi that is recognized nationally and even internationally [6].

2 Method

This research approach is a qualitative approach [8]. The data collection methods used include interviews, Focus Group Discussion / FGD with the DKI Jakarta Province Culture and Tourism Office. The key informants in this research were Anisa Sitawati and Cucu Sulaicha. Other informants were Suzen HR Tobing, Yahya Andi Saputra and Heryus Saputra. In addition, sellers of Selendang Mayang Drinks. From the data obtained, the following steps are taken:
1. Preparation of Standard Recipes
2. Presentation
3. Culinary Distribution Area
4. Culinary Cultural Value
Then, data analysis was carried out with the stages of data reduction, presenting data, and verification or drawing temporary conclusions [9].

3 Result and Discussions

3.1 Drafting Standard Recipe
The recipe for this typical Betawi drink is made from the basic ingredients of rice flour and hunkue (flour made from beans). Selendang mayang can also be identified as a starch-coated cake. The red, green, and white colors make the scarf look even more attractive. The cake dough is made from starch or palm sugar, sugar, water and food coloring, also put the pandan leaves.

In the process of making, the water is boiled until it boils, then add the pandan leaves, salt, and sugar until dissolved, or you can also add milk for flavor. Then enter the rice flour and stir quickly until well blended and evenly distributed. After cooking, pour it into the pan and add food coloring. Then spread the food coloring on the dough until blended, then cool until hardened.

To serve it, after the dough in the pan hardens, then cut it into thin strips like a layer cake just before the drink is served. Uniquely, thin bamboo is used to cut this cake. Then the cake is mixed with running brown sugar syrup and ice cubes, then poured with coconut milk sauce. It tastes sweet with a savory tinge from the use of coconut milk. Not to forget the Selendang Mayang is also usually spiked with fresh syrup water and ice cubes when eating it. Especially if eaten during the day. There are also some who serve Selendang Mayang using pieces of jackfruit to add flavor and aroma to the drink.

![Figure 1 Recipe of Selendang Mayang Drink](image)

3.2 Serving
The form of Selendang Mayang in culinary presentation is unique because it is similar to a layer cake. The name selendang mayang itself appears because of the form of these snacks. Where, 'Selendang or Shawl' comes from food colors that are green, white, and red like a dancer's scarf. Meanwhile, the word 'Mayang' means chewy and sweet. Besides shawl, this snack is similar to a layer cake at a glance. However, in terms of texture the two are very different. These colorful little pieces are more chewy and soft on the tongue.

In the past, the Selendang Mayang was sold in a simple form, namely still using the cart that went around in the villages. If there are buyers, some of the traders keep using small bowls, and the rest turn to plastic cups to serve Selendang Mayang. It's just that, nowadays, pikul model traders are rarely found anymore, except at entertainment events and from the government.

Figure 2 Selendang Mayang Drink

3.3 Culinary Distribution Area

Selendang Mayang drink sellers are usually found in the city area (Glodok). Also at Eat & Eat Restaurant which is located in one of the shopping centers in the Kelapa Gading area. Including in the ragunan area and around Kemayoran. However, however the spread of the Selendang Mayang Drink area cannot be limited by the administrative area alone. Because if it is called the Betawi tribe, when there are Betawi people, you will find Betawi specialties. Apart from Kota Tua and Setu Babakan, which are still in the category of DKI Jakarta Province, Selendang Mayang Drink can also be found in the corner of Tangerang, for example the Cikokol area, Tangerang City. Until now, there are still Selendang Mayang Drink sellers who are in the sixth generation.

3.4 Culinary Culture Value

Philosophical

There is a folk tale from Betawi which is still legendary. The name Selendang Mayang, for example, comes from a beautiful daughter named Mayangsari. This life happened in the
Jampang era. Mayangsari’s hair flows down like a beautiful scarf so it really has a beautiful aesthetic.

So, as an area that is interconnected both vertically and horizontally, there is the concept of a triangle, namely the micro cosmos and macro cosmos. This symbolizes obedience to God-Allah and is proven when the earth’s alms which consist of a variety of typical Betawi culinary delights and cakes clearly have their own codes. This then becomes one of the Betawi culinary advantages that need to be preserved and preserved so that it does not become extinct from time to time. Apart from being widely known by people outside DKI Jakarta Province.

**Meaning and Function (Usefulness)**

There are several Betawi culinary categories that are already rare and are intended for culinary preservation. These include Sate Asem, Sengkulun, Sayur Babanci, and Porridge Ase [3]. There are also those in the category of potential for the development of typical Betawi souvenirs as souvenirs from tourists who come to DKI Jakarta Province, especially Betawi Village, namely Ginger Coffee and Coconut Roots. Finally, the culinary delights in the presentation are devoted to Betawi specialties with the aim of being one of the Betawi culinary tours. Among them are Pindang Bandeng, Sate Pentul, Laksa Betawi, and Selendang Mayang.

Where, the purpose of the appointment of Betawi culinary specialties in this case is Selendang Mayang is to raise the creativity and economic generator of local residents who indeed oblige to serve Betawi culinary. Especially for hotels and restaurants in DKI Jakarta Province, then Betawi specialties become superior. One way is by making stands in strategic locations to introduce and preserve them for the wider community. Exploring intangible cultural heritage today is indeed a lot of challenges and is the government's obligation.

**Culinary Heritage/ Maestro/ Successor**

Intangible cultural heritage such as this typical Betawi cuisine cannot be separated from the ingredients in the vicinity of DKI Jakarta Province. Then coupled with the creativity of the local community in making these culinary specialties were born. Where the spices or basic ingredients from one culinary to another have differences.

Is it true that the meaning of the Selendang Mayang Drink is made from the basic material of sago? In Betawi, there is also a lot like cassava flour but also imports. This means more awung flour or sugar palm, for the DKI Jakarta Province, especially along the Ciliwung River from the direction of Bogor, as the birthplace of the Betawi people and along these locations there are palm trees. In essence, human culture and civilization would not exist if there was no food. Because after all, eating and drinking has become a necessity for the community. This is what distinguishes culinary from outside Betawi with different names and ingredients.

**4 Conclusion**

The result of this research is the standard recipe of Selendang Mayang Drink than can be used as a guide for culinary preservation, especially traditional Betawi cuisine. Beside it, this research showed about historical perspective of Selendang Mayang Drink (culinary culture value, meaning and function, culinary heritage, etc) and also Contemporar perspective.
References


The Implementation of Women Empowerment Policy on Prevention of Violence in Household in Kampar

Emilda Firdaus
{Emilda27.ef@gmail.com}

Faculty of Law UNRI Jl. Patimura No.9 Pekanbaru

Abstract. UU PKDRT is a government policy to protect women's rights. During this time women victims of domestic violence shackled with a wrong understanding of religion and culture. This study examines the implementation of women's empowerment policy in the handling of domestic violence in Kampar regency, its inhibiting factors and its prevention efforts. This research is sociological juridical by using primary data. In conclusion, the implementation of women's empowerment policy in coping domestic violence in Kampar Regency still encountered many problems, it is needed a policy in the form of PERDA which is accompanied by empowerment of women in economy sector in accordance with local wisdom of Kampar society.

Keywords: Implementation, Empowerment, Domestic Violence.

1 Introduction

Discrimination against women that led to the occurrence of violence against women has become a hot issue in recent years. The world community realizes that violence against women is more prevalent in the domestic realm than in the public sphere, after much data and research have revealed it. Violence committed by husbands against their wives can occur in various forms such as physical violence, psychic violence, sexual violence and family neglect. In Indonesia, it is known as domestic violence (hereinafter abbreviated as KDRT).

From the perspective of human rights, discrimination violates human rights. While discrimination against women violates women's rights, so that women empowerment is needed so that women can fight for their rights which are violated. Women's empowerment and the achievement of gender equality are issues of human rights and social injustice and are mistakenly perceived as women's issues alone, as these social conditions and conditions are a requirement in the process of equitable community development and sustainable people's welfare. Therefore, the women's rights struggle which is a growing interaction between individuals with various educational backgrounds, professions and nationalities, the women's movement at national and international levels, has been widely supported by the United Nations over the last 50 years, so the need for equivalent partnership with men or gender equality has become a central issue in the fourth world conference on Women in Beijing, China (1995).

The Universal Declaration of Human Rights is a common standard for increasing respect for human rights and freedoms to be more dignified and protected, based on justice, freedom and peace. After the Universal Declaration of Human Rights, the various international human rights instruments governing the status of women in family and community life, such as the
Convention on the Elimination of All Forms of Discrimination against Women, are called the Women's Convention or the Convention of Women or the Cedaw Convention, which was born on December 18, 1979. The Cedaw Convention is the Convention the most comprehensive regulating the protection of women's rights, emphasizing the importance of eliminating discrimination against women in all its forms and manifestations. The concept of discrimination is contained in Article 1. Another legal instrument governing the status of women is the 1993 Declaration on the Elimination of Violence against Women.

Movement and dissemination of Human Rights continues even by penetrating the territorial boundaries of a country. As soon as the human rights and human rights urges, if any country is identified as violating human rights, the nation-state in this part of the globe has responded, especially to some countries dubbed as 'superpower', criticizing, accusing, even harsh critics such as embargoes and so on.

The Government of Indonesia continues to issue policies to improve the legal system to be more gender-responsive, one of them by issuing laws that are more friendly to the interests of women. However, the values that discriminate against women who have long been rooted in Indonesian society are one of the obstacles to development in the field of women's protection and empowerment, such as patriarchal culture, domestic violence that is considered a family disgrace and so on. This causes women to lose more access to voice their basic rights as human beings.

In addition to having a constitutional basis, the abolition of violence against women has also been regulated by the Law of the Republic of Indonesia Number 23 of 2004 on the Elimination of Domestic Violence (hereinafter referred to as UU PKDRT). UU PKDRT is a real progress generated by the struggle of feminist movement in Indonesia. Domestic violence that has been considered only within private territory has now been made a public problem. In this case the public-private dichotomy has been successfully deconstructed.

Domestic Violence indicates that this form of violence is closely linked to gender issues, discrimination against women and the strength of the culture adopted by the community that household issues are a private matter and only an excess of the dynamics of domestic life.

In the beginning, violence against women is not the same as other conventional crimes, it is not placed as a characteristic crime that is the specification on the victim with female gender and also has a distinctive impact, either specifically on the victim self or in general on social aspect of society. Moreover, there is not even a special treatment for women as victims who are affected by the violent behavior that befell him. Now the law is more responsive and accommodative to the development of understanding the complexity of the forms and impacts of crimes directed at women as victims, thus known as violence against women.

---


CEDAW is actually an abbreviation of the Committee on the Elimination of Discrimination Against Women, a UN committee that oversees the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in States Parties (States that ratify the Convention) and oversees the compliance of those States in the implementation of the Convention on Women. Article 1, Convention on the Elimination of All Forms of Discrimination Against Women (Cedaw), reads: For the purposes of the present Convention, the term "discrimination against women" means any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of reduce or eliminate the recognition, enjoyment or use of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field by women, irrespective of their marital status, on the basis of equality between men and women.
In the case of violence by the perpetrator, it turns out that the relationship of love and trust is often a myth only. Reports are coming from around the world note that domestic violence occurs in all walks of life. Perpetrators and victims come from various tribes, races, religions, social classes and any level of education.

Socio-cultural values that marginalize and subordinate women also exacerbate this condition. The subordinated relationships are experienced by women all over the world because sub-ordination relationships are not only experienced by developing societies such as Indonesian society, but also experienced by developed countries such as the United States and others. The condition of poverty experienced by women is not due to the fact that women are more lazy than men, but the poverty of women is caused more by structural factors that hegemonies and bind women's roles, so that women's position becomes weak and poor. Besides, there is also a change in the morals and morals of society. The prominent influence of industrialization lies in the status of work and work skills, of the family life and position of women, and the traditions and customs of consuming goods.

Traditional attitudes that women are perceived as male subordination, the stereotyping of stereotyped roles, coupled with traditional female attitudes such as social and economic dependence on husbands and families and the fear and reluctance of women victims of violence to obtain justice, are the main causes among many other causes that cause violence in the household is not revealed or not addressed. Traditional attitudes that assume that what happens in the household are the things that should be resolved in the household as well. Accompanied by the limitations of legislation that can be used to resolve domestic violence through legal channels, from the tortuous reporting process, investigation and investigation process and court application, and court proceedings are also causes why not many victims complain to law enforcement. Still the scarcity of women's crisis centers and the victims' ignorance about the institutions that can help her solve her problems is also the reason that the victim chose to silence her.

In Indonesia, the level of violence against women in households is increasing every year, it turns out that the law products that prohibit violence against women in the household are less strong with the legal culture that has been adopted by the community. Patriarchal culture is one factor that fosters cases of domestic violence.

Riau Province is one of the provinces that is very strategic and has quite a lot of potential natural resources, such as mining, agriculture and fisheries. But recently Riau is again highlighted by events related to domestic violence, this can be seen from data P2TP2A Riau Province, from 2011 to 2016, from 96 cases to 646 cases, or if grouped into 17 case groups. The case of domestic violence is the highest case, in 5 (five) years reached 249 victims, with 55 people in 2013, 44 people in 2014, and 53 people in 2016, this is what causes Riau as a red zone.

The increase of this case cannot be separated from the public's courage to report it, so that the government through the agency or related bodies can well provide services to the community in creating protection. In addition, the data are also inseparable from the coordination or report of the districts in Riau, with Pekanbaru City 431 cases for 5 (five) years, Kampar 100 cases in 3 (three) years, Meranti and Indragiri Islands Downstream with 5 (five) cases each.

The emergence of domestic violence every year as if describing is not maximal preventive measures and protection to women, or how to empower women so that women do not become weak, or become the object of male violence. The protection of women is absolute, as a basis for upholding human rights, which cannot be usurped by anyone and is the responsibility of the State as a consequence of the State of Law. Data on the number of cases of violence
against women and children who have been reported and followed up by the Kampar District Police Reskrim Unit, in the last 3 (three) years are:

Table 1. Recapitulation of Number of Violence Cases in Women and Children At Kampar Reskrim Unit 2014-2016

<table>
<thead>
<tr>
<th>No</th>
<th>Type of Case</th>
<th>Number of Complaints</th>
<th>Number of Complaints Under the Follow up</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Fornication</td>
<td>13</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>Domestic Violence</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>3</td>
<td>Adultery</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>Rape</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>Pursue Underage Children</td>
<td>2</td>
<td>5</td>
</tr>
</tbody>
</table>

Source: Sat Reskrim Polres Kampar District

The number of cases of domestic violence that occurred in Kampar, would have an adverse impact on the development and protection of women, both as human (individual) and as a mother for the next generation, while the impact arising from the occurrence of domestic violence, especially against the wife are:

1. Usually have feelings of inferiority, shame and passivity;
2. Mental health disorders such as excessive anxiety, hard to eat and hard to sleep
3. Having serious illness, serious injury and permanent disability;
4. Sexual health disorders.

The magnitude of the negative impact of domestic violence on women is a common problem of the nation. Moreover, the impact of violence that is psychic, requires a long period of healing and broad impact. This is because women's natures as mothers and early educators for the sons of their daughters, so women must be physically and mentally healthy, while women affected by psychic violence will be mentally disturbed, and a necessity will be able to produce the next generation of healthy and intelligent people. Given the dangers of domestic violence for the sustainability of a nation, it is necessary to have concrete efforts by the government or stakeholders to prevent domestic violence against women from happening again, or in the event of a victimized woman not feeling ashamed to report.

Domestic violence is violence that has a unique character, because it occurs within the private sphere, the perpetrator is the closest person who should be the protector of the victim, and has a profound impact on the protection of everyone's human rights. As a State of Law with an obligation to protect the human rights of its citizens, the government has issued various policies and regulations to prevent domestic violence, including the issuance of Law Number 23 Year 2004 on the Elimination of Domestic Violence. But it is not very effective to suppress this violence, because of the high number of domestic violence, including in Riau Province.
Furthermore, based on data in the last 3 (three) years following the recapitulation of the number of cases of violence against women and children in P2TP2A Kampar District, are:

<table>
<thead>
<tr>
<th>No</th>
<th>Type of Case</th>
<th>Number of Complaints</th>
<th>Number of Complaints Under the Follow up</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rape</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>2</td>
<td>Fornication</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>Child Abuse Persecution</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Persecution</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>Domestic Violence</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>6</td>
<td>Violence Against Children</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>7</td>
<td>Coercion of Child Marriage</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>8</td>
<td>Sexual harassment</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>9</td>
<td>Fight</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>Pursue Children under Age</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>11</td>
<td>Theft</td>
<td>-</td>
<td>8</td>
</tr>
</tbody>
</table>

Source: P2TP2A Kampar District

Situations related to domestic violence, certainly still many who have not reported, or have reported but re-withdraw the report. This is because women are regarded as male subordination, the stereotyping of stereotyped roles, coupled with traditional female attitudes such as social and economic dependence on husbands and families and the fear and reluctance of women victims of violence to obtain justice, are the main causes between other causes that cause violence in the household is not revealed or not addressed. Traditional attitudes that assume that what happens in the household are the things that should be resolved in the household as well.

In addition to the limitations of legislation that can be used to resolve domestic violence through legal channels, from the convoluted reporting process, investigation and investigation process and court application, and court proceedings, -which is why not many victims complain to law enforcement. Still the scarcity of women's crisis centers and the victims' ignorance about the institutions that can help her solve her problems is also the reason that the victim chose to silence her.

One of the victims of domestic violence in Kampar regency said the factors causing domestic violence are based on several reasons such as:

1. Economic factors;
2. Factors of physical difference, power, and power.
Economic factors are motivated because of the dependency of the wife to the husband, the wife does not have the skills to make money, so just accept the husband's rough treatment for fear of not being supported or afraid of divorce. Other factors are the domination of power by husbands and gender discrimination. The husband plays a full role in the family by ignoring the rights of his wife and children. The differentiation of roles and positions between husband and wife in society is culturally derived on every generation, even believed to be a religious provision. This resulted in the husband being placed as a person who has a higher power than the wife. Misinterpretation of religious values is exacerbating the occurrence of domestic violence.

UU PKDRT in passing has been comprehensive in preventing Domestic Violence. The imposition of sanctions for perpetrators of domestic violence is very heavy, compared with the imposition of sanctions in the Criminal Code. But in practice, the law enforcement process is still not running as expected. The most important inhibiting factor is not yet understood by the public against the dangers and effects of domestic violence, as it is isolated by patriarchal cultural values and a false understanding of religious texts. Similarly, in terms of victims / potential victims of systemic factors that cause it. Among the causes are poverty / economic factors, low education level, female mindset itself in view of its position, environmental factors, and many other factors.

Legal protection of women victims of domestic violence and their families requires a strong commitment with high regard for the value of justice, non-discrimination and human rights as guaranteed by the constitution.

The existence of a legal system that is not friendly with domestic violence cases is not solely because of the content of the law, but more on the mindset of law enforcement officers, government apparatus, and the wider community that is still surrounded by a patriarchal view so that discriminatory acts often color in daily life -day as evidence of domestic violence occurs in society. The move towards a gender-responsive legal system still needs a hard struggle through solving the root causes.

The problems studied are, firstly, how the implementation of women's empowerment policy in combating domestic violence in Kampar regency; second, what is the obstacle factor in implementing the policy of women empowerment in overcoming domestic violence in Kampar regency. Third, what is the ideal form to implement the policy of women empowerment in overcoming domestic violence in Kampar Regency in the future.

2. Method

The methods used in this research are:

1. Location and Time of Research Field research was conducted in Kampar District. Secondary data was collected at the library of the Faculty of Law, University of Riau, Soeman HS Regional Library, Pekanbaru Municipal Library, The study time was 6 (six) months.

2. How to Size Size Determination Sampling method is Purposive Sampling that is retrieval tailored to the purpose of research, the sample size is not questioned, the sample taken only in accordance with the purpose of the study. To achieve the purpose and purpose of this study, then the population and sample in this study are:
<table>
<thead>
<tr>
<th>No</th>
<th>Respondents</th>
<th>Population</th>
<th>Sample</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Head of Law Department Setda Kampar</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>2.</td>
<td>Head of P2TP2A Kampar / Department of Women Empowerment and Child Protection</td>
<td>6</td>
<td>6</td>
<td>100%</td>
</tr>
<tr>
<td>4</td>
<td>Kampar parliament</td>
<td>4</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td>5</td>
<td>Kampar District Police</td>
<td>2</td>
<td>2</td>
<td>100%</td>
</tr>
<tr>
<td>6</td>
<td>Society</td>
<td>20</td>
<td>20</td>
<td>100%</td>
</tr>
</tbody>
</table>

3. Types and Data Sources: a. This type of research is sociological juridical with emphasis on field research. The sociological juridical approach is carried out because the problem studied revolves around how the application of law in society. Judging from its nature, this research is descriptive, because it intends to describe the facts examined clearly and systematically; b. Data source Data to be used in this research is:
1) Primary data is data obtained directly from the respondents by using data collection tools in the form of interviews;
2) Secondary data is data obtained from legislation, namely Law Number 23 Year 2004 on PKDRT, CEDAW, and the literature related to the main problem of this research;
3) Tertiary data is data obtained through dictionaries, encyclopedias, and the like to support both primary and secondary data.

4. Data Collection Techniques In accordance with the research stage, then the data obtained by technic:
a. Study Document in the form of research results, and literature that have relevance to the object of research.
b. Interviews, namely to the parties deemed competent and authorized in answering the problem of implementation of women's empowerment policy in overcoming domestic violence in Kampar District, consist of Kampar Regency Government, Kampar DPRD, P2TP2A, Kampar Society.

5. Data Analysis
The data obtained through this study were analyzed using qualitative juridical methods, looking for living and unwritten laws. Rules that one with the other should not be contradictory, pay attention to hierarchy of legislation and legal certainty.

3. Discussion

3.1 Implementation of women's empowerment policy in combating domestic violence in Kampar District
At a time when the culture of the nations is still low-grade, the law arises spontaneously unnoticed by the people. And as the culture develops, all the functions of society are entrusted
to a certain group. Thus legal processing is entrusted to the jurists as experts in their fields, and thanks to the activities of them the rule of law can be built scientifically, technically, even though the legal development is still bound to the spirit of the living law in the soul of society or nation. Regarding the linkage of the nation's beliefs, Von Savigny named the political element and on the concept of technical processing he named it with technical elements. Therefore, the government at both central and local levels in issuing policies should be guided by the values that live in society.

Law Number 23 Year 2004 on the Elimination of Domestic Violence, is one of the legal products established by the government to implement the protection of human rights in private areas, especially in the form of domestic violence. This is in accordance with the mandate of the 1945 Constitution of the State of the Republic of Indonesia, especially Article 28 H paragraph (2), namely the right to obtain convenience and special treatment in order to achieve equality and fairness (Affirmative Action), this is a legal breakthrough where originally domestic violence is considered as territory a private that no one outside the home environment can enter.

As a public law in which there is a threat of imprisonment or a fine for those who violate it, it is appropriate that the people comply with Law No. 23 of 2014 on PKDRT, with the awareness that this legal product is made by the government to protect the basic rights of the citizens for the sake of the realization of protection Human rights for all citizens as the demands of a state law (Rechtsstaat).

The background of the presence of this Act is intended to provide a deterrent effect for the perpetrators of domestic violence, the threat of punishment that does not include a minimum penalty and only the maximum penalty so that the alternative legal threat of confinement or fines feels too light when compared with the impact received by the victim, even more profitable if using legal provisions as stipulated in the Criminal Code. In the implementation of this Act, there needs to be a strategic effort outside the victim's self in order to support and provide protection for the victims in order to disclose cases of domestic violence that befall them.

The scope of Law Number 23 Year 2004 on the Elimination of Domestic Violence, not only addressed to a husband, but also can be addressed to a wife who committed violence against her husband, her children, her family or her housemaid residing in a household.

The impact of Law Number 23 Year 2004 on Elimination of Domestic Violence in Indonesia each year is fluctuating, including in Kampar regency of Riau Province. This can be seen from the data of the number of rapes of domestic violence cases that researchers get from Kampar Polres from 2013-2016.

Based on these data provide an illustration to the authors that the lack of public awareness of the presence of Law Number 23 Year 2004 on Elimination of Domestic Violence in Kampar District. Various policies have been issued by the Local Government of Kampar Regency, among others are drafting the Local Regulation on the protection of women, making UP2K program (effort of increasing family income) in each sub-district, various training for housewife, and forming KTP women) in each sub-district.

Based on data that researchers get from some communities in Kampar district, said that some policies made by the Kampar regency government have not had a long-term impact on the empowerment of women victims of domestic violence, such as trainings that are conducted only temporarily and there is no continuation.

This shows that the implementation of women's empowerment policy in domestic violence prevention has not been maximized. The policy of domestic violence should be comprehensive and sustainable, there must be a complete and appropriate regulation
accompanied by empowerment so not only protection of women. This is because most factors of domestic violence are economic factors, which in Kampar regency is divided into; low education, no permanent job, large number of family members in one house, early marriage and lack of religious understanding.

So it needs a policy of protection and empowerment of women victims of domestic violence in the form of Regional Regulations which also include empowerment in the economic sector, in accordance with the characteristics of local wisdom kampar community. Such as empowerment in the field of pineapple industry, salai patin, convection industry, and other economic sectors that exist in Kampar society.

3.2 Factors inhibiting the Implementation of Women's Empowerment Policy in Preventing Domestic Violence in Kampar District

Many challenges faced by Kampar regency government in the implementation of Law Number 23 Year 2004 on Elimination of Domestic Violence, namely:

1. Conventional Thinking Patterns In building a pattern of awareness of the existence of society as the subject of law, because most people in Kampar regency still faithful to conventional thinking patterns. The conventional pattern of thought is a way of thinking that sees the domestic realm as a private authoritarian territory, so that public law is deemed incapable of interfering with whatever happens within it. There are many cases of domestic violence, but local governments have difficulty handling because many women victims do not report.

2. Patriliakat Culture
   The overwhelming majority of Muslim occupation, misinterpretation of religion and culture and cultural values in Kampar's social fabric, so that married women, thinking that it is their duty to guard every family's disgrace, the husbands' disgrace and feel legitimate - what about what the husband did to him. This culture also places men as superiority in various fields, including in the household.

3. Lack of Socialization of Local Government Policy
   The lack of socialization of the policies of Kampar regency government related to prevention of domestic violence in the form of trainings for housewives to improve their economy. So much of the training is not known to the public and is only temporary and there is no continuity.

4. No Legal Devices
   Structurally there is no legal tool that is specifically used as legal reference at the regional level. There needs to be a Regional Regulation that provides comprehensive protection for victims of domestic violence.

3.3 Ideal Form of Implementation of Women Empowerment Policy in Combating Domestic Violence In Kampar District

The strengthening of efforts to eliminate violence against women through a structural approach must be done, so that public policies can become more responsive to women's conditions and positions. The notion of violence against women is not a question arising from individual elements, but rather systemic and structural.

In Law Number 23 Year 2004 regarding Elimination of Domestic Violence, the Government has obligations, namely:
a. Formulate policies on abolishing domestic violence;
b. Organizing communication, information and education about domestic violence;
c. Organizing socialization and advocacy on domestic violence; and
d. Conduct gender sensitive education and training, and domestic violence issues and set gender-sensitive standards and service accreditation.

Based on the research data, Kampar District Government has issued many policies to prevent domestic violence, such as in the form of training for housewife in order to improve skill to earn a living, to form a task force of domestic violence, to make UP2K program (effort of improvement family income) in each sub-district. This year there are already Ranperda about the protection of women.

Law Number 23 Year 2004 on the Elimination of Domestic Violence is used as reference by the Regional Government officials of Kabupaten Kampar in the making of regional level policies aimed at protecting women. In a State of Law a law or law instrument is required to protect the rights of citizens. The legal product should be comprehensive. To protect the right of women in the prevention of domestic violence, ideally it should be in the form of empowerment so not just protection.

The understanding of the law further elaborated by Von Savigny is related to the concept of the state, namely that there is no individual human being. This is because every human being is part of a higher unity, family, nation, and country. Furthermore, he also reveals that every period weaves with the past, so that culture with law can only come from the soul of the nation, because the nation still holds its relationship with the past. Based on the understanding outlined by Von Savigny it would seem that law is a free human creation, but the free man is not an individual human being. In other words, the law does not come from an individual, who may be arbitrary, but derives from the soul of a nation closely interwoven with history.

So as to prevent the occurrence of domestic violence in Kampar regency, local government must make a policy to implement Law Number 23 Year 2004 about PKDRT, in the form of Local Regulation that match with characteristic of local people's economy. It aims at empowering women victims of domestic violence, through activities that are not foreign to them, so it will be more effective to be done. The ideal form of implementation of women's empowerment policy in the prevention of domestic violence in Kampar regency is in the form of Local Regulation on Protection and Empowerment of Domestic Violence Victims in the sectors of the people's economy in accordance with the local wisdom of the Kampar community, consisting mainly of: Pineapple industry, Salai Patin and Convection Industry. This is in line with Von Savigny's opinion that the law is the soul of the nation, which continues to grow but cannot be separated from its history.

4. Conclusion

1. Implementation of women's empowerment policy in prevention of Domestic Violence in Kampar Regency is not maximal, due to lack of regulations which regulate the protection and at the same time empower woman in economy sector which resulted in the lack of protection of women's rights of domestic violence victims. State through Kampar regency government should be more active role to carry out the mandate of this Law of PKDRT. The Law on Domestic Violence (PKDRT) explicitly states that domestic violence is a form
of crime against human rights. The protection of human rights is an obligation in a State of Law and it is the responsibility of the government to exercise it both de jure and de facto;

2. The inhibiting factor of the implementation of women's empowerment policy in the prevention of domestic violence in Kampar regency is to lie in the cultural factor of society that is conventional thinking pattern which still strong with patriarchal culture, that men have higher social strata of women. Women or wives should obey or accept whatever treatment from men or husbands for the honor of the home, even at the expense of their basic rights. The excesses of this cultural factor, too, resulted in a less intense socialization of this Act, because the notion that domestic violence is a private / family matter is not considered important;

3. The ideal form of implementation of women's empowerment policy in the prevention of domestic violence in Kampar regency is to make the law in the form of regional regulation which not only regulate the protection but also the empowerment of women in social economy sector in accordance with the local wisdom of kampar regency society, women are economic factors.

Suggestions that writer can give in this research are:

Regulations are required in the form of legal products of the Regional Regulations, which regulate the protection of women and yet at the same time regulate the empowerment of women in the economic sector based on local wisdom of Kampar people. This will be a new breakthrough to change the legal system that does not have a gender perspective to be gender perspective as well as an effort to empower women to prevent domestic violence.

Because one of the obstacles to the implementation of UU PKDRT is community culture, it is expected to the Kampar Regency Government to include material on Gender understanding in formal and non-formal education system.

References

[7]. Law Number 10 Of 1998 Concerning Banking Civil Law Act (Burgelijk Wetboek)
[8]. Law Number 8 Of 1999 Concerning Consumer Protection
The Enforcement of Administrative Law to Violation of Building Construction Permit Requirements for Business Activity

Enny Agustina
{ennyagustinadua@yahoo.com}

Kader Bangsa University, Faculty of Law, Palembang, South Sumatra, Indonesia

Abstract. The Government, especially the Regional Government, has regional autonomy as the authority or power in a region that regulated and managed for the benefit of the region itself. The government in regulated and control used of land for business has various policies, which is one of Building Construction Permit issued by the City / Regency Government. There is a problem about Building Construction Permit that is the inconsistency of laws and regulations with social facts that occur in the community. From preliminary research results in Civil Service Police Unit and there are still many buildings for business activities that did not have Building Construction Permit. This research was data collection method was used library research (Library Research). Research Purposes was The Enforcement of Administrative Law to Violation of Building Construction Permit Requirements for Business Activities and to known The Government's Effort to Enforce Administrative Law to Violations of Building Construction Permit for Business Activities. The result of this research was The Civil Service Police Unit had done well the enforcement of administrative law. This is because the enforcement process is based on public order, the officers of Civil Service Police Unit seen that the location of the building for business activities was appropriate with the Spatial Plan.

Keywords: Enforcement Law, State Administrative Law.

1 Introduction

Every society has the right to build and open a business. However, these rights were accompanied by procedures and obligations that fulfilled by the community. The Government, especially the Regional Government, has regional autonomy as the authority or power in a region that regulated and managed for the benefit of the region itself. The government in regulated and control used of land for business has various policies, which is one of Building Construction Permit issued by the City / Regency Government. There is a problem about Building Construction Permit that is the inconsistency of laws and regulations with social facts that occur in the community. From preliminary research results in Civil Service Police Unit and there are still many buildings for business activities that did not have Building Construction Permit. Based on the background of the problem, it submitted and formulated the research title: "Enforcement of Administration Law to Violation of Building Construction Permit Requirements for Business Activity".
2. The Problem

1. How is The Enforcement of Administrative Law to Violation of Building Construction Permit Requirements for Business Activities?
2. What is The Government's Effort to Enforce Administrative Law to Violations of Building Construction Permit for Business Activities?

3. Purpose Research

1. To Known The Enforcement of Administrative Law to Violation of Building Construction Permit Requirements for Business Activities.
2. To Known The Government's Effort to Enforce Administrative Law to Violations of Building Construction Permit for Business Activities.

4. Literature Review

A. The Enforcement of Administrative Law.

The term law enforcement is often used to translate the term law enforcement (C.S.T, 2002) which is a series of efforts, processes, and activities to make the law work as it should. According to Jimly Ashiddiqie, an attempt to enforce or function of legal norms as a behavioral guide in the traffic or legal relationships in public life and state.

In the enforcement of administrative law is known to preventive law enforcement and repressive law enforcement (Tjokoaminoto, 1995). The enforcement preventive law was a series of action attempts, which is intended as a prevention of no violation or deviation of existing requirements. The enforcement preventive law was done by providing a provision for understanding and awareness for the society as well as parties related to licensing issues in order to understand what the legislator wants is. While repressive law enforcement was done when there had a violation of law, especially regarding the matter of licensing.

In the State of Administrative Law, the use of administrative sanctions was the application of government authority, where this authority came from the rules of the State Administrative Law written and unwritten. In general, authorize the government to establish the norms of the Law.

State Administrative, also accompanied by given authorize the enforcement of norms through the imposition of sanctions for those who violate the norms of The State Administrative Law. There are some typical administrative sanctions among others:
1. Bestuursdwang (Government coercion);
2. Recall of decision (provision) profitable (permits, payments, subsidies);
3. Imposition of administrative fine;
4. Imposition of forced money by the government (dwangsom).

B. Violations

The violations are coming from criminal law, civil law and administrative law. In terms of criminal law violations of criminal law norms immediately is taken action by the court without
any complaints from the party who harmed. While the violation in terms of civil law is a violation of civil law norms just taken action by the court after a complaint from the parties concerned. According to administrative law is a violation of the requirements of law and regulate governing the implementation of the interests and general welfare of the State and the actions of officials or administrative bodies of State which contradicts with the general principles of good governance (MD, 2006).

C. Building Construction Permit for Business Activities

Building Construction Permit was a permit given by the Regional Government to the owner of a stand-alone building and / or building a stand-alone infrastructure to build new, transforming, expanding, reducing and / or caring for buildings and / or building of stand-alone infrastructure in accordance with administrative requirements and applicable technical requirements.

Susanta said that a permit given by the regional government to a person, a group of persons or bodies to build in the framework of the utilization of space appropriate with the permit given because it fulfill the requirements of various aspects, land, technical, planning and environment. Every person who owns a building had a Building Construction Permit. Building Construction Permit is the beginning of a letter from the regional government that the building owner constructed the building appropriate with the stipulated function and based on the technical plan of the building approved by the regional government. (Sutedi, 2010).

Understanding business activities in the Big Indonesian Dictionary are an activity by directing the energy, mind, or body to achieve a purpose.

In Indonesia is known for small and medium micro enterprises. According to the Law of the Republic Indonesia Number 20 Year 2008 on micro, small and medium enterprises the definition is:

1) Micro Enterprises is productive businesses owned by natural persons and / or business entities that fulfill the criteria of micro-enterprises, and includes:
   a. Having a net worth of at most Rp. 50,000,000, (fifty million rupiah), excluding land and business buildings, or
   b. Having annual sales of at most Rp. 300,000,000, (three hundred million rupiah).

2) Small-scale business is a stand-alone productive economic enterprise, conducted by an individual or business entity that is not a wholly owned subsidiary, controlled, and became a direct or indirect part of a medium-sized or large-scale business that fulfill the criteria of a small business as referred to in the law.

3) A medium-sized enterprise is a stand-alone productive economic enterprise, conducted by an individual or business entity that is neither a subsidiary nor a branch of a company owned, controlled, or partakers either directly or indirectly with a small business or a large business by the amount of wealth net or annual sales proceeds as stipulated in law. In general, these medium-sized businesses in bank finance are included in the credit segment with a loan value of Rp. 500.000.000, (five hundred million rupiah) up to a maximum of Rp. 5.000.000.000, (five billion rupiah).
5. Results And Discussion

a. The Enforcement Administration Law to Violations of Building Construction Permit for Business Activities (Sukardja, 2014). Pamong Police Unit. The process of investigating the violation of regional regulations conducted when there are reports from the public or agency or findings in the field by the officers of Civil Service Police Unit, evidence of violation of regional regulations conducted investigation process. The investigation process was intended to find the element of infringement committed by the offender. After the data was valid or considered correct then made Report Events Violations of Regional Regulations made by Civil Servants Investigator. After the Report Events Violations of Regional Regulations conducted call offenders. This invocation used a summon letter was done up to 3 times. After the summons of the 3 Civil Service Investigators request assistance by the Police to take forcibly violators. After the Police pick up the offenders, it was taken to Civil Service Investigator's office or taken to the Police Station. And also after the letter summoned Civil Service Investigator officers issued a warning letter to violators without request assistance by the Police. The existence of this call had entered the realm of investigation. After the investigation by Civil Servant Investigator completed then the delegation to the Prosecutor through the police / police as the Coordinator of Supervisor of Civil Servant Investigator. After declared the complete file, so it was done delegation to conducted session.

The enforcement of administrative law to violation of Regional Regulation appropriate with Regional Regulation Number.3 Year 2012 about Organization and Work Procedure was conducted by Civil Service Police Unit. The authority given by the Regent to Civil Service Police Unit is in the form of authority sourced from the delegation's authority. The authority of the delegation is the authority of the government from one government organ to another. Civil Service Police Unit as a tool of regional government in maintaining and implementing peace and public order and enforcing regional law products. (Syaffie, 2003).

Process enforcement administrative law to violation of Building Construction Permit there are two: (Wijoyo, 2006)

a. Preventive
The preventive nature of enforcement administrative law is the prevention of law enforcement. Preventive law enforcement includes:
1. Socialization on the provisions of regional regulations
2. Integrated, monitoring and supervision in an integrated manner with Regional Device Work Unit. Civil Service Police Unit by conduct supervision to the buildings for these business activities directly plunge spaciousness by visit one by one building under construction and questioned related to Building Construction Permit.
3. Firm Actions. The firm action taken by Civil Service Police Unit is to impose administrative sanctions.

b. Repressive
The repressive nature of the enforcement of administrative law is law enforcement conducted after the violation of law. Repressive law enforcement includes: (dkk, 2011) Philipus M. Hadjon, et al. 2011, Introduction to Indonesian Administrative Law, Gajah Mada University Press, Yogyakrta.

1. Persuasive coaching
   Persuasive coaching is a coached to change or influence one's behavior, so behave appropriate with the ordered (HR, 2013).
The owner of the building that did not have Building Construction Permit after a persuasive coaching and then the building owner is summoned to Civil Service Police Office for question relate to the land used for the building, building permit, and building function. After owner of the building was questioned by Civil Service Police Officer made the news of the guidance event. This Civil Service Police Officer issued a coaching report and conducted persuasive coaching for 15 working days. (Santosa, 2015).

2. Warning letters
   This warning letter is given to violators of the Building Construction Permit if persuasive coaching is ignored. This warning letter there are three times, that is (Yuni, 2008):
   a) There are seven days. If the offender ignores the first warning letter then, there is a second warning letter;
   b) Given for seven days. If the offender ignores the second warning letter then, there is a third warning letter;
   c) This third warning letter is given for 3 days.

3. Execution termination and sealing
   The function of this sealing is to avoid other violations of the building under construction. The sealing procedure is the third warning letter is ignored, officer of Civil Service Police Unit reads the warning letter in front of the building and the people in the building, and then the officer who seals the letter is assigned the sealing duty. (Siahaa, 2008).

4. Dismantling of buildings
   The demolition of the building was initially handed over to owner of the building to dismantle the building itself. The goal is given an opportunity to owner of the building to retrieve the items used again. If owner of the building did not dismantle the building on the 7th day then officer of Civil Service Police Unit dismantle own building which has no Building Construction Permit.

b. Government Efforts to Enforcement of Administrative law to Violation of Building Construction Permit for Business Activities

1. The Office of Investment and Integrated Licensing socialize to the community Building Construction Permit. To socialize control the Building Construction Permit for business activities of the office of Investment and Integrated Licensing invites small and medium entrepreneurs, headman, Family Welfare Development or usually referred to as the Family Welfare Development Team is usually a police officer from the Sector Police or the Rayon Military Command.

2. Industry, trade, cooperatives, micro, small and medium enterprises had tried to make a copy to every member who wants to register their business and did not have a Building Construction Permit.

3. Efforts of Civil Service Police Unit for violation of Building Construction Permit requirements for business activities are:
   a. Socialization
   b. Persuasive, monitoring and supervision in an integrated manner with the Regional Device Work Unit.
   c. Firm Action
6. Conclusion

Based on the previous description or based on the results of research on The Enforcement of Administrative Law to Violation of Building Construction Permit for Business Activities, the following conclusions were drawn:

1. The Civil Service Police Unit had done well the enforcement of administrative law. This is because the enforcement process is based on public order, the officers of Civil Service Police Unit seen that the location of the building for business activities was appropriate with the Spatial Plan.

2. Government efforts to the enforcement of administrative law to violations of Building Construction Permit for business activities of the Office of Investment and Integrated Licensing had conducted socialization to the community about Building Construction Permit. from the Department of Industry, Trade, Cooperatives, Micro, Small and Medium Enterprises had tried to make a copy to every member who wants to register their business and did not have Building Construction Permit, while from Civil Service Police Unit conducted coaching and / or socialization, and persuasive, monitoring and supervision in an integrated manner with the Regional Device Work Unit and Action Firm.

References

Book:

Internet:
[3]. https://Klatenlab.bps.go.id/linkTableStatis/view/id/10 accessed on November 14, 2016, at 18:13 pm.
[10]. https://www.academia.edu/5090235/Hukum accessed Friday November 25, 2016, at 10.03 wib.

Regulation of the Law of Republic Indonesia:
[2]. Law of the Republic Indonesia Number 23 Year 2014 on Regional Government, State Gazette of the Republic Indonesia Year 2014 Number 244, Supplement to State Gazette of the Republic Indonesia Number 5587.
[4]. Regional Regulation of Regency of Municipality Number. 15 Year 2011 on Building and Building, District Gazette of Regency of Klaten Year 2011 Number 15, Supplement to Regional Gazette of Regency of Klaten Number 70.

Thesis / Dissertation:

Brochure:
[1]. Brochure of Integrated Office of Investment and Licensing of Klate Regency
Application of Government's Responsibility in Compliance of Community Rights in The Food Area in The District TTS Province Nusa Tenggara Timur

Jeane Neltje Saly
{jeaneneltje@gmail.com/ jeanes@fh.untar.ac.id}

Tarumanagara University, Indonesia

Abstract. The problem is what obstacles the implementation of government responsibility create enough food for the people, and how efforts are made for food sufficiency, in the Soe district of Timor Tengah Selatan/ TTS. The research method used is empirical juridical by using primary data besides secondary data. The data obtained through observation techniques and interviews, so that the data obtained are analyzed quantitatively and the conclusions are taken inductively. The results of the study are in addition to geographical conditions, rainfall, clean water, human resources are still far from expectations both in quality and quantity, as well as transportation for communication from village to village next to the marketing location challenges as well as increasingly complex food, change from time to time as a result of being influenced by local and global specific matters. Efforts made by Local Government to achieve food self-sufficiency through local produce, among others, in the form of institutional strengthening. and business development followed by post-independence stages in the form of General Guidance Sharpening with Stronger and Measurable Output in stages to meet the needs of the community, and with the desire to be exported, at least in order to enjoy the ASEAN community market.

Keywords: Food, Government Responsibility.

1 Introduction

1.1 Background Issues

Problematic implementation of government responsibility in the field of food security is one of the obstacle aspects of the State in the welfare of the people to realize the goal of the formation of the State Government, set out in the Preamble of the 1945 Constitution Particularly in Soe Regency of Timor Tengah Selatan (TTS), where the application of local food becomes an issue that has not been completed optimally, resulting in malnutrition, especially toddlers, which also occur in almost all countries in the world, on Global Nutrition Report.

1 Pembukaan Undang-Undang Dasar Negara Republik Indonesia ke-4, yang berbunyi: "Lebih dari itu untuk membentuk sebuah Pemerintah Negara Indonesia yang melindungi seluruh bangsa Indonesia dan keseluruhannya tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mendidik kehidupan berbangsa, ... dst
The Global Nutrition Report shows that Indonesia ranks 108th in the world with the most severe malnutrition cases resulting in inhibition of physical growth of toddlers, but also affects the internal organs of the body above. Laos (124) and Timor Leste (132). Indonesia's position is even higher among ASEAN countries, such as Thailand (46) Malaysia (47), Vietnam (55), Brunei (55), Philippines (88), even Cambodia.

One of the ways in carrying out its responsibilities is that the government implements the fulfillment of food towards the realization of self-reliance and food security. As an archipelagic country whose geographical patterns vary, food fulfillment is done through local food production.

Its implementation faces the alteration of processes and the way in which order is made. In order to run in an orderly manner, then the law is used as the basis, in accordance with the view of Mochtar Kusumaatmadja that the law should be used as the foundation in the implementation of development that moves to change and improve.2

The legal basis for the implementation of food is regulated in Law No. 18 of 2012 on Food (Act No. 18).

The philosophical considerations is that:

"Food is the most basic human needs and fulfillment is part of human rights guaranteed in the 1945 Constitution of the State of the Republic of Indonesia as a basic component to realize qualified human resources."

Judicial Considerations is that:

The State shall be obliged to realize the availability, affordability and fulfillment of adequate, safe, quality, and nutritious food consumption both nationally and regionally and personally evenly throughout the territory of the Unitary State of the Republic of Indonesia at all times by utilizing resources, institutions and culture local”.

The sociological consideration is that:

"as a country with a large population and on the other hand having diverse natural resources and food sources, Indonesia is able to fulfill its food needs sovereignly and independently”

UU No. 18/2012 About Food determines that what is meant by:

“Food is anything that comes from biological sources of agricultural, plantation, forestry, fishery, livestock, aquatic and water products, whether processed or unprocessed for food or drink for human consumption, including Food additives, Foodstuffs, and other materials used in the process of preparing, processing, and or the manufacture of food or drink dan/atau pembuatan makanan atau minuman”3.

Food is a basic component for the realization of quality human resources, is the most basic human needs and fulfillment is part of human rights guaranteed in of the 1945 Constitution of the State of the Republic of Indonesia4.

---

2 Mochtar Kusumaatmadja, Fungsi Hukum Dalam Pembangunan Nasional, BinaCipta, 1978,hal.11
3 Pasal 1 angka 1 Undang-Undang Nomor 18 Tahun 2012 tentang Pangan
4 Konsiderans Undang-Undang Nomor 18 Tahun 2012 tentang Pangan, huruf a
This is reflected in the General Explanation of Law no. 18 on Food, that: in the implementation of national development which is a reflection of the will of all people to continuously improve their prosperity and welfare fairly and equally in all aspects of life that is done in an integrated, directed, and sustainable manner in order to realize a just and prosperous society, both material and spiritual based on Pancasila and of the 1945 Constitution of the State of the Republic of Indonesia.

The purpose of the Food Arrangement is to meet basic human needs that provide benefits in a fair, equitable, and sustainable manner based on Food Sovereignty, Food Self-Reliance, and Food Security.

The purpose of arranging the organization of Food is set forth in the norm of Article 3, that is "Food Implementation is carried out to meet basic human needs that provide benefits in a fair, equitable, and sustainable manner based on Food Sovereignty, Food Self-Reliance, and Food Security.

Furthermore, in the norms of Article 4, among others, it is stipulated that "The Implementation of Food aims to improve the ability to produce food independently, provide a variety of food and meet the requirements of security, quality, and nutrition for public consumption, and realize the level of sufficiency of Food, especially Staple Food at reasonable and affordable prices in accordance with the needs of society".

The norm above shows the desire of the government to invite the people together to prosper through local food. However, the purpose of prospering the people through the subsequent food sufficiency on self-sufficiency and food security through local food has not been achieved optimally.

However, the situation indicates the number of cases of hunger, malnutrition, and malnutrition that sporadically still occur in various regions of Indonesia, from Aceh, Riau, Lampung, West Java, East Java, NTT, NTB, South Sulawesi, West Papua and other areas.

This situation also occurs in the world, although food security in the United Nations Food Policy Resolution launched in 1996 at the World Food Summit, that food can guarantee the survival of human life, not a guarantee. In fact, hunger still threatens the citizens of the world including Indonesia. The concept of food fulfillment that is left to the market mechanism actually worsens the situation. Although the government's efforts to carry out its responsibilities are to address cases of hunger or food scarcity, it is only temporary and even has the potential to add new problems such as rice imports and raskin programs.

The Report of this research would like to answer the obstacles in the implementation of government responsibility to create enough food for the people to support their welfare, and government efforts in implementing adequate food for the welfare of the people in Soe District TTS.

1.2 Problem Formulation

1. What is the obstacle in the implementation of government responsibility to create enough food for the people to support their welfare?

---

5 Indonesia, Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan, Penjelasan Umum, Alinea 1 dan 2
6 Penjelasan Umum, Undang-Undang Nomor 18 Tahun 2012 tentang Pangan
7 Pasal 4, UU NO. 18 Tahun 2012 tentang Pangan berisi tujuan UU pangan
8 Jeane Neltje Saly, Pangan dan Tujuan Pemerintah Dalam Implementasi Hak Asasi Manusia, Journa de Jure, BPHN, 2007, hal. 15
2. How is the government's efforts in implementing adequate food for the welfare of the people in Soe District TTS?

2 Research Methods

The type of research used is normative research, but in order to support the results of research used also supporting data obtained through empirical research to obtain empiric facts in the field. Empiric research is primarily used to obtain sufficient data on what constraints faced in the government's responsibility in providing food for the people, in carrying out its functions.

3 Research Approach

The type of research used is normative research, but in order to support the results of research used also supporting data obtained through empirical research to obtain empiric facts in the field.

Research Approach by using some research approach, that is approach of law (statute approach) by reviewing various laws regulation that arrange Food. *The second approach* is the conceptual approach, which is done by exploring legal concepts, theories and legal principles related to government responsibility in the fulfillment of food. *The third approach* is the field approach through interviews to determine the constraints and efforts made by the government in carrying out its responsibilities in the field of food.

Types and Data Collection Techniques used in this study are secondary data. Secondary data is data obtained through literature study. This library study was conducted to find conceptions, theories, opinions, or related findings as well as with the subject matter.

Secondary data in this study include:

1. Primary legal materials in the form of the 1945 Constitution, Law of the Republic of Indonesia Number 18 Year 2012 on Food; Head of POM Regulation no. 1 Year 2015 on Food Categories; Head of POM Regulation no. 4 Year 2014 on the Maximum Limit of Additive Sweetener Material; Head of POM Regulation no. 38 of 2013 on the Maximum Limit of Antioxidant Food Additives; 37 of 2013 on the Maximum Limit of Dye Supplementary Material 281/5000Head of POM Regulation no. 36 of 2013 on the Maximum Limit of Supplemental Preservatives; Head of POM Regulation no. 4011 of 2009 concerning the Maximum Limit of Metal and Microbe Contamination; Head of POM Regulation no. 4057 Year 2004 regarding the Maximum Limit of Aflatoxin Contamination; Head of POM Regulation no. 1563 Year 2012 on Transgenic Food Products; Head of POM Regulation no. 100 Year 2008 on Organic Food; Head of POM Regulation no. 0475 Year 2005 on Nutritional Value Information on Food Label; Minister of Health Regulation no. 33 of 2012 on Food Additives; Minister of Health Regulation no. 701 Year 2009 on Iteradiated Food

2. Secondary legal materials are materials that are closely related to primary legal materials and can assist in the analysis and understanding of primary legal materials, which can be
interviewed and so on. Tertiary legal material in the form of a Great Dictionary of Indonesian and other legal materials from the internet.

4 Research Results And Discussion

4.1 Location Overview

The Regency of Timur Tengah Selatan (TTS) located in East Nusa Tenggara (Figure), Geographically located at 9°26'- 10°10 'South Latitude, 124°49'01" - 124°04'00" East Longitude, Regency Border Regency: Regency of North Timor in the north, Regency of Timor Tengah Utara in the east, Regency of Belu in the east, Regency of Kupang in the west and Timor Sea in the west. Area of 3,955.36 Kilometers, South Central Timor District is inland. It consists of 32 districts and 266 villages and 12 administrative municipalities.

Density population based on the size of the area, not the productive land, it seems that the rate of population growth as high as it has not become a problem. But the change in the orientation of the original builders based on agriculture, has changed the proportion of sources of livelihoods in general NTT.

The climate in TTS Regency is basically dry (semi-arid) with hujanyang very short season during the months of November-March, and the drought between the months of April-October each year. Rainfall average 644.58mm/year which lasted from November to March with the number of raindays ranging from 100 to 150 days setahengan average air temperature ranges between 14°C -34°C, air temperature average about 24.6°C and the highest air temperature of 33.7°C. While humidity the average monthly air is 85 percent, the highest humidity occurs in February and the lowest humidity. Climatic conditions are very influential on agricultural land management, because in general agricultural ecosystems in the TTS is a rain fed area that is managed only when the amount of water in the soil generally occurs in September.

---

9 Badan Pusat Statistik, Kabupaten Timur Tengah Selatan, Tahun, 2016
10 Jeane NS, Hasil Penelitian Pangan 2015, Kerjasama Dengan Direktorat Penelitian HAM Kementerian Hukum Dan Ham, Jakarta 2015
11 Op.,Cit, Laporan BPS Kabupaten Timur Tengah Selatan Tahun 2018
4.2 Vision and Mission

"Vision:" The realization of the lives of South Timorese people who are Religious, Fair, Distinct, Advanced, Independent and Prosperous "

"Mission: To achieve the Vision of development, the MISI is set for South Central Timor development, realizing, among others: quality education standards and competitiveness; People's economic competitiveness gradually and sustainably; Facilities and infrastructure gradually and sustainably; Gender welfare and gender justice for the community; Sustainable technology development and sustainability management; Creativity and innovation of youth as a channel of interest and talent, and prosperous prosperous family life ".

The main food source, in the form of maize, is the main source of carbohydrate for Bakustulama people, so that corn is the dominant of their agricultural land which is sought so that the availability can be sufficient throughout the year. Although rice is also an important crop in the agro-ecosystem of TTS communities, corn remains a major source of food.

Type of corn planted by the farmer is the local corn, especially the white ones, much preferable because of the good taste. Hybrid corn is also grown, but only in part of the managed land. Hybrid corn is generally grown for sale or used as animal feed such as chicken, pork, and horse.

Farmers recognize the benefits of hybrid corn that is high productivity, but low-saving power. In the traditional storage room, hybrid corn is more susceptible to warehouse pests, whereas local jagun can survive being stored until the next planting season.

Food storage techniques, which is usually done is to put corn still wrapped kelembot on the kitchen stove. So that every time the furnace is used, the heat from the furnace will be up to the corn stack. Every day they will take a number of maize savings to be processed further in accordance with the needs. Corn is consumed almost every day, especially by villagers with frequent meals 3 times a day. If they have a supply of rice, then the diet is usually the morning eating rice.

4.3 Legal Basis of Government Responsibility in the Fulfillment of People's Food

The legal basis of government responsibility in the fulfillment of people's food is one of the legal efforts to overcome food insecurity. This is the mission of the state, especially developing countries in realizing development both at the center and in the regions, especially in the framework of regional autonomy continuously in a fair, directed and sustainable in realizing a just and prosperous society, both material and spiritual, based on Pancasila and the 1945 Constitution.

The principle set forth as a guideline in its implementation is fair development. The indication is seen from the government's efforts in accelerating the achievement of indicators related to the millennium development goals (MDG's), through the national road map accelerating the achievement of the MDGs in accordance with Presidential Instruction No. 3 of 2010 on Fair Development Program, the Guidelines for action plan to accelerate the achievement of MDGs objectives in the regions as the basis for planning and improving

---

12 Laporan BPS Kabupaten Timur Tengah Selatan Tahun 2013
13 Daud sebagai Petani jagung dan bawang merah, penduduk Desa Nule Kabupaten TTS
14 Op.,Cit. Tobias Sek, Desa Nule Kabupaten TTS
coordination to reduce poverty and improve the welfare of the people, among others, access to food marketing out of the region and the entry of activities from outside to the local food area. The allocation of funds to support the achievement of the MDGs will be continuously improved, including providing incentives and encouragement for local governments performing well in achieving the MDGs. Further strengthening mechanisms to improve the initiatives of Corporate Social Responsibility that support the achievement of the MDGs (Bappenas, 2010)\textsuperscript{16}.

As a country with a large population and on the other hand having diverse natural resources and food sources, Indonesia is expected to be able to meet its sovereign and self-sustaining food needs\textsuperscript{17}.

The Government and Local Government are determined to be responsible in such circumstances\textsuperscript{18}.

In carrying out these responsibilities the Government is obliged to manage the stabilization of supply and prices of Food Staples, to manage the Government's Food Staple Reserves, and the distribution of Basic Foods to realize the sufficiency of the safe and nutritious Food for the community\textsuperscript{19}.

Although these responsibilities are pursued through the development, development, and / or assisting in the provision of community food stocks, developing, supporting, farmers' activities to produce food for their welfare, but not yet achieved optimally.

Solutions taken in addressing hunger or food scarcity cases are only temporary and even potentially add new problems such as rice imports and raskin programs. Another thing that becomes a problem is the delegation of responsibility for the availability of food to the community\textsuperscript{20}.

Related to the fulfillment and protection of the right to food as an element of the protection and fulfillment of human rights is essentially implicitly regulated in the 1945 Constitution even before the constitution is amended. Article 27 paragraph (2) states that: "Every citizen shall have the right to work and a decent living for humanity". Decent living means fulfilling the basic human need for clothing, food and shelter. Food regulation as trade commodity as regulated in Food Law is important to increase national food production competitiveness. However, the regulation in the framework of the fulfillment of the livelihood of the public is a fundamental right that should not be ignored, given the sustainability of economic development requires a harmony between the two.

The fundamental right which is a human right in the field of food recognized in the basic law of this country, internationally there is an agreement in the International Covenant on Economic and Socio-Cultural Rights (Covenant of Ecosob). Ratified by Indonesia since 28 October 2005 with the issuance of Law Number 11 Year 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights. The Covenant includes, among others, the responsibility of the state in respecting, protecting and fulfilling the right to food for its people.

Article 11 of the Covenant on Ecosystems states that "The States to the present Covenant recognize the right of everyone to a life worthy of himself and his family, including the

\textsuperscript{16} Instruksi Presiden Nomor 3 Tahun 2010 tentang Program Pembangunan yang Berkeadilan
\textsuperscript{17} Jeane Neltje Sal, Hasil Penelitian terkait dengan Penerapan Konvensi HAM Tentang Hak Di Bidang Politik
\textsuperscript{18} Tanggung jawab Pemerintah tersebut diatur dalam Pasal 12
\textsuperscript{19} Ibid Pasal 13
\textsuperscript{20} Hal ini terdapat dalam Pasal 45 UU No. 18/2012 tentang Pangan, dimana dinyatakan bahwa Pemerintah bersama masyarakat bertanggung jawab untuk mewujudkan kerawanan pangan
appropriateness of food, clothing and shelter, and the improvement of the conditions of living continuously.” Ecosaus right are designed to ensure the full protection of human beings based on a view that human beings are entitled to enjoy the rights, freedom and social justice simultaneously. In 1992, the United Nations Food and Agriculture Organization, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) recognized that access to safe and nutritious food is the right of every individual.

Various countries has its own food-related regulation to ensure that the food available is safe, as well as in ASEAN countries, also has its own food-related regulations such as Malaysia, Singapore and Thailand. Its implementation faces challenges with large populations facing very complex challenges in meeting the food needs of its population. Therefore, policy (stabilization) of food insecurity becomes a central issue in development and is the main focus in agricultural development. Increasing food demand along with increasing population and increasing employment opportunities for the population to earn a decent income for access to food are the two main components in the realization of food insecurity. The policy of consolidating food insecurity in this case includes the establishment of national food stability. Until the end of the 20th century still held the opinion that for the birth of state responsibility is not enough with the two elements above but there must be damage or loss (damage or loss) on the part or another country. However, in its development to date, it seems that the element of “loss” is no longer considered a necessity in every case for the birth of state responsibility.

For example, violations of international legal provisions relating to human rights are clearly acts that are blamed according to international law, although they do not harm other parties or countries, which in this study relate to the state’s responsibility to respect, protect and fulfill the right to food for its people in the Ecosystem Covenant.

The world has entered the era of globalization, full of regional and global competition. Indonesia’s HR Challenge is a double nutrient burden in all life cycles (“across the life course”). The impact of food and nutrition problems at an early age is not limited to nutritional status alone, such as short, obesity, and malnutrition, but much more broadly because it is associated with lower risk of intelligence, and the risk of non-communicable diseases in adulthood.

To overcome this, need multisector cooperation in the center-area so that: Pregnant women and nursing mothers no less eat, not thin, and not anemia; Children are not low birth weight, not short, not anemic; and Children and adults are not fat. Although Accelerated Fulfillment of Food and Nutrition Community, but in practice has not been optimal. This is

---

21 Dalam kovenan ini diatur bahwa negara memiliki kewajiban untuk menghormati (to Dalam konteks ini maka negara diletakkan sebagai aktor utama yang memegang kewajiban dan tanggung jawab (duty holders) mewujudkan hak-hak ekosob. Sementara warga negara adalah pemegang hak (rights holders) termasuk didalamnya adalah hak untuk mendapatkan perlindungan pangan. Oleh karena itu adalah sangat penting untuk memastikan bahwa hanya makanan yang aman yang dikonsumsi.


23 Indonesia, Undang-Undang Nomor 11 Tahun 2005 tentang Pengesahan the International Covenant on Economic, Social and Cultural Rights, Lembaran Negara Republik Indonesia Nomor 118 Tahun 2005, Tambahan Lembaran Negara Republik Indonesia Nomor 4557.
due to geographical conditions, rainfall of only 30% every year, dry soil conditions and lack of water resulted in food outcomes achieved not as expected.

Government Regulations (PP) No. 17/2015 on Food Security And Nutrition is made to be the cornerstone of food implementation and food security. The objective is to create the conditions for the fulfillment of Food and Nutrition needs for the state up to the individual, as reflected in the availability of adequate food, both quantity and quality, safe, diverse, fulfilling the adequacy of nutrition, equitable and affordable and not contrary to religion, belief and culture communities, to realize a good nutritional status in order to live healthy, active, and productive in a sustainable manner.

To meet Food and Nutrition security in order to achieve the condition of the fulfillment of Food and Nutrition needs for the country up to the individual, so if domestic food is not sufficient, it can import from abroad but require the requirements. Among others are the requirements of security, quality, nutrition, and not contrary to the religion, beliefs, and culture of the community.

In its implementation, the Government shall stipulate certain types and quantities of certain staple food as government food reserves as required, which is primarily domestic staple food. Basic Foodstuffs, is referred to as "Certain Staple Foods" means Foods produced and consumed by the majority of Indonesian people when their availability and price are disrupted can affect economic stability and cause social upheaval in the community.

Government Food Reserves are periodically carried out taking into account the level of need. What is meant by the level of demand is the level of demand for the Government's Food Reserves is calculated by considering among others the ability of production, the number and distribution of population, consumption patterns, the level of consumption per capita, and the dynamics of international markets. The calculation of the level of need is set periodically.

In order to increase the availability of diverse food to support the nutrition of the community, the local food becomes the mainstay. To be implemented, it is stipulated in a Government Regulation. Government regulations. Article 43 of Law no. 18/2012 about Food. determines that: The cornerstone of activities is set forth in Harmonization and Synchronization of RAN-PG 2015-2019 and RAD-PG, Directorate of Community Health and Nutrition - BAPPENAS. Archives delivered in the Revised Socialization of RAD-PG, and RAD-PG Governor Regulation Draft. East Nusa Tenggara Province

Food situation, which describes the condition of food distribution and access, And Third, the level of food consumption which describes the level of food utilization In relation to the responsibilities of local government, namely the South East South Government (TTS), Soe City, then the 7 (seven) things have been done, but not yet achieved optimally. It is as a result of insufficient human resources despite efforts made in the form of education, the culture of society that is less creative and feel comfortable with the existing situation, rainfall that does not reach the standard of meeting the needs of the plant.

According to Sukirman Djahi, Head of South East Middle East Food Office in Soe City, that in fact besides the geographical and rainfall conditions which are not supporting the achievement of the goal of accelerating the improvement of food and nutrition, is the
Participation of the civilized society feel quite with their situation, even though it is in poverty level. Selanjutnya said that local government food reserves have not been optimally implemented inadequate connections, counseling related to the consumption of food diversification and nutrition improvement is done by way of counseling, even the village head is educated in Pusdiklat.

Although food crisis preparedness and food crisis management are given direction to the community to be able to store dry food in their barn which standard can survive until next season, supported by food distribution, food aid from central government in the form of Raskin but still not optimal to reach food sufficiency. To date, due to supervision, the local government oversees the implementation of food consumption of diversity and nutritional standards in order to improve public health through the Food and Nutrition Information System Accelerating food and nutrition compliance and food security is said by the Head of the Food Security Agency of the Ministry of Agriculture Agung Hendriadi in Food and Nutrition Strategic Policy (KSPG) through the preparation of the National Food and Nutrition Action Plan (RAN-PG) to all technical ministries and the preparation of the Plan Action of Food and Nutrition Area (RAD-PG) by Province and Regency.

Furthermore, it is said that building food and nutrition is a very complex handling, so the need for harmonious cooperation from multi sectors. The three priorities of food and nutrition issues that must be addressed are the transformation of agriculture-food systems to the present conditions; the second point is the community's nutritional problems and up to the availability of land and wate. To address these three issues, Agung requested that program planners and budgets focus on vulnerable areas of food insecurity based on maps of Food Security and Vulnerability. "In the Global Era, competition takes place in all areas of business, and the quality of human resources is a key factor in winning the competition, especially preparing healthy, qualified and qualified human resources in Indonesia," he said. According to him, in order to meet the adequacy of food and nutrition, supported by increased production that is ekperensial (not linear), with various efforts such as technological innovation, intensification, extensification, mentoring, business capital provision, and access to markets According to him, in order to meet the adequacy of food and nutrition, supported by increased production that is ekperensial (not linear), with various efforts such as technological innovation, intensification, extensification, mentoring, business capital provision, and access to markets.

In order to fulfill the food and nutrition sufficiency of the Food Security Agency, the Ministry of Agriculture has several excellent programs, such as Sustainable Food Houses (KRPL), Food Self-Reliance Program (KMP) Program, and Food Consumption Diversification Movement aimed at increasing food production and nutrition improvement starting from the household.

Although the support of food and nutrition handling, not only by the Department that handles Food and Health, as well as private partnership agencies (SKPD) private institutions and even community agencies are involved in realizing food security and nutrition, but output achieved is still far from expectations.

Though Indonesia as one of the center of biodiversity of the world store a wealth of flora and fauna abundant, some of which have the potential to be developed into food. Technology can be utilized in better management, traditional foods such as kaledo or papeda can be further developed, in addition to improving its nutritional content, as well as to

---

28 Agung, Workshop Pemantauan dan Evaluasi Rencana Aksi Daerah Pangan dan Gizi Provinsi Regional Tengah dan Timur di Yogyakarta, Jumat (24/11)
reach a wider market beyond its traditional consumers. So traditional foods such as kaledo and pepeda are also available in other areas. The "enrichment" of traditional foods such as kaledo, maize, not only promotes indigenous Indonesian food, more importantly improves food security by reducing dependence on rice.

Mexican country also has a traditional food called tortilla. Every day the inhabitants of the countryside this country preparing tortillas, is like cooking rice for the community in Indonesia. Tortilla made by utilizing one of Mexico's natural wealth of corn. History records show that from this country the origin of corn that is now scattered throughout the world. Interestingly, tortillas that used to be traditional food in rural areas, are now also consumed by the urban population and even penetrate into a number of other countries such as the United States. Better technology and management changed the image of tortillas from "village people" food to "modern food".

Residents in modern countries are now more careful to determine what type of food to consume. In addition to taste, they also began to consider the effects of these foods on health for the long term, as well as the impact of the food production process on environmental sustainability. Gradually they begin to abandon conventional foods like fast food and strive to return to traditional.

Some choose to become vegetarians with the consideration of the resources needed to produce animal food much more than vegetable foods. Down to Earth, one of the institutions supporting vegetarian lifestyles, says that to produce one calorie of beef requires 78 times the energy needed to produce one calorie of soybeans.

In contrast to the trend in developed countries, various types of fast food foods, especially international fast food, are now growing and flourishing, flooding major cities in Indonesia and competing with traditional foods.

4.4 Implementation of Government Responsibility in TTS District

a. The existence of Local Food Agriculture of TTS Soe Regency

In relation to food security efforts in the region of Middle East District Selata, then made various efforts by the Regional Government in this case the Office of Food Knowledge in Soe. The existence of the Government of TTS Regency, Soe, in relation to local food agriculture to meet the needs of the community is as illustrated below, namely Type of Food Crop

---

29 Jeane N Slay, Down to the Earth, Hasil Penelitian: Agribisnis, Lingkungan Hidup dan Keberlanjutan Hidup Manusia, Bahan Kuliah Lingkungan Hidup, Pustaka Abadi, Jakarta, 2012, hal. 2

30 Jeane N Slay, Ibid, hal. 3
To meet the needs of food in the household, the community South Central Timor District developing the type of food crops that have been cultivated by the previous generation with the main product is corn crops. While rice cultivated by the community in some areas depends on the availability of water, while other types of plants such as tubers, bananas and legumes developed by the community as an alternative crop in anticipating crop failure due to uncertain weather.

Other than that rice plant is also cultivated by the people of South Central Timor District in some areas along the River Basin which has been built irrigation channels with varying planting time, depending on the availability of water with 3.123 ha of harvested area produces 10,656 tons of dry unhulled rice as much as 7,106 tons of rice. While rice field with dried grain milled as much as 276 tons and Rice as much as 184 tons.

Data from the Secretariat of Soe City Food Office, February, 2017 Production of Wetland Rice in TTS District in 2014.

While other types of plants such as tubers, bananas and legumes are still developed as alternative communities anticipate crop failure due to uncertain weather.

Especially for this type of vegetable crops, most of the people have developed for an income-increasing orientation through sales in the market. Types of commodities such as cabbage, onion, spring onions, carrots and red beans not only dominate in the district market but also have dominated supply for some markets in Kupang City, the capital of NTT Province.

Several types of fruit plants in South Central Timor District have considerable potential and have economic prospects or value as a commodity such as avocado, mango, guava, papaya, pineapple banana, jackfruit, soursop, orange and watermelon. As it is known that the SoE Tangerines Citrus is one commodity that must be cultivated area professionals to improve household incomes and the and economy in area.

b. Problematic and Solutions

Problematic emerging, that is. not only lack of understanding of government apparatus including co-chairs related to independent food business, but also weather conditions. These conditions have an effect on the lack of effective assistance. LKD and TPD resulted in the objectives of food fulfillment is less successful. Solution is done through food imports. This situation occurs also in other countries, as in China.

As a result of the weather, China now imports many food from abroad, causing industrial worries on food security. In “Laporam The Global Food Security Index” in 2016, China is ranked 42nd, while western countries occupy the top blessing in global food safety ratings. Rank far beyond China (18), which is highly dependent on food imports, Korea31.

In Indonesia, especially TTS Regency, although the government has tried to apply local food, but the increase of business activities in Desa Mandiri Pangan has not been optimally

31 EPOCH TIMES, Krisis Tiongkok Berikutnya Krisis Pangan? http://www.erabaru.net/2016/10/14/krisis pangan, Dieksis di Jakarta, 16 April 2018
achieved. This problematic cause of food fulfillment through central government subsidy which actually also is imported product.

If applied, more productive crops related to maize in the solution to the constraints faced are also one good solution, as in terms of global warming impact introduced by Japan. If applied, more productive crops related to maize in the solution to the constraints faced are also one good solution, as in terms of global warming impact introduced by Japan. 

Currently implemented in the Bekasi region, in collaboration with Japanese plant physiologist Shigeharu Shimamura built the largest indoor farm in Miyagi Prefecture. The former Sony factory has now been transformed into a high-tech hydroponic farmhouse that allows workers to harvest thousands of lettuce each day. In overcoming the world's starvation of food production technologies. Some biologists think mutant corn may be the answer. A way to exploit natural genetic mutations and then cross-fertilize mutant maize with traditional corn crops to produce larger corn kernels without changing other aspects of the corn, as shown in the following figure. Cara untuk mengeksploitasi mutasi genetik alami dan kemudian melakukan pembuahan silang jagung mutasi dengan tanaman jagung tradisional untuk menghasilkan biji jagung yang lebih besar tanpa mengubah aspek lain dari jagung tersebut, sebagaimana terlihat dalam gambar berikut.

![Image](image)

**Figure 1.** Corn is the result of genetic manipulation.

The result is a 50 percent increase in crop yields. A surprising result for a struggling agricultural area meets food demand with limited areas. Although the breakthroughs have not been tested outside the laboratory, scientists have been looking for ways to utilize the same genetic mutations in other staple crops such as wheat and rice.

There is a problematic in the business run group does not look at the potential area (Village). Thus, the resulting product can not be marketed to a wider market or not market-oriented. In general, the efforts undertaken in TTS, Soe, in the form of business activities of self-sufficient villages of food, which in fact:

Food processing business 3%, Livestock Business 35%, Fishery Business 12%, Agriculture Business 45%, Other Business 5%.

The solutions are:

a. Strengthen the understanding to government officials and assistant officers to achieve optimization in mentoring
b. TPD guidance for performance improvement
c. Development of productive business groups in accordance with the potential area in Soe TTS.

---

Although less than optimal achievement of food fulfillment objectives, but the local government continues to do business throughout the region by way of Development of Food Self-Village, by Cluster, and Stages of development, namely:

a. Cluster which is a collection of similar business activities that interact and interdependence from upstream to downstream sectors which is a collection of similar business activities that interact and interdependence from upstream to downstream sectors

b. Cluster development stage, namely: Understanding the potential of economic development of villages, Cooperation, Management and improvement of services. Encouragement of innovation and entrepreneurship, marketing of village production

Prinsip

Principles of Cluster-Based Cluster Development in the form of: leading sectors, according to regional characteristics, carried out in a comprehensive and continuous integrated and sustainable manner, and implemented in accordance with the principles of autonomy and decentralization

Furthermore, according to Sukirman Djahi as the Secretary of Food Agency, the efforts made by the Regional Government are the Sharpening of General Guidelines with Stronger and Measurable Output in several stages, namely Preparation, RUK Formulation, Market and Network Development, and Strengthening Community Savings, Independence and Reduction of Facilitation Facilitators can be independent.

In the realization of Food Sovereignty, Food Self-Reliance, and Food Security, it is necessary to have a food institution that has authority in building coordination, integration, and synergy across sectors. The institute carries out the task of government in the field of Food, which is under and responsible to the President.

In realizing food sovereignty, food self-sufficiency and food security, communities can participate through the implementation of production, distribution, trade, food consumption, the organization of public food reserves, prevention and prevention of food and nutrition, information and knowledge of food and nutrition, Provision of Food Availability, Food Affordability, Food Diversification,

Food Safety, and / or Increased Independence of Household Food. Communities may also address issues, inputs, and or settlement of food issues to the Government and Local Government. The Law on Food is intended as a legal basis for Food Implementation which includes Food Planning, Food Availability, Food Affordability, Food and Nutrition Consumption, Food Security, Food labels and advertisements, Supervision, Food information systems, Food research and development, Food institutional, community participation, and investigation. According to A Patra M Zen, the fulfillment of basic rights such as food, health, housing, employment and education shall be or is the responsibility of the state, the State is responsible for facilitating and providing welfare for the people, such as eating minimum dwelling etc., members of the community. Therefore, the international community is pushing EKOSOB's rights not only into human rights, but also as legal rights.

Article 24 of the Ecosoc on Human Rights states that any State Party may submit an objection to another State Party without requiring that the State party to the objection as a victim of a human rights violation committed by the State accused of the offense.

A Patra M Zen, Justisiabilitas Hak-Hak Ekonomi, Sosial dan Budaya: Menarik Pengalaman Internasional, Mempraktikkannya di Indonesia, Jurnal HAM Komisi Nasional Hak Azasi Manusia, V1. 1 Oktober 2003, hlm. 38
Article 3 of the draft convention on state responsibility created by the International Law Commission (ILC) removes.

Frans Magnis Suseno states that the rule of law has four characteristics. First, the government acts solely on the basis of applicable law. Secondly, the community can appeal in court against the government's decision and the government is obedient to the judge's decision. Third, the law itself is just and guarantees human rights. Fourth, the power of judges is independent of the will of the government34.

According to Sri Soemantri, the most important elements of the state law are four, namely (1). That the government in performing its duties and obligations must be based on law or regulation; (2) a guarantee of human rights (citizens) (3). the division of power within the state; (4) the supervision of the judicial bodies adanya pengawasan dari badan-badan peradilan35.

In addition, according to Jimly Ashiddiqie, there are twelve basic principles of the state law. The twelve basic principles are the main pillars that support the stand up of a modern state so that it can be called a state of law in the real sense. The twelve principles are (1) the supremacy of law, (2) equality before the law, (3) the rule of law, (4) the limitation of power, (5) independent executive organs, (6) free and impartial courts, (7) state administrative courts, (8) administrative justice negara (constitutional court), (9) peradilan hak asasi manusia, (10) democratic (democratische rechtstaat), (11) serves as a means of realizing the goals of the state (welfare rechtstaat), and (12) transparency and social control.

Bagir Manan, in Arif Sidharta, elements and basic principles of the rule of law are as follows: (1) Recognition, respect and protection of human rights rooted in respect for human dignity (Human Dignify). (3) The principle of legal certainty. The state of law aims to ensure that legal certainty is manifested in society. (4) The principle of Similis Similibus (principle of equation). In a state of law, the government should not privilege any particular person (must be non-discriminatory). (5) The principle of democracy. The principle of democracy provides a means or method of decision-making. This principle requires that everyone should have equal opportunity to influence government action. (6) Government and government officials carry out public service functions. Related to the government's responsibility in fulfilling the people's food, then what is done by the government has not been optimal even though various efforts have been done.

5 Conclusions And Recommendation

5.1 Conclusions

1. Obstacles to implement the responsibilities of the Regional Government to fulfill the right to food as the basic needs of the people of NTT South East Regency Regency (TTS) is in addition to geographical conditions, rainfall, clean water, human resources are still far from expectations both in quality and quantity, transportation, and infrastructure for communication from village to village to marketing site, also facing increasingly complex food challenges, constantly changing from time to time and being influenced by matters of its nature both locally and globally. Changes and differences such as the actual condition

34 Franz Magnis Suseno, Etika Politik (Pinsip-prinsip moral dasar kenegaran modern), Cet. 7., (Jakarta: PT Gramedia, 2003), hlm. 295
35 Sri Soemantri, Bunga Rampai Hukum Tata Negara Indonesia, (Bandung: Alumni, 1992), hlm. 29-30
of society, the dynamics of population, the development of science and technology, the information revolution, telecommunications, transportation, democratization, decentralization, and of course globalization, are the determinants of food as the basis for national anticipation. The problem of food security experienced by Nusa Tenggara Timur is actually an irony because this region is not poor natural resources. Food availability is not the only determinant of food security, and NTT has the potential to be utilized in order to achieve food security missions.

2. Efforts made by City District Government to achieve food self-sufficiency through local produce, in the form of Institutional Strengthening. And Business Development followed by post-independence stages in the form of General Guidance Sharpening with Stronger and Measurable Output in the stages to be exported, at least in order to enjoy the ASEAN community market. Further enhancement and expansion of business network and capital access through the strengthening of business capital by way of innovation of processed food product and development of marketing network of Mandiri Pangan Village group and education for functional assistant and encourage community attitude toward habit to become culture of understanding and movement toward self-food security as well as the socialization of 4 healthy five perfect through the utilization of food in the region to make them prosperous.

5.2 Recommendation

1. In order to fulfill the government's responsibility in the fulfillment of people's food in TTS, it is necessary to deeply study the phenomenon of food security in NTT from micro scale so that the understanding of the phenomenon in society can be obtained better. Food security is a successful condition of food availability, access to food, food utilization and stability of access to food. Thus the commitment of both the central government and local governments to achieve the realization of local food as a daily staple with the socialization of long-term benefits for the welfare the community to reduce the attitude of living that feels enough with its existence to be able to utilize the existing land in the long term can be exported by way of working partnership of large capital business with agricultural working group.

2. Optimizing the creation of infrastructus as a means of communication and transportation of food products to the marketing area, as well as the addition of the quality and quantity of functional staff of chocal food business facilitators and their utilization for their welfare towards food self-sufficiency. penciptaan infrastruktur sebagai sarana komunikasi dan pengangkutan hasil pangan ke wilayah pemasaran, serta penambahan secara kualitas dan kuantitas tenaga fungsional pendamping usaha pangan klokal dan pemanfaatannya bagi kesejahteraan mereka menuju kemandirian pangan.

References


[9]. Franz Magnis Suseno, Eitka Politik (Pinsip-Prinsip Moral Dasar Kenegaran Modernmodern), Cet. 7,(Jakarta: PT Gramedia, 2003),


[14]. Winahyu Erwiningisih, Peranan Hukum Dalam Pertanggungjawaban Perbuatan Pemerintashan (Bestuursrendeling) Suatu Kajian Dalam Kebijakan Pembangunan Hukum


**Journal Dan Makalah:**


[12]. Jeane NS, Pemanfaatan Istilah Dalam Pembuatan Artikel Hukum, Pemakalah Dalam Diskusi alumni Mahasiswa Pascasarjana UPN Jakarta 2012,


[19]. Mochtar Kusumaatmadja, Hukum, Masyarakat, Dan Pembinaan Hukum Nasional, Penerbit Binacipta, Bandung, 1995

[20]. ………,Pembinaan Hukum Dalam Rangka Pembangunan Nasional, Penerbit Binacipta, Bandung, 1986,

[21]. Neil Smelser, Economy And Society: A Study In The Integration Of Economic And Social Theory. (With Talcott Parsons) (1956)

[22]. Otje Salman Dan Eddy Damian (Ed), Konsep-Konsep Hukum Dalam Pembangunan., Penerbit PT. Alumni, Bandung, 2002,

[23]. William L, Bob Figgins, David Hedengren, And Daniel B. Klein. "Economic Professors'Harvard Univ Published, USA


Peraturan Perundang-Undangan:


Construction of Pre Judges Through Judicial Reconstruction Commissioners and Representatives of Protected Rights

Joko Sriwidodo
{jokosriwidodo@ymail.com}

Faculty of Law, Jayabaya University, Jakarta

Abstract. To overcome the implementation of the Draft Criminal Procedure Code/ RUU KUHAP with legal instruments that are more concrete and easy to implement, the Government and the DPR must consider the existence of a Judicial Commissioner in the Criminal Procedure Code/ KUHAP. The presence of the Judicial Commissioner is expected to provide protection to the defendants, in the process of being investigated by investigators, prosecutors until the defendant is finally convicted. On the other hand, it is necessary to regulate facilities and infrastructure for commissioner judges so that the handling can run in accordance with the provisions of laws and regulations. Such a formulation is a feature of formal criminal law so that it is easily understood by the public, especially those who will become candidates or convicted suspects, and as a means of controlling the use of powers given to the law. law enforcement officers. The basic legal principle is that deprivation of the rights of others should not be carried out unless there is an authority to confiscate (detain) and this authority is exercised based on a court decision or court / court's permission.

Keywords: Judicial Reconstruction Commissioners; Representatives of Protected Rights; Criminal Procedure Code/ KUHAP.

1 Introduction

Construction in the current criminal procedural law when it is associated with the judicial process, especially in pre-trial, it is time to be changed by reconstruction especially in the procedural law concerning pre-trial.

Attempts to understand law as part of the history of human life never culminate in a common understanding among community groups. Between the group of ordinary people and groups of people engaged in the field of law both as legal practitioners and as academics of jurisprudence have different views about the phenomenon called law. Even among the people within each group is open the possibility of inequality of understanding because of differences in experience in dealing with the law. Human life has many aspects or areas and each requires regulation by law. The diversity of the law in the context of the diversity of aspects in human life makes it impossible to unite it in a single formula.1

For practitioners especially those included in the Five House of Law Enforcers such as police, prosecutors, judges, lawyers including legal consultants, and the Press, the law is

---

1 Apeldoorn, L.J. van, Pengantar Ilmu Hukum, Pradnya Paramita, Jakarta, 1975, hlm. 13.
understood from the standpoint and their respective roles. For the police and prosecutors, the law is better understood as a guide and an instrument to investigate the perceived behavior of the deviant and the legitimacy of the effort to put the target legal proceedings. For judges, the law is better understood as a steering through the method of deductive thinking as well as giving legitimacy to conduct an assessment of the true or false validity of legal behavior that is tried. For lawyers, law is understood as an instrument to fight for the interests of those who need their services in various forms. For the press, the law is understood as a steering and instrument to control the behavior of citizens and especially the behavior of state officials in order not to deviate from the goal to be achieved. In addition to the normative and functional understanding of such practitioners, it is not impossible to develop a legal understanding as an instrument for the pragmatic-economic or pragmatic-political pragmatic individual interests of law practitioners through the use of loopholes or holes that are textually contained within existing legal norms. This means that the law is used to justify the abuse of power for economic or political purposes.

This can be seen in the decision of Pre Judicial Budi Gunawan and Setya Novanto, they are in the process of pre-judicially stated not guilty. Unlike the other defendant on the other case such as late Sutan Batugana, his pre-trial was rejected by the judge.

One of the rulings considered controversial is the verdict. 04 / Pid.Prp / 2015 / PNJaksel dated February 16, 2015 filed by the applicant of the Police Commander Drs. Gunawan, SR Msi. Fighting the Corruption Eradication Commission (KPK) which has established the Petitioner as a suspect of corruption, because surprisingly Mr. Sarpin, SH who became the Sole Judge in the pre-trial case granted the pre-trial suit filed by the Petitioner and defeated the KPK and in one of its decisions stated that Letter of The Investigation Order Number: Sprin.Dik / 03/2015 dated January 12, 2015 which has established the Petitioner as a suspect of corruption is illegal and not based on law and therefore aquo determination does not have binding power, and also at the same time declared the investigation conducted by the invalid petitioner and has no binding legal force.

The ruling has generated tremendous controversy even leading to a wave of protests from many jurists as well as provoking the Judicial Commission (KY) to respond and even to the examination of ethical behavior violations of judges allegedly perpetrated by a judge Sarpin.

Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) which has been more than a quarter century (+32 years), is often referred to as the work of "majesty" of the Indonesian nation, a law made by experts Indonesian criminal procedure law accompanied by integrity and spirit to realize the administration of government that protect the interests of citizens in accordance with the Preamble of the 1945 Constitution.

The Criminal Procedure Code was created to replace the Herziene Indische Reglement (HIR), the creation of the Dutch colonial government. In the substance of the existing KUHAP there are some shortcomings as well as in the field of science and technology that must be anticipated by the Indonesian government to criminal procedure law is not left behind with the developments in the era of globalization, especially about various forms of crime, given the development of the current era of globalization of crime also experiencing progress along with the development of economic globalization, as well as the advancement of science and technology.2

Regarding this matter in the Criminal Procedure Code (Law No. 8 of 1981) does not occurred, a defendant may be detained without notice to his family and usually suspects of torture while detained. As experienced by a Narcotics Bandar arrested and detained without a

---

warrant and when the pre-trial was found guilty, because at the same time the defendant file was delegated to the Public Prosecutor. This provision should be immediately given due attention in ICCPR ratified through Law Number 12 Year 2005 About Ratification of International Covenant on Civil and Political Right (Covenant of International Civil and Political Rights).

From the above description can be drawn a common thread that the Criminal Procedure Code in Indonesia which is more than a quarter of a century must also be updated to fit the dynamics of science and technology, as well as changes in society and international provisions that developed advanced related to criminal procedural law. The various ratifications of some of the ICCPR's special international conventions directly related to criminal procedural law on detention by investigators should be as short as possible and at most two times twenty-four hours. In Europe a long period of detention is defined as a maximum of 5 (five) days or 1 (one) day of arrest and 4 (four) days of detention, while in the Criminal Procedure Code 20 days is considered too long and contrary to International Convention Against Torture and International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia with Law Number 12 Year 2005 even though the date the ratification is different, in its implementation must be applicable considering the human rights of the accused.

The idea of pre-judiciary was born out of inspiration derived from the rights of Habeas Corpus in the Anglo Saxon court, which provides a fundamental guarantee of human rights to the right to freedom. Habeas Corpus is a guarantee and security of personal liberty through a simple, straightforward and open procedure that anyone can use, Habeas Corpus's right is to be able to provide protection to a person suspected of committing an offense against an unauthorized examination.

Through the Habeas Corpus Act, a person with a court order may sue a detaining official to prove that the detention is not illegal or completely legitimate in accordance with applicable law.

In contrast to the review of forced attempts through pre-trial, the court order containing the rights of Habeas Corpus is not only directed to the relevant detention in the criminal justice process, but also against any form of detention that is deemed to have infringed a person's personal liberty rights guaranteed by constitution. In the development of Habeas Corpus warrant became one of the tools of supervision and improvement of the criminal process both at federal and state level in the United States.

The rationale for the amendment of Law No. 8 of 1981 by adding the existence of Judge Commissioner as an effort to protect human rights of the defendant, both in the process of investigation and prosecution, is based on several thoughts as follows:

1. Philosophical Reason
   The philosophical foundation is the ideal foundation, the instrument of law and can motivate law enforcement officers to pursue and direct the spirit and dedication of law enforcement, trying to realize the noble meaning and essence contained in the soul of the philosophical foundation of Pancasila.

2. Juridical Reason

---

3 Ahmad Ubbe, Proses Pengadilan dalam Perkara Pidana, Jakarta: BPHN- KemkumHam, 2009, hlm. 2
5 Ibid
6 Ibid
7 Yanto, Hakim Komisaris dalam Upaya Perlindungan Terhadap Hak Asasi Manusia, Disertasi, Jakarta: FH Jayabaya, 2010, hlm. 127
The 1945 Constitution, especially in the provisions of Article 20, on the legislation, Article 21 of the right of the People's Legislative Assembly to submit the Bill, Article 22 of the right of the President to file a Perpu (rules made by President without the consent from legislative, usually force majeur), Article 22A of the law-making procedure, Article 24 judicial authority, Article 24A authority of the Supreme Court, Article 24C The Constitution, Article 28A to Article 28J human rights.

3. Sociological Reasons
The community of justice seekers at some point often complains about various matters relating to criminal proceedings that tend to be long and convoluted, which is very detrimental to the justice seekers, both in terms of time, effort and cost.

4. Reasons for Efficiency and Effectiveness
The procedural law will relate to the constitutional rights of citizens, if the stages determined by the criminal procedural law can be effective and effective, it will benefit not only citizens dealing with criminal matters but also law enforcement processes by the state more efficiently and effectively.

5. Economic Basis
All articles in the Criminal Procedure Code refer to the rapid judicial system (speedy trial, contante justitie) simple and affordable costs. The introduction of the judiciary is quickly put forth in the filing of the case through an off-site special settlement (afdoening buiten process) in the legal proceedings of all cases must pass a new Court of Appeal can be filed an appeal to the Supreme Court to reduce the burden of the Supreme Court.

While the enactment of Law No. 8 of 1981 on the Criminal Procedure Code in the pre-independence period, enacted two criminal procedural laws namely the criminal procedure for the European class underway Srafvordering (sv) and criminal procedure law for indigenous groups apply Inland Reglement (IR) later renewed to Herziene Indische Reglement (HIR) with Staatsblad No. 44 of 1941. The procedural law for the European class has a better form of criminal procedural law and more respect for the human rights of the accused than with the arrangement of criminal procedure law in the Inland Reglement or Herziene Indische Reglement (HIR) imposed on the Indigenous people who at the time was his position as a citizen in the Dutch colony.  

This is as it is known in the case of a person in an inadequate process of investigation conducted by the investigator and the public prosecutor where the suspect in the process of examination always get the physical and psychological intimidation as happened in 1978 in the case of Sengkon and Karta who were charged with murder to the family in Bekasi. In examination (two) the person does not acknowledge his actions, but the investigator and prosecutor still insist that they are the perpetrators. The law does not side with people who are weak and do not understand their rights, and officers with authority always try to solve the problem without seeing the applicable law. Both are accused of robbing and killing. Not feeling guilty, Sengkon and Karta initially refused to sign the examination report. But because they could not bear the torture of the police, the two then gave up. Judge Djurnetty Soetrisno trusted the Police case news rather than the defendant's two denials. So in October 1977, Sengkon was sentenced to 12 years in prison, and Karta was 7 years old. The verdict was upheld High Court of West Java. It was in the cold walls that they met a jailer named Genul, Sengkon's nephew, who was imprisoned for theft. This is where the real murderer unlocks the secrets: he is the killer of Sulaiman and Siti. Finally, in October 1980, Gunel was sentenced to

8 Ibid;
12 years in prison. Even so, it does not necessarily make them free. Because previously they did not appeal, so the verdict is declared to have a permanent legal force.

Based on the above, the Government together with the DPR-RI made a breakthrough by making the Criminal Procedure Code more protective of the human rights of the suspect, containing in the Regulation on Judicial Review (PK) as well as the regulation on compensation issues.9 Luckily there's Albert Hasibuan, a lawyer and a councilman who staunchly fights for their lot. Finally, in January 1981, Chief Justice of the Supreme Court (MA) Oemar Seno Adji ordered that both be released through the review.10 However, after being released, their rights have been ignored by the government to provide restitution because of wrong handling of the case, until the second (2) of their rights are not given. This provision raises the need for a Criminal Procedure Code as a container in the process of proceeding in criminal justice. The case of Sengkon and Karta has passed and Indonesia has a new procedural law that is Law No. 8 of 1981, which in its journey contains some elementary weaknesses in case engineering and has been left behind by the existence of the rules of international law on human rights of the accused. As experienced by Imam Chambali aka Kemot and David Eko Priyanto who in the process of examination undergoing intimidation, torture by POLRI investigators to obtain the results of investigators to be submitted to the Prosecutor General.

The pre-trial institutions of its presence are inconsistent with the initial idea of the will of this institution as a protection against widespread deviance of dwang middelen from the law enforcement apparatus at the same time not in accordance with the intention of the existence of human rights protection for the parties involved in a renewal against Law No. 8 of 1981 so that impressed the absence of integrated criminal justice system.11

In order to anticipate this, the main thing is to revise the Criminal Procedure Code by presenting the Judicial Commissioner who acts to replace pre-trial institution; the authority of pre-trial institutions is not as effective as the justice seeker hopes. In addition, Article 50 of the Criminal Procedure Code also states that: Any person committing acts to enforce the provisions of a law shall not be subject to criminal sanction. It can be said here that pre-trial is a more repressive and non-preventive measure.12 In pre-trial a person may sue the investigator (POLRI) or the prosecutor, but in reality the pre-trial has always failed, because the case was handed over to the court, so the pre-trial suit is declared a failure. In contrast to the preliminary hearing process used by Common Law and United States system which conducted prior to examination of the subject matter but on a different basis.

The Preliminary Hearing function is performed as an attempt by the judge to examine whether there is a probable cause for believing that a particular suspect is the perpetrator of a crime and therefore has sufficient grounds to be detained and tried.13 In the preliminary forum of the court the official concerned filed a petition for detention and search before the forced attempt was made. So it can be said that the judges in the above processes have the authority

---

9 Indriyanto Seno Adji, KUHAP dalam Perspektif, Jakarta: Diadit Media, 2011, hlm. 45
11 Indriyanto Seno Adji, KUHAP dalam Prospektif, Jakarta: Diadit Media, 2011, hlm. 2
13 Ibid
as examining and investigating judges because in addition to overseeing the course of forced efforts, they also provide advice in the implementation of such force efforts.\textsuperscript{14}

The initial inspection process is important in a criminal act, in an attempt to protect a defendant from errors that can be committed by both the investigator, the prosecutor and the judge in imposing a criminal offense. Although the provisions have been made by investigators, prosecutors and judges, in reality does not always provide justice for the justice seekers, therefore criminal procedure law must be able to make breakthroughs in the prosecution process by presenting the Judge Commissioner.

Before discussing the construction and reconstruction more deeply, first explained about the understanding of the construction is an activity to build facilities and infrastructure. In a field of architecture or civil engineering, a construction is also known as a building or unit of infrastructure in an area or in some areas. In summary construction is defined as the overall object of the building which consists of parts of the structure. For example, Building Structure Construction is the overall form / build of the building structure. Other examples: Highway Construction, Bridge Construction, Ship Construction, etc., are no exception in the field of law, especially criminal law. While reconstruction by B.N. Marbun is the return of something to its original place, the compilation or reconstitution of the existing materials and reconstituted as they were or the original occurrence. This is done for the protection of the defendant in the criminal justice process concerning his / her rights.

The law can be perceived and manifested in the simplest form of legislation. In a more complicated form, the form of the law is controlled by a number of legal principles, doctrines, theories, or philosophies, recognized by the universals' legal system.\textsuperscript{15}

The doctrine of equality before the law or so-called the doctrine of equality, according to Albert Dicey, was born as a reaction due to the treatment of tyrants run by Anglo Saxon nobles in England.\textsuperscript{16} King John stopped the treatment by issuing Magna Charta containing the doctrine.\textsuperscript{17} Therefore, it can be said that the expression of equality before the law was born from the British common law system. The various principles of the protection of the human rights of suspects, defendants and convicted persons through national and international criminal law can be seen from the following table which provides some similarities between the ICCPR provisions, UDHR provisions and other provisions adopted in the Law of Material Criminal and Indonesian Criminal Law.

ICCPR as an international convention which is now a positive law in Indonesia has many similarities with the Criminal Procedure Code. Various provisions on the rights of suspects,  

\begin{itemize}
\item \textsuperscript{14} Ibid
\item \textsuperscript{15} Pengertian universal dalam tulisan ini mengacu kepada teori, asas, maupun doktrin hukum yang berlaku sebagai hukum positif dan termaktub dalam peraturan perundang-undangan di Indonesia maupun negara-negara lain di dunia. Sekalipun harus diakui bahwa terdapat juga sistem hukum lain yang berlaku di Indonesia, yaitu sistem hukum adat dan sistem hukum agama, yang tidak tertulis atau tidak bersifat hukum positif.
\item \textsuperscript{16} Bhardwaj, H.R., 	extit{Crime, Criminal Justice & Human Rights}, New Delhi, Konark Publisher Pvt. Ltd., 2001, hlm. 5.
\end{itemize}
defendants and convicts set forth in the ICCPR have been accommodated in the Criminal Procedure Code. However, it can also be seen that as a guideline for the Criminal Justice System, the Criminal Procedure Code is incomplete and does not reflect system regulation which is synchronous and integrated. There are still many provisions on the protection of the rights of suspects, defendants and convicted persons who have not been regulated in the Criminal Procedure Code. Some human rights are not even regulated as rights, but are applied as guidelines for the administration of justice. This leads to differences in perceptions among law enforcers, in particular prosecutors and investigators who consider them unnecessarily subject to these provisions because they only deal with justice. A concrete example in this case is the obligation of rapid judicial administration. It should be understood that it is not just the courts that must be fast in carrying out their duties, but also the process of investigation. The task of protecting human rights is not new at the court stage, but has started since the investigation stage.

Independence and freedom of a person contain a broad aspect. One aspect is the right of a person to be treated fairly, non-discriminatory and lawful, especially if a person is suspected or suspected of committing an offense or an act of crime. That is to say, the deprivation or restriction of liberty and freedom of movement of a person suspected of committing a criminal offense, in view of the Criminal Law may be arrest, detention and punishment, justified by virtue of existing laws and regulations which existed before any legal action was imposed on him.

It implies that there are certain rights of a person who is arrested, detained or sentenced to be fulfilled. These rights include:

1. The right to know the basis or reason for the arrest, detention and / or imposition of a criminal against him / her.\(^\text{18}\)
2. The right to receive humane treatment and rights in accordance with applicable legislation, during the period of arrest, detention or during the course of his or her crime.\(^\text{19}\)
3. Right to express opinions both orally and in writing.\(^\text{20}\)
4. The right to silence, in the sense of not issuing statements or acknowledgments. Thus, no particular pressures are allowed. The right is expressly stated in Article 52 of the Criminal Procedure Code.\(^\text{21}\)

In addition to the rights mentioned above, in examination at the level of investigation and trial, the suspect or defendant has rights including:

1. The right to freely give information to the investigator or judge;
2. The right to be given an interpreter at any time;
3. The right to legal assistance from a person or more of legal counsel during and at each examination level;\(^\text{22}\)

\(^{18}\)Hak-hak tersebut tercakup dalam Pasal 50, 51 dan Pasal 59 KUHAP (UU Nomor 8 Tahun 1981).

\(^{19}\)Hak-hak tersebut ditetapkan dalam Pasal 52-68 KUHAP.

\(^{20}\)Hak-hak tersebut diatur di dalam Pasal 60-63 KUHAP.

\(^{21}\)Pasal 52 KUHAP: "Dalam pemeriksaan pada tingkat penyidikan dan pengadilan, tersangka atau terdakwa berhak memberikan keterangan secara bebas kepada penyidik atau hakim."

\(^{22}\)Untuk mendapatkan penasihat hukum, tersangka atau terdakwa berhak memilih sendiri penasihat hukumnya. Dalam hal tersangka atau terdakwa disangka atau didakwa melakukan tindak pidana yang diancam dengan pidana mati atau ancaman pidana lima belas tahun atau lebih atau bagi mereka yang tidak mampu yang diancam dengan pidana lima tahun atau lebih yang tidak mempunyai penasihat hukum sendiri, pejabat yang bersangkutan pada semua tingkat pemeriksaan dalam proses peradilan
4. The right to contact and receive visits of his or her personal physician for the benefit of health whether or not related to the proceedings of the case;\textsuperscript{23}

5. The right to be notified of his or her detention by the competent authorities at any level of examination, to his family or any other person in the house with him;\textsuperscript{24}

6. The right to be tried in public court proceedings, as well as the right to prosecute and to bring witnesses and / or persons with special expertise in order to provide information which is favorable to him / her;\textsuperscript{25}

7. The right to send a letter to his legal counsel and to receive a letter from his or her legal counsel and relative whenever it is required by him, for the purpose of the suspect or defendant to be provided with writing instruments;\textsuperscript{26}

8. The right to claim compensation and rehabilitation for being arrested and detained without any statutory ordinances.

Indemnification and rehabilitation through pre-trial hearing is a form of restoration of the rights of suspects and defendants compensated by a certain amount of money. The compensation does not reflect a sense of justice and must go through a long bureaucracy awaiting the decision of the Minister of Finance. By the Police, the Minister of Finance's permit is either in the form of a letter or a decision is the basis of indemnification, whereas the compensation is included in the court decision. For example, the case of Sudarto's\textsuperscript{27} death with monetary compensation is only Rp. 500,000.

Limitations of the authority of the Pre-Judicial and also the passive nature of pre-trial judges in the Criminal Procedure Code during this time raises many doubts about its ability to protect the rights of suspects, especially from the actions of repressive law enforcement officers. In such circumstances it is impressed that pre-trial institutions become defenseless and not humanistic because they are unable or less able to protect suspects from possible violations of their juridical rights by criminal law enforcement officers at the preliminary examination level.

In most cases, pre-trial application whose material is outside the provisions of Article 77 of KUHAP is not granted and / or rejected because the judge thinks conventionally based solely on the provisions of KUHAP in the juridical normative perspective, but in this theme we will get a judge's perspective. unlike most judges who have tried pre-trial cases, there is a more progressive perspective by looking at various aspects relating to the background of the emergence of pre-trial institutions whose sole purpose is to protect the suspect's human rights from the possibility of becoming a victim of abuse of criminal law enforcement authorities in preliminary examination level, then before this progressive judge is the pre-trial cases whose material is outside Article 77 of the Criminal Procedure Code as well as in the decision of the

\begin{flushright}
\textit{wajib menunjuk penasihat hukum bagi mereka, di mana penasihat hukum tersebut memberikan bantuannya dengan cuma-cuma. Lihat Pasal 56 KUHAP.}
\end{flushright}

\begin{flushright}
\textit{Lihat Pasal 58 KUHAP}
\end{flushright}

\begin{flushright}
\textit{Lihat Pasal 60 KUHAP}
\end{flushright}

\begin{flushright}
\textit{Lihat Pasal 64 dan 65 KUHAP.}
\end{flushright}

\begin{flushright}
\textit{Lihat Pasal 62 KUHAP.}
\end{flushright}

\begin{flushright}
\end{flushright}
case no. 04 / Pid.Prap / 2015 / PN Jaksel on February 16, 2015 is acceptable and granted. Although the pre-trial decision is not the first time, because previously in the same district court (South Jakarta District Court) there has also been a pre-trial verdict. 38 / Pid.Prap / 2012 / PN Jkt-Cell filed by Bachtiar Abdul Fatah against the Attorney General of Indonesia, known as Chevron Bio Remediation case, which also granted the judge when the material is also outside the provisions of KUHAP. Likewise in pre-trial case No. 36 / Pid.Prap / 2015 / PN Jkt-Sel submitted by former Chief of BPK Hadi Poernomo, and long before any such case has aroused a long and controversial debate, especially in the verdict. 04 / Pid.Prap / 2015 / PN Jaksel dated February 16, 2015 filed by the applicant of the Commander. Police Drs. Budi Gunawan, SH. Msi. Against the Corruption Eradication Commission (KPK), although in fact in 2001 in Sleman District Court there was also a decision of Pre-Court No. 01 / Pre.Pid / 2001 / PN Slmn where the judge also granted the Petitioner's petition so that the investigation handled by the DI Yogyakarta Police Investigator was declared invalid and against the Law and therefore the Petitioners (Polda DIY) were ordered to stop the investigation.

The granting of a pre-trial request whose material is beyond the provisions of Article 77 of the Criminal Procedure Code does not need to be responded negatively, nor should it be appreciated positively along the motive or the reasons used by the judge in making the verdict true and not against the law and not motivated by abuse of authority, which has been decided by the judge is to grant the Pre-Judicial application whose material is outside the provisions of Article 77 of the Criminal Procedure Code there is a strong legal justification now that is with the decision of the Constitutional Court No. 21 / PUU¬XII / 2014 which extends the jurisdiction of pre-trial judges to examine and decide on the validity of the determination of the suspect as measured by the fulfillment of sufficient preliminary evidence of at least two valid evidences, and the latter of which should be given attention from the perspective of future law (ius constitutum), in the draft of the new Criminal Code has also contained the extension of authority pre-trial is not only about its authorization to verify the validity of the suspect's determination, the validity of the investigation and prosecution, but also to examine any losses suffered by the suspect or any interested parties arising from the unlawful action of the investigator.

The term Judge of the Preliminary Examination (Judge Commissioner) is actually not a new item in Indonesia, because at the time of enactment of the Reglement op de Strafvoerdering, it is set in the second title of Van de regter-commissaris functioning at the preliminary examination stage to oversee whether the act of forced effort (dwang middelen), which includes arrest, searches, seizure and inspection of letters, is done legally or not. In addition, in the Reglement op de Strafvoerdering the Judge Commissioner or regimental commissaris may conduct an investigating judge to summon persons, both witnesses and suspects, to the homes of witnesses and suspects, as well as to examine and hold temporary detention of suspects. However, the application of Herziene Indische Reglement (HIR) with Staatsblad. 44 In 1941, the term regiss commissaris was not used anymore.

Furthermore, the term Judge Commissioners began to reappear in the draft Law of Criminal Procedure Law submitted to the House of Representatives in 1974, during Prof. Oemar Seno Adjie, SH, served as Minister of Justice. In this concept, the Judicial Commissioner has the authority at the examination stage (dwang middelen), acting executive to participate in leading the implementation of the forced effort, determining which investigator conducts an investigation in case of dispute between the police and the prosecutor, and making a decision on the objections raised by the parties which is subject to action. The background for the introduction of Judicial Commissioners is to better protect human rights guarantees in criminal proceedings and avoid congestion by the incidence of
differences between investigative officers from different agencies. Unlawful arrest and detention is a serious violation of the human rights of freedom and freedom. Illegal seizure is a forced breach must be approved by the court, as well as Amir Syamsuddin said the importance of the judge commissioner to reduce the arbitrary actions perpetrated by law enforcement officers in the forced effort. In practice, many complaints suffered by victims related to forced efforts by law enforcement officers who were considered to violate human rights. 28 Prof. Andi Hamzah, 29 said that in principle the judge of this examiner is the same as the current pre-trial judge, the authority added with the extension of the search warrant detention, seizure, permit wiretapping. It aims to reduce the burden of judges of state courts, so that they can concentrate on civil, criminal, and so on. A person who does not receive his arrest, for example, can file a complaint to a preliminary examiner judge. 30

2 Problem Formulation

The formulation of the problem in writing this paper is as follows:

How is the construction of a commissioner's judge as an effort to protect the human rights of the suspect in the Indonesian Criminal Justice System?

3 Discussion

Legal justice for people in this country is an expensive item. Legal justice is only owned by people who have power, political and economic access only. Meanwhile, poor or poor communities are relatively difficult to gain access to legal justice, in fact they are often victims of unjust law enforcement. This phenomenon of legal injustice continues to occur in the practice of law in this country. The emergence of various protests against law enforcement officers in various region, shows the system and practice of law is currently in trouble, as according to Ahmad Ali, the supremacy and legal justice that became the desire of society never materialized in its real reality. The deterioration of law in Indonesia is even more so. Public confidence in law enforcement has worsened. 31

Legal injustice is a key word to explain the low level of public confidence in the legal institutions in Indonesia. According to Satjipto Rahardjo as a form of social crisis that afflicts our law enforcement officers, the things that arise in legal life are less well explained. This situation is less realized, in relation to legal life in Indonesia. 32 Ongoing law enforcement practices, though formally legitimate (formal juridical) law, but moral legitimacy and social is very weak.

---

Constitutionally, the provision of Article 28D of the 1945 Constitution states that: "Everyone is entitled to the recognition, guarantee, protection, and fair legal certainty and equal treatment before the law". This constitutional basis is clear; every citizen has the right and equal treatment before the law. No discrimination in the law enforcement process. States, in this case law enforcement officials have an obligation in providing non-discriminatory legal justice, whether for big people or in power as well as small people who have no access to power politics and economics.

The same right before the law is also affirmed in the Law of Human Rights of the State Gazette Number 39 of 1999, State Gazette Number 165, and Supplement to the State Gazette Number 3886, in Article 3 states as follows:

"Everyone is entitled to the recognition, guarantee, protection, and fair treatment of law and to obtain legal certainty and equal treatment before the law. That is, legal justice is the right of every color of the country that must be guaranteed and protected by the state."

Efforts to advance the role of law in addressing multidimensional for a long time and one of them with national criminal law reform, including in this case is the update of national criminal procedure law. Only up to the present KUHAP which was considered a masterpiece in the renewal of national criminal procedural law because it can replace the criminal law of colonial legacy is considered not in accordance with human rights in the realm of Indonesian independence, along with the development of ideas.

One of the fundamental principles in the KUHAP, namely the existence of a control institution called Pretrial. However, pre-trial in the KUHAP is considered to have a number weakness. First, the seizure and search process is not regulated as pre-trial. Second, the unequal position between the apparatus and the suspect is often intimidated and violent. Third, pretrial judges only prioritize the formal aspects rather than examine the material aspects because there is no obligation for investigators to prove the reasons for detention.

Narendra Jatna, said the idea of a Commissioner Judge is indispensable with the International Covenant on Civil and Political Rights ratified by Law Number 12 Year 2005 on Ratification of the International Covenant on Civil and Political Rights). In one of the provisions of the convention, it implies that any act of enforced efforts by law enforcement officers shall immediately be brought before the court.

The same thing is also conveyed by Former Kabareskrim Polri Komjen (Ret.) Ito Sumardi, involving the judge of the commissioner in the determination of the proper case whether or not to enter the court, will be contrary to the police work in conducting the cheap, quick and fair legal process, the countries used in the comparative study of France and the Netherlands are very different from the geographical conditions in Indonesia, and France itself is currently freezing the pattern of judges commissioners, while in the Netherlands such legal process has been removed.

34 Narendra Jatna, Dosen Fakultas Hukum Universitas Indonesia, dalam Diskusi RUU KUHAP Menuju Pembentukan KUHAP di gedung LBH Jakarta, pada tanggal 13 Februari 2009.
35 Brigjen Pol. HS. Maltha, 13 Maret 2013, Detik News, RUU KUHAP: Mantan Kabareskrim Kritik Pembentukan Hakim Komisaris
Romli Atmasmita, Professor of international criminal law from Padjadjaran University (Unpad), one of the experts who heard his opinion. The function and role of the commissioner judge in RKUHAP is not much different from pre-trial institution. That is filtering the authority of investigation and prosecution. The extension of authority to the commissioner’s judge will not necessarily trigger the improvement of the criminal justice system. In fact the authority of investigators and prosecutors are more stringent. As a result, the criminal justice system does not run effectively and efficiently. The Criminal Code Draft is only a reference to procedural justice but it is difficult to achieve substantial justice. Therefore, deny the existence of judges commissioners in the draft of Criminal Procedure Code. He chose pre-trial institutions to be retained in the draft of Criminal Procedure Code. With note, the authority of pretrial institutions is expanded and reinforced by a strict supervisory system with pretrial mechanisms and processes.

Based on the draft of the Criminal Procedure Code, the chapter regulating the Preliminary Examining Judge states that the Preliminary Examining Judge is authorized to determine or decide: 1) The legitimacy of arrest, detention, search, seizure, or wiretapping; 2) Cancellation or suspension of detention; 3) A description made by a suspect or defendant by violating the right not to incriminate himself; 4) Unlawfully obtained evidence or statements can not be used as evidence; 5) Indemnify and / or rehabilitate for a person arrested or illegally detained or indemnified for any unlawfully confiscated property rights; 6) the suspect or defendant is entitled to or is required to be accompanied by a lawyer; 7) Investigations or prosecutions are conducted for unlawful purposes; 8) Termination of investigation or cessation of prosecution not based on the principle of opportunity; 9) Whether or not a case for prosecution is required; 10) Violations of any other suspects' rights that occurred during the investigation phase.

The provisions of the law are as follows: first, the Judge of Preliminary Examination gives a decision within 5 days at the latest calculated from the date of receipt of the request relating to the aforesaid authority. Second, the Examining Judge, the Preface provides a decision on the request based on the results of a research copy of a warrant for arrest, detention, seizure, or other relevant records. Third, the Preliminary Examination Judge may hear information from the suspect or his or her legal advisor, the investigator or the public prosecutor. Fourthly, if necessary, the Judge of Preliminary Examination is allowed to request relevant and sworn testimony of relevant witnesses and evidence. Fifth, the petition relating to the authority of the Preliminary Examination Judge above does not delay the investigation process.

When examining the Criminal Code Draft Law there are several criticisms as follows: First, in relation to the litigation model in the criminal justice system. It can not be denied that the draft Criminal Procedure Code is more inclined to the due process of law which focuses on the protection of the rights of suspects. This is equivalent to classical criminal law purposes that focus more on individual interests and not in order to protect people from crime.

Secondly, it is still related to the due process of law, there is a strong indication that the draft of Criminal Procedure Code refers to the model, namely the establishment of a judge investigating institution that philosophically rejects efficiency in the judicial process. This will intersect with the general principle of procedural law that recognizes the quick, simple, low cost principle.

---

Third, due process produces procedures and substances of protection against individuals. Each procedure in the due process examines two things. 1), has the prosecutor removed the suspect's life, liberty and property without a procedure. 2), if using the procedure, whether the procedure pursued is appropriate with due process. It is not easy to apply due process of law in Indonesia, admitted by the legal circumstances that are full of judicial mafia practices.

Fourth, it is still related to the authority of the preliminary examiner judge in its implementation is not easy to implement given the geographical conditions in Indonesia. In a relatively short time should be able to confront the suspect physically to the preliminary hearing judge in the course of the extension of detention. The existence of a preliminary hearing judge shall be in any District Court in which jurisdictional territory is the same as the administrative area of a city or county government. In areas of eastern Indonesia consisting of many islands, one sub-district consists of one even several islands. With limited means of transportation, it is not easy to physically face the suspect to a state court, not to mention the safety factor.

Fifth, in the future Criminal Procedure Code, there should be a proportional protection of interests. This is in accordance with the doctrine of the existence of a criminal law that must protect the three interests, each of which is individuale belangen (interests of the individual), sociale of maatschappelijke belangen (interests of social interest or society) and staatsbelangen (interests of state interest). The criminal law serves to counter abnormal actions as described by Vos "... het starfrecht zich richt tegen min of meer abnormale gedragingen". The actions of abnormal actions in question are actions that affect the interests of the individual, the interests of society and the interests of the state. Therefore, an idolized criminal procedural law must have a balance of protection between individual interests in this case perpetrators of crimes, disturbed public interest due to crime victims and state interests in prosecution and punishment.

Sixth, as a solution to balance the protection of proportional interests between the actions of law enforcement officials and the protection of human rights is to optimize pre-trial institutions. That is, pretrial can be made against all the forced attempts that law enforcement officers can take against suspects and / or defendants. There should also be clarity on the status of the suspect, if the case has never been processed, while a person has been declared a suspect.

4 Conclusion

The existence of a judge commissioner which had a view in order to have a guarantee the protection of human rights of a person, who is a suspect / defendant in the criminal justice process. With the existence of the judges, the commissioners prevented different views on the validity of legal action on the preliminary examination, namely the validity of arrest, detention, search and seizure because the legal action relates to the issue of human rights as the defendant, namely freedom and freedom, wealth and protection against security and peace.

38 Ibid, hlm. 31
Guarantee on the protection of the rights of suspects / defendants in the preliminary examination stage as a manifestation of the function of criminal procedural law is to conduct a fair trial in order to discover the material truth or the essential truth. And the forced attempts by the Investigator to obtain sufficient initial evidence are not only submitted unilaterally to the investigator but there must be a test conducted by the commissioner's judge.

References

Books:
[1]. Ahmad Ali, Keterpurukan Hukum di Indonesia, Bogor: Ghalia Indonesia, 2005
[3]. Apeldoorn, L.J. van, Pengantar Ilmu Hukum, Pradnya Paramita, Jakarta, 1975
[6]. Indriyanto Seno Adji, KUHAP dalam Perspektif, Jakarta: Diaudit Media, 2011
[10]. Roni Hanitijo Soemitro, Metode Penelitian Hukum dan Jurimetri, Jakarta: Ghalia Indonesia, 1983
[12]. Soerjono Soekanto & Sri Mamudji, Penelitian Hukum Normatif, Jakarta: Rajawali, 1985
[14]. Yanto, Hakim Komisaris dalam Upaya Perlindungan Terhadap Hak Asasi Manusia, Disertasi, Jakarta: FH Jayabaya, 2010

Papers:

Website:

Cut Memi
{cutmemi@gmail.com}

Lecturer at Law Faculty of Tarumanagara University, S. Parman Street No. 1, Grogol, Jakarta Barat

Abstract. In the event that a different nationality marriage occurs, it is related to several aspects of International Civil Law because the marriage relationship contains foreign elements. On the other hand, it creates differences in nationality between children born from marriage and fathers or mothers who are Indonesian citizens, which also raises legal problems. The method used in this study is the normative legal research method. Based on the Decision Number 1416/2010/PTUN.JKT, the State Administrative Court has taken a final decision by stating that Sunnesh Rattan Laddaram is not entitled to his mother’s inheritance. Even more, the verdict was then upheld to the stage of Judicial Review in the Supreme Court referring to the Decision Number 105/PK/TUN/2013. Upon further analysis, the judge’s verdict indeed in this case is contrary to the rights of the child, the personal status theory, the preliminary issue, as well as the legitimate portion “legitieme portie” theory contained in the private international law. As a result, the researcher would strengthen the private international law theories and recommend that the judges of Jakarta Administrative Court implement the private international law theories in the future decision making and Sunnesh may submit the decision request as a heir to the District Court to gain his inheritance rights.

Keywords: Inheritance Rights of A Child, Law of Inheritance, Marriage between Different Citizenship.

1 Introduction

A. Background

Mixed marriage between Indonesian citizens and foreigners is an undisputed fact that happens in Indonesia. This mixed marriage has raised the issue in the Private International Law since foreign elements are fulfilled in this marriage. Indonesian Law No. 1 of 1974 concerning Marriages defines that a mixed marriage is the marriage between two persons subject to different family law as well as different citizenship and one of the parties holds
Indonesian citizenship. Therefore, mixed marriage is subject to Private International Law which is governed in Algemeene Bepalingen van Wetgeving (AB). Article 16 of AB stipulates that: “De wetelijke bepalingen betreffende den staat en de voegheid der personen blijven verbindend voor ingezetenen van Nederlandsch-Indie, wanneer zij zich buiten’s land bevinden” (The provisions of law concerning the status and rights of a person are still valid although that person stays overseas). The status and rights in Private International Law are called personal status, which is every act in family law that includes: marriages, divorces, inheritance, etc. Based on that, if there is an issue of personal status, it will be settled by the rules in Private International Law.

On the other side, as stipulated in Article 4 point c and d of Act No. 12 of 2006 concerning Citizenship, children born within legal wedlock from an Indonesian father and mother, as well as from an alien father and an Indonesian mother are both citizens of Indonesia. Pursuant to Article 6 of Citizenship Act, those provisions will affect in the dual citizenship of the child. Upon fully reaching the age of 18 (eighteen) or upon marriage, the child shall choose one citizenship.

Based on that reason, children born out from a mixed marriage could comply with the citizenship of its mother or father until it fully reaches the age of 18 (eighteen). When the child fully reaches the age of 18 (eighteen), the child will need to choose to comply with the citizenship of its mother or father. With such provision, there is a chance that the child will have a different citizenship from its parents when the child fully reaches the age of 18 (eighteen), which could raise a legal issue related to the inheritance rights of an alien child to its Indonesian mother. Meanwhile, according to Article 21 section 1 of Act No. 5 of 1960 concerning Basic Agrarian Principles, “Only Indonesian citizens can have the rights of ownership/freehold.” Hence, the Indonesian laws related to inheritance shall not be applied to that child.

One of the sample cases, which is also the main focus in this research paper, is the case of Sunesh Rattan Laddaram (a son who holds British citizenship) who struggles to obtain his inheritance rights from his Indonesian mother. Sunesh Rattan Laddaram is a son of a mixed marriage between his mother, Swita Motiram, who previously held Indonesian citizenship and converted her citizenship to Indian citizenship, while his father, Rattan Ladharam, held British citizenship, in 1979. However, his parents divorced in 1990 and the father got the custody of the child. Sunesh, therefore, holds a British citizenship as his father does. After the divorce, Swita Motiram came back to Indonesia and converted her citizenship from Indian to Indonesian. On 3 November 2009, Swita Motiram passed away and left her inheritance. The siblings of Swita Motiram, Kamlesh and Johny Motiram, filed an inheritance rights application for the wealth or property left by Swita Motiram to the Property and Heritage Agency.

On that basis, the Property and Heritage Agency issued a Certificate of the Rights to Inherit Number W7.AH.06.10-8/II/2010 on 25 February 2010. After the Certificate of the Rights to Inherit was issued, Sunesh claimed to be the heir since he is the only son of Swita Motiram and filed an application for the property left by Swita Motiram to the Property and Heritage Agency. The Property and Heritage Agency, therefore, rectifies the previous certificate and nullify the Certificate of the Rights to Inherit Number W7.AH.06.10-8/II/2010, and declared that Sunesh Rattan Ladhanam as the heir of the inheritance left by Swita Motiram.

However, the siblings of Swita could not accept the declaration and postulate that Sunesh shall not have the rights to inherit since Sunesh is an alien and is not subject to Indonesian law. Eventually, they filed a lawsuit to challenge the Certificate of the Rights to Inherit
The Jakarta State Administrative Court decided to nullify the Certificate of the Rights to Inherit. Moreover, the decision of Jakarta State Administrative Court was strengthened at the judicial review based on the Judgment Number 105 PK/TUN/2013 at the Supreme Court of Indonesia, which resulted in the rights to inherit enjoyed by the son to be dismissed. This is a challenging issue, which the author, as an expert in Private International Law, is keenly interested in conducting a research on the topic as mentioned above.

B. Issue

The issue raised is in this research how are the rights to inherit of an alien child toward the inheritance of an Indonesian mother based on Private International Law?

C. Objective of research

The objective of this research paper is to conduct a research related to the rights to inherit of an alien child towards the inheritance of an Indonesian mother based on the perspective of Private International Law. This paper is not only expected to contribute, to either in theory or practice in Private International Law, to the judges as a basis in ruling the decision, but the rights to inherit of an alien child to the inheritance of an Indonesian mother as well.

2 Literature Review/Discussion

1. The Definition of Inheritance

Sudarsono, an expert of Inheritance Law, states that if someone has passed away, the rights and obligations of that person will be transferred to its heir. It is in line with Article 830 Indonesian Civil Code that inheritance takes place in case of death only. Meanwhile, the person who enjoys the rights to inherit is the husband, wife, children, or appointed person.¹

Therefore, in inheritance matter, there are several terms that are related to each other, such as testator, a heir, and inheritance.²

a) A testator is a person who has passed away and left its inheritance.

b) A heir is a member of the family of the testator who replaces the position of the testator under inheritance law resulted from a death incident of the testator.

c) Inheritance is wealth, including all the assets and liabilities of the testator that will be transferred to the heir. All the assets and liabilities, which is joint-owned the heir, are called boedel.

d) Inheritance Law is law that governs what should be done with the inheritance of a person who has passed away and the consequences of the transfer of the inheritance from testator to the heir.

2. Laws related to the Certificate of the Rights to Inherit Making

A heir, although s/he is the biological child of the testator, does not mean that s/he will definitely have the rights to inherit. Therefore, as stated by I Gede Purwaka, it shall be equipped with the Certificate of the Rights to Inherit issued by officials or an authorized government department or made by the heir that is validated by the village head, urban village head, or subdistrict head. The description of the rights to inherit will be used as a strong evidence for the transfer of rights of inheritance from the testator to the heir. There are several regulations related to the Certificate of the Rights to Inherit, such as:

a. Letter of Director General of Religion on behalf of the Minister of Home Affairs dated 20 December 1969 No. Dpt/12/63/12/69 concerning Certificate of the Rights to Inherit and Proof of Citizenship;

b. Article 42 section 1 of Government Regulations No. 24 of 1997 concerning Land Registration;

c. Article 111 section 1 point c Head of National Land Authority Regulation No. 8 of 2012 concerning the Implementation Provisions on Law No. 24 of 1997 concerning Land Registration.

Based on those regulations, the evidence letter that could be submitted as a heir are: a) the testament of the testator, or b) court ruling, or c) the determination by the judges. Meanwhile, the departments that have the authority to issue the Certificate of the Rights to Inherit, are distinguished based on the category of the citizen, which are:

1. As for indigenous Indonesian: the Certificate of the Rights to Inherit will be made by the heir/s witnessed by 2 (two) persons and validated by the village head, or subdistrict head in the domicile of the testator in time s/he passed away;

2. As for Chinese Indonesian: Certificate of the Rights to Inherit will be issued by Public Notary, meanwhile for Alien Orientals, besides Chinese: the Certificate of the Rights to Inherit will be issued by Property and Heritage Agency. By relating it to the case of Sunesh, since Sunesh’s mother (testator) belongs to Alien Oriental (not Chinese), therefore the Certificate of Rights to Inherit shall be issued by Property and Heritage Agency.

3. Elements in Inheritance Law

Basically, a person shall enjoy the freedom to do anything toward its wealth or property, including transferring or granting it to any person s/he prefers. This element is called individual element, however, the freedom in this context does not mean an absolute freedom, there are still restrictions by the laws. The restrictions is called legitimate portion, which means a particular part or an absolute part enjoyed vertically by the heir that shall not be set aside by the testator. It should be noted that wife (husband), relatives like uncle (aunt) do not enjoy the right of legitimate portion.

4. Inheritance Methods

There are 2 (two) methods to be inherited:

a. Inherited by Ab intestato (inherited based on law)


4 Ibid.


6 ...
b. Inherited by testament (inherited based on the testament)

By relating it to this research, the inheritance method imposed on the mother of Sunesh towards her child is categorized as an inheritance by *Ab intestato* where the most characteristics of the inheritance are bloodline relatives between the testator and the heir.

5. General Principles of Inheritance\(^7\)

a. In principle, the objects of inheritance is the rights and obligations in the field of property.

b. If death occurred, the rights and obligations of the testator will be immediately transferred to the heir(s) (*saisine* rights), which means that even without handover, the heir(s) immediately obtains the inheritance of the testator.

c. The parties having the rights to inherit are bloodline relatives to the testator. Based on far or close blood relationship, the first class of the heirs are children and its descendants, the longest living husband or wife, while the second class of the heirs are parents, siblings, and descendants from siblings.\(^8\)

d. In principle, the inheritance shall not be left without distribution/division.

e. In principle, every person, including baby is competent to inherit, except those who are inappropriate to inherit (Article 838 of Indonesian Civil Code).

6. Theories of Private International Law Relating to Inheritance

1. The Theory of Personal Status

Before proceeding to discuss the personal status, firstly, it is required to explain the definition of Private International Law. Private International Law is a law, particularly civil law, that has the nature of international, but the sources of law are still national laws. Why it is international by nature because there are foreign elements in the civil relations. Nevertheless, the sources of law are still national laws. There are 2 (two) systems of law in determining the personal status of a person, one is common law system that applies the domicile principle, and another is civil law system that applies the nationality principle.

Historically, Indonesia enjoys the civil law systems and applies the nationality principle in determining the personal status of her citizens, in other words, the determination of the personal status of a person is determined by its nationality. Furthermore, concerning the personal status, it is required to explain whether or not the wealth or property owned during the marriage is included in personal status. The precedents of Indonesia determine that the wealth or property is included in the personal status.\(^9\) Therefore, since Indonesia applies the nationality principle, hence, in Private International Law governs that wealth or property is included in personal status and determined by the national law of the testator when it has passed away.

Based on that, wherever the Indonesian citizens go, Indonesian law, related to inheritance law, will always bind them. The author is still referring to *Algemeene Bepalingen van Wetgeving* (AB) since, until now, there is no law that governs Private International Law in Indonesia. Hence, the issue of Private International Law will be settled by the laws, which is a legacy of Dutch colonization period.

\(^7\) Surini, *Ibid*.

\(^8\) ...

2. **The Theory of Choice of Law**

Choice of law is a separated study in the general theory of Private International Law or usually called *partij autonomie*.\(^{10}\) Choice of law is a freedom given to the parties in determining or choosing which law will govern their contract, that has the international nature. The choice of law has been accepted based on the freedom of contract principle. Article 1338 section 1 of Indonesian Civil Code states that “All agreements that are made legally shall apply as the law between the parties thereto.”\(^{11}\)

The freedom in choosing the law is based on the interest of the contracting parties in conducting their business that will be beneficial for them.

By choosing the law, the contracting parties will feel secured since the applicable law is the law chosen and approved together by the contracting parties.

However, the freedom of contract principle will not be applied in inheritance law. The choice of law will only be applied in contract law. Hence, the choice of law principle will not be applied in other law fields, including the inheritance law, in particular, the personal status.

3. **The Theory of Evasion of Law**

Besides the theory of choice of law, we find another theory which is related to this research, it is Evasion of Law. There are several terms of evasion of law:

a. *Wetsontduiking* (Dutch);

b. *Fraude a la loi* (French);

c. *Fraus Legis* (Latin);

d. *Gezetzesumgehung = das Hadeln in Fraudem Legis* (German);

e. *Frode alla Legge* (Italian).

Evasion of law is an act conducted with the purpose of avoiding a requirement or certain legal consequence of a particular law to satisfy its purpose, as that person will be bound by a foreign law, not its national law (setting aside its national law). Therefore, the element of conducting evasion of law is avoiding a requirement or legal consequence of a particular law to satisfy its purpose. The objective is to be bound by foreign law (not its national law).

4. **The Theory of Preliminary Matter**

The theory of preliminary matter is a theory in Private International Law which states that in settling a Private International Law case, as a legal issue should be settled or determined first before the final decision made by the judges in a Private International Law. The premilinary matter arises, if the decision of a legal issue shall depend on the validity of the legal relation or other legal issues.

Example:

<table>
<thead>
<tr>
<th>Preliminary matter</th>
<th>Inheritance claim</th>
<th>Merits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picture</td>
<td>Is the marriage legitimate?</td>
<td></td>
</tr>
</tbody>
</table>


Explanation of the picture:

A woman married to a man and gave birth to two children (a son and a daughter). Years later, after the father of the children passed away and the children filed a lawsuit to claim the rights to inherit to the court. The claim, in this case, is called merits. In order to settle the merits, according to the Theory of Preliminary Matter, it shall examine the preliminary matter, in this case, if the mother has married to another person and has not divorced before marrying the father of the children, therefore, the marriage between her and the father of the children is not legitimate since the mother is still bound to the previous marriage. As the marriage is not legitimate, therefore, the children of them are children out of wedlock, hence, the merits could not be ruled.

Pursuant to the Theory of Preliminary Matter, if it applies to the inheritance case of Sunesh, before the judges decide the case, the judges shall firstly determine the validity of the preliminary matter (in this case whether or not the marriage between both parents of Sunesh are legitimate). Based on the validity of the marriage, the judges could determine the merits of the inheritance rights issue. Assuming the marriage is valid, the decision of the judges shall grant the rights to inherit to Sunesh. However, if it is otherwise, the decision of the judges shall nullify the Certificate of the Rights to Inherit.

3 Result And Discussion

The logical background of the rationale, as the basis, for the judges of State Administrative Court of Indonesia are stated infra:

a. Consider that the panel of judges agree that every descendant has the rights to inherit from its parent(s), however, the provision does not govern concerning the institution that has the authority to issue the Certificate of the Rights to Inherit in cassu to an alien who has Indonesian parent, who is a Foreign Oriental Group.

b. According to the consideration above, the panel of judges views that the Respondent, in issuing the Certificate of the Rights to Inherit No. W7.AH.06.10-36/VII/2010 on 19 July 2010 that has been given to Sunesh Rattan Ladharam, has acted beyond its authority.

c. By any reasons of the act of the Respondent, it shall be categorized as violating the Legal Certainty Principle, and Orderly State Officials Principle as a part of the Good Governance Principle. Therefore, based on the provision as stipulated in Article 53 Section 2 letter b of Law No. 9 of 2004 concerning the Amendment of Law No. 1986 concerning State Administration Judicature, the decision made by the Respondent relating to the dispute object shall be ruled as invalid, and also, the Respondent is entitled to revoke the disputed object that has been issued.

d. The president of the panel of judges, Dra. Marsinta Uli Saragih, S.H., M.H., expressed disagreement with the majority of judges by writing a dissenting opinion as stated below.

e. Because the Claimant used the invalid information that states Swita Motiran does not have a descendant in its rights to inherit application, it should be considered that the Certificate of the Right to Inherit No. W7.AH.06.10-08/II/2010 on 25 February 2010 contains the legal defect.

f. According to the consideration above, the president of the panel of judges argued that the Claimant does not have the interest in filing the lawsuit to the Jakarta State
Administrative Court and therefore, the Court shall reject the claim of the Claimant and based on Judgment No. 141/G/2010/PTUN.JKT.

Eventually, the judges ruled and adjudged that: declare that the Certificate of the Right to Inherit No. W7/AH.06.10-36/VII/2010 on 19 July 2010 that was given to Sunesh Rattan Ladhram, held by the Respondent, is invalid.

For that reason, Sunesh was not satisfied with the judgment. Later on, the Chairman of Property and Heritage Agency and Sunesh Rattan Ladharam filed an appeal application to Jakarta State Administrative High Court. The rationale of the judges of the Jakarta State Administrative High Court in judging the case are stated infra:

- In responding to the panel of judges of State Administration Court first degree, the panel of judges of State Administrative High Court disagrees to the logical background of the judgment by the State Administrative Court first degree, reasoned by: pursuant to the law principle of government administration, the official who made a decision has the authority to revoke or rectify it if there is a fallacy in making the previous decision.

- The legal issue, in this case, is that the Certificate of the Rights to Inherit No. W7/AH.06.10-36/VII/2010 on 19 July 2010 concerning the Inheritance Rights to the Inheritance of Swita Motiram only states that Sunesh Rattan Ladharam as the only heir of Swita Motiram. Is the act of Respondent/Appellant in issuing the disputed object justified by the law?

- Regarding to the law considerations relied by the Respondent/Appellant in issuing the disputed object a quo, the panel of judges of Jakarta State Administrative High Court argued that the reasons of the Respondent/Appellant are the reason of civil, which shall not be so easy to nullify or rectify the first decision which is the certificate issued on 25 February 2010 No. W7.AH.06-10-08/II/2010. Hence, substantially, the disputed object was issued not in accordance with the laws and shall be nullified.

Eventually, by the Judgment No. 86/B/2011/PT.TUN.JKT, the judges declared:

- The nullification of the decision of the Respondent/Appellant No. W7/AH.06.10-36/VII/2010 on 19 July 2010 concerning the Certificate of the Rights to Inherit that was given to Sunesh Rattan Ladharam.

- Obligate the Respondent/Appellant to revoke the decision of Respondent/Appellant No. W7.AH.06.10-36/VII/2010 on 19 July 2010 concerning the Certificate of the Rights to Inherit that was given to Sunesh Rattan Ladharam.

After that, the Property and Heritage Agency of Jakarta and Sunesh Rattan Ladharam filed a cassation lawsuit to the Supreme Court. The rationales of the judges of the Supreme Court in judging the case are stated infra:

- The rationale of cassation lawsuit could not be justified since there is no error of Judex Factie in applying the law, on the basis of the Decision of State Administration Disputed object to evaluate and examine the civil right based on Article 14 Section 1 of Instructie Voor De Gouvernements Landmeters STBL 1016 No. 517 as the authority of the Property and Heritage Agency as the jurisdiction of the general court. Besides, the Respondent has acted beyond its authority since the act of the Respondent is inconsistent with the Principle of Legal Certainty, and Orderly State Officials Principle as a part of the Good Governance Principle.

- The issuance of the disputed object is inconsistent with the law, and violates the General Principles of Good Governance (Principle of Legal Certainty), the Respondent relied on the civil reasons and nullified the previous decision that states two heirs, while in the
disputed object only states one heir, and also the objections regarding the assessment of the result of the evidence which is an appreciation of a reality, which could not be considered at the cassation stage since the examination at cassation is only related to the error in applying the law, as stipulated in Article 30 of Law No. 14 of 1985 concerning Supreme Court as amended to Law No. 5 of 2004 concerning Supreme Court and second amendment to Law No. 3 of 2009 concerning Supreme Court.

c. Based on those reasons above, the judgment of Judex Factie, in this case, is not inconsistent with laws and/or regulations. Therefore, the cassation application submitted by the Cassation Applicant I: Sunesh Rattan Ladharam and Cassation Applicant II: the Chairman of the Jakarta Property and Heritage Agency shall be rejected.

On 9 May 2012, State Administrative Supreme Court, by its judgment No. 28/K/TUN/2012, ruled and adjudged: Reject the cassation application of the Cassation Applicant I: Sunesh Rattan Ladharam and Cassation Applicant II: Chairman of Jakarta Property and Heritage Agency.

Since Sunesh, once again, was not satisfied with the judgment, Sunesh and the Jakarta Property and Heritage Property filed a judicial review application to Supreme Court. The rationales of the judge at the judicial review stage are stated infra:

a. The judgment of Judex Juris is appropriate since there is no fallacy and also there is no falsehood or craftiness from the opposing party as mentioned in Article 67 letter f and a of Law No. 14 of 1985 concerning Supreme Court as amended to Law No. 5 of 2004 concerning Supreme Court and the second amendment to Law No. 3 of 2009 concerning Supreme Court.

b. In order to examine the civil rights in the disagreeing condition or containing the order element, it becomes the authority of the general court.

c. Based on the rationales above, therefore, the judicial review application submitted by the Judicial Review Applicant: Sunesh Rattan Ladharam is not reasonable and shall be rejected.

Eventually, on 1 October 2013, the Supreme Court, by its judgment No. 105/PK/TUN/2013, ruled and adjudged: Reject the judicial review application from the Judicial Review Applicant, Sunesh Rattan Ladharam.

With regards to the judgment as stated above, with all due respect, the author disagrees with the judges. The considerations by the judges in stating that there are no rules that govern the institution that has the right to issue Certificate of the Rights to Inherit for an alien who has Indonesian parent/s and who is a Foreign Oriental Group, is fallacious and baseless since there are laws that govern it. According to Article 14 section (1) Instruksi Voor de Gouvernements Landmeters in Stbl. 1916 No. 517, jo. the Letter of Ministry of Home Affairs dated 20 December 1969 Number: DPT/12/63/12/69 jo. Regulations of the State Minister of Agrarian Affairs/ Chairman of the National Land Agency No. 3/1997 concerning the Implementing Provisions of Government Regulation No. 24/1997 on the Land Registration, it has been explicitly governed that the Certificate of the Rights to Inherit for an Indonesian, who is the Foreign Oriental Group descent, shall be issued by the Property and Heritage Agency. The panel of judges, in this case, has incorrectly applied the law and misinterpreted the inheritance rights enjoyed by an alien, whereas the law that shall be applied in inheritance is the law of the testator, not the law of the heir. The testator (the mother of Sunesh) is an Indonesian Foreign Oriental Group (not Chinese). Therefore, based on the law stated above, the act conducted by the Property and Heritage Agency in issuing the Certificate of the Rights to Inherit to Sunesh is in accordance with the law since the institution has the strong authority to do so.
Further, relating to the issue, we must note that Indonesia is a civil law country that applies the Principle of Nationality in determining the personal status of a person, including the inheritance issue. Based on the principle, the law that applies, in this case, shall be the law of the testator, at the time of his/her mortality. Related to the present case, since the mother of Sunesh is an Indonesian at the time of her mortality, therefore, the Indonesian Civil Code shall determine whether or not Sunesh deserves the rights to inherit. Article 852 of Indonesian Civil Code stated that: “The children or their descendants shall inherit from their parents, grandparents, or further blood relatives in the ascending line, without distinction between those of different sex or age, notwithstanding that they may have been conceived from several marriages.”

The provision means to state that nationality shall not hinder a child to inherit, moreover, the nationality and inherit rights are both different issue and not relevant one to another since the inheritance rights are determined by the bloodline, not the nationality, and the children are the first class that has the rights to inherit from their parents.\(^{12}\)

However, there are laws that restrict the ownership rights of an alien in Indonesia. Article 21 section (1) jo. section (4) of Law No. 5 of 1960 concerning the Basic Regulation on Agrarian Principles that states only an Indonesian citizen may have rights of ownership. However, Article 21 section (3) of Agrarian Law states that any foreigner, who after the coming into force this Act has obtained the rights of ownership through inheritance, without a will or through communal marital property and any Indonesian citizen too, having the rights of ownership and losing nationality after the coming into force of this law, are obliged to relinquish that rights within a period of one year after the obtaining of that rights or after losing that nationality. If after expiry of that period the rights of ownership is not relinquished, then it becomes invalid by the provision that the rights of other parties, incumbent hereon, endure.

Based on that provision, an alien child is allowed to receive the inheritance, not to mention that the inheritance came from his biological mother. Therefore, the limitation of inheritance rights shall not be the obstacle for the inheritance rights of a child in receiving the inheritance from its mother since the law itself gives a solution without violating the rights of an alien child. Hence, the child shall still obtain the inheritance although he has different citizenship with his mother.

It shall also be noted that in civil law system, there is a principle known as *legitime portie* (absolute part) in determining the rights of the heir in gaining a part of the wealth that could not be diminished, even though there is a testament from the testator. As a civil law country, this principle is not only recognized in Indonesia, but other countries as well, such as France and England in the inheritance case of Annesley. Annesley is an English citizen domiciled in France. In 1919, she made a testament that excluded his son to inherit. The act of Annesley is lawful in England. However, although the case was judged by English judges, the judges actually settled the case by using French law, which is known as *legitime portie*, in governing the case. The judges adjudged and declared that the son of Annesley would have received the inheritance at the minimum portion, which is one-thirds of the inheritance. By relying on this case, Sunesh absolutely has the rights to inherit from his mother.

The most fundamental question that shall be addressed is the ideal decision in this present case. In International Private Law, there is a theory known as the Theory of Preliminary

\(^{12}\) See Pitlo A, Hukum Waris Menurut Kitab Undang-Undang Hukum Perdata Belanda, Jakarta Intermassa, 1986, p. 41.
Matter. This theory states that in settling an International Private Law issue, a legal issue, that should be settled or determined before the final decision by the judges in International Private Law cases. The preliminary matter arises if the decision of a legal issue depends on the validity of the legal relation or other legal issues. By applying this theory to the case of Sunesh, the core issue is the inheritance lawsuit, while, the preliminary matter is whether or not the marriage between both parents of Sunesh is legitimate. Based on the explanation by Sunesh in his lawsuit, Sunesh was born in a marriage between Swita Motiram and Rattan Ladharam, proven by the Certificate of Marriage No. 534375 issued by the Government of Hong Kong and has been legalized by the Embassy of Indonesia No. 6096 dated 10 December 1979. By relying on the evidence above, therefore, Sunesh is a child from a legitimate marriage. Because of the status of Sunesh as a child, the judges shall be able to settle the inheritance case. However, the judges, on the contrary, nullify the Certificate of the Rights to Inherit issued by the Property and Heritage Agency. The author disagrees with the judges since the Certificate of the Rights to Inherit held by the relative of Swita Motiram shall be considered null because it contains legal defect with no good faith by disguising the fact that Swita Motiram actually has a child, Sunesh, which caused the fallacious in applying the law.

All in all, the act of the Property and Heritage Agency in nullifying the Certificate of the Right to Inherit in the name of the relative of Swita Motiram is correct, and it is under the authority of the Property and Heritage Agency. However, the nullification of the Certificate of the Rights to Inherit in the name of Sunesh by the judges of the State Administrative Court, which is reinforced by the courts until the judicial review stage in Supreme Court, it has caused a “dead end” for a child who is pursuing his rights, particularly the inheritance rights from his biological mother. This clearly infringes the fundamental principles in the Declaration of Human Rights. Besides, another transgression by the judges is not giving any solution for both parties, instead, the judges give no certainty of law and fairness, in particular, to a child (Sunesh) who deserves to enjoy his rights.

### 4 Conclusion

Based on the research conducted, the author concludes that the alien child shall still enjoy the inheritance from his/her mother, who is an Indonesian. It is also supported by the theories of International Private Law in personal status, legitime portie theory, as well as preliminary matter theory. The judgment that nullifies the Certificate of the Rights to Inherit that was given by the Property and Heritage Agency to Sunesh is fallacious and baseless, it therefore could not be justified. This fallacy of judgment is expected not to happen again in the future. The judgment or decision of the judges has caused the fallacious in applying the law, it is caused by the judges’ inadequate understanding in the theories of International Private Law. The act of the judges is inconsistent with the legal certainty and fairness principle, and infringed the fundamental principles in the Declaration of Human Rights.

The author recommends the judges in state/district courts to implement the theories of International Private Law, as the basis, to render a case that contains foreign elements in the future.

### Bibliography:

**Book:**

**Journal:**

Application of Law Number 2 Year 2012 Regarding Land Procurement for Development For General Interest in The Protection of Human Rights to Victims of Searching (Case Study Procurement of Land Related to Sodetan Inlet River Ciliwung, Bidara Cina, East Jakarta)

Dwi Andayani Budisetyowati
{dwib@fh.un.tar.ac.id}

Faculty of Law Tarumanagara University, Jakarta, Indonesia

Abstract. Undang-Undang/ Law no. 5 of 1960 concerning Basic Agrarian Regulations explains that if land has a social function, it means that for the public interest the rights to land are property rights, building use rights, use rights or use rights. land ownership can be revoked. But the question is what is appropriate "for the public interest according to law". In order not to experience multiple interpretations in society, Law no. 2 of 2012 concerning Land Acquisition for Development for Public Interest. One of the interesting cases is the case of the revocation of ownership rights / property rights committed by the DKI Jakarta Provincial Government to the people of Bidara District, East Jakarta on behalf of the public interest due to the development of Law No. 2 of 2012 is a regulation that regulates the related stages that must be passed by parties wishing to carry out the eviction action, so through this research the researcher examines the implementation of the law in order to provide protection of human rights. This research is a legal research with a normative doctrinal approach through research. However, in conducting research, the researcher also conducted interviews with the parties involved in this case.

Keywords: Land Procurement, Human Rights, Public Interest.

1 Introduction

The land is as a gift of God Almighty to the nation of Indonesia is one of the main sources for the survival and livelihood of the nation of all time in achieving the greatest prosperity of the people are divided equally and equitably. So the land is to be cultivated or used for the fulfillment of real needs. In connection with the provision, allocation, control, use and maintenance it needs to be regulated to ensure legal certainty in the control and utilization as well as legal protection for the people, especially the farmers, while maintaining the sustainability of its ability to support sustainable development activities. Land within the territory of the Republic of Indonesia is one of the main natural resources, which in addition to having deep inner value for the people of
Indonesia, also serves very strategically in meeting the needs of the country and the people who increasingly diverse and increasing, both at the national level and in relation to the world International.\(^1\)

Indonesia as a sovereign country has a land-related or agrarian law regulated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states "Earth and water and natural resources contained therein shall be controlled by the state as much as possible for the welfare of the people." Based on Article 33 paragraph (3) it can be interpreted if the land that is part of the earth is actually controlled by the state for the greatest prosperity of the people. The phrase "controlled by the state" pursuant to Decision of the Constitutional Court in the legal considerations of Decision Case Oil and Gas Law, Power Law and Water Resources Law (UU SDA) interpret "state controlling rights (HMN)" not in the meaning of the state has, but in the sense that the state just formulate the policy (beleid), make arrangements (regelendaad), manage (bestuursdaad), manage (beheersdaad), and supervise (toezichthoudendaad).\(^2\)

Nowadays the need for land for development is increasing especially by countries that are required to always provide land so that the role of the state as a "regulator" sometimes undertakes activities of "land acquisition for public purposes" on a small scale or large scale, when in its implementation facing the state with groups of people who do not want the land used as the object of development by the state. therefore, the role of the state as a regulator is very important, especially in regulating the rights of the state in the procurement of land in the public interest so as not to violate the rights of the community and to regulate the extent to which the rights of the people can defend their land if procured land for the common good.

In addition to development factors, the increasing number of population is higher, while the state of fixed and limited land causes the population's interest to land becomes high. Thus, humans increasingly intensify their efforts to get land to achieve their respective goals in exploiting the land. Likewise the state through the government which sometimes in practice if not supervised in certain ways, then the procurement of land can be deviated from the provisions of applicable legislation so that the legal rights of marginalized communities.

Actually, based on the prevailing laws and regulations, the government has the authority to procure land for public interest based on the principle that all land rights are functioning socially as regulated in Article 6 of the Basic Agrarian Law (continuously referred to as UUPA) determines: "All rights to land are functioning socially". The explanation of Article 6 is as follows:

"The right to any land which is present to a person, it is not justifiable that his land will be used (or not used) solely for his personal interests, especially if it causes harm to society. The use of land must be adapted to the circumstances and the nature of the rights, to the benefit of the well-being and happiness that has it and also the benefit of society and the state, but in that case the provision does not mean that the individual interests will be pushed entirely by the public interest. The Basic Agrarian Law also takes into account individual interests. The interests of society.

\(^1\) Boedi Harsono, *Menuju Penyempurnaan Hukum Tanah Nasional*, cet. 3., (Jakarta: Universitas Trisakti, 2007), hal.3.

and the interests of the individual must balance each other, to the ultimate achievement of the ultimate goal of prosperity, justice and happiness for the people as a whole."

Based on the explanation of Article 6 of the above Law, it can be concluded that every right of a person belongs to the rights of the public (public).\(^3\) When Article 6 of the UUPA is scrutinized, there are several things that can be viewed as the nature of the social function of property rights to land which is intended as an affirmation of the subject of limitation of individual freedom. The nature of social functions include as following:\(^4\)

1. The use of land shall be in accordance with the circumstances of the land, the nature, and the purpose of granting the right so that according to the UUPA the abandoned land is contrary to the social function;
2. Land use shall be in accordance with the plan established by the government;
3. If the public interest requires the destruction of the interests of the individual to suffer a loss then it shall be compensated for him;
4. Land is not a commodity of commerce so it is not justified to make land as the object of speculation."

Post-reform in 1999, although the UUPA from that date has not been changed by the legislator, but on the consideration of protection the law against constitutional right / human rights guaranteed in the 1945 Constitution of the Republic of Indonesia concerning the protection of property rights of the citizens so that the state / government is not easy to seize land ownership rights citizens on behalf of the public interest, then the law was enacted. Law no. 2 of 2012 on Land Procurement for Development for the Public Interest mentioned in Article 1 sub-article 2 in the Procurement of Land is an activity of providing land by providing compensation that is fair and fair to the party entitled. Furthermore, it is mentioned that if the government wishes to procure the land as mentioned in Article 13, it must perform 4 (four) stages: first, planning stage, second, preparation stage, third, implementation and fourth, delivery of nasil. If these stages are not performed, then the citizen who feels aggrieved by the issuance of a location determination letter related to land acquisition for the public interest can file a lawsuit to the State Administrative Court to oppose the procurement of the land.

As in the case of the Bidara Cina Sub-District, Jatinegara Sub-district, which is one of the sources by the authors in writing this research, the case where some East Jakarta ladies filed a State Administration Lawsuit at the Jakarta State Administrative Court on the basis of wanting to cancel the Decision Letter Location Number 2779 Year 2015 issued by the Governor of DKI Jakarta related to the establishment of Sodetan Inlet by the Provincial Government of DKI Jakarta on the basis of public interest. According to the citizens of the Bidara Cina, East Jakarta, the process of making the Decision Letter of Location Determination has actually violated Article 13

\(^3\) AP. Parlindungan, Bunga Rampai Hukum Agraria Serta Land Reform, (Bandung: Mandar Maju, 1994), hlm. 87.
letters (a), (b), (c) and (d) Law Number 2 Year 2012 on Stipulation of Location for Development in the Public Interest related to the Provincial Government of DKI Jakarta has never undertaken any planning activities such as showing the project planning document, then never socializing / notification to the community related to the activities of the inlet Sodetan project and never giving compensation, so based on Act No. 2 of 2012 the public filed a lawsuit of State Administration in the State Administrative Court of Jakarta.\(^5\)

The lawsuit in Jakarta's administrative court has been terminated by Decision Number: 59 / G / 2016 / PTUN-JKT which won the citizens of East Jakarta's Bidara Cina. when examining the legal considerations of the judges who hear the case, the panel of judges concludes that if the location determination done by the Governor of DKI Jakarta is not in accordance with the legal procedure pursuant to Article 13 (a), (b) (c) and (d) No. 2 of 2012 and Presidential Regulation No. 71 of 2012, especially not the implementation of procedures starting from the preparation stage until the stage of delivery of the results of the compensation so that the judge caused the decree was canceled. Based on the legal considerations, it can be concluded that the procedures for determining the location for development in the public interest must fulfill the requirements stipulated by Law Number 2 Year 2012 on the Determination of Location for Development in the Public Interest.

Therefore, based on the above matters, the government in carrying out development activities by displacing or eliminating the ownership rights of citizens' land on the grounds of the public interest, it is necessary to pay attention to the provisions contained in Law No. 2 of 2012 as legal protection law constitutional rights / human rights of every citizen of his or her ownership rights regulated in the 1945 Constitution of the State of the Republic of Indonesia in which the state or government cannot repeal such ownership in an arbitrary manner. So in order to apply the principle of prudence in conducting land procurement activities conducted by the government, the researcher in this paper tries to make a paper related to "Implementation of Law No. 2 of 2012 on Land Procurement for Development for Public Interest in the Protection of Human Rights against Victim Eviction (Case Study of Land Procurement Related to Sodetan Inlet Ciliwung River Development, East Jakarta Bidara Cina)."

2 Problems

Based on the description put forward in the introduction, the researchers want to highlight some of the issues related to the writing of this article are:

1. How is the application of Law Number 2 Year 2012 on Land Procurement for Development in the Public Interest in order to provide Human Rights Protection against Victims of Eviction / release of the land (ownership rights)?

\(^5\) Wawancara langsung dengan Resa Indrawan Samir, SH, MH selaku Kuasa Hukum Masyarakat Keluarahan Bidara Cina, Jakarta Timur tertanggal 15 Februari 2018.
2. What are the legal considerations of the judges of the Jakarta State Administrative Court Decision Number 59 / G / 2016 / PTUN-JKT so that the Determination of Location for Development in the Public Interest by the Provincial Government of DKI Jakarta is canceled?

3  Method Of Writing

This research is a legal research with doctrinal approach that is normative. As for which can be made object in research with doctrinal approach that is normative this is data in the form of primary material and material of secondary law and tertiary law material.

Data collection method to be used in this research is through library research, which is data collection method (legal material) by searching, recording, inventorining, studying books, literatures, legislation, previous research results, and documentation relating to the problem under study and not remain unlimited as well how to conduct direct interviews with related parties relating to issues that are addressed such as Observers of Women, Non-Governmental Organizations and Experts in the field of Law and Politics.

The data analysis conducted in this study was conducted with more qualitative approach that revealed the data (legal material) as much as possible so that the issues to be rise more transparent. The qualitative approach allows researchers to elaborate the data obtained comprehensively and the description results become more accountable.

4  Theory

4.1 Land Ownership Rights

In various literatures, rights can be interpreted as something that we can be cursed because it is absolutely ours. Rights in the law are identical with human rights (human rights) which means existed since human beings are born, because the right is inherent since the existence of man himself. Historically, as the natural rights theory proposed by John Locke in the late XIV to XIIIV, there are 3 (three) inalienable rights and are fundamental rights which include the right to life, the right freedom (liberty) and property right (prosperity).

Prosperity one of them is related to "land ownership (property)" which means that based on it is one of the fundamental rights that cannot be revoked which, as the right is a negative right to realize it the state must be silent, not performing acts or in a passive state. Accordingly, the state cannot automatically take arbitrary deprivation of property rights.

---


8 Ibid., hal. 3.
In Indonesia, the protection of property rights is regulated in Article 28G Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "everyone is entitled to the protection of property under his control", meaning that if the property is the right of ownership of the land, the right shall be protected by law. Then also protection of property rights is regulated in Law no. 39 of 1999 on Human Rights in Article 36 paragraph (2) stating "no one shall be deprived of his property arbitrarily and unlawfully."

However, within the right of ownership there is a right of ownership by the state which is based on the "right of control of the state" as stipulated in Article 2 Paragraph (2) of the Law on the Law "On the basis of Article 33 Paragraph (3) of the 1945 Constitution and matters as referred to in Article 1, earth, water and space, including the natural wealth contained therein at the highest level is controlled by the state as the power organization of the whole society ". From the latter sense, the state is authorized to determine the rights to land which may be owned by and or provided to individuals and legal entities that meet the specified requirements. Then, based on the Mastering Right of the state as meant in Article 2, there shall be established various kinds of rights on the surface of the earth called land, which may be given to and possessed by persons, either alone or together with other persons and bodies, legal entities as stipulated in Article 16 paragraph (1) of BAL, which are among others:

a) Right of Ownership;
b) Cultivation Rights;
c) Building rights;
d) Right to Use;
e) Right of Lease;
f) Right to Open Land;
g) Rights to Collect Forest Products;
h) Other rights not covered by the above rights to be determined by law and temporary rights referred to in Article 53.

The above mentioned temporary title rights are further stipulated in Article 53 paragraph (1) stating that: "Temporary rights as referred to in Article 16 paragraph (1) letter h, are Payable Rights, Business Rights for -Results, Right of Ride and Right of Lease of Agricultural Land shall be governed to limit its properties which are contrary to this law and the rights shall be abolished within a short time."

A person or legal entity that owns a right to land, by the UUPA is obliged to do or actively pursue it and must also maintain including increase fertility and prevent damage to the land. Then in addition, the BAL also requires that the right to land owned by a person or legal entity should not be used solely for private interests arbitrarily regardless of the interests of the general public or in other words all rights to such land shall have a social function as well as is stipulated in Article 6 of the BAL which states that "all rights to land have a social function". However, the social function of the land concerned and does not pour the legal rights of the people and should not be done arbitrarily.

4.2 Land Ownership Rights by the State
In principle, the definition of "land rights by the state" is not mentioned in the various laws and regulations in Indonesia. So far against this definition only refers to Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so that it allows the right to control land by the state interpreted on various understandings, depending on the angle of the field and interpreting the meaning even though the Constitutional Court has interpreted the meaning of Article 33 Paragraph (3) of the 1945 Constitution namely the meaning of "controlled by the state" which is to impose a policy (beleid) and the action of bestuursdaad, regelendaad, supervision (toezichthoudensdaad) to all branches of production branch for the purpose of the greatest prosperity of the people.

Whereas when referring to Article 2 paragraph (1) UUPA which specifically gives understanding of the right to control over the land that is the state is given the authority to:

a. Manage and administer, designate, use, stock and maintenance;
b. Determine and regulate the rights that may belong to (part of) the earth, water and space;
c. Determine and regulate the legal relationships between persons and legal acts concerning earth, water, and space.

So philosophically from the meaning of the right to control land (agrarian) by the state that gives authority to the state to regulate the utilization of rights to land including those controlled by the community. This means that the status of the state in managing and regulating the rights to community land associated with the position as ruler not as owner. For the understanding between being "possessed" possesses juridical consequences as having occurred before the coming into effect of the UUPA. The meaning possessed has the same consequence with the meaning of domain principle in the Dutch colonial era. So that people in this concept no one can have property rights, but only the right to use. Thus it would be contrary to the principle of customary law as the basis of the enactment of the agrarian law (recall article 5 UUPA).

Finding the source and task base for the state's authority in performing its state duties on the state's ownership of land is not the concept of modern state law. Rather it is the long-abandoned conceptions of the laws of the feudal state, both in practice and in legal theory.

Based on that opinion, the state of Indonesia as a modern legal state recognizes the right of state control in order to carry out direct legal relations between the state and the earth, water and space as interpreted by Notonegoro which establishes the existence of three kinds of relationships as follows:

a. The State as subject, given the position not as an individual but as a state. Thus, the state as a state body, the body publiekrechtelijk. In this form the state does not have the same status as the individual.
b. The State as an object, likened to an individual so that the relationship between the state and the earth and so on is "equal" with the individual right to the land.

---

10 Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Jembatan, 2005), hal. 268.
c. The relationship between the "direct" states with the earth and so on is not an individual subject and not in its position as a possessing country, but as a state which is the personification of all the people so that in this concept the state cannot be separated from the people. The state is only the founder and supporter of the unity of the people.

4.3 Land Procurement for the Public Interest

According to Imam Koeswahyono the procurement of land is a legal act undertaken by the government to acquire land for certain interests by providing compensation to the owner (either natural or legal entity) of the land according to certain nominal procedures and magnitudes. Meanwhile, according to Boedi Harsono, the procurement of land is a legal act in the form of releasing the legal relationship that originally existed between the holder of the rights and the land required by giving rewards in the form of money, facilities or other through consultation to reach agreement between landowners and parties in need.

Whereas when referring to existing legislation, the term land acquisition is used firstly in Presidential Decree No. 55/1993 on Land Procurement for the Implementation of Development for Public Interest in the provision of Article 1 number 1 of land procurement is defined as follows:

"Land procurement is any activity to obtain land by providing compensation to the right to the land."

Then the definition of land acquisition is changed again in the provisions of Article 1 number 3 of Presidential Regulation No. 36 of 2005 on Land Procurement for the Implementation of Development for the Public Interest namely:

"Land acquisition is any activity to obtain land by providing compensation to those who relinquish or deliver land, buildings, plants and objects related to the land or by revocation of land rights."

However, this definition of land procurement is criticized by the public for confusing the concept of land procurement with the revocation of rights. The definition of land procurement is then amended in Presidential Regulation No. 65 of 2006 on Amendment of Presidential Regulation No. 36 namely:

"Land acquisition is any activity to obtain land by providing compensation to those who relinquish or deliver land, buildings, plants and objects related to the land."

In 2012 the government enacted Law No. 2 of 2012 on Land Procurement for Development for Public Interest. The provisions of Article 1 point 2 define the land acquisition as follows:

"Land acquisition is the activity of providing land by providing fair and fair compensation to the rightful parties."

12 Imam Koeswahyono, Melacak Dasar Konstitusional Pengadaan Tanah Untuk Kepentingan Umum (Artikel, 2008), hal. 1.
13 Op. Cit, Boedi Harsono, Hukum Agraria Indonesia, Sejarah Pembentukan., hal. 7.
From these various concepts, the authors conclude that the procurement of land cannot occur if there is no appropriate compensation provided by the party holding the land.

The notion of public interest is meant to be intended for the purposes, needs or interests of the people or a broad purpose.\(^{14}\) The question is what is meant by the interests of the people or a broad purpose? According to the prevailing laws and regulations, the term "public interest" is governed in Article 1 paragraph 6 of Law No. 2 of 2012 on Land Procurement for Development in the Public Interest "The Public Interest is the interest of the nation, the State, and the society which must be realized by the government and used as much as possible for the welfare of the people ".

The definition of public interest is regulated in Article 1 point 6 of Presidential Regulation No. 71 of 2012 on Implementation of Land Procurement for Development in the Public Interest, namely "Public Interest is the interests of the nation, the State, and the society that the government must realize and use as much as possible for the welfare of the people."

Although in the legislation has mentioned the definition of "public interest", but in the implementation of the understanding is easily misunderstood, so easy to cause land acquisition in an arbitrary way if not properly guarded. Therefore, according to Mertokusumo, in taking the policy of land acquisition for the public interest, it must uphold the principles of democracy and uphold human rights by taking into account:\(^ {15}\):

1. Land Acquisition is a legal act which results in the loss of a person's physical or non-physical rights and loss of property for a time or forever;
2. Indemnify losses must take into account: loss of rights to land, buildings, crops, loss of income and other living resources, assistance to move to another location by providing new local alternatives equipped with adequate facilities, income recovery assistance to achieve equivalent conditions with circumstances before the take;
3. Those who are displaced by land acquisition should be accounted for in compensation should be expanded;
4. To obtain accurate data on those affected by evictions and the amount of compensation for absolute undertaken basic and socioeconomic surveys;
5. It is necessary to apply the agency responsible for execution and resettlement implementation;
6. Ways of deliberation to reach agreement must be developed;
7. Needs a means of collecting complaints and settling disputes arising in the process of land acquisition.

---

\(^{14}\) Oloan Sitorus dan Dayat Limbong, *Pengadaan Tanah Untuk Kepentingan Umum*, (Yogyakarta: Mitra Kebijakan Tanah Indonesia, 2004), hal. 6

5 Discussion

5.1. Implementation of Law Number 2 Year 2012 on Land Procurement for Development in the Public Interest in order to provide Human Rights Protection to Victims of Eviction

One of the principles of the rule of law is the guarantee of human rights abuses. One of the basic rights of human is protection of property rights to a land. Law Number 2 Year 2012 on Land Procurement for Development in the Public Interest is one of the reasons to uphold one of the principles of the rule of law, namely to protect human rights in the field of land ownership rights, therefore the procurement of land by both the central government and regional government can no longer do so arbitrarily without rights without procedures and ordinances imposed by law, including the provision of compensation for the land held in an unfair and fair manner to the party entitled.

Article 1 Sub-Article 2 states that the Land Agency is to provide land by providing compensation that is fair and fair to the party entitled. When looking closely at the article, it can be concluded that the procurement of land can only occur if the lands that have been held have been given compensation and fair damages to the party entitled. Subsequently, in the Act mentioned in Article 13, the procurement of land for public interest is held with the following stages: (a) planning; (b) preparation, (c) implementation, and (d) delivery of results. Given these stages, both central and local governments are required to comply with the procedures and stages of land acquisition prior to disposal of community ownership rights. Moreover, when looking at the article, the stages are imperative, meaning that if one of the stages is not done or both stages are not done sequentially, then the process of land procurement can be judged null and void due to defect procedure.

The first stage is the planning stage. The planning stage referred to here is the stage where the Institution (Government / BUMN / BUMD / Private) requiring the land to be held makes a plan based on the Spatial Plan and the development priorities listed in the Medium Term Development Plan, the Strategic Plan, the Work Plan The Government of the Agencies concerned. Then thereafter prepare a Planning Document containing: (a) the purpose and objectives of the development plan; (b) compliance with the Spatial Plan and the National and Regional Development Plans; (c) the location of the land; (d) the required land area; (e) an overview of the status of the land; (f) estimated time of Land Procurement; (g) the estimated period of development implementation; (h) the estimated value of the land; and (i) budgeting plans.

To the document is prepared based on feasibility studies and then set by the agency (government) that is require and the document file submitted to the Provincial Government.

---

16 Pasal 14 ayat (1) dan (2) Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Demi Kepentingan Umum.
17 Pasal 15 ayat (1) Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Demi Kepentingan Umum.
18 Pasal 15 ayat (2) dan (3) Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Demi Kepentingan Umum.
The second stage is the preparation stage. The preparatory stage here is a follow-up after the planning phase is completed, where the provincial government as the party who has received the land procurement document, carrying out the following activities, among others: (a) notification of the development plan means the provincial government shall notify the public regarding the land acquisition plan for development in the interest of the public either directly face to face or notification by mail, (b) initial data collection of development plan location means the provincial government to collect data on the community along with the object of land affected by the procurement of land. (c) the public consultation of the development plan means that the provincial government meets directly with the community directly explaining the procurement of land for development in the public interest, whereby the provincial government has been able to issue a decree (beschikking), which in practice against the decree is often filed to the Court to be sued because the provincial government sometimes unilaterally issued the decree without approval by the entire community affected by the procurement of the land.

The third stage is the implementation stage of land procurement, which means that the authority of this phase of implementation is no longer the authority of the provincial government, but the authority of the land agency (Badan Pertanahan Nasional / BPN) to carry out activities based on the Decision Letter of Determination of Location for Development such as: (a) an inventory and identification of the ownership, ownership, use and utilization of the land of the held land; (b) make an assessment of damages; (c) deliberation of indemnification mechanism; (d) indemnification; and (e) Release of Institution Land. In practice, assessments of damages may be assessed by an appraiser, or based on consensus deliberations between the community and the provincial government or by a permanent court decision.

The fourth stage is the Delivery of Land Procurement which is also still the authority of the Land Agency (Badan Pertanahan Nasional / BPN) which, if the stages of the government of compensation has been implemented by granting the right directly or through the court in the court, the Land Agency (Badan Pertanahan Nasional / BPN) is obliged to surrender the land which has been held to the agency requiring the land for public purposes.

With the enactment of Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, it indirectly avoids the practices of arbitrariness to be undertaken by parties who will conduct land procurement activities on the basis of public interest, so against the right of ownership cannot be deprived or repealed in an arbitrary manner by the authorities.

5.2. Legal Consideration of the Panel of Judges of the State Administrative Court of Jakarta
In Decision Number 59 / G / 2016 / PTUN-JKT That Cancels the Determination of Location for Development in the Public Interest by the Provincial Government of DKI Jakarta

20 Pasal 16 Huruf (a), (b) dan (c) Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Demi Kepentingan Umum.
21 Pasal 27 Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Demi Kepentingan Umum.
22 Pasal 48 Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Demi Kepentingan Umum.
One of the concrete cases of land acquisition for development in the public interest by using Law No. 2 of 2012 is a case that occurred in the Village Bidara Cina, District Jatinegara, East Jakarta started when the Decree of Determination Number 2779 Year 2015 issued by the Governor of DKI Jakarta is related to the establishment of Sodetan Inlet by the Provincial Government of DKI Jakarta (Governor) on the basis of public interest. According to Chinese citizens affected by the development of Sodetan Inlet, they were never informed in connection with the issuance of the Decision Letter of Determination of Location Number 2779 of 2015, so they filed a lawsuit at the Jakarta State Administrative Court to annul the Letter of Decision (beschikking).

As for the reasons in filing the lawsuit that is the procedure of issuance of Decision Letter Determination Location 2779 Year 2015 contradict with Law No. 2 of 2012 on Land Procurement for the Development of Public Interest and Presidential Regulation No. 71 of 2012 on President Number 71 Year 2012 on Implementation of Land Procurement for Development for Public Interest which in essence in the regulation requires the procurement of land for development in the interests of generally carried out by stages (a) planning; (b) preparation, (c) implementation, and (d) delivery of results.

As for the fact according to the residents, the Provincial Government of DKI Jakarta at least before issuing the Decision Letter of Location Determination has never done such things as showing its land procurement planning document, then, not having an AMDAL (Environmental Impact Analysis), never conducting proper public consultation activities with a plan of inlet development in which the community meet directly with the community, and not related to the amount of compensation received by the affected people.

The lawsuit in Jakarta's administrative court has been terminated with a Decision Number: 59 / G / 2016 / PTUN-JKT which won the citizen of Jakarta caste Bidara Cina. when examining the legal considerations of the Panel of Judges who hear the case, the judges concluded if the Local Determination of Location conducted by the Provincial Government of DKI Jakarta is not in accordance with the legal procedures of Law Number 2 Year 2012 and Presidential Regulation No. 71 Year 2012, especially the non-implementation of procedures ) planning; (b) the preparation, (c) the implementation, and (d) the delivery of the results in its land procurement activities so that the Decree of Determination of Location Number 2779 of 2015 shall be canceled. The judges' considerations are as follows:

"Considering that, when reading the provisions relating to the stages of development planning and the preparation stage of development up to the establishment of the construction site, the Court is of the opinion that the provision is cumulative is not an alternative meaning that the government prior to establishing the construction site shall follow all procedures specified in the stages of development planning as well as in the preparation stage of development, so that the non-fulfillment of any of the procedures prescribed in that provision causes the determination of the location stipulated by the governor to be void;"

"Considering that if the provision relating to the stages of development planning and the preparation stage of development in this dispute is related to the

---

fact in the hearing the Defendant has never denied and/or proven it in the hearing that the Defendant’s action in issuing the a quo dispute object is inconsistent with the procedure as determined in the above provisions."

"Considering, that since the Defendant cannot prove the a quo Dispute Object issued in accordance with the procedure stipulated in the applicable law provisions, therefore the Plaintiffs have successfully proven the arguments of the lawsuit so the Plaintiffs’ claim shall be entitled to be granted in its entirety."

When looking at the considerations of the judges of the judges, it can be concluded if the procedure of determining the location for development in the public interest must fulfill the conditions stipulated by Law Number 2 Year 2012 on the Determination of Location for Development in the Public Interest and to the requirements of procurement procedure the land stipulated in the legislation is cumulative, meaning that the non-compliance of one of the requirements or procedures for land acquisition, then the procurement of the land is null and void. according to the opinion of the author, it is reasonable that the judge to interpret the land acquisition legislation is cumulative and not an alternative, because the judge tries so that the act of procurement of land in Indonesia is not arbitrary and contains the principle of prudence, because the protected in the procurement of the land is a right community law, namely ownership rights that are easily eliminated on the basis of land acquisition in the public interest.

6 Closing

6.1. Conclusion

a) Law No. 2 of 2012 on Land Procurement for Development For the Public Interest can only be applied and provides Human Rights Protection to Victims of Eviction if all stakeholders involved especially those who have authority over the procurement of land such as Provincial Government and National Land Agency adhere to all procedures for land acquisition procedures (a) planning; (b) preparation, (c) implementation, and (d) delivery of results;

b) Decision of the Jakarta State Administrative Court Judge On Decision Number 59 / G / 2016 / PTUN-JKT Decision Number 5179 Year 2015 issued by the Governor of DKI Jakarta related to the establishment of Sodetan Inlet by the Provincial Government of DKI Jakarta (Governor) on the basis of the public interest explain if Public Officials involved in the procurement of land shall not violate Law No. 2 of 2012 on Land Procurement because the infringing act is an arbitrary measure that could reduce the principles of legal protection of human rights related to the ownership rights of citizens.

6.2. Suggestions

a) For the enforcement of the principles of legal protection for the human rights of citizens in Indonesia in relation to their ownership rights, any act of land acquisition conducted by the competent authority needs to be supervised by the superior, in order that the competent authority is more careful in carrying out its authority;
b) In addition, there should be strict witnesses to officials who have taken land acquisition actions, but their land procurement actions are proven to be unlawful or arbitrary either based on court decisions or superior assessments.

References

Books, Articles, Papers:


Court Decisions, Interviews and Laws and Regulations:


Protection of Women's Political Rights Based on Islamic Point of View

Palmawati Taher\(^1\), Rena Yulia\(^2\)
{palmawatitaher@untirta.ac.id\(^1\), renayulia@untirta.ac.id\(^2\)}

University of Sultan Ageng Tirtayasa, Indonesia\(^{1,2}\)

Abstract. This paper tries to provide an overview of the extent to which Islam views women's political rights, then also compares its application in several countries that apply the Islamic legal system and Indonesia as a country with a majority Muslim population. This research is a legal research with a normative doctrinal approach which is carried out through literature study by examining and examining primary, secondary and tertiary legal materials. However, in conducting research, researchers also conduct interviews if necessary with practitioners or experts in the field of law and politics.

Keywords: Politics, Human Rights, Women, and Islam.

1 Introduction

Various activities and mobilization over the years, women's participation in the political stage as a parallel relationship with men has not yet reaps to success. Today, the step of linking democracy with gender equality is a widely accepted principle. One important factor of any democratic framework is the principle of human rights, including the political rights of men and women.

Apart from that gender inequality can also be seen from the lack of representation of women in various areas of life, both in government systems, social organizations, religious institutions, customs, and political organizations and in the field of law. This state of affairs implies something that impressed as an unjust treatment of women. People tend to trust men more in the social activities of women. This situation build up a thought on the negative impact, as if women are seen as low and should not play an active role in various aspects of life, especially in politics.

Early feminism perspectives in political science tend to focus on issues such as gender differential in representation and political participation. Feminist criticism in mainstream political theory is slower to develop.\(^1\)

Humans are the khalifah of God on earth. His duties prosper the earth for human welfare.\(^2\) These are sacred texts that imply the necessity of man to politics. Al Qurthubi\(^3\) states that the

---

2 Lihat dalam Surah Al-Baqarah 2:30 dan Surah Hud 11:61
verse in this sura al-Baqarah shows the necessity of human appoint the government leaders to regulate the order of life of the people, enforce the law correctly and realize justice and other important things necessary for life together. These are all political matters.

The political discourse of Islam, politics (al siyasah) is simply formulated as a way of organizing the affairs of life together to achieve prosperity in the world and happiness in the hereafter (tadbir al syu-un al 'ammah li mashalihihim fi al ma'a'sy wa sa'adatihim fi al ma'a'ad). That way politics in this sense is really a vast space, as large as the living space itself. It appears in both domestic and public spaces, cultural and structural, personal and communal spaces. But politics mention in the minds of many people had been narrowed into terms for practical politics, structural politics, power struggles for self-interest or some people, no longer for the benefit of the common people and for the long future.

According to classical Islamic politics⁵, the leader (nashb al imam) is obliged in the category of fardh kifayah (collective duty) on the basis of religious argument and rational thought. Al Ghazali in Al Piqad fi al Iqitshad called this duty as something "dharuri" (inevitability) within the framework of the progress of the teachings of God. While al-Mawardi asserted that the existence of government is needed to protect the religion and regulation of the world (Al Ahkam al-Sulthaniyah).

As a collective necessity, then political participation in this matter is not a requirement of every citizen. But the more citizens who participated, legitimacy of power will get stronger and relatively more guarantee of stability.⁶

Islamic law is the law of God. That is, the law in the form of the rule of God which aims to regulate human relationship with God (worship) as well as human relationships with society, the relationship between humans and daily human activities (muamalah). Islamic law is universal. The provision concerning all areas of the law.

Munakahat regulates marriage and divorce. Wirasah governs inheritance. Muamalat establishes a trade system. Jinayat is concerned with criminal law. Al ahkam as sulthaniyah concerns on the state administration and state administration. Siyar establishes peace and war in the field of law among nations. Finally, Mukhas greatly governs the power of the courts and the judiciary.⁶

2. Related Problems

a. What is the Relation between Islam, Women and Human Rights?
b. How does Islam view to protect women's political rights?

3. Research Methods

This research is a normative law research using normative case study in the form of legal behavior product, for example studying law. The subject of the study is the law that is conceptualized as the norm or rule that is in society and becomes the reference of everyone's behavior. Thus normative legal research focuses on the inventory of positive law, legal principles and doctrines, the discovery of law in the case of concrete, systematic law, and levels of synchronization, comparative law and legal history.\(^7\)

Based on the above explanation, the author decided to use normative legal research methods to research and write the discussion of this research as a method of legal research. The use of normative research methods in research and writing efforts is based on the compatibility of the theory with research methods required by the author.

In legal research there are several approaches, with this approach the researcher will get information from various aspects of the issue that is being tried to find the answer. Approach method in this research is approach of regulation of legislation (statute approach).\(^8\) A normative study must necessarily use the approach of legislation, because that will be examined are the various legal rules that become the focus as well as the central theme of a study. While data analysis conducted in this research is done with more qualitative approach that reveal data (legal material) as much as possible so that problem discussed may be more transparent. The qualitative approach allows researchers to elaborate the data obtained comprehensively and the description results become more accountable.

4. Theory

4.1. Human Rights

Human Rights (fundamental) To understand the nature of human rights, it will first explain the basic definition of rights. Definitively "right" is a normative element that serves as a guide to behave, protecting freedom, immunity and ensuring human opportunities in maintaining its dignity and prestige.\(^9\) The right itself has the following elements:\(^10\)

a. Right owner;

b. Scope of application of rights;

c. Parties willing to exercise rights.

All three elements are integrated into the basic understanding of rights. Thus the right is a normative element inherent by each human being which in its application lies in the scope of the rights of equality and rights of freedom associated with the interaction between individuals or with agencies.

Right is something to be gained. In relation to the acquisition of rights there are two theories namely McCloskey's theory and Joel Feinberg's theory. According to McCloskey's theory it is stated that giving rights is to be done, owned or done. Whereas in Joel Feinberg's

---


theory it is stated that giving full rights is the unity of legitimate claims (benefits gained from the exercise of rights accompanied by the implementation of obligations). Thus the benefits can be gained from the exercise of rights when accompanied by the implementation of obligations. It means that between rights and obligations are two things that cannot be separated in the manifestation. Therefore when a person demands a right must also perform obligations.\textsuperscript{11}

John Locke stated that human rights are rights given directly by God the Creator as a natural right. Therefore, there is no power in the world that can uproot it. This right is very basic (fundamental) for human life and life and is a natural right that cannot be separated from and in human life.\textsuperscript{12}

In Law Number 39 Year 1999 on Human Rights Article 1 states that:

"Human Right is a set of rights attached to the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection human dignity and prestige.

Based on some formulation of the definition of Human Rights, obtained a conclusion that human rights are the inherent rights of human nature and fundamental as a gift of God that must be respected, maintained and protected by every individual, society or country. Thus the nature of respect and protection of human rights is to maintain the safety of human existence as a whole through the action of balance that is the balance between the rights and obligations, as well as the balance between the interests of individuals and the public interest.\textsuperscript{13}

4.2. The concept of human rights in Islam

To understand the concept and the nature of human rights in Islam, it will first explain the basic definition of human rights. In Arabic, human rights are known as (Haqq al-Insâni al-Asâsî or also called Haqq al-Insâni ad-Darûrî), which consists of three words, namely:

a. The word right (haqq) means: property, belonging, authority, power to do something, and is something to be gained.

b. The word man (al-insân) means: the intelligent being, and serves as the subject of the law.

c. Asasi (asâsî) means: basic or principal.

In terminologically, human rights in the perception of Islam, Muhammad Khalfullah Ahmad has given the understanding that human rights are the inherent rights of human nature and fundamental as a mandate and grace of Allah SWT which must be maintained, respected and protected by every individual, society or country. Even Ibn Rushd further emphasizes that human rights in Islamic perceptions have provided a format of protection, security, and anticipation of the various human rights that are primary (darûriyyât) owned by every human being. Such protection comes in the form of anticipation of things that will threaten the existence of the soul, the existence of honor and descent, the existence of material possessions, the existence of the mind, and the existence of religion.\textsuperscript{14}

\textsuperscript{11} Tim ICCE UIN Jakarta. \textit{Ibid.}, hlm. 200

\textsuperscript{12} Masyhur Effendi. \textit{Dimensi dan Dinamika Hak Asasi Manusia dalam Hukum Nasional dan Internasional}, Jakarta, Ghalia Indonesia, 1994, hlm. 3.

\textsuperscript{13} Tim ICCE UIN Jakarta \textit{... Op., cit...}, hlm. 201.

Thus, the nature of respect and protection of human rights in the concept of Islam is to maintain the safety of human existence as a whole and the balance, namely the balance between rights and obligations, as well as the balance between private interests with the public interest. So in fulfilling and demanding rights cannot be separated from the fulfillment of obligations that must be implemented. So also in the interests of individuals can not damage the interests of the people (public interest). Therefore, the fulfillment, protection and respect for human rights must be accompanied by the fulfillment of KAM (human rights obligations), and TAM (Human Responsibility), in private life, community life, and state. So it can be concluded that the essence of human rights is the integration of HAM, KAM, and TAM that take place in a synergistic and balanced. All of this (HAM, KAM, and TAM) is a blessing and a grace as well as a trust that will be held accountable before the divine court of God Almighty.

Some kinds of human rights in Islam, among them:

a. Right to live.

The most important human rights promoted by Islam are the right to live and to respect human life. It has been stated explicitly by Allah SWT on QS. 5 (al-Ma'idah): 32. According to Shaykh Syaukat Husayn, Islam commands his people to respect this right to life, even to the infant still in his mother's womb. Moreover, Islam not only takes into account the glory and dignity of the human person while he is alive, his dignity remains glorified, until his death, with taken care of his body, bathed, memorized, prayed and buried well and full of sincerity.

b. Right to acquire life or economic rights.

Speaking of economic rights, Islam has taught every individual to be able to meet his personal needs and his family in accordance with the achievements of life skills owned. However, behind the property it contains, in it contained the rights of others, especially among the dhia'fa of the poor, who are expelled through zakat, infak, alms funds (ZIS). It is in accordance with the word of Allah SWT QS. 51 (adz-Dzariyat): 19.

c. Right to freedom and freedom.

Islam strictly prohibits the practice of slavery, in the form of an independent person being a servant of light, then traded. As has been explained by the Prophet Muhammad in his hadith narrated by Imam Bukhari and Ibn Majah which comes from 'Amr ibn' Ash, namely: There are three categories of people that I myself will sue on the Day of Judgment. Among them are those who cause an independent to be a servant sahaya, then sell it and eat the money from the sale.

16 Terjemahan dari ayat tersebut: “Oleh karena itu Kami tetapkan (suatu hukum) bagi Ban Israil, bahwa barang siapa yang membunuh seorang manusia, bukan karena orang itu (membunuh) orang lain, atau bukan karena membuat kerusakan di muka bumi, maka seakan-akan dia telah membunuh manusia seluruhnya. Dan barang siapa yang memelihara kehidupan seorang manusia, maka seolah-olah dia telah memelihara kehidupan manusia semuanya. Dan sesungguhnya telah datang kepada mereka rasul-rasul Kami dengan (membawa) keterangan-keterangan yang jelas, kemudian banyak di antara mereka sesudah itu sungguh-sungguh melampaui batas dalam berbuat kerusakan di muka bumi”.
18 Terjemahannya : “Dan pada harta-harta mereka ada hak-hak orang miskin yang tidak mendapat bahagian”.

d. The right to freedom of opinion and expression. 
Islam conferred the right of freedom to think and the right to express opinions to all mankind. This freedom of expression is not only given to citizens against tyranny, but also for individuals to freely express their opinions and at the same time expressing them in relation to various problems. Of course freedom of speech here is related to efforts to promote good deeds and virtues, and strive to appeal and anticipate the various acts of evil and injustice.19

e. Equal rights and position before the law.
Islam affirms and emphasizes the equality of all mankind before Allah SWT. As His creatures, man has been created from the same origin, the same ancestor, and to whom they must obey and obey. It is in accordance with the QS. 4 (an-Nisa): 1.20

f. The right to freedom of association.
Islam has also given the people the right to freedom of politics, association and forming organizations. However, the right this association is conducted with the motivation to spread and realize the good and good for the individual, the society and the nation, not to spread the evil and the chaos. So it can be said that the right to freedom of association does not apply absolutely and indefinitely. However, he is committed with a passion to spread the good deeds of virtue and godliness, as well as to suppress evil and evil.21 The right to freedom of association is generally contained in the QS. 3 (Ali `Imran): 110).22

g. Right to justice.
Islam is present to the earth to uphold justice. So every human servant of Allah SWT gets this very important right of justice. Islam requires its people to uphold justice for their own. It is explicitly explained by Allah SWT in QS. 42 (assh-shura): 15.23

h. Right to get a place to live.
Islam considers that to live as human right in a very urgent human life. So a person can rest in his house of residence that will bring happiness and prosperity for himself, his wife and his family. Ibn Hazm argues: if one does not have a dwelling house and a clear residence, it becomes an obligation for the rich (agniya) to awaken their dhu'afa (weak economic) dwelling place. Even according to Ibn Hazam as also put forward by Ibrahim

19 Abul A’la Maududi, Human Right in Islam, Aligharh: 1978, hlm.30-31
20 Terjemahannya : “Hai sekalian manusia, bertakwalah kepada Tuhan-mu yang telah menciptakan kamu dari diri yang satu, dan dari padanya Allah menciptakan isterinya, dan dari pada keduaunya Allah memperkembangkan biakkan laki-laki dan perempuan yang banyak. Dan bertakwalah kepada Allah yang dengan (mempergunakan) narna-Nya kamu meminta satu sama lain, dan (peliharalah) hubungan sillaturrahim. Sesungguhnya Allah selalu menjaga dan mengawasi kamu”.
21 Syeikh Syaukat Husain, Human Right .....Op cit....., hlm. 84-85.
22 Yang Artinya: “Kamu adalah umat yang terbaik yang dilahirkan untuk manusia, menyuruh kepada yang maw ruf, dan mencegah dari yang munkar, dan beriman kepada Allah. Sekiranya Ahli Kitab beriman, tentulah itu lebih baik bagi mereka; di antara mereka ada yang beriman, dan kebanyakan mereka adalah orang-orang yang fasik”.
al-Lubban, both argue: the obligation for the state to establish a place of settlement for its impoverished citizens, with no distinction between tribes, nations, race and religion.  

### 4.3. Political Rights

Politics is essentially power and decision-making. Its scope starts from the family institution to the highest formal political institution. Therefore, political understanding in principle includes the main issues in everyday life that in fact always involving women. Women's involvement in politics is not meant to impose, degrade, or seize power from men, but is intended to be a male equal partner.

In relation to the political rights, it cannot be separated from the concept of Human Rights which in principle protect the political rights that have been affirmed in the International Covenant on Civil and Political Rights (ICCPR) in essence aims to strengthen the basic human rights in the civil field and politics contained in the Universal Declaration of Human Rights so that they become legally binding provisions and their elaboration covers other related subjects. The Covenant consists of the preamble and articles covering 6 Chapter and 53 Articles on which Indonesia has ratified it into Law no. 12 on 2005. At least according to the researchers, in the ICCPR related to the protection of political rights is divided into 3 (three) parts, namely:

1. Freedom of expression, opinion and access to information;
2. The right to participate in cultural life; and
3. Right to participate in public life and politics

Therefore, with the principle of the ICCPR stating the existence of the right to participate in public life and politics, therefore the role of women in the political world cannot be reduced.

When talking about political rights, must speak to the political man. Political man is meant here is the human as the perpetrator and also the object of politics. Basically all the discourse of political actors has been the study and review of the political fiqh kiab, but in this case there is still the discourse of forgotten political actors, the political discourse of women. As one of the perpetrators and creators of political discourse, women have no meaningful, even marginalized place. Recognized or not, the domain provided by political fiqh, for example about government institutions, such as Imamah, representatives, ministries and so on. It seems more familiar with the activities of men than with women's activities.

Therefore the position of women in political fiqh is an agenda of its own and very important to see. The issue is not merely questioning whether or not women should be imams (leaders), but how the fiqh conception in view of women's political role in general. Broadly speaking, in discussing the existence of the rights of women in politics there are three opinions developed as described below:

a. Conservative Opinion

---


This conservative view argues that in political practice, Islam does not recognize the political equality between men and women. The scholars who support such an opinion, for example, Imam al-Ghozali which states that a woman cannot be positioned as a priest (head of state).

b. Liberal-Progressive Opinion
The liberal-progressive view is that Islam from the outset has introduced the concept of women's involvement in political roles. The group explicitly says that women have the right to vote in politics. They are also allowed to assume the heavy political tasks held by men.

c. Apologist Opinion
The apologist's view is that there is a certain political part of the territory that women can enter and there are certain areas that women cannot touch at all. According to this group, the political area of women is to be a mother.

5. Discussion

5.1. The relationship between Islam, Women and Human Rights

Talking about the relationship between Islam, Women and Human Rights cannot be separated from the Qur'anic concept of human rights that have been arranged therein. Read the most authoritative source of Islam: al-Qur'an will find many texts that explain respect and respect for human beings. Some of them are:

"And indeed We have glorified the children of Adam. We raise them up on land and sea, We given them rizki from the good and we over them with perfect advantages over most of our creation ". (Q.S. al-Isra, 70).

In another letter the Qur'an also mentions human equality:

"O people We created you from men and women and We made you tribes and nations so that you may know one another. Indeed the most honorable among you with Allah is the most devoted to Him. "(Q.S. al Hujurat, 13).

Two verses above and many other texts explain the glory and equality of human dignity regardless of their origin, color, sex, language and so on. This is the logical consequence of the doctrine of the Lord's Kingdom. All human beings with their various backgrounds at the end come from a single source of God's creation. The superiority that man has over the other man is only in the aspect of his closeness to God.

The other most explicit statement concerning equal rights and duties between men and women is expressed in the Qur'an surah al -Ahzab, 35: "Truly Moslem men and women, believing men and women, men and women who remain in his obedience, the true men and women, men and women who are patient, male and female the devout woman, the sadaqah and the woman who is charitable, the fasting men and women, the men and women who care for their honor, the men and women who many call (name) Allah, Allah has dedicated the forgiveness and the reward which big". Similarly in al Nahl, 97, Ali Imran, 195, al Mukmin 40 and others.

The doctrine of egalitarianism (al-musawah) of Islam above is also stated by Prophet Muhammad SAW. In one of his sayings he said:
"Humans are like comb teeth, there is no superiority of Arabs over non-Arabs, white people over black, except on the basis of piety to God." His other word is: "Surely, Allah does not judge you on your body and face but on work and your heart". And "Women are the siblings of men".

The statements of the Qur'an and the hadith of the Prophet above it became the basis of the Holy Prophet to declare what was known as "Shahifah Medina", "Mitsaq al Madinah" or Medina Charter, in 622 AD. It contained agreements on the rules prevailing in Medina society. Historians claim that this Medina Charter is an authentic manuscript of undoubted authenticity. Some declare it as the world's first human rights declaration.

The Islamic human messages revealed in so many Islamic texts above were formulated in a very impressive manner by Imam Abu Hamid Al Ghazali (1111 AD) and further developed by Abu Ishaq al Syathibi (879 H). Al Ghazali, the greatest classical Sunni Muslim thinker, says that the purpose of religion is social welfare (kemaslahatan). Al Ghazali goes on to explain: "I think the benefit is to realize the religious goals that contain five forms of protection. That is protection against; religion (hifzh al din), soul (hifzh al nafs), mind (hifzh al 'aql), descendants (hifzh al nasl) and possessions (hifzh al maal). Any way that can guarantee the protection of these five principles is the benefit and disregard it is mafsadah, refuse the damage is the benefit." What is formulated Imam al Ghazali as a religious goal (maqashid al-Shari'ah) is nothing but a mere summary of the principles of religion, the principle of humanity in Islam.

According to KH. Husein Muhammad mentioned that the doctrine of equality (almusawah or egalitarianism) of Islam above was also stated by the Prophet Muhammad. In a hadith: "Humans are like comb teeth, there is no superiority of Arabs over non-Arabs, white people over black, except on the basis of piety to God." (Hadith), then "Really, God does not judge you on your body and face but in your actions and heart." (Hadith).

According to KH. Husein Muhammad, these Qur'anic and hadith statements have been used as a basis for declaring what is known as Shahifah Madinah or Mitsaq al Madinah namely "Medina Charter", in 622 AD. The contents include agreements on the rules prevailing in Medina society. Historians claim that this Medina Charter is an authentic manuscript of undoubted authenticity. They declare it as the world's first human rights declaration.

This means that there is no conflict between human rights and HAP declarations with pure Islam. Basic human rights and women's basic rights are not Western-exposed concepts, nor Western ones. In Islam the rights of women and human beings are fully recognized and respected.

Similarly, according to Faqihuddin Abdul Kodir, that Sahaba Umar bin Khattab r.a. states in various occasions: "By Allah, we in the days of ignorance never count women. Then Allah revealed some verses about them, and gave them right. We realized then that they also have an autonomous right where we can no longer intervene".

According to Faqihuddin, some other hadith texts, it has explicitly stated women's rights in domestic life, where previously the right was not owned by women (Arabic period of Jahiliyah). The text of the hadith, among others, is narrated by Hakim ibn Mu'awiyah ibn Haydah al-Qusyairiy, that his grandfather asked the Messenger of Allah: "What are the rights

27 Al-Ghazali, Al Mustashfa min Ibm al Ushul, Tahqiq Dr. Muhammad Sulaiman al-Asyqar, jilid I, Beirut, Al-Resalah, 1997 M/1418 H. hlm.286
29 Hadis Bukhari, kitab 77, bab 31, no. 5843
of the wife?” The apostle replied: “You must feed him as you eat, give him clothes as you wear, do not hit his face, do not harass and do not disobey him by leaving home”.30

Nevertheless, there are sometimes many conflicting religious texts, between curbing and liberating women. For example, some scholars forbade women to come and enter the mosque. Whereas in the mosque, the center of education, information, politics, and economy, in addition to the place of worship of course.

Such restrictions are usually based on certain Hadith texts concerning threats to seductive women with the fragrances they wore. According to Faqihuddin,31 in this case A’ishah ra., Ummul Mukminin has criticized the fatwa, saying that the right to go to the mosque is the same, between men and women. No women should be banned. If the problem is ‘disturbing and seductive’, then there must be an order for gender, men and women, not just one-sided, women only. Male and female relationships must be disciplined and directed not to fall into low body and moral interest. But for religious and humanitarian work, based on good thoughts and charitable deeds, there must be a balanced space between them.

In the view of the kiai Husein, if there are discrepancies in religious texts that tend to be discriminatory or contradictory, perhaps a wise way of responding is, first, by negating (dismissing) forms of discrimination between people, including in terms of male and female relation. This is because discrimination is inconsistent with the principle of Tawhid (the Word of God). Secondly, by avoiding contradictions in the sacred texts. The Qur’an has stated in its verse: “... not come to him (the Qur’an) evil, from the front or from the back, which is sent down from the most wise, Most Praiseworthy God.” (Q.S. Fusshilat, 42)

Perhaps the best way to do this is to reread the sacred texts; The Qur’an, and the hadith of the Prophet as well as texts of the classic book written by scholars. Of course this reading is through the means that allow all to be able to overcome these seemingly contradictory circumstances. Here Kiai Husein invites people to look at all the texts of the Qur’an and the hadith of the Prophet. as the books of instruction for man to achieve a goal. The goal is none other than realizing the mercy (affection and love), and peace for all human beings. Because the Qur’an states: "We did not send you (Muhammad) except to be a mercy to the universe.” (Surat al-Ambiya / 21: 107)

5.2. Islamic views in providing protection to women’s political rights

Until now, women’s political participation has undergone massive degradation and reduction process. Women’s activity space is restricted to domestic territory and positioned subordinate. This restriction is not only read in textbooks, but also appears in social reality. In fact, the general reason used is that women are seen as a trigger of forbidden sexual relations and their presence in public places is seen as a source of "libel" temptation and stimulates social conflict. This tendentious perception refers to the authoritative sources of Islam (al-Qur’an and hadith) which are read literally and conservatively. For a long period of interpretative discriminatory views this is widely accepted even by some Muslims today. University of Al-Azhar, has issued a fatwa haram on the basis of Islamic Shari'ah for women to hold public positions (al-region al-ammah al-mulzimah). Said al Afghani says "al siyasah 'ala al mar'ah haram shiyanah li al mujtama’ min al-takhabbuth wa al-u al munqalab” (politics for women is ha ram to protect society from chaos). Al-Mawdudi from Pakistan and Mustafa al-Siba'i from Syria and a number of other scholars approved this view. Al-Siba'i said that "the

31Faqihuddin Abdul Kodir. Dalam Penegasan Nabi.....Ibid.
political role of women in the Islamic view is shunned even I say forbidden. Not this one because he has no expertise but because his social losses are greater, violated Islamic ethics and harmed the interests of the family. \(^{32}\)

The Qur'an speaks of women in various letters and verses concerning the various sides of life. There is also a description of the privilege of female figures in the history of humanity in general, for example in the letter an-Nisa' verse 32 which shows women's rights. Which means, "For men there is a share of what they earn, and for women (too) there is a part of what they earn."

According to the above paragraph the political right of the jurist is the right which is owned and used by a person in his capacity as a member in a political organization such as the right to vote (and elected,) to run for office and to hold public office in the state. In addition, political rights can be interpreted as rights in which individuals contribute through such rights in the management of the state.

Some argue that Islam does not establish equality between women and men, especially in obtaining political rights. The issue of women's right to nomination has two other dimensions: firstly, women become members of parliament, second: to participate in the election of members in parliament.

In order to know the provisions in these two issues, the first contains authority in general affairs, it must be explained that there are two powers, namely First, general authority is the power in the affairs of society, such as the authority of law making, the decision of litigation, implementation of law, and control of law enforcement. Second, special authority is the power to regulate certain issues, such as testament to small children, authority over property, and arrangement of waqf.

The Shari'a provides an opportunity for women in the authority of number two above. In that case, he has the power that men have, as having the power to regulate his special interests.\(^{33}\) This opinion is based on At-Taubah's letter: 71: which means: "And those who believe, men and women, some of them are a helper to others. They enjoin goodness, prevent evil, establish prayers, pay zakat, and they are obedient to Allah and His rulers. They will be given mercy by God. Verily Allah is mighty and wise altogether. "(Surat at Taubah [9]: 71).\(^{34}\)

This verse shows that women are like men. Each of them may participate in politics and organize community affairs, and have the right to govern the public interest.

These political rights include:

a. The right to express and give opinions in policies, elections and referenda in various ways.

b. The right to nominate a member of a representative institution and a local member.

c. The right to nominate for president and other matters of political alliances and communications.\(^{35}\)

Women are humans who are burdened with obligations just like men. He is obliged to worship Him, establish religion, fulfill duty, keep the unlawful, and preach in goodness and amar ma'ruf nahyi munkar. Divine revelation includes men and women, unless there is a

---


\(^{34}\) Depag RI, *Al-Qur'an dan Terjemahan*, Jakarta, Departemen Agama Republik Indonesia. hlm. 291

proposition explaining the specification of revelation only to men. When Allah says: "ya ayyuhaa naas (oh all human) or "ya ayyuhal ladziina aamanuu (hai those who believe), then women are also included in it. Ummu Salamah when hearing the Prophet's call: "fateful ayyuhaa" (oh man) he immediately answered the call, even though he was preoccupied with his busy life. Companions were astonished at his rashness. "I am also human," said Umm Salamah at that time.6

With regard to the position of women and gaining political rights, Islam recognizes the importance of women's role in public life and its impact in political life. Therefore women have been given political rights that reflect their dignified, honorable and noble status in Islam. Some of these rights are as follows:

   Exchanging ideas is a very important principle in Islam. The methodology devised by Islam to create a successful nation invites each of its members to counsel each other and deliberate with each other. Allah Almighty says, which means "And to those who receive (obey) the call of his Lord and establish prayer, their affairs (in deciding) by deliberation between them and they spend some of the rizki we give them. (Surah Assh-Shura 42:38) Islam respects the right to freedom of thought and expression of opinion to all mankind. This freedom of expression is not only granted to citizens against tyranny. Also for citizens of a country to be free which to have different opinions and express various problems.37

b. Rights Against Elections
   Decisions on political matters are deeply reckoned and rewarded in order to have a profound effect on the formation of their own societies.38 In the Qur'an Allah says: "O ye who believe, obey Allah and obey Allah's Apostle and Ulil among you, if you differ on the opinion of something, then return it to Allah and the Qur'an and the apostle or His sunnah. And as if you really believe in God and the day after. That is what is more important to you and better consequences. (Surat an-Nisa '4:59).
   Thus as a member of the ummah as a whole, women are also entitled to determine their own destiny and the destiny of their nation. Because all individuals have the right to choose the head of state and occupy positions in the ranks of government.39 Shura (discussion) according to Al-Quran should be one of the principles of management of areas of common life, including political life. This is in the sense that every citizen in social life is required to always hold deliberations.

c. Right to Get the Protection of Honor
   The third important right that Islam provides to women is the protection of honor. Muslims are forbidden to attack each other's honor in any way. This was conveyed by the Prophet on his pilgrimage. The Muslims are bound to guard the honor of others, can be punished by a court of law after proven wrong. The State shall also protect the honor of its citizens without any discrimination. Allah says in the Qur'an: which means "O ye who believe! Let not a people mock some other people because they may be mocked better than they are.... (Surat al-Hujarat 49:11).

d. Oversight Rights

36 Yusuf Qaradhawi, Fiqh.....Ibid.....hlm.161
38 Syekh Syaukat Hussein, Human Right In ....Op cit...., hlm. 18
39 Fatimah Umar Nasif, hak dan kewajiban.....Op cit.....hlm. 172
People and individuals have the right to oversee the head of state and all offices of the government. According to their work and behavior concerning about state affairs. This oversight right is intended to straighten the head of state if he deviates from a straight path. It is because Islam has granted the right for all mankind to condemn the injustice of the government.

The Muslim's assumption is that educated women are no better than those who do not have the education to give birth to intelligent children. This means also to equip themselves is a foolish attitude of their own, because we will find the facts of gender equality commonly referred to as "political rights". It includes women's rights in elections, candidates for political office and the right to participate in public affairs. Quran and Islamic history find female figures which follow serious discussions and argue, even against the Prophet himself. Proven, during the caliph Umar Ibn Khattab came to power, women could freely argue with him in the mosque. Umar revised his statement and turned to support her opinion. Thus was born the name since then: "The woman is right, and Umar is wrong."

However, again many people give a mistaken interpretation of the hadith. One of the Prophet's hadith explains that women cannot be selected to occupy the highest position at the state level. Clearly, the hadith narrates: "The people will not succeed if they - the women - are allowed to be their leaders." Compared to the height of women's dignity, such a provision will have no effect. Women also remain in their original position as noble humans when compared with the biological and psychological nature of men and women. For the intended Hadith is al-qiyadah al-'ammah 'total leadership', general leadership covering a larger society than usual, as does the head of state. As for the other areas, laa maani'a lahu. The scholars agree that the areas of fatwa, ijthad, education, riwayah, science of hadith, etc. may be occupied by women. In history, it has been done by women for decades.

The Qur'an mentions two types (men and women) responsible for the enforcement and improvement of society with amar ma'ruf nahyi munkar. When the hypocrites play a role in destroying the social order of life, on the part of men there are also hypocrites who can damage society. So for the women which are obliged to improve the state of society as well as men. It is similar with serving the ministry or prime minister. In the time of the Prophet, the first voice echoes the belief of Muhammad's prophet hood. And support him is a woman, Khadija ra., who later became his wife. The first man who shaheed fii sabilillah any woman, namely Samiyyah Ummu Amar r.a.

The arguments we see in the Qur'an and Sunnah are generally applicable to men and women, except the distinction with the background of her feminine nature: in a household, one male and one female. Women have their own laws, menstruation, childbirth, istihadah, pregnancy, childbirth, breastfeeding, nurturing and so forth. Men have a level of 'qawamah', leadership, responsibility towards the family and the right to provide for the family. There is also a law of inheritance each of which has its own part, two women equal one part of a male. The reason is very clear, because it is calculated based on the difference of hard work and responsibility between men and women.

Thus, there is no obstacle to a woman serving as prime minister, although the jumhur ulama agree to haram woman holds power in al-region al-kubra or al-imamah al-uzhma

---

41 Muhammad 'Atiyah al-Abrasyi, 'Azamatu'ul Islam, Juz II; Kairo: Maktab al-Usrah, 2002, hlm.270
(supreme leader). Whereas women can serve as supreme leaders in government affairs. But within the limits of leadership in one particular area, which is not comprehensive in society, women deserve it, as in the prosecutor's office, education and even minister.

Finally, the affirmative action policy in women's representation in Parliament has also been able to create equal political rights for women.

6. Closing

6.1. Conclusion

a. The relationship between Islam, Human Rights and Women is an interrelated relationship. In the Qur'an as the main source of Islamic law we will find many texts that explain respect and respect for human beings, regardless of background of origin, color, language, ethnicity, race, and so on. According to Imam Al-Ghazali that the purpose of religion is social welfare (benefit). The most explicit statement of equality of rights and duties between men and women is expressed in verse 35 of al-Ahzab, which means: "Truly Muslim men and women, believing men and women, men and the women who remain in their obedience, the righteous men and women, men and women who are patient, men and women who are devoted’, the men and women of charity, fasting men and women, men and women who keep their honor, men and women who many call (name) Allah, Allah has provided forgiveness and a great reward " . Similarly in al Nahal, 97, Ali Imran, 195, al Mukmin 40, and others. 32.

b. The Qur'an speaks volumes of women in various letters and verses concerning the various sides of life, and those that describe the privileges of female characters in the history of humanity in general, for example in Surat an-Nisa' verse 32 which shows the rights of women, which means, "For men there is a share of what they earn, and for women there is a part of what they earn"... some political rights include; 1). The right to express and give opinions in policies, elections and referenda in various ways. 2). the right to nominate a member of a representative institution and a local member. 3). Right in the nomination to become president and other matters containing political alliances and communicating opinions. Women have been given political rights that reflect their dignified, honorable and noble status in Islam, among them; 1). The right to freedom of expression. 2). The right to elect. 3). The right to privilege protection. 4). Monitoring rights. With that, Islam provides protection to women's political rights.

6.2. Suggestions

a. Need to develop studies about the relationship between Islam, Human Rights and Women, to see the interconnection between them, so as to produce more harmonious relationship between them.

b. Need to conduct more comprehensive comparative studies on women's political rights contained in the Qur'an and also As Sunnah.

43 Muhammad Azhar, Filsafat Politik.....Op cit...hlm.70
44 Yusuf Qaradawi, Fiqh.....Op cit.....hlm.248
References


[10]. Effendi, Masyhur, 1994, Dimensi dan Dinamika Hak Asasi Manusia dalam Hukum Nasional dan Internasional, Jakarta, Ghalia Indonesia.


[12]. Gaus, Geral F. dan Chandran Bukhsh, 2013, Handboook Teori Politik, (Terj. Derta Sri Widowatie), Bandung, Nusa Media bekerjasama dengan LPPIP.


[15]. Ibn al-Atsir, Jami’ al-Ushul, juz VII, hal. 357.


Rights and Obligations of Human Rights in Islam
Perspective

Zainal Arifin Hoesein
{zainal_arifin@uia.ac.id/ Arifinhoesein55@yahoo.com}
Professor of Law Faculty, Universitas Muhammadiyah Jakarta, Indonesia

Abstract. The discourse of human rights in Islam is earlier than other concepts or teachings. That is, Islam comes inherently with the teachings of human rights. Islamic teachings of human rights can be found in the main source of normative teachings, namely Al-Qur’an and Hadith which contains the life practice of Muslims. This is evidenced by the Medina Charter (mitsaq al-Madinah) initiated by the Prophet Muhammad when migrated to the city of Medina. The covenant document contains, among other things, the recognition and affirmation that all groups in the city of the Prophet, whether Jews, Christians or Muslims, are one nation (ummatan wahidah). Islam in addition for talking about human rights also talks about the obligations of Human Rights (KAM) which becomes a counterweight and alignment to achieve the benefit of the ummah (maslahah al-ummah).

Keywords: Human Right, Human Liability, Islam.

1 Introduction

Human rights in Islam are transcendent for the benefit of humanity through Islamic shari’ah which is revealed through revelation. According to the Shari'ah, human is a free being who has duties and responsibilities, and therefore they also have the right and freedom. The basis is that justice is established on the basis of equality (egalitarian, indiscriminate). That is, the task that is carried out will not be realized without the freedom, while the existential freedom does not materialize without the responsibility itself. In principle, Islam provides assurance of freedom to humans in order to avoid the futility and pressure, whether related to the problem of religion, politics, and ideology. However, the granting of freedom to humans does not mean they can use it absolutely, but in that freedom is contained rights and interests of others who must be respected as well.

At the beginning of the opening of the Medina Charter, it has been mentioned that all human beings are one people (ummatan wahidah), born from the same source, so there is no difference between one with another in all things. But in Islam there is one thing that makes a person regarded higher in the eyes of Allah SWT., Namely the level of faith, so not seen from the color of skin, race, ethnicities, country, and gender, but the level of one's faith that distinguishes it with others. Undeniably also, that in Islam all human are brothers and sisters hood, they are the descendent of one father and one mother, namely Adam and Hawa. This is as pointed out in the Qur'an letter An-Nisa verse 1:

“O all human, fear your Lord Who created you from one by one, and from him, God created his wife; and of them, God has multiplied many men and women. And fear Allah who by His name you ask one another, and (nurture) the relationship of silaturrahim. Allah always guards and keeps watch over you.”

Islam is a religion of humanity, the principle of this humanity in Islam is its respect for the man more than any other creature, regardless of color, race, tribe, and caste. In the letter of Al-Hujurat verse 13 it is explained that Allah SWT. creating all the different and nonsmoking human beings is not to oppress each other, to insult each other, and to drop each other. But this distinction is directed solely for all people to know each other and complement each other's flaws and strengths. Simply stated, that the human rights referred to by the Medina Charter are the similarities between each individual human being in all aspects of social life, as well as human freedom of religion and respect-between religions. The main principle in the Medina Charter is freedom of religion and protecting equal rights and equality of obligations upon all individuals of all citizens.

In Indonesia, the Human Rights Obligation (KAM) is quite clear, it is stated in the Republic Indonesia Law no. 39 of 1999 article 69, paragraph 2, which reads: "Every one's human rights creates basic obligations and responsibilities to respect the human rights of others on a reciprocal basis and the duty of the Government to respect, protect, uphold and promote it." From the sound, which we can say that the outline is in the piece "every human rights person raises basic obligations and responsibilities", it is clear that every human rights points that every human being possesses, is necessary and should be accountable, and that can be done with the implementation Human Liability.

2. Research Problem

Based on the background mentioned above, there are three problems that become the subject of this research:

1. What is the concept and the nature of human rights in Islam?
2. What are the human rights principles in the Qur'an and the Universal Declaration of Human Rights?
3. What is the concept and nature of Obligation Right in Islam?

3. Discussion

3.1. The Concept and the Nature of Human Rights in Islam

In understanding the concept and the nature of human rights in Islam, the author first explains the basic understanding of human rights. The word Human Right in Arabic is known as Haqq al-Insani al-Asasi or also called Haqq al-Insani ad-Daruri, which consists of three words, namely; the word right (haqq) means: belonging, possessing, authority, power to do

---

2 “O mankind, We created you from a man and a woman and made you nation and tribe to know one another. Verily the most honorable among you by Allah is the most wicked among you. Allah is Knower, Knower.”
something, and is something to be gained. The word man (al-insan) means: a creature that is intelligible and serves as the subject of the law. While the word asasi (al-asasi) means: basic or basic.

In terminologies, Human Rights in the view of Islam is a right inherent in human self that is natural and fundamental as a trust and grace of Allah SWT which must be maintained, respected, and protected by any individual, society or country. Even Ibn Rushd further affirms that Human Rights in Islamic perception has provided the format of protection, security, and anticipation of the various human rights that are primary (daruriyyat) owned by every human being. The protection comes in the form of anticipation of things that will threaten the existence of soul, honor, descent, property, and reason, and religion. In this context, Human right is a gift of Allah SWT for all human beings obtained naturally from birth, therefore human rights in line with the nature of man himself. According to the Shari'ah, human is a free being who has duties and responsibilities, and therefore he/she also has the right and freedom. The basis is that justice is established on the basis of (egalitarian) equality, indiscriminately. That is, the task that is carried out will not be realized without the freedom, while the existential freedom does not materialize without the responsibility itself. Islam places humans as beings who have the glory and virtue, possess the highest dignity and dignity, as stated in the Qur'an:

“And indeed we have honored the sons and daughters, we transport them on land and sea, we give them sustenance of the good and we exhort them with perfect advantages over most of the creatures we have created. 5

The Islamic human rights system contains the basic principles of equality, freedom and respect for humanity. Equality, meaning Islam sees all humans are equal and have the same position, the only advantage enjoyed by other humans is determined by the level of sobriety. This is similar to the word of Allah SWT. in the letter of al-Hujurat verse 13:

“O mankind, We created you from a man and a woman and made you nation and tribe to know one another. Verily the most honorable among you in the sight of Allah is the most wicked among you. Allah is Knower, Knower.”

The freedom in Islamic teachings is an important element. Islam is present to provide assurance of freedom to humans in order to avoid the futility and pressure, whether related to the problem of religion, politics and ideology. However, the granting of freedom to human beings does not mean that they can exercise such freedom absolutely, but in that freedom is contained the rights and interests of others who must be respected as well. Regarding respect for fellow human beings, in Islam all national races have the same honor. The basis of the equation is actually a manifestation of the very human form of human dignity. Essentially the image of honor lies in the superiority of humanity, not on individual superiority and ethnic race. Honor is applied globally through absolute solidarity of equality. All are descendants of Adam, if Adam is created from the land and honored by Allah, then all his offspring also have the same honor without exception.

5 QS Al-Isra ayat: 70
The principles of respect for human rights, such as those concerning justice, equality, freedom of religion and others without discrimination on the basis of race, color, sex and religion can be found mainly in the verses of Makiyah (which descended during the Meccan period), then in the journey of Islamic civilization, scholars and Muslim scholars to develop rational concepts both in legal matters (commonly called fiqih) or theology (which is often called kalam science), and there began to be seen a lot of differences in the perception of human rights among scholars and Islamic scholars and goes on until now, coupled with the onslaught of Islamic Revivalism in the last decade. The spirit of Islamic revivalism also touches on human rights.8

Islam sees humans as noble9, the glory is attributed to the worship of human for their Rabb. Individuals are required to be responsible moral beings, who will carry all the deeds of their deeds without the possibility of delegating them to other persons.10 Therefore, the value of a person is equal to the value of universal humanity, as the value of universal humanity is equal in value to the cosmic value of the whole universe.11 In Islam the basic rights of human as a gift given by Allah SWT. (theocentric)12 Whereas in Western thought, human rights are natural rights (al-huquq athabi'iyyah / natural right) flowing from the idea that absolute sovereignty belongs to human, no other sovereign side of human (anthrophocentris).13 14

Islam as a universal and comprehensive religion that surrounds several concepts. The concept in question is aqidah, worship and muamalat each containing teachings of faith. Aqidah, worship and muamalat, in addition to containing the teachings of faith, also includes the dimensions of Islamic teachings are based on the provisions of shar'i'ah (fiqih). Furthermore, in Islam, according to Abu A'Ala Al-Mawdudi.15 There are two concepts about right. First, human right or Huquq ql-insan ad daruriyyah, and the second is Allah right (huquq Allah). Both types of rights can not be separated. And this is what distinguishes between the concept of human rights according to Islam and human rights from a Western perspective.

---

7 Revivalism comes from the word revival, Revivalism is a revival movement. In Christianity the revival is a return to the sacred texts of the Bible (back to bible), Revivalism is emerging as a response to secularism. The Islamic Revivalism is a movement of Islamic purification of heresy,khurafat, tahayyul and call back to the Qur'an and Hadith.
9 Look Al-Qur'an surat Al-Isra ayat: 70.
10 Look Al-Qur’an surat Al-Baqarah ayat: 48 meaning: “And guard yourselves from the Day of Judgment (the Day of Resurrection) that one can not defend anyone, even the slightest; and (so are) not received syafa’at and ransom from him, and neither will they be helped”
11 Look Al-Qur’an surat Al-Maidah ayat: 32
12 Theocentric adalah sebuah pemikiran dimana semua proses dalam kehidupan di muka bumi ini akan kembali kepada Tuhan.
13 Antrophocentris adalah pandangan yg menempatkan manusia sebagai pusat dari alam semesta.
It is important to underline that the core of human rights is egalitarianism, democracy, equality before the law, and social, economic and cultural justice. Differences for example, in the view of Islam is the will of Allah SWT, therefore all efforts that force that all people are uniform (one religion, one nation, one color, one political view etc.) is denial of sunnatullah. In the Qur'an Allah affirms:

"And if thy Lord willed, surely the believers of all the earth shall be all. Do you then (forcefully) persuade men to be believers all?"\(^{17}\)

The above verse emphasizes that the attempt to equalize all the differences of all humanity is an act of human rights violation. It also shows that with human differences it is encouraged to help each other and work together. Therefore, the respect for differences among human beings is a primordial attitude that grows organically since Islam is called to humanity. Other principles of upholding human dignity and prestige are Islamic criticism of injustice, social imbalances and discrimination. These values are also striving for by human rights. The Qur'an has expressed this criticism, such as economic injustice in the statement "wealth should not go round among the rich alone",\(^{18}\) Also the zakat rules contained in the letter At-Taubah verse 60\(^{19}\) reinforces how Islam cares for the oppressed people who need to be helped and improved in dignity and prestige. Abandoning the plight of the poor and displaced is a violation of religion and human rights.

While at the socio-political level, Al-Qur'an wants to strengthen the most basic family unit consisting of both parents, children and grandparents. The family unit is the basis of harmony where human dignity begins to be established, therefore Qur'an cares about this aspect.\(^{20}\) Therefore, the improvement of human dignity can only be meaningful if it is related to the aspects of economic, social and political justice. The above Qur'anic principles have been arranged in such a way that human rights are not violated either in the individual, family, or community level. Either economically, socially, and politically.

The Qur'an and as-Sunnah as the main source of law in Islam give high rewards to human rights. The Qur'an as the first legal source for Muslims has laid the foundations of human rights and truth and justice. This can be seen in the provisions contained in the Qur'an, among others:

1. The Qur'an describes creation and creatures, and about equality in creation, for example in Surah Al-Hujarat verse 13:

"O mankind, We created you from a man and a woman and made you nation and tribe so that you may know one another. Verily the most honorable among you by Allah is the most pious among you. Allah is Knower, Knower."\(^{21}\)

\(^{17}\) Al-Quran, surat Yunus ayat: 99.
\(^{18}\) Look: Surat Al-Hasyr ayat 7: What are the spoils (fai-i) that Allah gave to His Messenger (of possessions) derived from the inhabitants of the cities of Hence is for God, for apostles, relatives, orphans, the poor and the people who are on the way, that the treasure should not circulate among the Rich among you alone. what the Apostle gave you, So take it. leave what he forbids. and fear Allah. Verily, Allah is harsh in punishment.
\(^{19}\) "Indeed, the zakat is for the poor, the poor, the zakat boards, the Mu'allaf who is enticed into their hearts, to (liberate) the slave, the one who is indebted, for the way of Allah, and those who on the way, as an obligatory provision of God; And Allah is Knower, Mighty, Wise."
2. In the Qur'an there is also a verse about life, the maintenance of life and the provision of means of life. In addition, the Qur'an also speaks of honor, for example in Surah Al-Maidah verse 32:

"Therefore We decreed (a law) unto the Children of Israel, that whosoever kills a man, not because of that man (kill) another, or not for making mischief in the earth, it is as if he has killed all humanity. And whoever preserves the life of a man, it is as if he has preserved all human life. And indeed indeed have come unto them Our apostles with (bring) clear explanations, and many of them afterwards have indeed exceeded the limits of corruption on the earth."

3. The Qur'an has posed a stance against the oppression and the people who do zhalim and ordered to do justice which is expressed in the words: 'adl, qisth and qishash.

4. The Qur'an also speaks of the prohibition of force to guarantee freedom of thought, conscience and expressing aspirations, for example as proposed by Surah Al-Kahf verse 29:

"And say: The truth is coming from your Lord, then whoever wants to believe, and whoever wants to (disbelieve) let him be infidel ". Lo! We have prepared for the tyrants the Fire, whose turmoil surrounds them. And if they ask for drink, they will be given to drink with water like a boiling iron that scorches the face. That's the worst drink and the ugliest resting place."

Likewise with Sunnah Rasulullah SAW., He has provided guidance and examples in the enforcement and protection of human rights. This is for example seen in the command of Prophet SAW. which enjoins to preserve human rights and the rights of glory, even to persons of different faiths, through their sābd:

Remember whoever tries to disbelieve a mu‘ahad (a heathen who has been protected by a peace treaty), degrading him, weighing him above his ability or taking something from him without his consent, then I am his rival on the Day of Resurrection.21

Other arrangements on human rights can also be seen in the Medina Charter22 and Khatbah Wada’. Both manuscripts pertaining to the Prophet (s). this then became the masterpiece of human rights in Islam. The khatbah wada’ is now known as the sermon of the Prophet SAW, with Muslims all over the world and affirmation of the perfection of Islamic teachings that he has conveyed. In fact, more than that, in the sermon that coincides with the implementation of wukuf in Arafat on 9 Dzulhijjah 11 H, there is another thing that is very important for human life on earth, namely the commitment of Islam that has upheld the values of human rights. Where was the Prophet SAW. calling for:23

---

21 Hadits from Abu Daud, dishahihkan by Syeikh Al-Albani on Shahih Al-Jami’.
22 About contract of Madinah detail will explain in sub theme 3 and 4 in this paper.
23 Nurcholis Majid said that Khatubah Wada’ have taken point of view detail and strong about human right. Start from basic human right, soul, property, and respectibility, even about issue crucial in kontemporor era like labour right, the honor of human. Look: Mohammad Monib dan Islah Bahrawi, Islam & Hak Asasi Manusia Dalam Pandangan Nurcholish Madjid, Jakarta: Gramedia Pustaka Utama, 2011, hlm. 93.
"My brothers! Your blood and all your possessions will be pure to you, until your time comes before God as the day and the holy month. And you go to God, all of you will be held accountable for all your deeds."

In the life of the nation and state, in this case Indonesia, there are basic human duties (basic), among others: (1) Everyone shall respect the human rights of others, morals, ethics, and the order of life of society, nation, (2) Everyone in the territory of the Republic of Indonesia shall comply with the laws and regulations, the unwritten law, and international law (on human rights that have been accepted by the state of Republic Indonesia), (3) In exercising their rights and freedoms, every person shall be subject to the restrictions set by law, (4) Every citizen shall participate in the defense of the state, (5) Everyone's basic rights and obligations shall have the obligation to respect the human rights of others mutually.

Thus, human rights based on an Islamic perspective essentially all return to the five principles of human rights known as the term "dharuriyyat al-khamshah" (the five most dominant human rights) that protect human life and at the same time be held accountable. The five principles are: keeping the religion (hifzh ad-din), keeping the soul (hifzh an-nafs), maintaining the mind (hifzh 'aql), maintaining offspring (hifz an-nasl), and maintaining property (hifz al-mal).

3.2. Human Rights Principles In the Qur'an and the Universal Declaration of Human Rights

The Islamic Declaration on Human Rights was compiled at the Islamic Conference in Makkah in 1981. The Declaration consists of 23 Articles that accommodate two basic forces, namely faith in God and the establishment of the Islamic order. In the introduction of this declaration it is argued that human rights in Islam stem from a belief that Allah Almighty, and only God as the law and the source of all human rights. The advantage of this declaration is that the text contains clear and unique references to the totality of rules derived from the Qur'an and Sunnah and other laws drawn from both sources by methods deemed to be lawful Islam.

The Human Rights Principles contained in the Universal Declaration of Human Rights (DUHAM) have been described in various verses of the Qur'an. If the human rights principles contained in the Universal Declaration of Human Rights are compared with the human rights contained in the teachings of Islam, then in the Qur'an and as-Sunnah will be encountered, among others, the principles of human rights as follows:

1. Human Dignity (al-Karamah al-Insaniyah)

In the Qur'an it is mentioned that man has a high position or dignity. The dignity that humans possess is totally absent in other beings. That high dignity is essentially a fitrah that is not separated in human beings. It has been affirmed by Allah SWT. in Surat al-Isra 'verses 33 and 70 and the letter of Al-Maidah verse 32. The Qur'anic principles which have placed man on a high and noble dignity in tune with the principles outlined


by the Universal Declaration of Human Rights, among other things contained in Articles 1 and 3.\(^{26}\)

2. Equation (al-Musawah)

Basically all human beings are equal, because all are servants of Allah Ta'ala. Only one criterion can make a person high in rank from the others, namely his piety.\(^{27}\) The principle of equality (al-mu'adalah) is in the Universal Declaration of Human Rights contained in chapters 6 and 7.\(^{28}\)

In the view of Islam, man is born in a state of fitrah\(^{29}\), without carrying the sin of inheritance, and free without bearing the burden as a slave or sin of others. The concept of fitrah and merdeka also gives the meaning of equality of degree for every human being born, because both are born in the state of fitrah and free earlier. Differences of race, ethnic, or class precisely to further realize the introduction, not the symbol of degradation position.\(^{30}\)

3. Justice (al-'Adalah)

The word al-'adalah or al-'adl in Al-Qur'an according to Al-Baidhawi as quoted Suyuthi Pulungan, means "mid and equation".\(^31\) While Sayyid Qutub emphasizes on the basis of equality as the principle of humanity that is owned by everyone. Justice for him is inclusive, not exclusively for a particular group, even if for example the justice is a Muslim for non-Muslims.\(^{32}\)

The command to uphold justice is clearly stated in several verses of the Qur'an, for example: Al-Maidah verse: 8, Al-An'am verse: 152 and Al-Hujurat verse: 9. Those verses mean that upholding justice is the duty of every believer by faith in Allah SWT, as an act of witness to Him. The mandatory order is addressed to

---

\(^{26}\) Article 1: All people were born free and have the same of satus and human right. They have intellect, lustrous and wish they can interact in brother/sisterhood. (Semua orang dilahirkan merdeka dan mempunyai martabat dan hak-hak yang sama. Mereka dikaruniai akal dan hati nurani dan hendaknya bergaul satu sama lain dalam persaudaraan). Article 3: All people have the right of life, freedom, and safety as individu. (Setiap orang berkhar atas kehidupan, kebebasan dan keselamatan sebagai individu).\(^{27}\) Look Q.S al-Hujurat ayat 13

\(^{28}\) Article 6: Everyone has the right to recognition before the law as a private human wherever they are (Setiap orang berkhar atas pengakuan di depan hukum sebagai manusia pribadi dimana saja ia berada). Article 7: Everyone is equal before the law and is entitled to the same legal protection without discrimination. All are entitled to equal protection against any form of discrimination against this Declaration, and against any instigation that leads to such discrimination. (Semua orang sama di depan hukum dan berkhar atas perlindungan hukum yang sama tanpa diskriminasi. Semua berkhar atas perlindungan yang sama terhadap setiap bentuk diskriminasi yang bertentangan dengan Deklarasi ini, dan terhadap segala hasutan yang mengarah pada diskriminasi semacam ini).\(^{29}\) Look Hadits Rasulullah SAW.: “Setiap anak dilahirkan dlm keadaan fitrah (Islam), maka kedua orang tuanahal yg menjadikannya Yahudi, Nashrani atau Majusi.” (Shahih Bukhori, Hadits No. 1296)


two things, namely the order of establishing the law or solving the problem fairly, and the commandment is fair to the person who establishes and resolves a problem. That is, anyone who is given authority or power to lead others must be functioned to uphold justice and must do justice, it is two elements that can not be separated in an effort to uphold justice. Even in the smallest social unit, family, justice should be upheld like a husband to his wives.

4. Freedom (al-Hurriyah)

Freedom is one of the basic things of everyone's life and is the recognition of a person or group and the glory of the dignity of another's humanity. Freedom to make everyone or the group feel elevated its existence and appreciated the value of humanity in the midst of the pluralism of the ummah. Among the freedoms that people need. First, freedom from persecution and claiming rights. This freedom requires an upholding of social order and security in society, so that they avoid arbitrary and unlawful acts in absolute terms. In that connection the Qur'an states that Allah SWT. strongly opposed to abusive acts, real or hidden, and violates human rights for no good reason. Second, freedom from fear, the Qur'an strongly emphasizes the importance of providing protection and maintaining the safety of the self and the soul of every human being. The Quran strongly denounces the person who kills a person, whom he calls the act as if it were the same as killing the whole person. On the contrary, the Qur'an praises the person who keeps the life of a person, whom he calls the act as being the same as preserving the whole human life.

Third, free speech or opinion. In the history of Islam can be found evidence that shows that the Prophet SAW giving freedom to his companions to speak and express their opinions. This is evident in the deliberations or consultations he undertakes to discuss matters. He developed a culture of freedom of opinion or dissent among his companions. The Qur'an commands people to dare to use their minds, especially to express their true opinions. Therefore, every human being is in accordance with his dignity and nature as a being who thinks has the right to express his opinion freely, as long as it is not contrary to Islamic principles and can be accounted for. The right to express opinion freely is stated in the General Declaration of Human Rights clause 19.

---


34 Lihat surat An-Nisa' ayat: 3: "And if you are afraid that you will not be able to do justice to the (orphans) rights of orphans (if you marry her), marry other women whom you love: two, three or four. Then if you are afraid that you will not be able to do justice, then marry only one, or the slaves you have. That is closer to non-persecution."


36 Look QS Al-A'raf ayat 33

37 Look QS Al-Maidah ayat 32


39 Article 19: Every person shall have the right to freedom of expression; in this case including the freedom to hold opinions without interruption, and to seek, receive, convey information, opinion in any way and without regard to limits.
Fourth, freedom of religion. Humans have the right of personal freedom to have any belief or ideology. This freedom must be respected and protected by others. This freedom of religion we can see from the statement in the letter of Al-Kafirun verse 6: "for you your religion and for me my religion." This verse contains the connotation of freedom of religion, but there is another verse more assertive in the same thing, that is "no coercion in (embracing) religion. Verily the truth is manifest from error." Another verse states: "And if thy Lord will will surely have faith all men that are on the earth. Will ye then compel men to be all believers?"

But the fact is Allah SWT not doing Allah will. Allah only gives guidance through Allah messenger and revelation, for then human is given the freedom to choose his desired religion as stated in the letter of Al-Kahf verse 29: "And say:" Truth comes from your Lord, then whoever wants (believer) , and whoever wants to (disbelieve) let him be infidel ". Lo! We have prepared for the tyrants the Fire, whose turmoil surrounds them. And if they ask for drink, they will be given to drink with water like a boiling iron that scorches the face. That's the worst drink and the ugliest resting place."

The verses are strong evidence that it does not justify anyone forcing others to embrace Islam. Everyone is given the right to freedom to choose the religion he wants. That is, Islam since 14 centuries ago has legalized the toleransi and freedom of religion and the Prophet has practiced it. This is in line with article 18 of the Universal Declaration of Human Rights, which reads: Everyone has the right to freedom of thought, conscience, and religion.

5. Peace (as-Salam)

In the Qur'an Allah Ta'ala commands the believers to create peace in their internal environment. It is set out in the letter of Al-Hujurat verse 9:

"And if there are two groups of those who believe it is a war you should reconcile between the two! But if one breaks a covenant against another, let that break the covenant you fight back until it returns to God's command. If he has receded, reconcile between the two according to justice, and be fair; Allah loves those who are just."

In Verse 9 it is clear that if there are two classes of believers fighting to stop them from war, by counsel, or by threat, and or by legal sanction. However, if one group is reluctant to accept peace according to Islamic law and violate it as predestined by Allah SWT. about the events for their creatures, they can be fought so that they submit and obey God's law, and return to God's command, that is peace.

Therefore, persons acting as interpreters should be fair and honest, without taking sides with anyone by taking a neutral position as an arbitrator, and not taking economic and political advantage from him. The above verse describes the realization of internal peace, there is also another verse that enjoins the believers to love to receive peace to create an external peace. As confirmed by Allah SWT. in Surah Al-Anfal verse 61:

"And if they incline toward peace, then lean unto him and put him to trust in God. He is the Hearer, the Knower."
6. Right to Social Security (al-Haq fi Al-Dlaman Al-Ijtima'i)

In the Qur'an there are many verses which guarantee the minimum level and quality of life for all people. These teachings, among others, are the lives of the poor should be considered by the community, especially by those who have. Surat az-zariyat verse 19 has affirmed:

"And in their possessions there is a right for the poor who ask and the poor who are not partakers."

Such social security shall be granted, at least to those mentioned in the Qur'an, those entitled to social security. As explained in Surah al-Tawbah verse 60 below:

"The zakat is for the poor, the poor, the managers of the zakat, the mu'allaf whom he is persuaded, to (liberate) the slaves, the debtors, for the way of Allah and for them yuanq is on the way, as a required provision of Allah, and Allah is Knower, Wise."

The verse commands Muslims to practice zakat to those who need it. The purpose of zakat, among others, is to reduce poverty and create social welfare for the community. This is in line with Article 22 of the Universal Declaration of Human Rights, which reads: Everyone as a member of society has the right to social security.

7. Right to property (Al-Haq fi Al-Milkiyah)

In Islamic law, the right to own for a person is highly respected. Likewise with the protection of the property of a person is the duty of the ruler. Therefore, anyone, not even a ruler, is permitted to deprive another's property, unless it is in the public interest and in a pre-determined manner. This is in accordance with article 17 of the Universal Declaration of Human Rights, which reads: everyone has the right to own property, either alone or with others; (2) no one's property may be seized arbitrarily.

In this declaration, among others, explained that:
1) The ruler and the people are the same subject before the law.
2) Every individual and every person shall strive by all means available to combat violations and revocation of this right.
3) Everyone not only has rights, but also has the obligation to protest injustice.
4) Every Muslim has the right and obligation to refuse to obey any orders that are contrary to the law, whoever commands them.

3.3 The Concept and the Essence of Human Rights in Islam

The Human Rights Obligation (KAM) is something that every human must do as a living being. Human Rights Obligation is essentially a duty that is in every human being and has been owned since human was born. The fundamental obligations are direct orders from God. An example of Obligation is believing in God,44 do good, and always appreciate fellow beings

43 Ibid.
44 Look al-A’raf ayat 172: “And (remember), when your Lord took the offspring of the sons of Adam from their sobbi and God took witness of their souls (saying): "Am I not your Lord?" They replied: "True (You are our Lord), we are witnesses". (We do so) so that on the Day of Resurrection you will not say: "We (the people of Adam) are the guilty of this (the unity of God)"”
in this world. Another example of the simplest of Obligation Rights is to respect others so that the right of others to honor is fulfilled.

The term "Human Rights Obligations" is not so well known, when compared to the term of Human Rights which is always commemorated and celebrated every year. But not so with basic obligations, often forgotten people. Prof. Jimly Asshiddiqie in some of his papers stated that if we observe also use the term 'Human Liability'. However, in Law No. 39/1999 on Human Rights in Article 1 paragraph (2) uses another term to discuss this matter, namely 'Basic Obligations'. Perhaps some of us ask why the Human Rights Law does not use the term 'Human Rights Obligation', as when the Act speaks of 'Human Rights' and regulates an obligation under the Human Rights Chapter of the 1945 Constitution? The simple answer, in the Human Rights Law, the position of 'basic duty' is simply to ensure that human rights are done. So that human rights are absolute, then there will be exceptions, that is simple when offending the human rights of others, either individuals or groups.

The Indonesian Ulema Council (MUI) said about human rights at the MUNAS VI of 2000, establishing and recognizing international human rights in general as long as it is not against Islam. On the other hand, MUI also deplore the emphasis on human rights that are too biased on the rights and forget the obligations, and encourage the importance of balance and harmony between rights and obligations.45

Based on reality, Islamic law always gives rights and obligations in tandem (arm in arm). For example, the human being has the right to be guarded of his life, but there are also times when he is obliged to save his life in jihad qital or war (in this case not only prohibited to take the lives of others without rights). Humans are also entitled to earn sustenance (guaranteed), and obliged to share fortune to others. Man has the right to own the land, accompanied by the obligation to manage the land and so forth.

The balance between rights and obligations lies in the most basic essence of the concept of human and himself. Human was created for the purpose of worshiping Allah SWT.46 Even one of the wisdoms of the creation of the seven heavens and the earth is to remind man of God's power over everything that is closely related to the purpose of human creation.47 Thus, can be interpreted that true man actually created with a basic obligation attached to him. So with a position like this, the fate of the creation is very dependent on the mercy of the Creator, Allah SWT.

Obligation is actually a form of restrictions on human rights that can make the source of the emergence of the nature of individual egoism. Because human beings not only have human rights, they also have basic obligations. Usually, people only demand rights, but forget that they also have an obligation to respect the rights of others. Obligation is also something to be done by every human being as a living being.

In the life of religion and the state, there is a Human Rights Obligation to be fulfilled, another: (1) Human obligation to perform human duties, (2) moral obligation on the basis of right and wrong norms as accepted and acknowledged by society, (3) on the basis of social environmental norms and behavior, (4) Obligations to God the Creator.

Thus it can be understood that the nature of respect and protection of human rights in the concept of Islam is to maintain the existence of a whole human being and the balance, namely

46 Look QS Adz-Dzaariyat ayat 56.
47 Look QS Ath-Thalaq ayat 12.
the balance between rights and obligations, as well as the balance between individual and social interests. So that in fulfilling and demanding rights can not be separated from the fulfillment of obligations that must be implemented. So also in the interests of individuals should not damage the interests of the people. Therefore, the fulfillment, protection and respect for human rights must be accompanied by the fulfillment of Obligation human right in private life, community life, and state.  

4 Conclusion

From the above explanation, the authors conclude that are answering the formulation of the problem or subject matter that has been formulated in this study:

1. Human rights in the perspective of Islam is a set of rights attached to the nature and existence of human beings as creatures of God Almighty. As a gift that must be preserved and preserved.

2. The principles of human rights in the Qur'an and the Universal Declaration of Human Rights which have been described in various verses of the Qur'an comprise: The principle of human dignity (al-karamah al-insaniyah), the principle of equality (al-musawah), the principle of justice (al-`adalah), the principle of freedom (al-hurriyah), the principle of peace (as-salam), the principle of the right to social security (al-haq fi al-dlaman al-ijtima'i) and the principle of the right to property -haq fi al-milkiyah).

3. Human Rights Obligation is a set of obligations inherent in human nature and existence to respect, uphold, and protect human rights. So the essence of human rights is the integration of human rights and obligation that take place synergistically and in balance. All this is a blessing and a grace as well as a mandate that will be held accountable before the court of Allah SWT. Rabbul `alamin.

References

Book:


Paper/Journal/Internet
[2]. AM, Arief, Hak Asasi Manusia Dalam Perspektif Al-Qur’an, 2015;
The Lack of Legal Aid Accessed by The Poor Society in West Kalimantan Province

Rini Setiawati¹, Sri Ayu Septinawati², Charlyna S. Purba³

{rini090366@gmail.com¹, septin2006@yahoo.co.id², charlyna.purba@gmail.com³}

Faculty of Law Universitas Panca Bhakti Pontianak, Indonesia¹,²,³

Abstract. Providing legal aid to the poor in West Kalimantan was one of the state's role manifestations in providing legal protection as ruled by 16th Indonesian Law of 2011 on Legal Aid. In fact, the authors found that most of the poor society in West Kalimantan faced the difficulty to access the legal aid. It was caused by the lack of verified legal aid providers in West Kalimantan. The aim of the study was finding the solution to maximize the legal aid providers within giving the legal aid to the poor society. Through unstructured legal method, the study found that there was a legal vacuum of the unruled mechanism which institutions that provide verification of legal aid institutions established by the Local Government. The implication of the study gave a recommendation in the form of legislation revision that legal aid regulations need further arrangements in the 16th Indonesian Law of 2011 on Legal Aid.

Keywords: Legal Aid, Poor Society, Access.

1 Introduction

Article 27 paragraph (1) The 1945 Constitution of the Republic of Indonesia (Sekretariat-Negara-RI, 2002) mentioned that all citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions. Equality before the law can be realized and enjoyed by the community if there was an equal opportunity to get justice (Gerstenberg, 2012). Equality before the law might be accompanied by various facilities for the public to obtain justice too including legal aid right fulfillment (Sir & Brooke, 2017).

There were many poor society which is entangled in legal cases and could not able to afford legal counsel services in accompanying his case became one of the establishment reasons in the form of legal aid regulation. Legal aid was a legal service provided by legal aid providers, free of charge to legal aid recipient. Legal aid recipient was a poor person or group. While, legal aid provider was a legal aid agency or civic organization that provide legal aid services based on The 16th Indonesian Law of 2011 on Legal Aid (The Republic of Indonesia, 2011).

Legal aid provider role in providing legal assistance in the proceedings for the poor is very important (Iwan Wahyu Pujianto, Syafrudin Kalo, Eka Putra, 2015). The reason was very sure because the poor society which entangled in legal cases had not understood their rights as defendants, it made them were treated unfairly or impaired their right. Meanwhile, firmly in The 1945 Constitution of the Republic of Indonesia stated that every citizen had the same right before the law and was entitled to be treated fairly (Sekretariat-Negara-RI, 2002).
Legal aid providers were brought by central government's policy in fact was a clearly appropriate but also crippled. It was caused by the current problems especially for the rural poor, including West Kalimantan Province in gaining access to justice (Cassese, 2016) through obtaining mentoring from legal aid providers. Any legal aid agency must be verified and accredited to be able to provide legal assistance and access the budget were mentioned in The 16th Indonesian Law of 2011 on Legal Aid. These were the problems and would be answered in this issue.

2 Literature Review

The realization of the state of Indonesia as a constitutional state, everybody constitutional right is guaranteed to gain recognition, guarantee (Bies, 1993), protection, legal certainty and equal treatment before the law as a means of human rights protection (Zick, n.d.).

Article 27 paragraph (1) The 1945 Constitution of the Republic of Indonesia (Sekretariat-Negara-RI, 2002) sounds —All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions. Then, Article 28 D paragraph (1) The 1945 Constitution of the Republic of Indonesia (Sekretariat-Negara-RI, 2002) stated that —Every person shall have the rights to recognition, guarantees, protection and certainty before a just law, and of equal before the law. Next, Article 281 paragraph (1) The 1945 Constitution of the Republic of Indonesia (Sekretariat-Negara-RI, 2002) mentions —The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right to not be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances. The last but not least, Article 34 paragraph (1) The 1945 Constitution of the Republic of Indonesia (Sekretariat-Negara-RI, 2002) mentioned that —Impoverished persons and abandoned children shall be taken care of by the State.

Besides that, the state is responsible for poor society legal assistance provision as a manifestation of access to justice oriented to social change realization (Bernts & Faculty, 1992). Article 1 paragraph 1 of The 16th Indonesian Law of 2011 on Legal Aid (The Republic of Indonesia, 2011) finds the meaning of legal aid is a legal service provided by legal aid providers, which free of charge for legal aid recipients. Legal aid recipient is a poor person or group, whereas legal aid providers is a legal aid organization or civic organization providing legal aid services under The 16th Indonesian Law of 2011 on Legal Aid.

Based on these provisions, then the state recognizes poor society economic rights, social rights, cultural rights, civil rights and political rights. On the basis of these considerations, the poor society have the right to be accompanied in the lawsuit that is being experienced and to be defended by both litigation and non-litigation lawyers. Litigation is the process of handling legal cases conducted through the court to solve them. While, non-litigation is the process of handling lawsuits conducted outside the court to solve them.

Legal assistance provided to legal aid recipients includes exercising power, accompanying, representing, defending and/or carrying out other legal actions for the legal benefit of the legal aid recipients.

The next provisions in this Indonesian Law, Article 8 mention that the implementation of legal assistance is carried out by qualified legal aid providers, including: 1) incorporated; 2) accredited under this The 16th Indonesian Law of 2011 on Legal Aid; 3) have a permanent office or secretariat; 4) has a board; 5) has a legal aid program. Accreditation shall be obtained
based on the results of the assessment conducted by the Minister to fulfill the feasibility of providing legal aid by forming a committee consisting of ministries conducting legal affairs in the field of law and human rights; academics; public figure; and institutions or organizations providing legal aid services.

3 Research Method

The type of the research is qualitative research method, especially dogmatic legal research. Phase of research is exploratory research through unstructured method and then hypothesis building. Data were collected by library research. The purpose of the study is to explore how the lack of legal access by the poor society in West Kalimantan Province could happen. The scope of the research is Indonesia Law related to legal aid.

4 Result And Discussion

4.1 The Difficulty to be Verified Legal Aid Provider

The difficulty of becoming a verifiable legal aid agency is one of the reasons for the difficulty of the poor accessing legal aid. The provision of Article 6 The 16th Indonesian Law of 2011 on Legal Aid mention as follows (The Republic of Indonesia, 2011):

(1) Bantuan hukum diselenggarakan untuk membantu penyelesaian permasalahan hukum yang dihadapi Penerima Bantuan Hukum.
(2) Pemberian Bantuan Hukum kepada Penerima Bantuan Hukum diselenggarakan oleh Menteri dan dilaksanakan oleh Pemberi Bantuan Hukum berdasarkan Undang-Undang ini.
(3) Menteri sebagaimana dimaksud pada ayat (2) bertugas:
   a. menyusun dan menetapkan kebijakan penyelenggaraan Bantuan Hukum;
   b. menyusun dan menetapkan Standar Bantuan Hukum berdasarkan asas-asas pemberian Bantuan Hukum;
   c. menyusun rencana anggaran Bantuan Hukum;
   d. mengelola anggaran Bantuan Hukum secara efektif, efisien, transparan, dan akuntabel; dan
   e. menyusun dan menyampaikan laporan penyelenggaraan Bantuan Hukum kepada Dewan Perwakilan Rakyat pada setiap akhir tahun anggaran.

The provision mentioned above states that the actual implementation of the Legal Aid is organized by the Minister and implemented by the legal aid providers. Tugas menteri dalam hal penyelenggaraan bantuan hukum ini, diantaranya:
1. compile and set policy,
2. compile and set standards,
3. preparing budget,
4. manage budgets, and
5. prepare and submit reports to the House of Representatives at the end of each fiscal year.

Means, the legal aid providers are very much tied to the Minister. The position of legal aid providers is limited to organizers in terms of policies, standards, and budgets. Other than
that, The 16th Indonesian Law of 2011 on Legal Aid has determined that those who can provide legal assistance are verified and accredited legal aid providers.

This is stated in Article 7 Un The 16th Indonesian Law of 2011 on Legal Aid contains (The Republic of Indonesia, 2011):

(1) Untuk melaksanakan tugas sebagaimana dimaksud dalam Pasal 6 ayat (3), Menteri berwenang:
   a. mengawasi dan memastikan penyelenggaraan Bantuan Hukum dan pemberian Bantuan Hukum dijalankan sesuai asas dan tujuan yang ditetapkan dalam Undang-Undang ini: dan
   b. melakukan verifikasi dan akreditasi terhadap lembaga bantuan hukum atau organisasi kemasyarakatan untuk memenuhi kelayakan sebagai Pemberi Bantuan Hukum berdasarkan Undang-Undang ini.

(2) Untuk melakukan verifikasi dan akreditasi sebagaimana dimaksud pada ayat (10 huruf b, Menteri membentuk panitia yang unsurnya terdiri atas:
   a. kementerian yang menyelenggarakan urusan pemerintahan di bidang hukum dan hak asasi manusia;
   b. akademisi;
   c. tokoh masyarakat; dan
   d. lembaga atau organisasi yang memberi layanan Bantuan Hukum.

(3) Verifikasi dan akreditasi sebagaimana dimaksud pada ayat (1) huruf b dilakukan setiap 3 (tiga) tahun.

(4) Ketentuan lebih lanjut mengenai tata cara verifikasi dan akreditasi sebagaimana dimaksud pada ayat (1) huruf b diatur dengan Peraturan Menteri.

Because the Minister also oversees and ensures the provision of legal aid and provision of legal assistance is carried out in accordance with the established principles and objectives, attached the task of verification and accreditation of legal aid organizations or community organizations to meet the feasibility of providing legal aid.

This verification and accreditation process is conducted once in 3 (three) years by the minister by forming a committee consisting of ministries conducting government affairs in the field of law and human rights, academia, community leaders and institutions or organizations providing legal aid services.

The 16th Indonesian Law of 2011 on Legal Aid does not set out in detail the provisions on the procedures for verification and accreditation. However, it is further stipulated in ministerial regulations, that is The 3rd of Regulation of the Minister of Law and Human Rights of 2013 on Procedures for Verification and Accreditation of Legal Aid Institutions or Societal Organizations. Stages (Hukum, Hak, Manusia, & Indonesia, 2013) in performing verification and accreditation is done in the following manner:

1. announcement
2. application
3. administrative checks
4. factual checking
5. the classification of legal aid providers
6. the establishment of legal aid providers
The complexity of the verification and accreditation process has become one of the pros and cons among the legal aid providers. On the one hand the objective is for the provision of legal aid in accordance with the principle of justice (Moore, 2002), equality in law, openness, efficiency, effectiveness, and accountability. However, on the other hand it is against the goal to be achieved.

How come, the difficulty of becoming an accredited legal aid provider becomes a new problem and an obstacle to ensuring and fulfilling the right for legal aid recipients to gain access to justice (Moore, 2002), realizing the constitutional rights of all citizens (Resnik, 2013) in accordance with the principle of equality of positions within the law, to ensure the certainty of the provision of legal aid equally throughout the territory of the Republic of Indonesia, and to realize an effective, efficient and accountable judiciary.

4.2 The Lack of Verified Legal Aid Providers in West Kalimantan Province

West Kalimantan Province is the fourth largest province in Indonesia, with the surrounding area 146,807 km² or 7,53 percent of Indonesia or 1,13 times of Java island. Based on West Kalimantan Provincial Government official website it is known that there is 14 (fourteen) districts/cities, including Pontianak City, Singkawang City, Mempawah Regency, Sambas Regency, Bengkayang Regency, Landak Regency, Sanggau Regency, Sintang Regency, Kapuas Hulu Regency, Ketapang Regency, Sekadau Regency, Melawi Regency, Kubu Raya Regency, and Kayong Utara Regency.

The extend and the number of regions in West Kalimantan Province is unbalanced with a verified and accredited legal aid agency. From the fourteen regencies/cities there are only 3 (three) regencies/cities whose have the verified and accredited legal aid providers currently.

On January 7 of 2016, come through the Minister of Justice and Human Rights of the Republic of Indonesia Decision of 2016 Number M.HH-01.HN.03.03 on Institutions/Legal Aid Organizations Passed Verification of Accreditation as Legal Aid for the Period of 2016 to 2018 stipulates that the institutions mentioned in the annex may provide legal assistance and access the legal aid budget in accordance with applicable laws and regulations. The decision stipulates that there are a number of 405 (four hundreds and five) verified legal aid institutions spread throughout the provinces region in Indonesia, 6 (six) legal aid institutions of them are in West Kalimantan Province.

Legal aid institutions in West Kalimantan Province can be shown as the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Institution</th>
<th>Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Biro Konsultasi dan Bantuan Hukum Fakultas Hukum Universitas Tanjungpura</td>
<td>Pontianak City</td>
</tr>
<tr>
<td>2</td>
<td>Posbakumadin Pengadilan Negeri Pontianak</td>
<td>Pontianak City</td>
</tr>
<tr>
<td>3</td>
<td>Gerakan Masyarakat (Gema) Bersatu Ketapang</td>
<td>Ketapang Regency</td>
</tr>
<tr>
<td>4</td>
<td>Lembaga Kajian dan Konsultasi Bantuan Hukum Fakultas Hukum Universitas Panca Bhakti</td>
<td>Pontianak City</td>
</tr>
<tr>
<td>5</td>
<td>Lembaga Konsultasi dan Bantuan Hukum Perempuan dan Keluarga (LKBH PEKA)</td>
<td>Singkawang City</td>
</tr>
<tr>
<td>6</td>
<td>Galaherang</td>
<td>Mempawah Regency</td>
</tr>
</tbody>
</table>

Source: West Kalimantan Regional Office of The Ministry of Justice and Human Rights

Based on the table above show the lack of verified legal aid institutions. It creates the difficulty of reaching the whole community in West Kalimantan Province. Of course when
compared with the the extend and the number of regions in West Kalimantan Province making effective legal aid to the poor society is something mission impossible to do.

4.3 The Lack of Regions in West Kalimantan Province in Having Local Law on Legal Aid

The government administration system in Indonesia divides between central and local government. Local government (Carr, 2006) is a part that can not be separated from the state implementation. The success of local government will affect the state governance implementation successful as a central government. The local governance principle (The Republic of Indonesia, 2014) based on legal certainty principle, orderly state organizers principle, public interest principle, openness principle, proportionality principle, professionalism principle, accountability principle, efficiency principle, effectiveness principle and fairness principle (Bernts & Faculty, 1992).

Principles of governance are implemented in the form of policies in the form of local regulations that can be established by the region to provide legal certainty to the implementation. A legislation may be established under the direct conditions governing it. Local Law establishment about legal aid is a direct command of the higher legislation, it is Article 19 The 16th Indonesian Law of 2011 on Legal Aid admits that (The Republic of Indonesia, 2011):

(1) Daerah dapat mengalokasikan anggaran penyelenggaraan Bantuan Hukum dalam Anggaran Pendapatan dan Belanja Daerah.

(2) Ketentuan lebih lanjut mengenai penyelenggaraan Bantuan Hukum sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Daerah.

In West Kalimantan Province which devided into 14 regions of regencies/cities, there are only 2 (two) of them whose have legal aid in their local laws, diantaranya yang memiliki peraturan daerah tentang Bantuan hukum as shown in the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Regency/City</th>
<th>Local Law</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sambas Regency</td>
<td>√</td>
<td>The 11th Sambas Regency Local Law of 2015 on Legal Aid Enforcement</td>
</tr>
<tr>
<td>2</td>
<td>Mempawah Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>Sanggau Regency</td>
<td>√</td>
<td>In making process</td>
</tr>
<tr>
<td>4</td>
<td>Ketapang Regency</td>
<td>√</td>
<td>-</td>
</tr>
<tr>
<td>5</td>
<td>Sintang Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>6</td>
<td>Kapuas Hulu Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>7</td>
<td>Bengkayang Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>8</td>
<td>Landak Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>9</td>
<td>Sekadau Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>10</td>
<td>Melawi Regency</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>11</td>
<td>Kayong Utara Regency</td>
<td>√</td>
<td>The 5th Kayong Utara Regency Local Law of 2015 on Legal Aid to the Poor</td>
</tr>
</tbody>
</table>
12 Kubu Raya Regency √ -
13 Pontianak City √ -
14 Singkawang City √ -

The table above shows that there are only Sambas Regency (Negara, 2015) and Kayong Utara Regency (Kayong Utara Regent, 2015) who already have local law on legal aid. While, other areas do not have local law on legal aid until the time of this writing. Information obtained by author from West Kalimantan Ministry of Law and Human Rights Regional Office stated that now a days Sanggau Regency Local Government is currently drafting a Local Law on Legal Aid.

Meanwhile, if we return to pay attention to legal aid agencies are verified and accredited based Minister of Justice and Human Rights of the Republic of Indonesia Decision of 2016 Number M.HH-01.HN.03.03 on Institutions/Legal Aid Organizations Passed Verification of Accreditation as Legal Aid for the Period of 2016 to 2018, then there will be no verified and accredited legal aid agencies in the regions of Kayong Utara Regency and Sambas Regency.

Although Kayong Utara Regency and Sambas Regency have had local law on legal aid, in fact precisely in that area there has not been any verified and accredited legal aid institutions. A verified and accredited legal aid institution is located in Pontianak City, Ketapang Regency, Singkawang City and Mempawah Regency which has no local legislation on legal aid.

4.4 The Urgency of Giving the Authority for Local Government to do a Verification and Accreditation Against Legal Aid Institution

The lack of legal aid implementation in West Kalimantan Province influenced by several things as described above, such as the number of verified and accredited legal aid providers the number is still very minimal, areas that have local legislation on legal aid are still minimal, and the extend of West Kalimantan Province so it has not been able to reach out to people in areas that need legal aid. This problem is certainly very detrimental to the poor in West Kalimantan Province who needs legal aid. Absolutely, this is not in accordance with the role and purpose of the state in order to realize the welfare of society, including the poor society in West Kalimantan Province which requires legal assistance. Effectiveness problems in providing legal aid to poor society in West Kalimantan Province can be solved with a solution, namely authority granting to the Local Government to conduct the legal aid providers verification and accreditation.

The granting of this authority may be carried out as an extension of the interpretation of further regulatory provisions relating to the arrangement of the provision of legal aid which can be regulated by local law as mentioned in Article 19 The 16th Indonesian Law of 2011 on Legal Aid. Authority granting the local government to verify and accreditation of legal aid will greatly support the purpose of providing legal assistance, in particular ensuring equitable legal aid implementation throughout the unitary state of the Indonesian republic.

This is because of legal aid providers accreditation procedures will be adjusted to the conditions and potential of each region without reducing the quality and benefits obtained by the poor to access justice (Dowd, 1987) through legal aid providing. So, based on local government principle as regulated by The 23th of Indonesian Law of 2014 on Local Government, namely as widely as autonomy principle and co-administration task (The Republic of Indonesia, 2014). Autonomy principle (Pratchett, 2004) is the basic local government principle based on local autonomy. Local autonomy (Clark, 1984) is the rights, authority, and authonom region obligation to regulate and manage their own governmental
affairs and interests of the local community in the system of Unitary State of the Republic of Indonesia.

No further explanation is found in The 16th Indonesian Law of 2011 on Legal Aid about the local law on legal aid provision. Means, it is become an opportunity and the possibility for local government to do a verification and accreditation for the legal aid institution in the regions.

In addition, the solution will greatly assist central government, including time effectiveness aspect, institution aspect and budget aspect. The implementation of legal aid provider verification and accreditation by local government will reduce the amount of time of legal aid institutions and ministry to prepare and do the verification and accreditation. Then, it will minimize the financing that should be required by the legal aid institutions and ministry in order to effort the verification and accreditation if it can be done in the region and not must be in the central which far enough from the regions spread throughout in the Unitary State of the Republic of Indonesia.

5 Conclusion

Complicated problems faced by the poor society, including the poor society in West Kalimantan Province to gain access to justice through legal aid is influenced by a number of things, such as the lack of verified and accredited legal aid institutions and have not spread in all regencies/cites in West Kalimantan Province, the lack of regions with local law on legal aid (Sambas Regency and Kayong Utara Regency).

There are only 6 (six) verified and accredited legal aid institutions makes them unable to reach all the poor society in West Kalimantan Province. Maximizing solution for the legal aid provision can be done by authority granting to local government to do a verification and accreditation for the legal aid institutions. This power granting may be incorporated as an integral part of the local law in legal aid. So, all the regions in West Kalimantan Province have to set their own local laws on legal aid.

References

The Law As The Instrument of Right Protection on The Body Integrity of Woman As The Victim of Not Fulfilled Promise to Marry

Lusiana M. Tijow\textsuperscript{1}, Fence Wantu\textsuperscript{2}
\{lusianamtijow@gmail.com\textsuperscript{1}, fence_wantu@gmail.com\textsuperscript{2}\}
Law Faculty, State University of Gorontalo\textsuperscript{1,2}

Abstract. The women as the victim of not fulfilled promise to marry refers to problem of injustice law that “may result in” and result in” the women suffered various forms of violence; physical, psychic, sexual, social and economy. The effect result in long- and short-term that may destroy the women dignity finally giving influence to their self-concept and eliminate possibility of the women to get their essential rights that protected by the constitution. The problem formula in this study referred to how the law and human right becomes protection instrument of body integrity on women as the victim of not fulfilled promise to marry. This normative law study used method of qualitative judicial analysis. The right of body integrity of women brought them on their body originality and completeness. In this case, the principle of human being as a woman referred to the unity of thought, feeling and bodily that would build the self-concept of a woman and her existence. It became living value of the integrative prestige and dignity of woman describing herself into good developing physical and mental condition, and achieving welfare well. Thus, the woman as the victim of not fulfilled promise to marry has right to get guarantee of law protection from anything that threat her body integrity.

Keywords: Law and Human Right, the Right of Body Integrity, The Woman as the Victim of Marriage Promise.

1 Introduction

A human has will to do well to others based on a relation between personal with principle of rationality and moral. The law purpose\textsuperscript{1} referred to provide safety, happiness and system in the society. Human and society has responsibility to create side-by-side living and arrange it in justice that the law seen as proper duty for human being. Injustice law is not a law. The reason is because 2) any state governments always defend their actions by showing real justice inside; 2) Improper law toward the justice principle often considered old fashion and no more used, 3) By conducting injustice, the government actually has conducted outside its authority, thus it is illegal. It showed that the government has right and responsibility to keep the legal certainty.

The nature of law is as the facility for formulation of a justice social rule. It related to all people including women who have will to create a rule that is justice therefore the main

\textsuperscript{1}Wirjono Prodjodikoro, Perbuatan Melanggar Hukum dipandangdariSudutHukumPerdata, Bandung, Sumur Bandung, , 1976, hlm. 43
\textsuperscript{2}Zainuddin Ali, FilsafatHukum, Jakarta, SinarGrafika, 2006, Hlm. 86
purpose of justice becoming the main focus of formulating the law appropriate to the justice principle. Thus, the law has its authority. Women become legal subject, a social political power that must give substantial contribution in resolving state problem as well as gender problem.

The legal purposes are classified in to 3 (three) streams, namely:
1. Ethic stream that consider of the basic of legal purpose on achieving justice;
2. Utility stream consider of the basic of legal purpose on create the benefit;
3. Judicial-formal stream consider of the basic of legal purpose on creating legal certainty.

The legal purpose universally such as the opinion of Gustav Radbruch: 1) Justice, 2) legal certainty in system of social living, 3) Beneficial. However, its implementation often results in stress. Often, the legal certainty and justice has a crush, crush of legal certainty and beneficial, and between justice and the legal certainty. In order to solve this stress, Gustav Radbruch based on his theory used scale of priority that should be applied, where the first priority is always justice, then beneficial and finally the legal certainty.

The body integrity of woman refers to self-concept of personal unity of woman in order to develop her. When there is human, there will be human right and it must be kept highly for anyone without exception. The human right does not depend on other confession; either not depends on confession of society or country. Thus, the country, everywhere, anytime, has responsibility to accept and uphold the human right as the fundamental or basic rights. Oppression and ignorance toward the human right consider against the justice and humanity.

The case of woman as the victim of not fulfilled promise to marry began with relationship between adult man and woman with no marriage tie only as a couple of lovers. In this relationship, they promise each other to get marry. Mostly, the man says the promise. The promise is said directly, via communication tools or HP suchas WhatsApp, WeChat, Line, and Kakao Talk, SMS (Short Message Service), via computer or others. With this promise, the woman voluntarily gives away her body that the do sexual conduct. However, in the end, the man broke his promise. It shows a cause resulting in an event where for the woman who asking for the promise to marry from the man, whether in condition pregnant or not, the woman often experience various kinds of violence as the victim that finally it affected her body integrity.

The man’s deed to the woman as the victim of not fulfilled promise to marry considers against the humanity principle of a woman and this deed refers to action that result in loss and suffering (physical, psychic, sexual, social and economy) to the woman, whether she is pregnant or not. Moreover, the suffering experienced by the woman in the time or after the violence happened, in fact, proved to be more traumatic than for the man. However, seriously,
it refers to form of attack or ignorance toward human right that result in losing body integrity
of the woman.

Injustice experienced by woman mostly result from hegemony and domination as well as
unbalance structure of relation power between man and woman roles. The role of man is
constructed to dominate the role of woman. This is the gap of gender relation. In this case, the
structure of thinking, social, politic, culture and economy form pattern of relation between
individual of society and groups among the society.

The underestimating perspective in the following process result in attitude of egoism and
give priority on the dominance than being dominated, or privilege, then authorize, oppression
and of course violence of sociopolitical and economy. There are placed up high, considered
and given priority, in other hand, there are placed lower, forgotten, and marginalized.

Like what happen to the woman as the victim of not fulfilled promise to marry with
strong myth made in our social structure that relationship between man and woman before
marriage and they conduct sexual though with the promise to marry, the woman should not
believe the promise and she should not give her body. Even, the relationship happens because
of love each other.

The fact above is far from the reality seen from the women’s experiences. The influence
is often disappearing in the process of resolution and court that it make difficulty in resolution
(also prevention) of the case of promise to marry. Therefore, it places woman suffering from
violence showing phenomenon of Ice Mountain where what is identified and reported often
cannot give justice for the woman.

There are many reasons basically that all of them start from how the woman as the victim
of not fulfilled promise to marry cannot get legal protection:

1. The woman as the victim of marriage promise is not considered as victim because she
   considered bad for giving away her body and dignity.
2. When the woman is not pregnant, she can make another relationship, however, when she
   is pregnant, it becomes the woman’s problem.
3. The woman might be left because she is not married yet, it is only broke a promise.
4. The deed is considered as taboo and shameful of herself, it is better to keep silent than
   getting reaction of being blamed.
5. It is not crime against the country; it is only matter of individual/personal. Thus, there is
   worry that the legal upholder will not take any real action to find and tae into court the
   actor and victim that the woman as the victim becomes more stressful.
6. Insensitive legal process and legal upholder with the situation and condition of the
   woman and moreover how to take care the proof and finding the witnesses.
7. Considering this case containing stigma, reporting the case sometime will result in
   uncomforted feeling of oneself because the woman feel shame when everyone knows her
   problem and the consequence she will be left and there is no man who want to marry her.

The perspective and framework above are often bias and corner the woman as the victim
of not fulfilled promise to marry and make the legal process getting more difficult and surely
he woman will experience unconformity and injustice. The framework to be able to empathy
by understanding the experience of the woman as the victim of not fulfilled promise to marry
is try to place yourself in the woman characteristic as a victim that we easily find out how far
the situation and condition experienced by the woman, how far cause-effect of the situation
and condition experienced by the woman as the victim of not fulfilled promise to marry that
finally we can make sure the justice for the woman.
According to the Criminal Code, this case does not belong to crime in the following circumstance:

1. Two people who have not married yet do sex, although:
   a. The conduct considered against or bothers the feeling of social moral.
   b. The woman willing to do sex because of trick or promise being married, however the promise broke.
   c. The woman become pregnant but the man refuse to marry her or there is any obstacle to marry according to the law.
2. A married man has cause a girl pregnant (meaning he has conducted adultery), however his wife does not make any claim.
3. Someone lives together with his couple without marriage, whereas the conduct considered as a sin and against or bothers the feeling of social value/moral.

The woman as the victim of not fulfilled promise to marry faces difficulty of paradigm as the basic on how the legal scholar and advocate give definition to the law. This condition happens in Indonesia where in general the legal scholars focus only on the definition of law as the norm and basic rules. It isolates the law from the social reality. Thus, the legal product, legal apparatus, and legal culture have not yet appreciated the woman. Then, it implies for woman that she should be able to get her right protected by the constitution, as the form of upholding the woman right in the frame of human right.

The attention toward the criminal victim is purposed that the victim will not be more suffered after experiencing crime, hopefully the victim get protection and guarantee of right fulfillment in front of the law. The limitation of criminal victim covers 3 (three) elements: (1) who is the victim of the crime? (2) What suffer or losses got by the victim? (3) Who responsible and/or how the sufferers and losses might be recovered?

Arief Amrullah states that the future criminal law should implement equal protection of criminal law between social protection, the doer and the victim (the potential victim or direct victim) that become ideal concept in order to develop wiser criminal law by considering various interests above. Therefore, the definition concept of individual protection must be broadening to the protection of actual victim.10

The woman as the victim of not fulfilled promise to marry still has constitutional right protected by the law. This right happens because of the nature of human being. The people have it because they get human right directly from the God as their nature (secundum suam naturam). Oppression and ignorance toward Human Right against the justice and humanity, because the basic principle of justice and humanity refer to that all the people have equal dignity with the same rights and duties.

Each human must respect, accept and keep the Human Right with no exception. The body integrity of woman becomes integral part of humanity nature for a woman where her body integrity implants in the nature of human. It results from human aspects as human being. Each person is precious creature of the God the Only One. As stated in the Act 1 number 1 of the Law number 39 of 1999 on The Human Right, the human right refers to a set of right implanted on the nature of human existence as the God and the Only One’s creature and refers to bless of the God that must be honored, kept high, and protected by the country, law, government and anyone for the honor and protection of human dignity and prestige. Thus,

---

9Ibid
10Arief Amrullah, Perlindungan Hukum Pidana Terhadap Korban Kejahatan Korporasi, (Jember : Universitas Jember, 2008), hlm.13
when the woman as the victim of not fulfilled promise to marry does not get instrument of legal protection, it means placing the woman into experiencing various forms of violence such as physical, psychic, sexual, social and economy.

2 Research Purpose

The purpose of this study refers to analyze how the law and woman right become instrument of protection toward body integrity of the woman as the victim of not fulfilled promise to marry.

3 Research Method

The study is normative legal research, where the writers tend to study on legal bases that study to find out the legal bases available in positive law, written and unwritten ones. The written positive law focus on the Law of formulating legislative regulation and related regulation, the principles of formulating the legislative regulation, and the court decisions related to violence toward woman. This study gives priority on philosophical approach, statute approach, conceptual approach and case approach. The legal material being collected is calculated and analyzed based on legal reasoning that one of them refers to legal interpretation.

4 Discussion

4.1 The Law, Human Right and Woman Right

Indonesia as a legal country places the guarantee of human right absolutely in the constitution. The constitution as the highest legal source in a country becoming the basic in conducting the country, in which one of its functions is to limit the authority and guaranty the right and freedom of its citizen. A set of legal regulation appears in order to create peace and comfort condition. How the legal role as stabilizer in the society covers many factors. One of them is source of where the legal comes from. The Universal Declaration of Human Right becomes official interpretation toward the United Nation Decree, containing more detail of some rights listed as the human rights.

The constitutional right of citizen covering the human right and citizen right guaranted by the Fundamental Constitution of 1945 apply for each of Indonesian citizen.\textsuperscript{11} It appears in the formula using phrase “each people”, “all citizen”, “each of citizen”, or “each citizen”, showing that each individual citizen has constitutional right without discrimination, whether based on tribe, religion, political belief, or gender.

Even more, the Fundamental Constitution of 1945 stated that “Anyone has freedom from discriminative treatment based on anything and has right to get protection against the discrimination”. Therefore, if there is any regulation or treatment that discriminate certain

citizen, it considered against the human right and the constitutional right of the citizen, and of course against the Fundamental Constitution of 1945.

Thus, any woman of Indonesian Citizen has the same constitutional right as the man of Indonesian Citizen. The woman also has right to not to be treated discriminatively based on her status as a woman, or other differences. All the constitutional right described previously refers to the constitutional right of any woman as the Indonesian Citizen. This constitutional right related to the state confession of subject of the constitutional right or citizen, in this case, those who accepted legally and legitimated by the law as a citizen of Indonesia. Thus, they have the same right in any matters as the Indonesian citizen.

The Fundamental Constitution of Indonesian Republic 1945 Act 28A verse (1) to Act 28J verse (2) related to human right as well as Act 29 verse (2) stated that related “The country guaranty the freedom of each citizen to choose his religion and to do devotion based on the religion and belief”. This act is the most proper one to fulfill the requirement called as the act of human right resulted from the original draft of the Fundamental Constitution of 1945. While the other regulations, such as Act 27 verses (1) and (2), Act 28, Act 30 verse (1), Act 31 verse (1), and Act 32 verses (1) and (2) are not regulation on guarantee of human right in the actual meaning, but they have relation to the definition of the citizen right.

The human right is called as the basic right because it considered as the fundamental where all the organizations must develop to live together and refers to the law principles. The meaning of basic right is clear if seen as living humanism that must be organized since the human realize of their place, duty and function in the world. The concept of Human Right revealed as integral basic right given by Allah to the human that need to be honored and protected. The concept of basic right resulted from pancasila admit the rights directly from the God the Only One for the human as the natural right and respect human dignity and prestige as well as human as social and individual creature.

The Law of Indonesian Republic Number 39 of 1999 on the Human Right has arranged in detail of the right to live and right to not being eliminated forcedly and not being killed, the right to have family and continue the heredity, right to develop oneself, right to get justice, right of personal freedom, right od safe feeling, right of welfare, right to participate in the government, woman right, children right, and right of religious freedom.

The Woman Right considered as the right belong to the woman that must get guarantee of the rights basically in the humanity dignity and for the humanity. The appearance of Human Right concept is in order to develop consciousness of human being on the necessity of admitting, respecting, and achieving integrated and complete human being. The woman right refers to human right. It gives statement that the rights embedding on the woman belong to human right, because the woman is human who born with freedom, has dignity, the same as the man, thus, she cannot be discriminated in any fields.

Based on history of Woman Right development as part of human right, it cannot be separated from tough struggle of woman specially the feminism including when Indonesia participated in ratifying it. The border of Woman Right is as follow: “The Right of Woman and Girl Right are unity part, not marginalized, and inseparable from the universal human right. The full and equal participation of woman in the political, personal, economy, social

---

12 Ibid, Hlm 230
13 Penjelasan atas Undang-Undang RI Nomor 39 Tahun 1999 tentang HAM
14 Ida Sampit Karo, Karo dalam Tapi Omas Iehrom, et.al. (penyunting), Penghapusan Diskriminasi Terhadap Wanita, (Bandung: Alumni, 2006), hlm. 237.
and culture in national, regional and international stages and eliminated any kinds of
discrimination based on gender belongs to the main purpose of international society. Based on the border, the elements of woman right define as the human right show specialty of the purpose and morality interest for the woman as the legal owner of the Woman Right covering full participation, equality and discrimination as result of sexism. Other definition of the Woman Right is formulated as follows: “The rights embedding of a woman that naturally created as human being the same as the man, to be specific it refers to the right to get the same opportunity and responsibility the as for man in any field of living.”

CEDAW refers to Bill of Rights for Women comprehensively for the first time in specific admit the Woman Right. As an instrument of the Human Right international, Cedaw become the first universal arranging the Woman Right. The main fundamental given by CEDAW in the developing of Human Right is markedby appearing of clear definition on discrimination against women and equality. Cedaw arranges scope of Woman Right and the State duty to guaranty the fulfillment of the Woman Right.

CEDAW follows the three principles, first, the principle of substantive equality, this principle accept that the woman is in unequal position and thus the woman must be treated differently in order to get equal benefit and final result. This principle makes sure the equality in opportunity, access and benefit, and result (equality of opportunity, equality of access, and equality of result). Second, the principle of Non Discrimination, CEDAW states inequality between the man and woman as the result of social construction. Thus, the proactive action must be conducted in order to eliminate it. The Act 1 of CEDAW states: “Discrimination against woman means each differentiation, marginalization or limitation made based on gender, that have influence or purpose to decrease or eliminate acceptant, obtain or usage of human right and principle freedom in the fields of politic, economy, sociocultural, civic, or anything by the woman, regardless their marital status, based on equality between man and woman.”

Third, the Principle of State Responsibility, CEDAW decides the state responsibility (Acts 2-5 CEDAW) to prevent, forbid, identify and conduct action, give sanction toward discriminative treatment, provoke woman right and equality between man and woman through proactive action and accelerate the defacto equality. It means the country must guaranty and make sure the Woman Right to be applied in reality, in other word, the country responsibility cover two aspects, namely: (a) Responsibility to provide tool, way, opportunity, effective mechanism to protect the Woman Right. (b) The responsibility to achieve equal and fair result, in the level public and private.

The above rule strictly states the existence of legal protection to “a whole Indonesian nation and homeland”. The meaning of “all” shows on the individuals and covered by keeping

17 Ibid  
20 Ibid, Hlm. 17  
21 Ibid, Hlm. 18  
22 Ibid  
23 S.F. Marbun, Peradilan Administrasi Negara dan Upaya Administratif di Indonesia, Liberty, Yogyakarta, Hlm. 349
each individuality, while "a whole" shows that individuality eliminated and all covered as a complete unity including the woman. This rule is achieved through set of legal regulation that must be obeyed and applied. The effort of upholding the woman right must be conducted from the regulation, structural and culture sides. The legal regulations giving specific treatment to the woman with equality and balance perspective is necessary to uphold the woman right.

The law must be able to achieve justice to all Indonesian people including give protection guarantee to the body integrity and honor of the woman as the victim of not fulfilled promise to marry. The right of body integrity of woman becomes the basic right of a woman and central attention in applying comprehensive rights and significant because it makes the humanity side of woman as the focus of the Human Right concern.

The law principally refers to reflection of woman right as part of human right, cannot be eliminated, integral and cannot be separated. The understanding of woman right become part of human right as value, concept and norm living and developing in the society and claim for duty to get protection guaranteed and duty to uphold it. Thus, the law contains justice or not, it depends on the Human Right included and arranged or guaranteed by the law. The law is not seen as reflection of the authority only, but it must give protection to the citizen right. The law based on humanity value and accepts the Human right, the norms must contain precious values that keep high the human dignity and guaranty the Human Right.

4.2 The Right of Body Integrity

Most of women do not know their right because in their life rarely talking of it. The function of body integrity belong to each individual or private, not belong to group or public, because who has right to arrange and keep the body is the owner no other people. The woman body is an identity differing it from the man body, its appearance, function, and anatomy configuration. Moreover, the woman body related to constructive matters socially and culturally in the role and function. In the function, the woman body placed as being hegemony thing by body domination and (or) man passion.

The body integrity refers to description of ideal body relate to body completeness of someone implanting in the person. The Body Integrity of a woman means a whole or completeness of the woman. The woman will feel losing her body integrity when she loses one of her body components such as feminine organ (virginity or woman vagina).

The nature of body integrity for the woman as the victim of not fulfilled promise to marry refers to a whole unity and completeness of thought, feeling, and human body with self-acceptance as complete personal as the collaboration of physical, psychological, emotional, aspiration, and achievement characteristics that will construct the self-concept of the woman completely to develop.

With the body integrity, woman will more understand her condition suffered and experienced based on her experience. In general, man and woman will always feel loss of the body integrity when losing one of body parts (leg, hand, finger) or specific part of woman that basically will result in feeling of a great losing. It is like what the woman as the victim of not fulfilled promise to marry experience. The great of losing feeling when her body given to the man based on the promise to marry her however the man deny and broke his promise or statement that should be fulfilled.

24Ibid
25Hardiman, dalam Lusiana M Tijow, Op Cit, Hlm. 118
26Ibid
27Ibid
In his book *Violence and The Sacred*, Rene Girard (1993) states that woman body contain two elements contradicting each other, *first is* the sanctity of womb and nipple. Womb and nipple are symbols of the coming of new people and his life. *Secondis* menstruation. Therefore, any violence related to the woman body will bring consequence to the doer.

Related to the right of body integrity, the fourth World Conference of United Nation in the woman work program (FWCW), Beijing, China: 4-15 September 1995, paragraph 112, study deeply of the General Secretary of the United Nation in any forms of violence against the woman in line with the right of body integrity in the United Nation Document A.162/122/Add paragraph 277 states that the Right of body integrity used increasingly to get guarantee needed to protect all the people and specially the woman against violence and harassment resulting in decreasing of health, freedom, and self-integrity from any threats.

Based on the fact above, it shows phenomenon of woman body losing its ideal self-concept that inside and what someone willing of him/herself, thus, it places woman in not conducive situation toward what being experienced and suffered. The situation experienced by the woman as the victim of not fulfilled promise to marry legitimate various forms of injustice, oppression, and finally violence and ignorance of the woman right.

### 4.3 The Woman as The Victim of Not Fulfilled Promise to Marry

At the beginning, the violence against woman is like conventional crime where it is considered as specific character crime that is specification on the woman victim. However, there is little regulation arranging the victim and its protection. *Whereas, if comprehensive examination applied to this criminal problem, it should not ignorance the role of crime happened.*

The material truth must get attention as the purpose to achieve in examination a crime. The role of victim considered to be strategic, that it can decide that the criminal actor get appropriate punishment of his deed. The limitation of criminal victim can be decided in the science of victimology; victimology is a science studying the position and role of victim in a crime. It conducted in the reason that any crime will include the doer and the victim.

The definition of victim, whether found by the expert or from the legitimation regulation covers:

- a. A victim is someone experiencing physical, mental suffers, and/or economic losses resulted from a criminal action
- b. A victim is who suffering physical and mental as the result of other’s action searching fulfillment of someone interest or other people that against the right of suffered party
- c. A victim is individual or group of people suffering physical, mental or emotional suffers, emotional, economic or experiencing ignorance, decrease, or opression of his basic right, as the direct result of serious human right violence, including rapping victim.
Act 1 verse (2) of the Law number 13 of 2006 on the Protection of Witness and Victim states that “victim is the one who experiences physical and mental violence and/or economic losses as result of a criminal action” thus, what happened to the woman as the victim of not fulfilled promise to marry resulting in physical, psychic, sexual, and social violence includes as action or attitude conducted by resulting losses for the woman and as the direct effect of ignorance and violence against the human right.

In the Indonesian Dictionary, it defines the term ingkar and janji. The definition of ingkar are:
  a) Not justify, deny, not accept, disavow
  b) Not fulfill
  c) Disobey, unwilling

The definition of janji are:
  a) Statement that states willingness and capability to do
  b) Agreement between two parties (each of them willing and capable to do something)
  c) Rule requirement must be fulfilled

Based on the definitions of ingkar and janji above, the writers get definition of ingkar and janji as denial and not fulfilled of statement or agreement that state willingness and capability to do something. Not fulfill promise to marry means broken the promise conducted before legal marriage. As stated above, it refers to denial and not fulfilled statement or agreement that state willingness and capability to do something by the two parties.

Taking a look at the condition of legal upholder that not consider to the existence of and low attention to the victim condition result from less understanding on the study of victim including the woman as the victim of not fulfilled promise to marry who experiencing physical, psychic, social and economy violence. Basically, the woman as the victim has right to get protection because it related to uphold the woman right.

The absence of protection toward body integrity of the woman as the victim of not fulfilled promise to marry means automatically eliminate possibility for the woman to get her right as protected by the constitution. It gives implication on the upholding the woman right in the framework of human right. Thus, its legal instrument must give guarantee of legal certainty and reflect justice that the protection toward body integrity of the woman as the victim of not fulfilled promise to marry becomes justice for the woman.

Summary

The constitution as the highest legal sources in a country becoming base in conducting the country, where one of its functions is to limit authority and guaranty basic right and freedom of its citizen. The law must be able to achieve justice for all Indonesian people including giving guarantee of protection toward body integrity toward the woman as the victim of not fulfilled promise to marry. The right of woman body integrity becomes basic right of a woman and becomes central concern for the woman in implementing her most comprehensive rights and necessary because making the side of woman humanity, as the focus of Human Right

---

33 Departemen Pendidikan dan Kebudayaan Republik Indonesia, Kamus Besar Bahasa Indonesia, dalam Lusiana M Tijow Op.Cit, Hlm. 97
34 Ibid
concern. The law basically refers to reflection of woman right as part of human right, cannot be eliminated, integral and inseparable. The understanding of woman right is part of human right as value, concept and norm living and developing in the society and guaranty responsibility to get the protection guarantee as well as duty to keep it. Thus, whether the law contain justice or not, it depend on the Human Right included and arranged or guaranteed by the law. The law is not seen as the authority reflection only, but it must give protection toward the citizen right. The law is based on humanity values and accept the Human Right. The norms containing the honor values keep high the human dignity and guaranty the Human Right.

Bibliography


[2]. Masyur Effendi, *Perkembangan Dimensi Hak Asasi Manusia dan Proses Dinamika penyusunan Hak Asasi Manusia*, Ghalia Indonesia


Legal Protection of the Communal Rights to Geographical Indications in the Perspectives of Human Rights in Indonesia

Almusawir

{almusawir27@yahoo.co.id}

Faculty of Law, University of Bosowa, Indonesia

Abstract. Geographical indications are for which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin. Geographical Indication is one form of Intellectual Property which must be strived to legal protection for member countries of World Trade Organization (WTO). The provision is set forth in Trade Related Intellectual Property Rights, especially in Article 22 through Article 24. Indonesia is a member of the WTO that is rich in knowledge, tradition, and culture, with a tropical climate and produces products with high economic potential and cultivated by community groups in certain areas to improve their welfare, should obtain adequate legal protection as communal property rights. Constitutionally in Article 33 Paragraph (3) of 1945 Constitution of the Republic of Indonesia determined that “Earth, water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people”. The provision is interpreted that the state is a regulator in the utilization of natural resources, including products Geographical Indication as communal property rights and strongly related to Human Rights.

Keywords: Geographical indications; World Trade Organization (WTO); Human Rights.

1 Introduction

Indonesia has a lot of economic potential. As an archipelago country that has many traditions, knowledge and culture as well as a tropical climate, Indonesia can produce goods of economic value. Everyday, we often encounter the name of an item accompanied by the name of the area of origin of the item for the geographical of the item.

Indication shows the specificity of an item produced from a certain area. This sign indicates the initials or origin of a product, whether it is food, agricultural or handicraft products, including raw materials or processed products from agriculture and mining products.

The Geographical Indication Rights are exclusive rights granted by the state to registered Geographical Indications Holders, as long as the reputation, quality, and characteristics that are the basis for providing legal protection for the Geographical Indications are still available. The characteristics and quality of goods that are maintained and can be maintained within a certain period of time will give rise to reputation (fame) of goods and high economic value. Because of this, the goods should have adequate legal protection.
Regulation on the Protection of Geographical Indications (RPGIs) through registration to the Minister, is expected to provide legal certainty to Holders of Geographical Indications so that Geographical Indications products that are developed for generations by local communities can provide sufficient economic benefits fairly to improve their welfare.¹

Legal protection for Geographical Indications has been carried out for 40 (forty) types of local products, through a system of registration and issuance of certificates of Geographical Indications by the Minister (ex-Director General of IPR). The aim is to provide legal certainty to local communities who have been endeavoring products for specific location specifications, with traditional methods in order to obtain sufficient economic benefits fairly in improving their welfare. However, in trade practices, the use of signs that have similarities with registered Geographical Indications is still continue. Example: Toraja and Kalosi names are Geographical Indications of the Toraja and Enrekang communities, which are used as Trademarks for arabica coffee products from the Toraja and Kalosi Enrekang regions by Key Coffee, Inc. Corporation of Japan under the names Toarco Toraja and Arabica Kalosi with images of Toraja owned houses registered in Japan and America and Sulatco Kalosi Toraja Coffee Brand and Sulatco Kalosi Toraja Coffee owned by IFES Inc. California Corporation United States. Such a park will marginalize the local community from the origin of the product as a Geographical Indication Holder, because it cannot obtain sufficient economic benefits from products protected by Geographical Indications.

Based on the background of the above thoughts can be drawn a problem, namely how the relevance of the concept of communal property rights and monopoly on Geographical Indications with Human Rights.

2 Research Method

This type of research is normative legal research² and empirical legal research using legislation approach, conceptual approach, and case approach.³ There are two types of data in this study, namely (1) primary data, i.e. data derived from the results of interviews and observations, (2) secondary data i.e. data obtained from library research and documents. The data collected through the stages of editing, then coding and analyzed using descriptive-qualitative techniques.

3 Results and Discussion


Geographical Indications (GIs) is a sign that has unwittingly existed for a long time and can indirectly show the existence of a specificity in an item produced from a particular area. This sign can be used to show the authenticity of an item. These goods can be in the form of food, agriculture, handicrafts, including raw materials or processed products from agriculture
and mining products. For member countries of the World Trade Organization, geographic indication is one of the intellectual property that must be protected.

The legal protection system for GIs was first introduced by France in the early 20th century, by providing legal protection for local products that have certain geographical criteria and other specific criteria with Appellation d'Origine Contrôlée (AOC). At the Paris Convention in 1883, the term used was indication of source or appelation of origin. The same thing was used in the Madrid Agreement of 1891, with the term Indication of Source (AO) for trade names that are identical or exactly the same as the area of origin of the product. The term differs from the one used in the Lisbon Agreement which expressly defines GIs … the geographical name of a country, region, or locality, … In the international order, legal protection for IG is contained in the norms of approval of Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Indonesia has ratified the TRIPs agreement, with Law of the Republic of Indonesia Number 7 Year 1994 on Approval on the Establishment of the World Trade Organization (WTO) on November 2, 1994. By ratifying the agreement, each member country must implement it in its national law. To carry out these obligations, GIs is then integrated into Law Law of the Republic of Indonesia Number 20 Year 2016 on Trademarks and Geographical Indications (Trademark Law and Geographical Indications) with a view to regulating the overall legal protection of GIs.5

In the approval of TRIPs, GIs are … indication which identify a good as originating in the territory of a Member, or a region or locally in that territory, . . .6 These provisions do not specifically regulate certain norms that must be followed by member countries, but only set minimum standards for legal means of IG. Therefore, the procedure for legal protection for IG is left to the policy of each member country, whether it is regulated integrated into or outside the rules of the Brand. Although the approval of TRIPs recognizes IG and Trademarks as independent regimes with different product characteristics.

3.2 Scope of Objects Geographical Indications (GIs)

GIs in the intellectual property legal regime is a sign that is associated with a region or community group, which strives for products with certain characteristics and characteristics due to the geographical environment of the origin of the product. Legal protection for GIs in national law, is integrated into Law of the Republic of Indonesia Number 20 Year 2016 on Trademarks and Geographical Indications (Trademark and IG Law).

The scope of IG objects in the Trademark Law and IG covers goods or products in the form of: natural resources, handicraft items, industrial products.7 Natural resources are all things based on nature that can be used to meet the needs of human life which includes not only biotic components such as animals, plants, and microorganisms but also abiotic components such as petroleum, natural gas, various types of metals, water, and soil. While industrial products are the results of human processing in the form of raw materials into finished goods, among others, Tunun Gringsing, Tenun Sikka.8 In the approval of TRIPs, industrial results are not strictly regulated as Geographical Indications, because the IG in
question is, the goods is essentially attributable to its geographical origin. Thus, goods whose characteristics and quality are not directly related to the geographical area of origin of the product are not categorized as IG. Remaining at the 1883 Paris Convention was determined, Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour. Whereas in the Lisbon Agreement IG covers, … environment, including natural and human factor. The foregoing explanation shows that the scope of the Geographical Indications object determined by the Trademark Law and Geographical Indications includes biotic and abiotic products and industrial products processed by traditional methods is the result of adoption of international provisions related to IG, by looking at the potential of Indonesian IG products.

3.3 Protection of Geographical Indications (PGIs)

We can find the Conception for Protection of Geographical Indications (PGIs) in the 1883 Paris Convention for the Protection of Industrial Property and the 1891 Madrid Agreement. Both agreements mention “Indication of Source as an indication referring to a country or a place in that country, as being the country or place of origin of a product.” In Paris Convention 1883 Article 1 Sec. 2 determined, The Protection of Industrial Property has as its object patents, utility models, industrial design, trademarks, service marks, trade names, indication of source or appellation of origin, and the repression of unfair competition.” In principle, the convention has been regulated on the concept of Geographical Indication as Indication of Source, for legal protection of indications of origin by prohibiting the product from entering a member country, if the product is not properly from the country concerned. In contrast to the 1958 Lisbon Agreement which used the Appellation of Origin (AO) term for Indication of Source, it was included in the trade name rules that used the place name for the traded product. The name of the place in question functions as a sign of differentiating similar products from other regions. Therefore, the product that uses the term AO must be exactly the same as the mark of the origin of the product. Example: Petronas Tower, Sydney Opera House. The sign is not related to the characteristics of the product, but only identifies the area of origin of the product. Whereas IG is a sign, in the form of name, logo, image, symbol, in addition to functioning to identify the area of origin of the product, these signs become characteristic representations and quality of certain regional products due to geographical factors.

In the international order, legal protection for IG is generally contained in the norms of TRIPs Agreement, Article 22 paragraph (1): … indication which identify a good as originating in the territory of a Member, or a region or locally in that territory, where a given quality, representation or other characteristic of the goods is essentially attributable to its
This article is not very specific as to the substantive conditions that can justify legal protection in the Member States of the Agreement. However, the minimum standard that must be carried out by each member country is to carry out legal protection measures for IG, including its contact with unfair competition. Although the TRIPS Agreement adopted the Appellation d’Origine Contrôlée (AOC) rule in the Paris Convention 1883 and independently regulated IG and Trademarks.

Indonesia has ratified the TRIPS agreement with Law of the Republic of Indonesia Number 7 Year 1994 on the approval of the establishment of the World Trade Organization (WTO) dated November 2, 1994, and its contents regulate legal protection for Geographical Indications in general in Articles 22 to 24, and specifically regulated in Article 10 Paris Convention 1883 concerning the prohibition on the trading of goods using Origin Indications for goods from certain territorial territories, which shows the quality, reputation or special character of the item is essentially related to the geographical location of the goods produced (False Indications: Seizure, on Importation, etc., of Goods Bearing False Indications as to their Source or the Identity of the Producer).

The legal protection policy for geographical indications which in the Trademark Law and Geographical Indications is carried out after the Geographical Indication is registered by the Minister at the request of an institution representing the community in a particular geographical area and provincial or district/city regional government. It is meant that the institutions that represent the community in certain geographical areas include producer associations, cooperatives, and the Society for the Protection of Geographical Indications (MPIG). The concept places IG as collective-communal property rights and is two different things.

According to Rob Edger, collective rights are rights held by group or sets, rather by individual. A group generally connotes a set of individuals with strong racial, state, religious, or linguistic ties. Whereas communal rights is the right born from the participation of community groups in a particular area, to own and utilize an object together. The order of thinking of individuals in communal society always puts the behavior pattern on the group ego, so that the individual ego will be defeated by group superiority. Therefore, the behavior of the individual must be carried out in his position as a member of the alliance within the framework of unity and fellowship. This definition indicates that intellectual property rights as intangible objects are no longer limited to individual and collective property rights, but have become communal and monopolistic property rights and are closely related to human rights.

The essence of communal property rights and monopoly related to the legal protection of local communities, which have sought regional products with certain distinctive characteristics that are not possessed by other regions, in order to obtain the economic benefits of these products in an adequate intellectual property regime to improve their welfare. Such a concept places the role of the Government as a regulator to be important, to establish legal regulations
that can support communal property rights and local monopolies, as a form of protection of human rights law related to the economic rights of local communities.

3.4 Relevance of Legal Protection of Communal Rights of Geographical Indications with Human Rights

Legal protection of communal rights and monopoly on Geographical Indications is in line with the constitutional mandate that economic development is carried out based on the principle of kinship. Therefore, the Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.25

The above provisions are meant that, economic activities are carried out by promoting common interests in the concept of communal property rights and monopolies to manage and utilize natural resources that have been cultivated by local communities for generations in a particular area. In this case, managing crops, water, natural wealth, the state is a regulator to regulate and manage these natural resources for the prosperity of its people.26 This function must be able to be carried out as the executor of the constitutional mandate to fight for respect, protection and fulfillment of the rights of local communities related to the use of natural resources in the form of communal property rights and monopoly on IG as intellectual property.

The same is true of the Declaration of Human Rights. With regard to the legal protection of intellectual property, Article 27 paragraph (1) has been determined as follows: everyone has the right freely to participate in the cultural life of society, enjoy art and to share in the advancement of science and its benefits. Everyone has the right to the protection of the moral and material interests resulting from the artistic, scientific and literary production of which he is the author; Paragraph (2): Everyone has the right freely to participate in the cultural life of society, enjoy arts and participate in scientific advancement and its benefits.

According to Sharon E. Foster, the language of Article 27 Section (2) is very granting author’s moral and material interests the status of human rights.27 In line with this, Hector Macqueen said that: A property paradigm implies a system of control to be exercised by the right holder control, that is, control subject matter of his property rights. No one can, take, use otherwise interfere with the property without permission from the right holder.28

Furthermore, in the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 15 Section 4, it is determined the efforts that must be carried out by member states in preserving, developing and disseminating the results of science that are born from human intellectual creativity, to realize rights protection as which is regulated in Article 15 Section 1 of ICESCR.29

The foregoing explanation is the basis for recognizing the economic rights of intellectual property as part of human rights. Even though it does not explicitly state communal rights as intellectual property rights, but by regulating IG in TRIPs agreement, it is argued that intellectual property rights are not only limited to private rights but also include communal rights related to IG. Example: Roquefort, namely sheep milk cheese from the Lacaune,
Manech, and Basco-Bearnaise breeds. Only cheese stored in Combalou caves in the Roquefort-sur-Soulzon region alone can be named Roquefort.30

According to Duncan Matthews, there are 3 (three) arguments for analyzing the relevance of IPR with human rights, namely: First, IPR is not part of human rights but the full rights are related to law. Second, IPR is part of human rights with an emphasis on property rights and individual rights. And third, aspects of IPR that have the potential to conflict with human rights.31

Regarding communal rights and monopoly on IG as intellectual property, in the explanation of the Ratification of the International Covenant on Economic, Social and Cultural Rights that the opening of the 1945 Constitution has mandated recognition, respect and will for the implementation of human rights in carrying out community life, nation and state (letter b). The Indonesian people as part of the world community deserve respect for human rights contained in the United Nations Universal Declaration of Human Rights and other international instruments on human rights (letter c).32

According to the concept of human rights protection, recognition of Intellectual Property Rights in the concept of human rights protection, assumes that every citizen has the right to decent work and livelihoods through the fulfillment of his basic needs to improve the quality of life that is decent individually, collectively, and communally for his welfare. The state must provide fair legal recognition, guarantee, protection and certainty as well as equal treatment before the law, including in terms of the use of land, water and natural resources contained therein, dismantled by the state and used for the greatest prosperity of the people. people based on kinship principles in the form of communal rights and monopoly rights. Thus, everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law. The state's obligation is to respect the human rights of its people (respect), protect the human rights of the people (to protect), and fulfill the human rights of its people (to fulfill) in all aspects of life that are realized in the national legal order to protect the rights of these people. Because of that, exploitation of IG by unauthorized parties must be considered as a human rights violation, because economically it will marginalize local communities as IG holders.

4 Conclusion

TRIP's gives its member countries the authority to prevent others, not violating the rights to registered Geographical Indications. In national law, IG is regulated integrated into the Trademark Law and IG with the aim of clearly and thoroughly regulating the legal protection of IG. However, the local community as the IG holders do not know the concept of communal property rights and the monopoly on the IG. Therefore, the practice of using signs that have similarities with IG registered without rights should be considered human rights violations.

Recommendation

GI’s that are integrated into the Trademark Law, need to be clarified and emphasized the right to IG that can only be granted in the form of communal and monopolistic property rights,
to guarantee protection, and legal certainty that equitably utilizes Gis's economic rights in relation to human rights.

References

[3]. Achmad Zen Umar Purba, International Regulation on Geographical Indications, Genetic Resources and Traditional Knowledge, Workshop on the Developing Countries Interest to Geographical Indications, Genetic and Traditional Knowledge, PIH FHUI and Dit. Gen of IPR’s, Dept. of Law and Human Rights, Jakarta, 6 April, 2005.
[13]. The WIPO Journal, ISSN: 2041-2029, Volume 1 Issue 2 2010, is published by Thomson Reuters (Legal) Limited (Registered in England & Wales, Company No 1679046. Registered Office and address for service: 100 Avenue Road, London, NW3 3PF) trading as Sweet & Maxwell.
The Protection of Debtor Rights on the Stage of Household Credit Agreement Implementation

Marwah
{marwah@unhas.ac.id}

Faculty of Law, Hasanuddin University, Indonesia

Abstract. This research is an empirical research that aims to know and analyse the protection of the debtor's right in the implementation phase of mortgage loan agreement. One form of state responsibility under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia is through the implementation of housing and settlement areas so that the people are able to occupy a decent and affordable house in all areas of Indonesia. In order to help the government program, the banks offer mortgage loans. In the implementation phase of the mortgage agreement, the debtor's obligation to pay the debt is an obligation that must be implemented based on the agreed agreement. Based on the results, the determination of interest applied by banks in Indonesia is a combination of fixed rate and floating rate method. So, at the beginning of the credit, the bank offers a rate below 10% every year for a period of one to five years (fixed rate). However, after the fixed rate interest expires, the bank is entitled to fix the interest rate increase. By the time the floating rate interest is in effect, some borrowers are aware that the interest charged by the bank is larger than expected because the number of credit instalments suddenly increased without any notice from the bank. This causes some debtor customers to be unable to pay credit instalments.

Keywords: Debtor's Right; Implementation; Government Program.

1 Introduction

Credit in banking activities is the most important business activity because the largest income from a bank's business comes from income from business credit activities in the form of interest and fees. The scope of credit is not only in the form of lending funds to debtor customers, but also related to elements that include sources of credit funds, fund allocation, credit organization and management, credit policies, credit administration and documentation, credit supervision and settlement of non-performing loan. Therefore, credit business requires professional handling with high moral integrity. Credit activities will be smooth if the parties involved in the activity trust each other. This condition is needed by banks in the business and the allocation of funds for credit because the funds in the bank are mostly third-party funds entrusted to the bank.

When the bank and prospective debtor have signed a credit agreement, the credit agreement is binding on both parties and acts as a law for both parties. The enactment of the agreement as a law for those who bind themselves to an agreement has placed the agreement

2 Article 1338 par. 1 *Burgerlijk Wetboek* (BW)
as law. In this case Roscoe Pound argues that the balance of protection between producers and consumers reveals the legal function as a means of social control, namely controlling the life of society by balancing the interests that exist in society.³

Furthermore, according to P.S. Atiyah, the contract has three basic objectives, namely:⁴

a. It is inspired by the desire to enforce promises and to protect the reasonable expectations which are generated both of promises and by other forms of conduct;

b. Contract law itself is also powerfully influenced and affected by the idea that unjust enrichment should not be permitted;

c. Contract law is also designed to prevent certain kinds of harm, particularly harm of an economic nature, or at least to compensate those who suffer such harm.

Based on the provisions of Article 1320 Burgerlijk Wetboek (BW), that there are four legal conditions for an agreement, namely agreeing to those who bind themselves, the ability to make an engagement, a certain thing, and a lawful reason. Regarding the agreement as a legal requirement of the agreement, based on the provisions of Article 1321 BW, that if an agreement is reached due to an oversight regarding the nature of the goods that are the subject of the agreement or due to coercion or fraud, then there is no agreement. Thus, the agreement must occur in a state of free and honest parties, no fraud, no coercion and no oversight.

In the practice of lending by banking institutions, especially KPR, at first some banks offered quite competitive interest, which was below 10% per year for a period of one to five years (fixed rate). However, according to the agreement that has been made, after the fixed rate period ends, the bank has the right to unilaterally increase interest rates.¹⁵ In addition, several KPR debtor customers also objected to the method of annuity mortgage interest charges used by the bank at this time. In the annuity method, the total instalments each month for one year will be the same, while the principal and interest instalments will change. The principal instalments will increase every year and interest instalments will decrease.⁶ The interest charged with annuity method is very much affected by the mortgage for a period of 10 to 15 years because when the debtor customer wants to repay a part or all of the loan before the mortgage agreement expires, the principal amount to be paid is still very high.

The lawsuit regarding objections regarding the interest rate of the mortgage in floating with the annuity interest calculation, was once filed by Elman Simangunsong as the Plaintiff domiciled in Medan, against PT. Bank Tabungan Negara (Persero) as Defendant, arrived at the cassation level at the Supreme Court with case register No. 2644 K/Pdt/2012. In the case, it was explained that between the Plaintiff and the Defendant had entered into a KPR Agreement on October 20, 2009, with a principal amount of IDR 108,000,000.00 and a credit period of 120 months. The interest rate set in the KPR is 13.5% per year, with an annuity interest charging system, so that the instalment that must be paid by the Plaintiff is IDR 1,691,900.00 per month. Based on the mortgage agreement signed by the Plaintiff and Defendant, the due date of the mortgage loan instalment is on the 7th of each month, and the

³ Ahmadi Miru, 2013, Prinsip-prinsip Perlindungan Hukum Bagi Konsumen di Indonesia, RajaGrafindo Persada, Jakarta, p. 64
⁵ Research Results, November 29, 2017
⁶ Ismail, 2010, Manajemen Perbankan dari Teori Menuju Aplikasi, Kencana, Jakarta, p. 143
fine in arrears is 1.5% per month, and the expedited payment penalty is 1% of the remaining loan principal.\(^7\)

In the case it was explained that between the Plaintiff and the Defendant had entered into a KPR Agreement on October 20, 2009, with a credit ceiling amounting to IDR 108,000,000.00 and a credit period of 120 months. The amount of interest set in the KPR is 13.5% per year, with an annuity interest charging system, so that the instalment to be paid by the Plaintiff is IDR 1,691,900.00 per month. Based on the KPR Agreement signed by the Plaintiff and Defendant, the due date of the mortgage loan repayment is on the 7th of each month, and the arrears fine is 1.5% per month, and the expedited payment penalty is 1% of the remaining credit principal.\(^7\)

In the lawsuit, the Plaintiff objected to the method of calculating payments between the difference in repayment of principal debt and very large interest payments, so that the Plaintiff stopped paying the instalments before the calculation of interest and payment of principal debt was calculated in a balanced and proportionate manner. In this case the plaintiff has paid 8 months in instalments amounting to IDR 13,971,955.00 but the Plaintiff's remaining credit principal is based on the checking account on June 7, 2010, which is IDR 107,618,645.00. Therefore, according to the Defendant, the annuity interest calculation system has violated the law, the principle of propriety and the principle of balance in the exercise of freedom of contract.

In the cassation memory, the Plaintiff stated that the Medan District Court had erroneously applied the law of proof in its legal considerations which rejected the Plaintiff's claim entirely in decision No. 291/Pdt.G/2010/PN.Mdn on February 8, 2011, which was further strengthened by the Medan High Court with decision No. 152/PDT/2011/PT-MDN on July 8, 2011.\(^7\) At the cassation level, in the consideration the consideration, the Supreme Court judge argued that the reasons for the cassation from the Plaintiff could not be justified because the consideration in the Medan High Court ruling affirming the Medan District Court ruling was correct where the Plaintiff could not prove the claim of the claim that the imposition of interest and the principal debt instalment by the Defendant against the Plaintiff is against the law, while the Defendant can prove his denial argument that the Defendant's action in the a quo case is in accordance with a legally made credit agreement between the Plaintiff and the Defendant.

2 Research Method

This research is an empirical legal research. This method is used to analyse the position of the balance principle at the stage of implementing a mortgage agreement between the bank and debtor customers. Data obtained from primary data and secondary data in this study were analysed with qualitative techniques then presented descriptively, namely by examining the existing problems and then concluding them synchronously, systematically and scientifically as shown through factual data exposure.

\(^8\) Ibid.
\(^9\) Ibid.
3 Results and Discussion

At the implementation stage of the mortgage agreement, the debtor's obligation to pay debts is an achievement that must be carried out based on the form of achievement as stipulated in the provisions of Article 1234 BW. This is affirmed in the provisions of Article 1235 BW, which contains the rule that in each engagement to provide something is the obligation of the debtor to submit the material concerned and to care for him as a good father of the house, until the time of submission. Furthermore, based on the provisions of Article 1236 BW, it is stipulated that the debtor is obliged to compensate the cost, loss, and interest to the debtor, if he has brought himself unable to give up his material, or has not properly cared for to save him.

In the KPR Agreement, the obligation to provide protection in order to achieve a balance of rights and obligations of the parties, is not only the obligation of the government but also as an obligation of parties who have stronger economic capacity. The provision of protection by those who have stronger economic capacity to the weak economy indicates that there is a good will of the strong economy parties in formulating an agreement. Likewise, the weak economy also has an obligation to provide protection to strong economic parties in terms of protecting the security of the strong economy of the capital disbursed to it. The principle of balance of work which has imperative meaning, forces the parties to submit to the agreement so as to make the balance as a principle of law in an agreement. Therefore, the existence of an unbalanced position and / or bargaining position in the credit agreement is contrary to the purpose of law, namely justice, because the agreement is formed as a forum that brings the interests of the parties together as a form of fair exchange of interests.

According to Nieuwenhuis, fulfillment of achievement as an embodiment of the implementation of contractual obligations other than determined by autonomous factors (what is determined by the parties to the contract), is also determined by factors outside the parties (heteronomous factors). Therefore, in analysing the binding power of a contract that is related to the implementation of contractual obligations, it is necessary to consider the factors that determine the contents of the contract, namely autonomous factors and heteronomous factors.

Autonomous factors, known as "party autonomy" (partij autonomie) is the main factor or "primary determinant" in determining the contents of the contract, meaning that the nature and extent of the rights and obligations of the parties to the contract can be seen in what they agree on. As a primary determinant factor, autonomous factors occupy a hierarchy or main sequence to determine the binding power of a contract. The foundation of the idea that autonomous factors are the primary determinants that originate in the parties, as affirmed in Article 1338 (1) BW, that all agreements made legally apply as laws for those who make them. Under the provisions of Article 1338 (1) BW a contract has binding power, provided that the contract is made legally. That is, in the formation of the contract must pay attention to the validity of the contract as stipulated in Article 1320 BW, 1335 BW, and 1337 BW.

If the autonomous factor comes from the parties themselves (partij autonomie), to jointly determine the nature and extent of rights and obligations of the parties, on the contrary,

---

10 Herlien Budiono, 2006, Asas Keseimbangan Bagi Hakum Perjanjian Indonesia, Citra Aditya Bakti, Bandung, p. 76
11 Agus Yudha Hernoko, 2011, Hakum Perjanjian, Asas Proporsionalitas dalam Kontrak Komersial, Kencana Prenada Media Group: Jakarta, p. 244
12 Ibid, p. 245
heteronomous factors are factors that are sourced from outside the parties. Heteronomous factors are "subsidiary determinants" that occupy a hierarchy or sequence after autonomous factors to determine the binding power of a contract.13

Heteronymous factors can be traced to the formulation of Article 1339 BW, which places the nature of the contract, propriety, habits, and laws as elements. Meanwhile, another article that can be referred to elaborate heteronomous factors in the contract is Article 1347 BW, which contains the rules that the conditions that are always agreed upon according to custom, must be considered to have been included in the contract, even if not explicitly included in the contract. The formulation of Article 1347 BW is related to the conditions normally agreed upon (bestandig gebruikelijk beding) which also relates to the nature of the contract as referred to in Article 1339 BW. Therefore, it is appropriate if the two articles are placed as heteronomous factors (the determinant factor of subsidiary) that determines the binding power of a contract. Thus, if we look at the formulation of Article 1339 BW and 1347 BW, the heteronomous factor which is the determinant factor of subsidiary to determine the binding power of a contract consists of the usual conditions agreed upon (bestandig gebruikelijk beding, compliance, customs, and laws).14

It should also be emphasized that it is appropriate for an agreement, including the mortgage agreement, to be fulfilled by both parties in good faith. Good faith (goeder trouw) is important to prioritize, even in terms of agreements with coercive rules (dwingend recht). In addition, it should also be considered also changes in circumstances that affect the fulfillment of the agreed achievements.15

The goodwill of the parties in a mortgage agreement is reflected in the actions of the parties. Based on the agreed mortgage agreement, the debtor customer is obliged to pay the instalments on time. However, when there is an increase in interest rates and instalments, the bank does not submit information about the changes to debtor customers. This causes some debtor customers not to provide sufficient balance for instalment payments in their accounts. In fact, in the mortgage agreement that has been agreed upon, the address and telephone number of the debtor’s customer have been listed to facilitate communication.

Regarding information by banks to KPR debtor customers, regarding the increase in interest rates and the number of instalments when the fixed rate interest has expired, can be seen in the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Bank Name</th>
<th>Information Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>1.</td>
<td>Bank Tabungan Negara</td>
<td>-</td>
</tr>
<tr>
<td>2.</td>
<td>Bank Rakyat Indonesia</td>
<td>-</td>
</tr>
<tr>
<td>3.</td>
<td>Bank Mandiri</td>
<td>-</td>
</tr>
<tr>
<td>4.</td>
<td>Bank Central Asia</td>
<td>10</td>
</tr>
<tr>
<td>5.</td>
<td>Bank Panin</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: Primary Data, processed 2018

13 Ibid.
14 Ibid, p. 246
Based on the data in the table, it is known that 4 of the 5 banks that were sampled in this study did not submit information about the increase in interest and the amount of mortgage loan installments, before the fixed rate interest expired. Whereas 1 bank, namely Bank Central Asia, has sent via sms to debtor customers, regarding information about the increase in interest and the amount of mortgage loan installments before the fixed rate interest expires.

Furthermore, good faith aspects are important to be put forward in completing the balance study in the implementation of the KPR Agreement, assuming that the differences in the parties' position in the KPR Agreement are not absolute to make the KPR Agreement biased and detrimental to one party if each party has good intentions to submit in the agreement he made. In this case, Setiawan is of the opinion that the principle of freedom of contract now no longer appears in its full form, partly due to the influence of the determination of the intention both in the pre-contractual, contractual and contractual obligations.¹⁶

In the implementation of the agreement, good faith is defined as propriety, namely an assessment of the actions of a party in terms of carrying out what has been promised. Good faith at the time of exercising the rights and obligations arising from a legal relationship or agreement is nothing more than good faith when carrying out a legal relationship or agreement that has been made. Therefore, the good intentions actually lie in the inner heart of humans which is reflected in the actual actions of the agreement which will provide an objective measure of whether or not there is a good faith.¹⁷ If the parties share the same intention in binding themselves in an agreement, the implementation will proceed as expected and the purpose of the agreement can be achieved.

Although good faith in the implementation of the contract has become the most important principle in the contract, it still leaves a number of controversies or problems. According to Ridwan Khairandy, there are at least three issues related to good faith. First, understanding good faith is not universal. Second, the legal test used by the judge to assess whether there is good faith in the contract. Third, the understanding and attitude of the courts in Indonesia are related to the good faith function in the implementation of the contract.¹⁸

It should be noted that goodwill does not only refer to the good will of the parties, but must also refer to the values that develop in the community, because good faith is part of the community. This good faith ultimately reflects the standards of justice or public decency. With such meaning, good faith is used as a standard as a universal social force that regulates social relations, namely every citizen must have an obligation to act in good faith towards all citizens. Thus, if someone acts in good faith in accordance with objective standards based on social habits, then others must act similarly to themselves.¹⁹

This is an objective conception that is universally applied in all transactions, and in accordance with the Roscoe Pound postulate, that: “Men must be assume that those with whom they deal in general intercourse of society will act in good faith and will carry out their undertaking according to the expectation of the community.”²⁰

Standards or tests for good faith in the implementation of contracts are certainly objective standards. In contract law, the notion of acting in good faith refers to compliance with a reasonable commercial standard dealing deal, which according to the Dutch legislator, acts in accordance with redelijkheid en billijkheid (reasonableness and equity). This is indeed an

---

¹⁶ Setiawan, 2008, Aneka Masalah Hukum dan Hukum Acara Perdata, Alumni, Bandung, p. 179
¹⁷ Djoni S. Gazali and Rachmadi Usman, 2012, Hukum Perbankan, Sinar Grafika, Jakarta, p. 343
¹⁹ Ibid., p. 128-129
²⁰ Ibid.
objective standard because one party may not act in an unreasonable and improper way, it will not be a good defence to say that honestly, his conduct is to be reasonable and inequitable.\footnote{Ibid., p. 135}

Furthermore, according to Ridwan Khairandy, good faith has three functions in contract law. The first function teaches that all contracts must be interpreted according to good faith, the second function is the add function, and the third function is the function of limiting and eliminating.\footnote{Ibid., p. 144}

Associated with the first function, that the principle of good faith plays an important role in the interpretation of contracts, in the past held the opinion of both scholars and legislation that the interpretation of contracts is only needed for something that is not clear. If the contents of the contract are clear, then no interpretation or interpretation is needed. In connection with this Article 1342 BW (old) the Netherlands determines that if the words of a contract are clear, it is not permissible to deviate from it by means of interpretation. In the current development, it is understood that in the interpretation of the contract there is no distinction between the contents of the contract that is clear and unclear, even to the words that are clear, can be interpreted by directing it to the wishes of the parties or special conditions relevant to the formation of meaning referred to by the parties.\footnote{Ibid.}

However, unlike BW (old), BW (new) Netherlands no longer contains contract interpretation provisions. The contractual interpretation provisions contained in the BW (old) are omitted because some are deemed unnecessary and some are considered too general in their formulation, so that their meaning is not correct. Thus, this interpretation is entirely handed over to the world of justice and science to develop provisions and principles in the interpretation of contracts.\footnote{Ibid., p. 145}

In its second function, good faith can add to the contents of a particular agreement and can also add to the words of the provisions of the law concerning the agreement. This function can be applied if there are rights and obligations arising between the parties not expressly stated in the contract.\footnote{Ibid., p. 146} Furthermore, in the third function of good faith which is limiting and negating, some pre-war legal experts argue that good faith also has that function. They teach that a certain agreement or a certain condition in the contract or the provisions of the law concerning the contract can be ruled out, if since the contract is made, the situation has changed so that the implementation of the contract creates injustice. In such circumstances, contractual obligations can be restricted, even completely eliminated on the basis of good faith.\footnote{Ibid., p. 146-147}

In the implementation phase of the KPR Agreement, there may be a "certain situation" that is not as usual so that the balance of the gain from the agreement is not achieved. Certain conditions can be in the form of, only one party that gains profits and the other party experiences a loss so that there is no balance in the implementation of the agreement. Therefore, the mortgage agreement can be considered fair if both parties as a result of the agreement are in a more favourable position than before the agreement was made.\footnote{Herlien Budiono, \textit{Op. Cit.}, p. 351}

Thus, it does not matter how much profit the two parties get or the balance of profits obtained. In essence, there are advantages gained by each party and the satisfaction of each party for the benefits it receives. In such a case, balance must not necessarily be based on the
calculation of profit and loss in the material sense, but also fulfilling all the objectives of the contract, especially the achievement of immaterial existence. Balance in the KPR Agreement, can also be interpreted as a harmonious reciprocal relationship in the form of each party performing a balanced achievement against the other party. If the debtor customer cannot return the loan or debt, then the balance in the implementation of the mortgage agreement is certainly not yet achieved.

Responding to this matter, Mariam Darus Badrulzaman stated that the principle of balance is a continuation of the principle of equality, giving the creditor the right to demand repayment of achievements through the wealth of the debtor, and also giving the creditor the obligation to carry the burden of carrying out the agreement in good faith. In a state of strong creditor position, it is balanced with its obligation to pay attention to good faith, make the position of creditors and debtors balanced. For this reason, it is necessary to create a favourable and friendly bank credit agreement climate, avoid pressure and coercion and prioritize negotiations to protect each other's interests and seek balance of interests. The application of such conditions is the application of the principle of balance in the bank credit agreement, including the KPR Agreement.

The legal consequences of an imbalance in a credit agreement, including the mortgage agreement, which can result in the credit agreement can be cancelled or become null and void. The cancellation of a bank credit agreement can be interpreted in two meanings, namely the bank credit agreement is cancelled in full, or only cancellation of the bank credit agreement clause containing only exoneration clause. In this case, BW does not provide explicit references regarding the purpose of cancelling an agreement. As a result, this lack of clarity gives the judge the authority to interpret the intention of "cancelling an agreement", so that there are differences in interpretation by several judges.

From various literatures, in general the meaning of cancelling is aimed at cancelling the agreement in full, but in various cases, the cancellation of the credit agreement is directed at cancelling the clause which burdened the debtor's customers only. In this case, the author agrees with the views of some judges who state that the cancellation of the credit agreement must be interpreted as the cancellation of the exoneration clause only.

In court practice, exoneration clauses are often used as a basis for lawsuits, namely to declare a mortgage agreement null and void due to the absence of a balance of rights and obligations of the parties to the credit agreement. One of the cases referred to is the Supreme Court Decision No. 2644 K/Pdt/2012 which resolved the lawsuit filed by Elman Simangunsong as an appeal applicant, against PT. Bank Tabungan Negara, as the researcher described earlier in the introduction.

Based on this, it can be seen that the cancellation of the exoneration clause in the KPR Agreement makes the agreement still valid and cancellation only during the exoneration clause. The consequence is that debtor customer debts remain and debtor customers are still required to pay off debt. Therefore, with the cancellation of the exoneration clause only, the purpose of the KPR Agreement can be redirected to the original goal, ie each party obtains profits from the agreement. This is certainly in accordance with the fact, that the parties that are bound in a mortgage agreement are parties who need each other and must complement each other.

The fact of the emergence of claims regarding credit agreements between debtor customers and the bank shows that the public is increasingly aware of its weak position in a

28 Ibid., p. 349
credit agreement at the bank. In response to this, in order to protect financial service sector customers, including KPR debtor customers, the OJK has now issued Circular Number 13/SEOJK.07/2014 concerning the Standard Agreement which regulates among others the format of standard agreements and clauses prohibited in the standard agreement.

This is in line with Phil Harris’s view that “About Legislative intervention and the solution to the consumer problem, this enormous gap between the theory of contractual freedom and equality, and the reality of modern consumer transactions, has been bridged only relatively recently by state intervention through consumer protection legislation and, to an extent, by an increased sense of ‘consumer awareness’ by many trading concerns”.

This arrangement is an initial milestone for the balance in positioning the parties in an agreement. The phenomenon in the credit agreement at the bank needs to be addressed by the Republic of Indonesia Supreme Court through the provision of its opinions through decisions especially regarding the application/use of the principle of balance in the mortgage agreement. In order to realize legal justice, judges can enter into the realm of the agreement and can set aside the contents of the agreement by exploring, following and understanding the legal values and sense of justice that lives in society according to the mandate of Article 5 paragraph (1) Law of the Republic of Indonesia Number 48 Year 2009 on Judicial Power.

In relation to the description, Herlien Budiono expressed his views regarding efforts to restore balance in an agreement, which includes:

a. Renegotiation, the parties can restore the balance of the agreement that was previously disturbed by re-adjusting or cancelling the agreement after renegotiation. Re-negotiation in order to improve the agreement can be done through peace (schikking), mediation, or by the intervention of a judge. Renegotiation is intended as an effort to restore balance by encouraging the parties to provide new content to the agreement.

b. Adjustment, recovery of balance in an agreement can be pursued through a number of adjustments, such as, cancellation of the agreement as a whole, various cancellations for some, adjustments on court orders or off-court adjustments in the form of cancellations in part due to changing circumstances.

c. Termination of agreement with fulfilment of cancellation or cancellation conditions, and cancellation.

Listening to the description, an illustration is obtained that the principle of balance is very instrumental in implementing an agreement, including the mortgage agreement. The realization of the value of justice can be achieved by increasing the protection of debtor customers because of the position of the bank as a provider of mortgage facilities, always considered stronger than the position of debtor customers who apply for KPR. Regarding the protection of debtor customers, this has generally been regulated in the UUPK and in particular has also been regulated in the OJK Law, which is then set forth in the form of OJK Regulation Number: 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector.

32 Ibid., p. 491
4 Conclusion

The protection of debtor rights at the stage of implementing a mortgage agreement has not been achieved because the mortgage agreement still includes several clauses that are contrary to Article 22 of the Financial Services Authority Regulation No. 1/POJK/2013 concerning Consumer Protection in the Financial Services Sector. The clause, among others, is that banks can sell land and buildings that are collateral both under hand and auction to other parties to settle obligations without the approval of debtor customers, the bank can review and change the loan interest rate with or without prior notification to debtor customer, as well as authorizing the bank to make corrections to the checking account and be released from all compensation in the form of anything related to the mistake.

References

Legal Protection of Fishing Rights By Fishermen on Fishery Resource Conservation Activities in Indonesia

Yulia1
{yulia.hasan@universitasbosowa.ac.id1}

Faculty of Law Bosowa University, Makassar, Indonesia1

Abstract. The purpose of this study was to determine the concept of legal protection of fishing by fishermen in conservation of fish resources in Indonesia and to analyze the factors that hinder fishermen's fishing rights in fish resource conservation activities. This research is normative juridical using qualitative analysis techniques. The results showed that the concept of legal protection for fishing by fishermen for conservation of fish resources in Indonesia is inseparable from international agreements that have been agreed by the Indonesian government. The protection of the conservation of fish resources in Indonesia is an implementation of an international agreement that regulates the conservation of fish resources and has been ratified by the Indonesian government. However, there are still several international agreements that have not been implemented into national law and this has an impact on the availability of fish resources, because they are taken by foreign fishermen and are detrimental to Indonesian fishermen. For this reason, cooperation agreements with other countries are needed to protect fish resources which are the right of fishermen. The results also show that the factors that hinder fishermen's fishing rights in the conservation of fish resources are human actions that have negative impacts that can damage the fishery environment, changes in government policies related to conservation area management, and weak law enforcement.

Keywords: Legal Protection, Rights Of Fishermen, Conservation Of Fish Resources.

1 Introduction

Fish is one of food source that has economic value and important for human life because the environment of the existence of fish resources can be made business land, one of them as a tourist attraction, conservation efforts through the conservation of fish resources and their ecosystems is the absolute obligation of each generation. The action of conserving the natural resources is done through environmental management, especially the marine environment, intended to preserve, protect the interests and welfare of future generations. Conservation cannot be separated by the management of fish resources and the environment as a whole. Considering the characteristics of fish resources and its environment has a high sensitivity both to the influence of global climate and seasonal climate as well as aspects of ecosystem linkage among local, regional, or global waters, crossing the boundaries of the country, in conserving management and development fish resources should be based on principles (article 2 paragraph (2)(1): caution with the support of scientific evidence, consideration of local wisdom, community-based management, integrated coastal area management, more capture prevention, development of fishing gear, and eco-friendly
fishing methods, consideration of the economic condition of the community, and sustainable use of biodiversity.

Protection of fish resources cannot be separated from the various international instruments implemented by Indonesia in formulating rules on fishery resource management as UNCLOS 1982, UNFSA 1995, CCRF and others. Then implemented in law number 31 of 2004 on Fisheries junto law number 45 of 2009 concerning the amendment of Law Number 31 of 2004 concerning Fisheries, and other laws governing the importance of protecting fish and environmental resources. Fishery is the largest marine resource potential in the last decade (10 years) shows the existence of exploitation and exploration of fishery products Indonesia, and experienced a very harmful increase for Indonesia. According to the World Food and Agricultural Agency (FAO) fishery crime activity called Illegal, Unregulated, and Unreported Fishing (IUU-Fishing), which means that fishing is done illegally not reported and not in accordance with established rules. (M. Natsir Jamil, 2015) (2).

FAO data states that Indonesia’s losses due to IUU Fishing are estimated to reach 30 trillion per year. FAO stated that the current stock of fish resources in the world that still allows for increased capture is only 20 percent, while 55 percent are in full utilization condition and the remaining 25 percent are in danger of sustainability. This is clarified with the statement of the Ministry of Marine and Fisheries that the loss rate is about 25 percent of the total owned by the potential of fisheries owned Indonesia of 1.6 million tons per year. Fishery conditions in this world do not very much with the conditions in Indonesia. (M. Natsir Jamil, 2015) (3). Based on these conditions as FAO member states, the government of Indonesia has an obligation to act and take responsibility in preventing, reducing and eliminating IUU Fishing, by implementing International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU) into national law as a basis for taking preventive IUU Fishing.

Although international regulations regulate the importance of conserving fish resources undertaken by countries, the government of Indonesia in the conservation of fish resources faced with the problem of fish resources management are: economic policies tend to be more favorable to the exploitation of fish resources, resulting in weak institutional management and law enforcement. During this law enforcement of illegal fishing has not been able to realize protection in the context of the management and utilization of fish resources potential, as well as maintaining the territory of the sovereignty of the United Republic of Indonesia. Besides the application of the principles of sustainable development into the organizational system, as well as work programs of government, both central and in the region is still not running properly.

Efforts to conserve fish resources should still be done through state regulations by protecting, utilizing and conserving fish resources, one of them by applying international agreements that have been ratified by the Indonesian government into national law as a form of cooperation and attention to prevent IUU Fishing. This is done given the resources of fish is a natural resource that must be protected and maintained for future generations.

Therefore, this paper aims: To know the concept of legal protection of fishing by fishermen on fishery resource conservation activities in Indonesia, to analyse factors that inhibit fishing rights by fishermen on fish resources conservation activities. This was the juridical normative research using the qualitative analysis technique.
2 Discussion

A. The Concept of Legal Protection of Fishing by Fishermen on The Conservation Activities of Fish Resources

1. International Treaties Governing The Conservation of Fish Resources

The protection of fishing law by fishermen in Indonesia cannot be separated from several international agreements that have been ratified by the government as follows:

1.1. Sea Law Convention 1982

Stockholm Declaration 1972 is the development of modern international environmental law, meaning that since then the environmental law changed the nature of the use oriented to be environment oriented. Use-oriented environmental law that provides the right of the international community to exploit the environment and natural resources without imposing any obligation to maintain, protect, and preserve it. The legal products that existed before the birth of the Stockholm Declaration merely justified the human right to use the environment but did not require environmental protection. An environmentally oriented legal product is a legal product that not only gives people the right to use the environment but also burdens people with an obligation to safeguard, protect, and preserve it. The 1982 Sea Law Convention falls within an environment-oriented category.

A Sea Law Convention adopted in 1982 after 11 years of negotiations in UNCLOS III. Adopt a nautical sea institution 12 nautical miles and ZEE 200 miles. These institutions are a compromise between the wishes of some countries to expand the national maritime zone and the wishes of maritime nations to maintain the territorial sea within the 12 nautical miles. (Marcel Hendrapati, 2013:125-126) (4).

In relating to the utilization and management of fish resources, the Sea Law Convention of 1982 contains provisions relating to the applicable fisheries laws of various maritime zones which are below and beyond the limits of national jurisdiction. Provisions relating to the conservation of fish resources are provided for Article 61 of the 1982 Law of the Sea. In brief the objectives of fisheries conservation under Article 61 of The 1982 Law of The Sea Law are:

a. Sets the allow number of catches, (total allowable catch) abbreviated as ATC;

b. Maintenance of biological resources in ZEE;

c. The population of the species captured, maintained in such a way or restored to the level that MSY can produce;

The sovereign rights of coastal states on biological natural resources in ZEE are offset by the obligation of coastal states of undertake conservation efforts. Access is not allowed to other countries automatically, but it depends on what can be done between coastal countries with third countries, it is regulated in detail in articles 62 from paragraph (3) to (5) of the 1982 Sea Law Convention.

Based on the above provisions, coastal states are required to take conservations measures by establishing the allowable amount of fish catch from fish resources contained in the exclusive economic zone. (Seokwoo Lee, 2013)(5). Coastal states are required to maintain, on the basis of existing scientific evidence, so that fish resources do not over-exploited in order to ensure maximum sustainable yields. (Dikdik Mohamad Sodik, 2011:85) (6)

Article 4 Paragraph (1) of The law No.24 of 2000 on International Treaties states that the Government of Indonesia makes international treaties (with one or more countries or
international organizations or other international legal subjects) by agreement and the parties are obliged to implement the agreement in good faith. (Muhammad Ashri, 2012:82)(7) Currently one of the main requirements to be considered in any fisheries management plan is adherence to international sanctions, and a prudent approach to management (precautionary approach to management). (Jesse Hasting, 2012) (8). Such obedience tends to be increasingly realized in the fishery policy of each country or the statutes of the organization in charge of coordinating the management of fisheries.

1.2. The Convention on Biological Diversity 2010

One of the outcomes of this convention is addressing the need for conservation and sustainable use of marine resources to tackle poverty, food security and livelihoods and promote economic growth. From 283 points of agreement, 19 points concerning marine and fisheries and three very important points, namely conservation, fisheries management and subsidies. The importance of marine conservation including marine protected areas and sustainable utilization is expressed in point 177 which refers to the Convention Biological Diversity of 2010 which targets 10 percent of coastal and marine areas by 2020. When the Indonesian Sea reaches 3.1 million km2 (310 million hectares), then we must conserve 31 million hectares. To date our marine conservation area is about 15.4 million hectares (5 percent) and 2020 is targeted 20 million hectares. (Yusmanto, 2012) (10).


United Nations consent of 1995 fish stock comprises 50 articles and two annexes, contains basic materials such as: under article 2 of this agreement aims to ensure the long-term conservation and sustainable use of straddling fish stocks and distant fish stocks and distant fish stocks through the effective implementation of the relevant provision of the convention.

According to Article 6 Paragraph (1) of The United Nations agreement, States should apply a broad precautionary approach to the conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks. While Paragraph (2) of this agreement states that states are required to be more careful when information is uncertain or unreliable should not used as an excuse to delay or derail conservation measures and management of fish resources. The implementation of the prudential principle approach at the regional level is in the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). CCAMLR is the first international treaty to contain prudential and ecosystem approaches as a basic principle for the conservation and management of marine biological resources.

Today there are five (5) regional fisheries organizations authorized to regulate the conservation and management of fish stocks, especially the world’s tuna. Although special powers and responsibilities are different, but have the same authority to establish conservation and sustainable management measures for tuna stocks, the five organizations are:

a. The Conservation Convention of Southern Bluefin Tuna, Commission (CCSBT)

b. Inter-American Tropical Tuna Commission (IATTC).

c. The International Commission for the Conservation of Atlantic Tuna (ICCAT).

d. The Indian Ocean Tuna Commission (IOTC)

e. The Western and Central Pacific for Fisheries Commission (WCPFC)


Indonesia has ratified CITES through Presidential Decree No.43 in 1978 about Convention On International Trade in Endangered Species of Wild Fauna And Flora, and as a consequence trade of vegetation and wildlife conducted by Indonesia is subject to the provisions of CITES. The ratification is stipulation or procedure that the convention has been in effect based on the stipulation of the two Presidential Decree No.43 in 1978.

1.5. The 1995 FAO Code of Conduct for Responsible Fisheries

The fundamental problem faced by marine fishery at present is the general tendency of decreasing fishery productivity in most waters area. This is exacerbated by the declining quality of the environment/habitat of fish and the high poverty rate of the population in some areas. On the other hand, the fishery continues to be the mainstay of food sources, especially animal protein, employment, beauty, recreation, trade, and various economic activities of the world community.

In the FAO conference on 31 October 1995, the principles generated in the Rio Summit were adopted into Code of Conduct for Responsible Fisheries (CCRF). In principle, the code is the basis of international standards for the conservation, management and development of fisheries as a whole. The basic standards include several settings, including rules about (1) arrest, (2) management, trade, and fishery products, (3) operational capture, (4) aquaculture, (5) fisheries research, and (6) integration of various fisheries activities into the management of coastal areas. One of the most important issues in fisheries management is the limited property right. This is inseparable from the character of fish resources that is common properties and open access. The character of such resources is also exacerbated by the high uncertainty of fish resources, environment, market, and government policy, and then encourage the fisheries into various forms of unhealthy competition.

A management approach that provides space for the division of tasks and responsibilities between government and other stakeholders is referred to as management co. This management is defined as the decentralization of decision makers involving user groups (stakeholders) and governments. User groups in this case include fishermen, processors, fish traders, intermediaries (middleman), fishing gear suppliers, consumers, researchers, employees, government, law enforcement, environmental and conservationists, NGOs and others.

Co management is required on the basis of awareness that under other management approaches, effective processes for ensuring linkages between the public, private and public sectors have always failed to develop. Article 6 and 7 CCRF suggest the importance of stakeholder participation in effective fisheries management. For small scale fisheries management co is very important at least for the following reasons (Yohanes Widodo, 2008:195) (12)::

a. Local conditions and the history of kenelayanan business have significance as a pre condition of development of management co;
b. Proximity to the beach (which is fragile requires effective management
c. The traditionally of management has proved inadequate to address the rate of improvement *entry*, *capitalization*, and *exploitation*.

d. Communities have a responsibility for empowering conflict rules and resolutions, and

e. Small scale fisheries have local and regional interest that are often disproportionate to the size of fish resources. Co-management effort by effectively linking the various stakeholders is one way to solve the problem of the resource management process.

Management of fishery resources is quite complicated when compared with other natural resource management, especially those that are territorial. Therefore fisheries management needs a goods plan that must be approach and supported by all those involved and stakeholders, is stakeholders. Involving all stakeholders, theirs obligations and responsibilities for long-term utilization and management of fish and ecosystem resources can be improved.

Although it does not have binding legal force, it provides guidance for all countries in the formulation of the measures necessary to ensure the management and utilization of fish resources in accordance with national legislation in the field of fisheries and the environment. CCRF provisions can be used as guidance in making laws and regulations concerning fisheries for the prevention and control of fishing activities that are not responsible in the form of fishing.

1.6. International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) 2001

IPOA-IUU formed as a non-binding international instrument within the framework of CCRF, to respond to the concerns of the 23rd UN Food Agriculture Organization Fisheries Session Meeting in February 1999. The purpose of IPOA IUU is to prevent, reduce and eliminate IUU Fishing activities by providing guidance to all countries in developing comprehensive, effective and transparent steps in collaboration with competent regional fisheries management organizations. IPOA-IUU divides the steps that must be implemented based on (Dikdik Mohamad Sodik, 2014:195)(14):

a. The division of responsibilities between all countries, flag countries, flag ships, and coastal states;

b. Measures agreed upon in international agreements on trade;

c. Responsibilities of regional fisheries management organizations;

Paragraph 10 IPOA IUU governs the responsibilities of all countries, to implement the provisions of international related to the regulation in the 1982 Sea Law Convention in the prevention, reduction and elimination of IUU Fishing. On the basis of that, all states under paragraph 11 are encouraged to ratify or ratify the 1982 Sea Law Convention and United Nations approval of fish stocks 1995. States which have not ratified or ratified both international instruments are prohibited from taking action against the provisions of the international instrument.

The existence of IUU IPOA has supplemented and supplemented the provisions of the 1982 Sea Law Convention and the UN Agreement on Fish Stock 1995 and CCRF. The majority of the provisions contained there are drawn up under the provisions of the 1982 Sea Law Convention and United Nations consent on 1995 Fish Stock and CCRF. Although IPOA IUU only has the strength as a recommendation to all countries, it turns out IPOA IUU plays an important role in the establishment and development of international fisheries law as a legal system positive. IPOA IUU provides guidance to all countries in drafting national legislation on the prevention and reduction of IUU Fishing activities.
The Indonesian Government in its effort to protect the conservation of fish resources, has signed several international agreements as described above. The purpose of international agreements, because the marine environment has the potential for diversity and high economic value, rich with fish resources that are beneficial to humans and the environment that can be used as a source of food and tourist attraction. Given its irreplaceable nature and an important role for life, conservation efforts through the conservation of fish resources and their ecosystems become the absolute obligation of each generation. Fish resources that exist in the territory of the country can come from the territory of other countries that migrate into the country, it is necessary to cooperate between countries as outlined in the agreement as described above. This cooperation is intended to nurture, protect the interests and prosperity of future generations.

International agreements that have been ratified in the field of fish resource conservation if observed, some are hard law and soft law. Pramudianto, 2008: 23) (15). Hard law includes laws that have a definite binding power (legally binding), whereas soft law is the legal elements that have no binding power to be sure. International agreements included in the hard law category United Nations Law of the Sea 1982, Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995, United Nations Convention on Biological Diversity 1992, and Convention International on Trade Endangered Species 1973. While the soft law category is CCRF 1995 and IPOA-IUU.

The types of international agreements of the hard laws category mentioned above are conventions and agreements. The type of agreement with the form of convention regulates the essentials and principles. Whereas the agreement form specifies particular things in particular. International agreements that have been ratified by Indonesia are multilateral, of course, each of these international agreements has principles. Principles that apply to international agreements such as the principle of good faith, pacta sunt servanda, and pacta tertiis nec nocent nec prosum. As a participating country of international agreement, Indonesia has shown good faith to implement the agreement, especially in the field of fish resources conservation.

Management of fisheries in marine territories within the control of a country based on the international treaties described above, basically the management and regulation, supervision and law enforcement are left to the policies of each country. Each country is entitled and responsible for the utilization activities of marine resources, especially fisheries, including the protection and preservation of its environment.

According to the authors there is an interlinked international agreement and complementary, in other words the international agreement is an overall system, legal system and environmental system. International treaties such as UNCBD 1992 regulate ecological systems primarily in protecting flora and fauna and their habitats through the conservation and protection and management of good biodiversity. UNCBD 1992 in its implementation will affect CITES 1973 which regulates trade in endangered species, and the UNCLOS 1982 agreement serves as the legal order for the seas and oceans, is a contribution to strengthen, “peace, security, cooperation and friendly relations among all nations”. Therefore to protect fish resources, countries must sign agreement set forth in some international agreements, so that when problems arise concerning fisheries management, countries can cooperate in their handling.

2. The concept of protection on fishery resource conservation in Indonesia

Indonesian republic is a law state (rechtstaat) therefore the natural resources and ecosystem management are based on law in order to secure legal certainty in doing catching
fish activities. Also the base of legal protection on fishery resource management and its ecosystem that is used as guidance in Indonesia is the implementation of International agreement which is explained previously. Also the concept of law on fishery resource conservation as follow:

1.1 Law number 32 of 2009 on Living Environment

Living environment in Indonesia as the ecology concept, its meaning is on article 1 number 1 Law number 32 of 2009 stated that: “Living environment is the unity of space with all things, source, condition, and living creature, including human being and its behavior, which influence the nature itself, the continuance of living, and the prosperity of human being and other living creatures.” Based on that limitation, living environment is not separated by administrative region or country. If living environment is connected with its protection and management, then there should be a clear regional border protection and management. Indonesian living environment is not other than Nusantara region which locates cross position between two continents and two oceans with tropical climate and weather and season which give natural condition and position which has high strategic role on value, a place where Indonesian people and nation hold states chores in implementing protection and management of living creature is a Nusantara (Indonesia) Knowledge. (Syamsul Arifin, 2012: 67-68) (16).

Indonesia Knowledge which is covered in 4 important realizations:

- the realization of Indonesia archipelago as one political unit,
- the realization of Indonesia archipelago as one social and cultural unit,
- the realization of Indonesia archipelago as one economic unit,
- the realization of Indonesia archipelago as one security and defense unit.

According to international law, Indonesia archipelago as the realization of archipelago state has been recognized in the international sea law convention of 1982 (The International on the law of the Sea). 1982 convention is Law of the sea convention which is ruled the entire sea aspects including the management and the protection of the resource. According to the law, Indonesia has bounded to this convention and has caused right and responsibility which is applied by the Indonesian republic government.

The aims of management and protection of living environment according to article 3 of the law are as follow:

- To protect the Indonesian republic regions from polluation and/or damage of living creature.
- To guarantee the continuance of life of living creature and ecosystem preservation.
- To keep the preservation function of living environment
- To reach the harmony, conformity, balance of living environment
- To guarantee the fulfillment of today and tomorrow’s generation justice
- To guarantee the fulfillment and protection of right on living environment as part of basic human right
- To control the utilization natural resources wisely
- To realize the continuance development and
- To anticipate global environment issues

From the limitation above “protecting the preservation of living environment function” does not mean that the environment is preserved or static but the environment condition get development both through evolution process and revolution process. Well and healthy environment are the basic and constitutional rights of Indonesian people. The nation, government and stake holders have responsibility to protect and manage the living
environment in implementing the establishment continuance so that the living environment of Indonesia can be the living and supporting resource for Indonesian people and other living creatures.

1.2 Law number 31 of 2004 on fisheries junto law number 45 of 2009 about the amendment on fisheries Law of 2004

A state area covers land, air and water. Indonesia has all of it so that our country has two forms of geographic as one character of a country which is an archipelago state and a land state. The geographical shape like this is a blessing from Allah SWT who creates and owns the universe.

The existence of fish resource which is found in Indonesia water is abundant, and can be managed and utilized to give benefits for nation and country, especially the entire society. In the dictum of Law number 31 of 2004 about fisheries has been emphasized that the water under the state of Indonesia jurisdiction and sovereignty and Indonesia Exclusive Economic zone and the ocean according to international rule including fish resources and a potential fish cultivation field.

Article 2 paragraph (2) Law number 31 of 2004 stated that the management of fisheries is done according to advantage, justice, cooperation, equality, cohesion, efficiency, and continuous preservation principals. While on the article 2 the law number 45 of 2009 about the amendment of Law number 31 of 2004 about fisheries stated that the fisheries management is done according to principals on (a) advantage (b) justice (c) togetherness (d) cooperation (e) independence (f) equality (g) cohesion (i) efficiency (j) perseverance (k) continuous development.

According to article 3 law number 31 of 2004 stated that the management of fisheries is applied aiming to:

a. To improve the living standard of small fishermen and the people who cultivate small fish
b. To improve the income and state devise
c. To push the expansion and job opportunity
d. To improve the availability and the consumption of fish protein source
e. To make the management of fish resources optimal
f. To improve the productivity, quality, additional value, and competitiveness
g. To improve the availability of raw materials for industry of fish management
h. To reach the utilization of fish resources, the field of fish cultivation, and fish resource environment optimally
i. To guarantee the perseverance of fish resource, the field of fish cultivation, spatial order

In the Law number 31 of 2004 according to article 4 stated that the Law functions for:

(a) Every individuals both native and foreign citizens and Indonesian and foreign corporate bodies which conduct activities of fisheries in the area of Indonesian republic fisheries management
(b) Every fisheries ship with Indonesian and foreign flags which conducting fisheries activities in the area of Indonesian republic fisheries management
(c) Every fisheries ship with Indonesian flag which conducting fish catching outside of Indonesian republic fisheries management area
(d) Every fisheries ship with Indonesian flag which conducting fish catching both as individuals and in groups, in the form of cooperation with foreign party.
The implementation of Law on fisheries number 31 of 2004 is derived in the form of government regulation (PP) number 60 of 2007 about fisheries resource conservation, to rule more completely about the effort of ecosystem conservation management or fisheries habitat including the development of water conservation area as part of the ecosystem conservation.

According to article 2 paragraph (2), fisheries resources conservation is conducted according to principals: a) notice approach, b) consideration on scientific proof, c) consideration on local wisdom, d) management on society base, e) cohesion on development shore area, f) the avoidance of extra catching, g) the development fish catching tools and the strategy in catching fish environmentally friendly, h) a consideration on social economy condition of the society, and i) the utilization of continuous various biological resources. Previous rules are based on article 6 CCRF on responsible fisheries management. (Yulia A. Hasan, 2015)(18).

The activities on fisheries resources conservation is the obligatory activities which is conducted by the government, local government and society especially fish farmer society or fishermen because for the society who dwells around the shore area and small islands rely on fish catching so that if there is conservation activities will impact the income and earnings of the fishermen society.

Fish resources is important as in the Law number 31 of 2004 constitute that about the conservation of fish resources which is conducted through ecosystem conservation, species ecosystem, and genetic conservation. An effort on fish resource conservation cannot be separated from the fish resource management and the whole environment. Noticing that fish resource characteristics and its environment has high sensitivity both from global climate effect and seasonal climate also some connectivity aspects of ecosystem among local, regional, global water area which is possibly cross the sovereignty border of a country. So that in the effort of fish resource conservation management and development should be based on carefulness principals with the support from scientific proof, as found in the implementation of law number 60 of 2007 about fish resource conservation. The explanation of fish resource conservation according to previous general constitution regulation: efforts on the protection, the perseverance and the utilization of fish resource including species and genetic ecosystems to guarantee the existence, the availability, and the continuance by keeping and improving the quality value and the variation of fish resource.

The area of water conservation is managed by the government and local government depending on their authorities according to article 16 paragraphs (1), (2), and (3) based on fishery Law. In relation with this the management of water conservation area which under the responsibility of government are:

a. The sea water beyond 12 mile which is measured from the shore line to the ocean or to the archipelagic water
b. The water which is under the responsibility area of cross province management, or
c. The water which has certain characteristics.

While the management of water conservation area which is conducted by the provincial government covers:

a. Sea water beyond 12 mile which is measured from the shore line to the reason and or to the archipelagic water.
b. The water conservation area which is under the responsibility of cross regencies/cities management.
In determining the right, power, and responsibility in government field is not in the hand of central government but some have been given to the provinces and regencies/cities government as one of the authorities’ right and the authorities in sea area management. Indonesia Sea consists of internal waters, archipelagic waters, and territorial sea. (I Wayan Partiana, 2014:347). (19). If we notice Indonesian map, there is no single province in Indonesia which does not have beaches or sea areas. Some provinces in Indonesia have 12 sea mile at maximum to the archipelagic waters which is both are measured from the base line, such as Banten, West Java, central Java, east Java, Aceh, Bali, west Nusa tenggara and east Nusa tenggara while some provinces that facing the ocean, such as Yogyakarta, west Sumatera, and Bengkulu. Beside that there are some provinces that facing the archipelagic waters such as West Kalimantan, Central Kalimantan, South Kalimantan, West Sulawesi, South Sulawesi, Central Sulawesi and South-East Sulawesi.

Law number 27 of 2007 about the shore areas management and small island in the article 23 paragraph (2) constituted that the utilization of small islands and the water surrounded is prioritized for one of these interests: a. conservation; b. education and training; c. research and development; d. sea cultivation; e. tourism; f. Marine and fishery works and industries on fishery perseverance; g. organic farming; and/or h. farming; i. organic farming; j. livestock.

In point e above stated that the utilization of Island and the water surrounded can be used for tourism. To be able to use the shores and the island for tourism areas need a well preparation because without good planning it will cause damage to the natural resources which lay around the island and the shore. Indeed the beauty of the shore and the island which Indonesia has can attract many tourists to visit and of course it can increase the local income moreover if the places still maintain its cultural tradition values which is related with the island and the shore. The celebration or cultural tradition which is conducted once in a year in the beach can harm the beach environment for a long time later if there is no sufficient monitoring. Fish that usually live in the shore will move to the middle of the sea and slowly will go away. The impact is the fish resource in the shore will be decreased.

Therefore according to the article 27 paragraph (1), (2), and (3) the Law number 23 of 2014 about the local government regulate that provincial areas are given an authority to manage the sea natural resources within its area to the furthest 12 mile sea measured from the beach line to the ocean and/or to the archipelagic waters, which include:

a. Exploration, exploitation, conservation and the management of the marine resources beside oil and gas
b. Administrative regulation
c. Space regulation
d. Joining in the protection of sea security
e. Joining in the defense of state sovereignty

The management of water conservation areas could be done by the regencies/ cities authorities, which include: 1/3 sea water of provincial management authority areas: brackish water and fresh water under its authority areas.

Conservation areas consist of some zones and they are primary zone, continuous fisheries zone, utilization zone, and other zones. Conservation areas planning will be regulated later by the ministerial regulation.

In order to improve the quality and the quantity of the conservation implementation of the fishery resource needs person in charge of the implementation. If we refer to the regulation on the article 3 government regulation number 60 of 2007 stated that the fishery resource conservation under the responsibility of the government, local authorities, and the society.
The fishery resources conservation management that has been explained in some previous regulation prove that Indonesian government is serious to protect the fish resource from the unwanted things that might happened. It is only that in the fishery law there in no regulation Straddling Fish Stocks and Highly Migratory Fish Stocks beside that the regulations on fish species which are protected are still limited. According to the author this problem in deciding the verification process and the regulation arrangement spend much time so that the fish resources come to an end. To anticipate this to happen the government needs to conduct cooperation with other countries.

Other than those challenges, the law enforcement in our country is considered law so that there is no different effect for the fishermen and the foreign traders, because so far the prevention of fish resources conservation only rely on single law instrument which is the Fishery law it also needs other law instrument to catch the criminals on fishery.

The author suggests the civil law enforcement instrument to be used as well which is a compensation and it is appropriated with the effect cause by the fish catching activity. Noticing that the fish resource can be used for the state and the society income through some activities, such as; catching fish both for consumption and tourism object. Therefore fish resource conservation must be given a special attention from the government regulation number 60 of 2007 about resource conservation. Fish and government concentration nowadays is to establish useful maritime in accordance with the government mission in the maritime context which is to realize Indonesia as independent, developed, strong country which based on the national interest.

According to the investigation found in international agreement data in the field of fish resource conservation that have been ratified by Indonesian government are as follow:

Table 1. International agreement ratification on the fish resource conservation field

<table>
<thead>
<tr>
<th>No.</th>
<th>International agreement</th>
<th>Ratification</th>
<th>Problem regulated</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995 or usually called United Nations Fish Stocks Agreement/UNFSA 1995</td>
<td>Law number 21 of 2009</td>
<td>Regulation on Straddling Fish Stocks and Highly Migratory Fish Stocks</td>
</tr>
<tr>
<td>3.</td>
<td>Code of Conduct for Responsible Fisheries 1995</td>
<td>Adopted from the Law number 31 of 2004 about fishery jo. the law number 45 of 2009 relating to the amendment of the law number 31 of 2004</td>
<td>To regulate the ethics code on responsible fisheries</td>
</tr>
<tr>
<td>4.</td>
<td>International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, Unregulated Fishing (IPOA-IUU) of 2001</td>
<td>Decree of fishery and maritime ministerial NO.KEP50/MEN/2012 relating to the national plan action to prevent, deter and eliminate illegal, unreported, and unregulated fishing of 2012-2016</td>
<td>To regulate the national plan action to prevent, deter and eliminate illegal, unreported, and unregulated fishing</td>
</tr>
</tbody>
</table>
If we notice from the table above there are international agreements that have been ratified by the government which can be used right away as the source of the Law without necessity of regulation implementation which need to be adapted with the Indonesian law regulation such as the Law number 21 of 2009 relating to the regulation on conservation and the management Regulation on Straddling Fish Stocks and Highly Migratory Fish Stocks and there is also an international agreement that has been ratified by the Indonesian government that still needs other regulations as the realization of its implementation for example UNCLOS 1982 which is ratified with the Law number 17 of 1985 that is later implemented on the Law number 6 of 1996 about Indonesian water. This shows that Indonesian government is not strict in regulating the implementation form of international agreement into national Law. The target of international agreement which is regulated the conservation of fish resource is the fish catcher or the fishermen lives in the country which obey the national Law and in contact with the sea environment directly beside having right to catch fish they also have to understand their responsibility in catching the fish so that the purpose written in the international law can be fulfilled.

B. Factors that inhibits the right to catch fish for the fishermen in the activities of fish resource conservation

The legislative regulation relating to conservation of fish resource was basically managed to avoid fishery from the negative impacts such as catching activities and for those who do not care about conservation of fish resources. According to Lawrence M. Friedman, (2001:285:286) (21), there are three things that are the foundation of the presence of good law order in the society, they are: Law substance, Law structure, and Law culture. The three of them should be in synergy in order to get affectivity in the law enforcement on fish resources.

While Anthony Allot (1981: 22) elaborates the factors that influence the ineffectiveness of the law, they are: 1) the imperfection on the formulas on law sentences in the regulation (the defects, of legal linguistics formulation), 2) the conflict between the interest of the Lawmaker and the willingness of the people which become the regulation target. 3) there is no implementation norms such as implementation regulation and institution which is responsible to make sure the implementation of legislative regulation.

Broadly, to guarantee the conservation of fish resources can be accomplished well so that in the article 7 paragraph (2) Fishery Law set responsibilities that must be obeyed in conducting effort or fishery management activities:

a) Type, number, and size of the catching tools including the size of the mesh
b) Type, number, size, and location of the additional tools meaning for the facilities, tools, or other things that can be used to help the efficiency and the effectiveness of fish catching

c) Area, line, and time or season for catching the fish

d) Requirement or operational procedure standard in fish catching

e) Monitoring system of fishery ship

f) New fish type that will be cultivated

g) Type of fish and return spreading areas of fish disease

h) Fish cultivation and protection

i) Prevention, pollution, and damage of fish resource and its environment

j) The minimum size and weight of fish type that can be caught

k) Fishery sanctuary

l) Epidemic and epidemic areas of fish disease

m) Types of fish that is prohibited for trading, exporting from Indonesia and importing to Indonesian republic (NO.4.PERMEN-KP/2014, there is no reason why it is prohibited and need to be published and socialized).

n) Types of fish that is under protection (No. 35/PERMEN-KP/2013 relating to the ways for setting the fish protection status).

Those responsibilities mostly are put in the decree of fishery and maritime ministerial and refer to government regulation number 60 of 2007 fish resource conservation and the regulation has become the reference for the society in conducting fisheries management and fish catching.

If we look at the substances that are regulated in the legislative regulation in order to protect fish resource is actually adequate. It is just often cause pro and cons on the implementation of this regulation. For example in the regulation of the ministry of fishery and maritime No.2.PERMEN-KP/2015 about the prohibition to use fish catching tool such as trawls and Seine nets in the area of fishery management of Indonesian republic, there are some groups of Fishermen in Indonesia protested the implementation of ministry regulation almost 70 percent catching tools used by the fishermen are trawls by the implementation of that regulation can be felt as torturing the traditional fishermen and make them poor. It is one of the factors that influence the ineffectiveness of law which is the conflict between the lawyer maker and the willingness of the people which become the target of regulation as mentioned by Antony Allot.

The consideration by making the ministry regulation above that the use of fish catching tools such as trawls and seine nets in the fishery management area of Indonesia has caused the decreasing of fish resource and threatening the preservation of fish resource environment. Based on the research result shows that the sea exploitation in Indonesia is in the critical condition, the production in the headwater only 50%. If we allow this to happen there will be a natural degradation such as the smaller size of the fish, it is not impossible will be disappear. (Yulia. 2017)(23).

In one side the government would like to enforce the regulation but another side the society feels that the regulation lessen their income, even many fishermen become jobless. What the government did was right by giving the transition time before implementing the regulation and the use fishing tools that are prohibited can only be used 12 mile from their sea areas.

In order to protect the continuance of fish resource beside ministerial regulation on fishery and maritime number 2 of 2015 also has been issued limitation to catch lobster
Panulirus SPP, Crabs (Sylla SPP), and small crab (portunus SPP) has been put in the ministry regulation number 1 of 2015 about the size of the lobster that can be caught is above 8 cm or equal with 300 gram, crab width 15 cm or equal with 350-450 gram, small crab width 10 cm or equal with 55-8- gram according to the fact in the field there are still lobster trade. Crabs and small crab trade which is not fit the regulation and this trade usually are conducted by the fishermen in the middle of the sea working with receiver to sold to the society, not from the fish auction.

Basically the government protects the right of the fisherman in catching the fish because in the fish resource conservation there are three things need to be noticed protection, utilization and perseverance. Of course the fishermen has the right to utilize the fish resource by conducting catching activities but also need to notice the perseverance because fish resource need to be protected from the decreasing number and the types of fish resource can threaten its environment perseverance so that the cooperation between the government and the society in fish resource management is seriously needed.

Generally the violation of fish resource conservation is caused by some factors, as follows:
1. There Human behavior that cause negative impact that harm the fishery environment
2. There is a change in government policy related to a management conservation area which before is the authority local government the existence of new local government Law. That authority is given to provincial government. For example the absence of local regulation on fish resource conservation because the Law number 23 of 2014 about local government give authority to the provincial government to manage resource in the sea the furthest 12 mile sea (article 27) automatically the province should wait another local authority law.
3. Low enforcement on the law, this is related to the supervising, the reporting, and the trial. Generally the facilitation of the law enforcement on the fish resources conservation is as follow:
   a. The administrative facilitation could be preventive and aim to enforce the legislative regulation. The enforcement can be applied toward the activities that are related to the permission requirement, the management of fishery, etc. administrative sanction mainly has instrumental function that is controlling prohibited actions. Beside that the administrative sanction mainly focuses in protecting interest which is protected by the regulation that is violated.
   b. Criminal act facilitation conservation act of fish resource is regulated in article 84 till 93 in fishery law. In conservation case of fish resource currently in doing supervisory, the existence of compressor in the ship of fish catching, there is an indication of breaking the law.

According to Freed T. Wildes (Akhmad Fauzi, 2006: 13), that conservation of fish resources has genuine meaning including preservation and development concept of natural resources to human being needs on the earth nowadays and in the future. Therefore conservation implicitly including moral aspects and responsibilities to preserve, keep, secure, persevere the natural resources for today and tomorrow’s generations. If morally and human responsibility are not implemented there should be sanction given to the human in accordance with the deeds. Noticing that the conservation of fish resources is ecological sentries that is how people and their behavior can keep the perseverance environment functions according to the purpose of fishery management and preservation that is to accomplish harmony, in accordance, and balance in the environment to guarantee the fulfillment of justice for.
nowadays and next generations. Therefore fishermen as one of the parties in the conservation of fish resource has the right and responsibility in doing fish catching activities in accordance with the regulation on fishery regulation as international agreement implementation that has been ratified by Indonesian government.

3 Closing

as closing, the author can summarizes some major points, they are:

a. The concept of legal protection on the fish catching done by the fishermen in conservation activities of fish resources in Indonesia cannot be separated from the international agreement that is agreed by the government of Indonesia. The protection on conservation of fish resources in Indonesia is the implementation of international agreement that is regulated the conservation of fish resources which are completed each other. However there are still some international agreements that have not been implemented in the national law and this situation influences the availability of fish resources because they can be taken by the foreign fishermen and it can harm Indonesia. To anticipate the international agreement that has not been implemented it is better to conduct a cooperation agreement with other countries to protect the fish resources which become the right of our fishermen.

b. Factors that inhibit the right of the fishermen to catch fish in the conservation activities of fish resources are : a. human behavior that give negative impact that harming the fishery environment , b. the government policy that is changed related to the management of conservation areas, c. the low enforcement of the our law

References

[1]. Article 2 Paragraph (2) government regulation number 60 of 2007 relating to conservation of fish resources:
[3]. presented in the national seminar entitled “Rekonstruksi Ideal Eksekusi Tindak Pidana Perikanan, Antara Kaidah dan Harapan” to celebrate the 22nd anniversary of Persatuan Jaksa Indonesia (PJI) by M.Nasir Jamil on 09th June 2015at Gedung Graha Pena,Makassar.
[6]. Dikdik Mohamad Sodik, 2011, Hukum Laut Internasional dan Pengaturannya DiIndonesia, PT Refika Aditama, Bandung, page 85


Law Enforcement Through The Restorative Justice Approach Reviewed From The Perspective Of Human Rights

Henny Saida Flora¹
{hennysaida@yahoo.com¹}

Faculty of Law Catholic University of St. Thomas North Sumatra, Indonesia¹

Abstract. Law enforcement through restorative justice communities is given the opportunity to handle their own legal problems that are perceived to be fairer and the burden of the state in some cases is reduced. Implementation of restorative justice in the perspective of national legal system can be accepted if implemented based on Pancasila state philosophy, guarantee justice and legal protection against human rights. To ensure that there is a diversity in its implementation, a norm or norm to legitimize that all actions taken in the implementation of restorative justice are not considered illegal. Restorative justice offers the concept of an informal settlement that merely puts forward the formalistic legalistic side but can be done through mediation between perpetrators and victims, reparations, and victim awareness work conferences, in addition the existing criminal justice system is considered no longer able to provide protection against human rights and transparency of the increasingly undesirable public interest and the fact that many societies prefer to settle criminal cases that they experience outside the system through restorative justice.

Keywords: Law Enforcement, Restorative Justice, Human Right.

1 Introduction

Restorative justice is a form that centers on the needs of victims, perpetrators of crime, and society. In contrast to the decisive retributive law for perpetrators of crime, to restructure and restore victims, perpetrators, and society. This is caused by every crime, the victim is the first as a result of a crime. Hereafter referred to as the party responsible for the actions that have been given to be responsible for its actions. The psychologically responsible of his dignity as a person is restored. Society also must be restored, because they also destroy life in society.

Justice is recuperating to a certain understanding of evil. According to understanding is the act of destroying the order of the universe derived from divine law. This is called the law. The evil one must be penetrated by the act of purifying himself by the perpetrator of evil. This is called punishment. By contrasting such a crime, then explain to the contrary to the offender.

The focus of restorative justice rests on the recovery and reconciliation of victims, perpetrators, and communities. To achieve this goal, the reconciliation process pursued by restorative justice involves all parties, victims, victims' families, communities and perpetrators. In contrast to the judicial process involving only judicial officers such as judges, prosecutors and perpetrators of crimes and their defenders, restorative justice involves all

Restorative justice is not concerned with the actions that have been committed by evil, but compensation to be paid to restore the damage suffered by the victims and the community. In determining this level is also done by victims and the community. No punishment by the perpetrator of the crime will heal the victims' wounds and damage the community but the compensation negotiated together in the deliberations involving the perpetrators, victims and the community will restore and reconcile all parties.

The principles of restorative justice are based on the view that human life in society is relational. Any action relating to other acts beforehand then a crime perpetrated by a perpetrator is not solely the responsibility of the perpetrator himself. The crime is related to the social condition of the community and the condition of the victim. Suppose someone stole money. The act of stealing the money is not solely the responsibility of the perpetrator. The act of stealing may be driven by social injustice in society, so the thief is caught in poverty and then steals. It could also steal the action was driven by the wealth of the victim who abounded very stimulate the thief's desire to steal money. In other words the thief may be a victim of social situations in society. This view does not say that the offender is innocent. The perpetrator of the crime is guilty. But in accounting for such action he is not alone. Responding to wrong actions is not only to punish the perpetrator, but to be viewed from a wider perspective. So settle a crime must be done by involving three parties, namely victims, perpetrators of crime, and society. Therefore all that has to be done is restoring (restoration) not parties ie victims, perpetrators of crime, and society. The recovery of the three parties can occur in deliberations and dialogue involving the three parties.

2 Literature Review

2.1 General Principles of Restorative Justice

Some of the universally applicable principles inherent in restorative justice in law enforcement include the following:

a. The principle of a fair settlement (Due Process) In any criminal justice system throughout the country, the suspect is always given the right to know in advance about certain procedural safeguards when faced with prosecution or punishment. The due process should be regarded as a form protection to provide a balance for state power to hold, prosecute, and carry out the punishment of a sentence. Among the internationally recognized identified protections and included as a due process idea are the right to presumption of innocence and the right to a fair trial as well as the right to legal advisory assistance. In the process of restorative settlement, formal boundaries are always granted to the suspect at any time, both during and after the restorative process so that the suspect's right gets a fair trial and remains awake. However, if the suspect is required to obtain his right and choose to participate in a restorative process then the suspect should be informed of the implications of his decision to choose restorative intervention, whereas in the case of a verdict of completion through restorative the offender can not fulfill the decision because it is considered to reduce the rights or burden the suspect too, then to the perpetrator given additional protection the suspect may be allowed to appeal any treaty reached in the restorative process on grounds of innocence. In the implementation
of the mechanism of the process of restorative approach requires the desire to continue to
provide protection for suspects associated with due process. However, because in the
process of restoration it requires guilty pleas first, it raises the question of the extent to
which informed consent and the release of voluntary rights can be used as the beginning
of a just settlement. The basic concept of settlement through a restorative approach that
requires the recognition of guilt for the offender is a requirement for a way out of the
continuation of the recovery process and simultaneously as a signal that the offender must
be responsible for his actions because a guilty plea is another form of responsibility.

b. Equal Protection In the process of settling criminal acts through restorative justice must
arise from a process of mutual understanding of the meaning and purpose of justice
regardless of race, sex, religion, national origin and other social status. There is doubt
about the ability of the restorative approach system to solve a problem and provide a
sense of justice among different participants because one party may have advantages,
economic, intellectual, political or even physical strengths, so that there will be an
inequality between the parties participate in a restorative process. This restorative
approach has the potential to provide equal protection on an international scale because
the concept of restorative justice provides a framework that provides conceptual
consistency for international standards and norms in criminal justice. The social injustices
that always exist in society affect the judicial system and give indications that inequality
will remain in a restorative system. However Braithwaite believes that restorative justice
has the potential to cope with these problems because the community is involved.

c. The Rights of the Victim In solving a problem through a restorative approach, the rights
of the victim need attention because the victim is an interested party who should have a
(legal) position in the settlement process. In the criminal justice system it is generally
assumed that the victim does not receive equal protection from the authority of the
criminal justice system, so that the essential interests of the victims are often neglected
and if only there is merely the fulfillment of the administrative system or the management
of the criminal justice.

d. Proportionality The idea of fairness in a restitutive system is based on a consensus of
consent which provides an alternative choice in solving the problem. While the notion of
proportionality is related to the scope of equality of sanctions of suffering that must be
imposed on offenders. In criminal justice, in general, proportionality is considered to have
been fulfilled when it has fulfilled a feeling of retributive justice (the balance of
reciprocity between punish and reward). Whereas in a restorative approach may impose
unequal sanctions against offenders who commit the same offense. Some victims may
just want a simple apology while other victims may expect full restoration of the
offender.

e. Presumption of Not Guilty In criminal justice in general the state has a burden of proof to
prove the suspect's fault. Since and until the burden of proof is done, the suspect should
be considered innocent. Unlike the case in the restorative process that requires a guilty
plea is a condition to be continued the cycle of settlement. In restorative proceedings, the
suspect's right to presumption of innocence may be compromised in that the suspect has
the right to terminate the restorative process and refuse to acknowledge that he or she is
guilty and subsequently choose the formal process option where the error must be proved
or the suspect may have the right to appeal to court and all agreements agreed in the
restorative process are declared to have no binding power. Advocates or legal counsel
shall be provided at all times to inform the suspect of the implications of participation in the restorative process should not be a formal admission of guilt and that statements made in the process must be unacceptable in a formal court hearing.

f. Right of Assistance Consultancy or Legal Advisor In the restorative process advocates or legal counsel have a very strategic role to build the ability of offenders in protecting their rights assistance of legal counsel. In all stages of the informal process a restorative suspect may be informed through the assistance of a legal advisor on his / her rights and obligations which may be used as consideration in making a decision. Nevertheless once a suspect chooses to participate in a restorative process he should act and speak on his own behalf. Their positions allowing lawyers to represent participants at all stages during the restorative process will destroy the many benefits expected of encounters such as direct communication and proactive collective feelings and decision making. Lawyers can also be very helpful in advising their clients about the most likely outcomes that are earned and should be expected.

2.2 Historical, Philosophical and Sociological Basis of Implementation of Restorative Justice in Settlement of Criminal Cases

One of the content material in the Criminal Code which is in the spotlight of various parties and the need for immediate renewal is the punishment system. The punishment system in the Criminal Code is still focused on the prosecution of the perpetrators of crimes, not paying attention to the recovery of the losses and the suffering of victims who are lost due to the crime. this is explicitly illustrated by the types of punishment provided for in Article 10 of the Criminal Code.

The system of indulgence contained in Article 10 of the Criminal Code is essentially still retain the retributive paradigm of giving appropriate retribution for crimes perpetrated by the perpetrator. Retributive paradigm with the aim to provide deterrent effect so that the perpetrator does not repeat the crime again and prevent or prevent the previty effect of the community from committing the crime. The use of retributive paradigm has not been able to recover the loss and suffering experienced by the victim. Although the perpetrator has been found guilty and sentenced but the condition of the victim can not return as before.

With these weaknesses came the idea of a punishment system oriented to the recovery of victims’ losses and suffering, known as the restorative justice approach. Because the victim is the most disadvantaged party due to crime. Restorative justice accommodates the interests of the parties, including victims as victims are involved in the determination of sanctions for perpetrators. Restorative justice returns conflict to the most affected parties (victims, perpetrators and their communities) and gives priority to their interests. Restorative justice seeks to restore victim’s security, personal respect, dignity and more importantly a sense of control. By embracing the restorative justice paradigm it is expected that the harm and suffering experienced by the victim and his family can be recovered and the burden of guilt of the criminals can be reduced because they have received forgiveness from the victim or his family.

In essence, law enforcement and law enforcement agencies are highly likely to be involved in the settlement of cases by using restorative justice approaches, especially if this process is already part of the formal criminal justice system.

The characteristics of customary law in each region generally support the application of restorative justice. relating to customary offenses or customary offenses, and their resolution mechanisms, customary law has its own views. The notion of adat violation is related to the
condition of imbalance of the cosmos in society. This includes acts that interfere with the peace of life or violation of propriety in society. Violations in the concept of customary law are:

a. An action event from the parties in the community
b. The action creates a balance disorder
c. This balance disorder creates a reaction and
d. The reactions that arise make the re-maintenance of disturbance of balance to the original state

According to Sooerjono Soekanto, in the practice of everyday life it is difficult to separate the customary reactions and correction, which are often regarded as the stages that follow each other. Theoretically, the reaction is a behavior immediately to a certain behavior which is then followed by an attempt to improve the situation, i.e., a correction that may be a form of negative sanction. Customary reactions are a behavior for to give a certain classification to certain behaviors, while correction is an attempt to restore the balance between the birth and the occult world.

Sociologically the application of restorative justice in the punishment system also has a strong foundation, as many cases of crime are brought to court, but it is felt by the public is not in accordance with the values of community justice. This can be seen in the case of the theft of watermelons worth thirty thousand rupiah, the case of the theft of three cocoa beans worth thirty thousand dollars, and the case of cutting bamboo trees. The various cases are of concern to the public who generally assume that prosecution of these cases to the court is inappropriate and incompatible with the values of justice that live and thrive in society.

When looking at the case, the community considered the prosecution of the case considered to override the value of justice in the community, and is considered inversely proportional to the case of the corrupt who until now has not been completed, so there is the impression that there is discrimination in law enforcement process.

In addition, sociologically in some areas also still practice the values of restorative justice derived from customary law ever applied in Indonesia. For example, the Kuntara Munawa Book which is often called the Book of Religion is still used as a reference in the application of customary law in Bali. The community also still maintains the deliberative institutions as a means of finding solutions to any problems that occur in each community group. This suggests that the implementation of restorative justice in Indonesia's penal system has a strong sociological foundation.

From a philosophical point of view, the necessity of applying the restorative justice approach in Indonesian punishment system can be seen from the philosophical values contained in the restorative justice paradigm itself. When viewed from the definition, conception and principle of restorative justice paradigm there are at least three philosophical values contained therein, namely the recovery of victims' losses and forgiveness of the perpetrators, rebuilding harmonious relationships between the victim and his community on the one hand with the perpetrators in the other side, so that there will be no resentment in the future and the settlement of disputes that benefit the parties, whether perpetrators, victims, or the community (win-win solution). These values are in essence in line with the values that growing and develop in people's lives in almost all areas of Indonesia.

According to Hazairin, as stated by Soerjono Soekanto, people's lives in almost all parts of Indonesia have communal characteristics, where mutual cooperation, please help, has a big role. With this characteristic, the people in Indonesia, trying to create harmony in social systems and community life. Therefore, efforts to resolve disputes that occur in social life are
always strived to maintain peace. This is in line with what was stated by Hazairin, that the cases in the field of law are solved primarily with the aim of maintaining peace. This shows that philosophically the application of the restorative justice paradigm in the punishment system is in accordance with the values that live and thrive in a society inherited from the ancestors of the Indonesian nation.

2.3 Relevance Restorative Justice With Human Rights, Religious Law and Community Culture

Restorative justice approach has correlation and relevance to human rights. Because restorative justice guarantees the freedom of parties to fight for their interests. In addition, the principles of restorative justice also ensure that the settlement process is done without any discrimination. This is clearly in line with the principles of human rights as set out in Article 1 of the Universal Declaration of Human Rights (UDHR). The basic conception of human rights is the recognition that all human beings are born free and equal in their respects and dignity. The provision expressly states that every human being has freedom and has the same rights and dignity without any discrimination.

Other human rights principles that are in line with the restorative justice paradigm include:

a. Right to trial in a reasonable or reasonable time. This is stated in Article 9 paragraph (3) of ICCPR. Furthermore, in Article 14 paragraph (3) letter c of the ICCPR, it is stated that a person accused of a crime is entitled to a minimum guarantee, one of which is the right to be tried without undue delay. This right is in line with the principles of rapid, simple, light contest justice adopted in the Indonesian legal system as regulated in Article 2 paragraph (4) of Law Number 48 Year 2009 on Judicial Power and General Explanation Item 3 letter e of KUHAP. The principle of fast, simple and lightweight justice is one of the efforts to provide protection to the dignity of human dignity and human dignity of Indonesia. When viewed from the various provisions of the restorative justice approach is in accordance with the principle of fast, simple and lightweight. Because using the restorative justice approach to settling criminal cases that occur in the community can be done quickly, simply, and the cost of light. This suggests that the approach of restorative justice is in line with human rights principles.

b. The right to personal, family, honor, dignity, and property protection, and the right to private property which shall not be exploited arbitrarily by any person. The right to personal, family, honor, dignity and property protection is regulated in Article 28 G Paragraph (1) of the 1945 Constitution. Meanwhile, the right to private property which shall not be arbitrarily taken over by any person is provided for in Article 28 H paragraph 4) of the 1945 Constitution. Both rights are in line with the principles of restorative justice, because the principle of restorative justice seeks to recover victims' losses through the payment of indemnification from the perpetrator. This is a manifestation of the protection of property and private property. In addition, the restorative justice approach also emphasizes to the parties to maintain confidentiality when in the process there are matters relating to the dignity and dignity of the parties.

c. The right to a sense of security and protection from the threat of fear to do or not to do which is a human right is contained in Article 28G Paragraph (1) of the 1945 Constitution. This is also in line with the principles of restorative justice. because one of the principles of restorative justice is a sense of security for the parties in the implementation of the
process of restorative justice. d. The right to special convenience and treatment to achieve equality and justice, and the right to be free from discrimination on any basis and the right to protection from discriminatory treatment. The right to special facilities and privileges to achieve equality and justice is provided in Article 28H Paragraph (2) of the 1945 Constitution. While the right to be free from discrimination on any basis and the right to protection from discriminatory treatment is provided in Article 28I Paragraph (2) of the Constitution 1945. These rights are also in line with the principles of restorative justice, one of which is the principle of non-discrimination. For in restorative justice approaches there is also a need to pay attention to parties with special conditions, such as women, elderly, children and disabled people given special treatment in order to have the same position with other parties in negotiating.

In line with the principles of human rights, the restorative justice approach is essentially also in line with religious law. According to Marwan Effendy, since Jesus or Jesus has spread the New Testament (Gospel) and the presence of Islam has introduced the principles of restorative justice, each of which is the principle of "Love" and Diyat (Pardon and Compensation) in Qisas law, The Gospel of Matthew 5:39 states: "Do not fight against anyone to do evil to you, but whoever slaps your right cheek, give him your left cheek too". Meanwhile, in the Qur'an Surat al-Baqarah verse 178 more firmly, namely the provision of capital punishment for the kill, but if the family forgives the punishment is replaced with the payment of fines. This is still true in countries that apply Islamic law to criminal acts. Furthermore, when viewed from the culture of society, the cultural essence of Indonesian society is still influenced by custom law values that want the realization of peace and harmony in public life.

One of the culture of society which is still to be implemented is the institution of deliberation in the process of dispute settlement. Indonesian society has long known the functionalization of deliberative institutions as part of the mechanism chosen to resolve the criminal case. Deliberation either organized by the perpetrators and the victims themselves or by involving the village apparatus or through customary institutions shows the mindset of the community in seeing an emerging problem. Problem solving including problems related to criminal offenses through deliberative institutions is a mindset summarized in restorative justice that provides an opportunity for the parties to deliver improvement efforts in order to create a harmonious relationship in the future.

In various principles and models of restorative justice approach the process of dialogue between the perpetrator and the victim is the basic moral and the most important part of the application of justice. The direct dialogue between the perpetrator and the victim makes the victim able to express what he feels, raising the hope for the fulfillment of the rights and wishes of a criminal settlement. through the process of dialogue the offender is also expected to inspire his heart to self-correct, realize his mistake and accept responsibility as a consequence of the crime he committed with full awareness. From this process of dialogue also the community can participate in participating in realizing the outcome of the agreement and monitor its implementation. This shows that the culture of Indonesian society also strongly supports the application of restorative justice.

2.4 Legal Aspect of Restorative Justice Implementation in the Settlement of Criminal Cases Outside the Court In Indonesia

There is no provision that explicitly stipulates the application of restorative justice in the criminal justice system, except in Law No. 11 of 2012 on the Criminal Justice System, but in
the practice of justice in Indonesia, especially on the investigation level (police), restorative justice has been widely applied in cases of domestic violence, and other cases that are classified as minor crimes. In some rules of the legislation in it contained spirit of restorative justice, there are some provisions of the legislation that contains the spirit of restorative justice is as follows:

1. The Criminal Code (Penal Code). The provisions in the Criminal Code containing restorative justice spirit are contained in Article 82 of the Criminal Code. The provision of Article 82 of the Criminal Code is the basis for the abolition of the right of prosecution for the public prosecutor. The article states that the right to prosecute for a violation that is only punishable by a fine, is no longer valid if the maximum fine has been paid, and if the case has already been submitted to the prosecution then the payment shall be accompanied by the cost of the case.

2. Criminal Procedure Code (KUHAP). In the Criminal Procedure Code, provisions in which contain the spirit of restorative justice are contained in Article 98 of the Criminal Procedure Code (KUHAP) on compensation claims for criminal acts that harm the other party. The indemnification demands are based on the idea that if a criminal act is causing harm to another person, the person may file a claim for damages to the offender. the indemnification claim can be filed simultaneously with a criminal case hearing (criminal case), before the prosecutor read out his claim.

3. Law of the Republic of Indonesia Number 11 Year 2011 on Child Criminal Justice System. Law Number 11 Year 2012 is the single most obvious legislation in implementing the settlement of criminal cases through restorative justice approach. The a quo law regulates the mechanism for settling criminal cases of off-court children in the presence of provisions concerning the diversified legal institutions. According to Article 1 point 7 of Law Number 11 Year 2012, "Diversi is the transfer of the settlement of child cases from the criminal justice process to proceedings outside the criminal justice". Furthermore, in Article 5 paragraph (1) of Law Number 11 Year 2012 it is stated explicitly that the criminal justice system of children shall prioritize the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seeking a fair settlement by emphasizing restoration back to its original state rather than retaliation.

4. Law Number 32 Year 2009 on Environmental Protection and Management. Law Number 32 Year 2009 is essentially an administrative legislation, but it also provides for criminal provisions. Within the a quo law there is also a dispute resolution mechanism using the restorative justice approach. Article 84 paragraph (3) stipulates that the mechanism of dispute resolution through the courts can only be pursued if the dispute resolution efforts outside the selected court are declared unlawful by one or the parties to the dispute. This suggests that the dispute resolution mechanism through the judiciary is a last resort (ultimum remedium).

5. Law of the Republic of Indonesia Number 21 Year 2007 concerning the Eradication of Crime of Trafficking in Persons. Law Number 21 Year 2007 regulates the rights of victims of trafficking in persons or human trafficking, one of which is the right to restitution and rehabilitation. According to Article 2 paragraph 13 and 14 of the Act a quo restitution is a compensation payment charged to the perpetrator based on a court decision with permanent legal force for material and / or immaterial damages suffered by
the victim or his heir. Meanwhile rehabilitation is the recovery of disturbances to the physical, psychological, and social conditions in order to carry out its roles properly both in the family and in the community.

6. Law of the Republic of Indonesia Number 13 Year 2006 concerning the Protection of Witnesses and Victims. Restorative justice values contained in Law Number 13 of 2006 are reflected in Article 7 of the a quo Law stating that victims through the sacred and victim protection institutions (LPSK) are entitled to bring to justice in the form of the right to compensation in cases of human rights violations severe human rights and the right to restitution or compensation that is the responsibility of the offender.

7. Law of the Republic of Indonesia Number 11 Year 2006 concerning Aceh Government. In Law Number 11 Year 2006, there is no provision that expressly contains restorative justice values. However, aquo legislation provides a strong foundation for the regulations below which contain restorative justice values especially in the presence of regulatory provisions on gampong customary courts or peace courts.

8. Law of the Republic of Indonesia Number 26 Year 2000 regarding Human Rights Court. Restorative justice values in Law Number 26 Year 2000 can be seen in Chapter VI on Compensation, Restitution and Rehabilitation. The chapter consists of one article, namely Article 35. Based on the provisions of Article 35 of Law Number 26 Year 2000 any serious victims of human rights violations and / or their heirs may receive compensation, restitution and rehabilitation. Such compensation, restitution and rehabilitation are included in the Decision of the Human Rights Court. Compensation, restitution and rehabilitation are further regulated by government regulations. In this case is the government regulation No. 44 of 2008.

9. Law of the Republic of Indonesia Number 31 Year 1999 regarding Corruption Eradication as amended by Law of the Republic of Indonesia Number 20 Year 2001 regarding Amendment to Law of the Republic of Indonesia Number 31 Year 1999. The spirit of restorative justice in Law Number 31 of 1999 as amended by Law Number 20 Year 2001 is contained in Article 18 paragraph (1) letter b which regulates the additional penalty for the payment of replacement money. The existence of the above provisions in essence indicates that lawmakers also want perpetrators of corruption to participate in recovering the financial losses suffered by the state.

10. Law of the Republic of Indonesia Number 8 Year 1999 regarding Consumer Protection. In Law No. 8 of 1999 the values of restorative justice are reflected in the provisions of Article 63 letter c which regulates the penalty for the payment of compensation (restitution). According to the provisions of the aforementioned section, the criminal payment of compensation is categorized as one of the additional types of criminal along with other additional types of criminal sanctions.

In the present society is paying serious attention to law enforcement especially the judicial process. Therefore, people especially crime victims always highlight the judicial system in their country, as also happened in Indonesia. The judiciary is not only related to trials, court decisions, justice and legal certainty, but more broadly including crime prevention efforts.
3 Conclusion

1. The focus of restorative justice concerns restoration and reconciliation of victims, perpetrators, and communities. To achieve this objective, the process of reconciliation by restorative justice is to involve all parties, ie victims, victims' families, communities and perpetrators of crime. In contrast to the judicial process involving only judicial officers such as judges and prosecutors as well as perpetrators of crimes and their defenders, restorative justice involves all parties involved in crime, victims, perpetrators and the public. Restorative justice minimizes the role of government.

2. Restorative justice does not emphasize the punishment that the perpetrator must commit, but the compensation to recover from the victims and the community. In determining the magnitude of this compensation also conducted a joint discussion involving victims and the community. The punishment no matter how big the perpetrator does will heal the wounds of the victim and the destruction of society. But compensations are negotiated together in deliberations involving perpetrators, victims, communities or recovering and reconciling all parties.

References

[1]. Bambang Waluyo, 2016, Penegakan Hukum di Indonesia, Sinar Grafika, Jakarta
[6]. Yoachim Agus Tridiatmo, 2015, Keadilan Restoratif, Cahaya Atma Yogyakarta,
Regional Governance Based on the Value of Local Wisdom (Study of Ternate Empire)

Nam Rumkel¹, Tri Syafari², Yahya Yunus³
{narmrumkel@yahoo.com¹, trisyafari.unkhair@gmail.com², humano@unkhair.ac.id³}
Faculty of Law, Khairun University of Ternate, Indonesia¹,²,³

Abstract. In Indonesia many areas have their own customary law, of course the customary law is derived from the oral tradition of the ancestors. Starting from Aceh to the Papua region has its own oral tradition story. But unfortunately, in the era of globalization and sophistication of science today make oral traditions in areas of Indonesia increasingly abandoned, especially the young generation as a successor to the oral tradition of the ancestors in the future. Customary law is a term given by law science circles in the past to the group, the guidelines and the reality that regulate and discipline the life of the people of Indonesia. Scientists at the time saw that the people of Indonesia, who live in remote areas live in order and they live orderly by referring to the rules they make themselves. Similar to in other parts of Indonesia, the triumph of the four empire of the earth Moloku Kie Raha (North Maluku) slowly began to be forgotten. In fact, Ternate Empire in the reign of Sultan Babullah dubbed the Ruler of 72 nations. The honor was obtained after that time, the Ternate Empire has a very large conquered area up in Mindanao, the Philippines to Sabah, Sulu, even the island of Timor. Based on the exposure, this paper will discuss about the values of local wisdom in Ternate that still exist and local governance that accommodate the values of local wisdom.

Keywords: Customary Law, Ternate Empire, The Value Of Local Wisdom, Local Governance

1 Introduction

Humans are created on earth with diversity which is a gift from God Almighty. Nations and tribes are created by Him which is different between one nation and another, as well as one tribe and another tribe which has different characteristics. Even with the meaning of diversity shows that Allah created human beings with the best of creatures with the concept of diversity that has been arranged by him.

The concept of Bhineka Tunggal Ika which means different but one. Indonesia in addition to a variety of tribes, also has a very wide area so that government is formed in the regions in the form of a unitary state with the concept of regional autonomy to the greatest possible extent. in one container whose name is the Unitary State of the Republic of Indonesia but adheres to the meaning of diversity between various existing elements, it requires a basic framework that can unite these various elements within a framework of the State.

The regional government as mandated in the second amendment to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as 1945 Constitution of the Republic of Indonesia) in Chapter VI Article 18, Article 18A and Article 18B, that the provincial, district, and municipal governments regulate and manage themselves government affairs according to
the principle of autonomy and co-administration. So that the implementation of regional government goes as expected. So, the government implements government with the concept of regional autonomy. The implementation of regional autonomy should be directed to accelerate the realization of public welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness by paying attention to the principles of democracy, equity, justice, and peculiarities of an area in the system of the Unitary State of the Republic of Indonesia (hereinafter abbreviated NKRI).

The implementation of regional autonomy with the concept of decentralization is a symbol of trust (trust) from the central government to the regional government, this will in itself restore the self-esteem of the government and regional community. If in a centralistic system, they cannot do much in overcoming various problems, in this autonomous system they are challenged to creatively find solutions to various problems faced. This is important because the state recognizes and respects the unity of indigenous peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Republic of Indonesia Unitary State, which is regulated in law. Thus the state opens the opportunity for the regions to develop their regions by their own initiative according to the specificities of the region as long as they are not in conflict with the principles of the Republic of Indonesia. The state promotes Indonesia's national culture in the midst of world civilization by ensuring the freedom of the people in maintaining and developing cultural values.

From year to year since the reformation began, the law on regional government continued to change, starting with Law of the Republic of Indonesia Number 22 Year 1999 being replaced by Law of the Republic of Indonesia Number 32 Year 2004 until it was replaced by Law Number 23 of 2014 concerning Regional Government. In the general explanation Law of the Republic of Indonesia Number 23 Year 2014 regulates the existence of local wisdom that:

"Establish policies regarding the procedures for recognizing the existence of indigenous peoples, local wisdom, and indigenous peoples' rights related to environmental protection and management. Local wisdom is ideas or values, local views that are wise, full wisdom, good value embedded and followed by members of the community. Local wisdom is a source of knowledge that is dynamically developed and transmitted by certain populations that are integrated with their understanding of the surrounding nature and culture".

Based on the results of research conducted almost the same as what was carried out by the Partnership Institution (Lembaga Kemitraan) conducted on good governance in several regions in Indonesia, the results show that there are still many regions that have not carried out implementation properly based on indicators of general principles of state administration, so

---

1 Consideration of Law of the Republic of Indonesia Number 22 Year 2014 on Regional Government, State Gazette of the Republic of Indonesia Year 2014 Number 244.
2 General Explanation of Law of the Republic of Indonesia Number 23 Year 2014 concerning Regional Government, State Gazette of the Republic of Indonesia in 2014 Number 244.
3 Article 63 paragraph (1) of Law of the Republic of Indonesia Number 32 Year 2009 on Environmental Protection and Management, State Gazette of the Republic of Indonesia Year 2009 Number 140.
4 Aminuddin, 2013, Menjaga Linkungan Dengan Keserifan lokal, Titian Ilmu, Jakarta, p. 14
impact on the poor service and the welfare gap in the people in the area who have problems in terms of governance that is not good. The results of this study indicate that the Regional Government of North Maluku Province ranks the 3rd (three) worst in terms of governance in the Indonesia Governance Index.\(^5\)

Therefore, it is the most determined in the implementation of state government and national development to achieve a just, prosperous and equitable society based on Pancasila and the 1945 Constitution, Article 1 of the 1945 Constitution stipulates that the State of Indonesia is a unitary state in the form of a Republic. Furthermore, in Article 18 of the 1945 Constitution along with its explanation states that the Indonesian region is divided into autonomous or administrative areas.

### 2 Research Method

This type of research is normative legal research\(^6\) and empirical legal research using legislation approach, conceptual approach, and case approach.\(^7\) There are two types of data in this study, namely (1) primary data, i.e. data derived from the results of interviews and observations, (2) secondary data i.e. data obtained from library research and documents. The data collected through the stages of editing, then coding and analyzed using descriptive-qualitative techniques.

### 3 Results and Discussion

#### 3.1 Regional Governance Concept Based on North Maluku Local Wisdom.

North Maluku Province is an area that cannot be separated from the history of this nation, because there are 4 (four) Kingdoms\(^8\) which at the time of the archipelago maintained its territory from colonialism which came from the Portuguese, Dutch and Japanese who targeted the region and natural wealth such as spices owned, but thanks to the persistence and resilience of the Sultan in the 4 (four) Kingdoms, the North Maluku region still existed and then voluntarily united to build the Unitary State of the Republic of Indonesia.

Departing from the historical concept, the concept of regional government is actually the meaning of the existence of regional autonomy which gives meaning to the implementation of regional governance.\(^9\) Therefore, in the implementation of regional government, one of the most important principles by emphasizing the principle of regional autonomy by using the principle of autonomy as broadly as possible means that the region is given the authority to

---

\(^5\) An annual governance assessment by the Partnership Institution, accessed at [http://www.kemitraan.or.id/govindex/](http://www.kemitraan.or.id/govindex/) dated October 20, 2015


\(^7\) Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010, p. 96

\(^8\) The kingdom included the Kingdom of Ternate, the Kingdom of Tidore, the Kingdom of Bacan, and the Kingdom of Jailolo. Although in its history there are the oldest kingdoms in North Maluku, the kingdom of Loloda, but those that still exist today are the remaining four kingdoms, in M. Adnan Amal, 2010, *Kepulauan Remah-Rempah, Perjalanan Sejarah Maluku Utara 1250-1950*, KPG, Jakarta, p. 25

make regional policies to provide services to increase the role and initiative and empowerment of the community aimed at improving people's welfare. The concept actually shows that the design of regional government with the concept of governance provides reinforcement so that in the governance process goes according to what is the basic principle in the regional government, by offering a model for the implementation of regional autonomy which also contains the principle of real autonomy and responsibility.

The principle of real autonomy emphasizes that to deal with regional government affairs is carried out based on duties, authorities and obligations which in fact exist and have the potential to grow live and develop in accordance with regional potential and peculiarities. Thus, of course, the content and type of autonomy for each region are not always the same as other regions. Whereas in the sense of responsible autonomy it is seen as autonomy which in its implementation must be truly in line with the objectives and purpose of granting autonomy, which is basically to empower the region including improving people's welfare which is a major part of national objectives.

The meaning of local governance is not only seen as an application of the concept of regional autonomy but can also be interpreted as a regional authority that has a government to regulate and manage the interests of local communities according to their own initiative based on the aspirations of the community in accordance with the implementation of legislation. Local governments as part of the central government with various obligations, with various formats of governance are highly expected to prosper the people with various policies carried out with the concept of meaning management. The concept of improving community welfare is a major step in determining the policy strategy in regional development, the essence of the meaning of welfare is to involve the lives of many people which includes various dimensions: In the political field, it is directed to a system of political fostering in a dynamic, democratic area, more specifically is the development of people's political life so that they can participate in every development process in the region. In the economic field, it is directed to provide the widest possible opportunity in economic and trade activities.

In the field of social, education, health, directed to improving the quality of social life, improving the quality of education, the quality of health so as to increase the quality of population growth both from the outer and inner aspects. In the field of culture, directed to improving the quality of regional culture while preserving the noble culture of the nation with national and international dimensions so that it can strengthen the spirit of nationalism in the frame of the Republic of Indonesia. In addition, the preservation of regional culture can increase regional tourism activities that can increase foreign exchange and increase local income.

In the field of religion, directed to improving the quality of religious life so as to guarantee the freedom of its adherents to carry out worship in accordance with their respective religious beliefs. The harmony of religious life is always fostered to increase national unity in order to avoid social conflicts, as well as conflicts between religious adherents. In the field of law and security, directed to improve the quality of obedience and compliance with national law and local customary law so as to guarantee order, and to create a sense of security to support public welfare.

In accordance with Article 18 of the 1945 Constitution of the Republic of Indonesia, as a juridical consequence of the holding of regional government (regional division) in Indonesia

on the basis of decentralization is the birth of an autonomous region that has regional autonomy in organizing self-government affairs. In accordance with the mandate of the constitution, the regional government carries out governmental affairs that are its authority except for government affairs referred to in Law of the Republic of Indonesia Number 32 Year 2004 Article 10 paragraph 3 covering: (a) Foreign policy, (b) Defense, (c) Security, (d) Judicial, (e) National Monetary and Fiscal, and (f) Religion.

Although the pattern of division of authority in the administration of central and regional government affairs is clearly regulated in various regulations, especially in Law Number 23 of 2014 concerning Regional Government. The end of this regulation actually shows the delegation of authority to the regions to regulate their domestic affairs in order to improve public services, which in turn has a shift in prosperity from the center to the regions. So, the core of the implementation of regional autonomy with the concept of governance by providing the widest possible space for local governments (discretionary power) to organize their own government on the basis of initiative, creativity and active participation of the community in order to develop and fight for their respective regions. 

According to Amrah Muslimin, within the framework of administering government in a country, the government in a broad sense holds on to two kinds of principles, namely the principle of expertise and regional principles. In the regional principle, there are two types of governance principles, namely deconcentration and decentralization. Therefore in the context of regional government, the concept of autonomy is an essential part of decentralized government, in other words regional decentralized government cannot be imagined the running of regional government without the essence of regional autonomy.

Regional autonomy is the authority of the government that is submitted to autonomous regions as a form of decentralization in the scope of a unitary state. Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the State of Indonesia is a Unitary State in the form of a Republic. The implementation of the decentralization principle is in the context of realizing the authority of regional autonomy, so that it cannot escape the Unitary State of the Republic of Indonesia (Article 18 of the 1945 Constitution of the Republic of Indonesia). This provision is the basis for territorial or territorial decentralization. According to Bagir Manan, Article 18 of the 1945 Constitution of the Republic of Indonesia only regulates territorial decentralization, which is interpreted in a narrow sense, with the notion of territorial decentralization is nothing but political decentralization. The reason for this lies in the existence of regional factors. According to Benyamin Hoessin, in essence decentralization is the autonomization of a society that is in a certain territory. A society that was originally not autonomous through decentralization became an autonomous status by incarnating it as an autonomous region that has an independent regional government.

The authority to regulate and manage is the substance of an autonomous region conceptually organized by the regional government. Based on the above description, the
existence of regional autonomy given to the regions in the form of freedom and independence to govern and manage their own government is a manifestation of the demands for efficiency and effectiveness of public services to the community in order to realize the welfare of the community. A good indicator of autonomy is autonomy that gives full freedom to each component to do anything as long as it does not conflict with the order's identity. In this context, local governance based on the values of local wisdom can be interpreted as the most important part of regional development with various concepts that want to be realized in local government.

Historically North Maluku, or more familiarly known as Jazira Moloku Kie Raha, one of the provinces in the eastern part of Indonesia, which had four sultanates and until now these sultanates still existed such as the Ternate Sultanate, the Tidore Sultanate, the Bacan Sultanate, the Jailolo Sultanate. If you can interpret the various values contained in it from the various sultanates, which can be interpreted as an effort to strengthen local government, it actually stores a variety of cultural diversity that not only becomes the identity of the local people of North Maluku but also national and international identity by interpreting the meaning of Moloku Kie Raha with local wisdom, which means customs and rules, Jago loa Se Banari or honest and fair and Ceng se Cange or Popular and Humble. The local wisdom has a foundation with what is called a philosophical aspect called Philosophy: "Jo Se Ngofa Ngare", which means: "You" (the ruler) and "I" (the people), while in the sociological aspect called Balo Kesu Se kano-kano and the normative aspects that exist. These meanings provide important lessons for the people who are in the area to live life with values that lead to wisdom and wisdom in the procession of life. The value of unity, courtesy, ethics and procedures for social interaction, is taught accordingly, and is expected to be able to be realized in a social life. The historical value being taught becomes a great reflection, for every North Maluku community, which can later be learned and expected to be used in the procession of life.

Basically, the cultural values in Moloku Kie Raha are the same, but still in accordance with the structure of the community and their respective customary institutions. Ternate Sultanate is known as Coou value, which can be interpreted as full loyalty to the Sultanate without salary or expectation of getting rewarded. Whereas in Tidore it is known as Bari fola which means the value of mutual assistance to help one another without expecting any reward. For Bacan and Jailolo basically also have the same values.

The implementation of regional government based on the values of local wisdom is actually a reflection of a regional regulation that has been made by the executive and legislative in the area. Based on the provisions of Article 22 A above, Law of the Republic of Indonesia Number 10 Year 2004 on the Establishment of Legislation (State Gazette of the Republic of Indonesia No. 53 of 2004, Additional State Gazette of the Republic of Indonesia No. 4389) which is the elaboration of Article 6 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number III/MPR/ 2000 concerning Legal Sources and Order of Legislation. In the provisions of Article 7 of the Law of the Republic of Indonesia Number 10 Year 2004 is regulated in the hierarchy of laws and regulations consisting of (1) the 1945 Constitution of the Republic of Indonesia, (2) Law/Government Regulation in Lieu of Law, (3) Government Regulation, (4) Presidential Regulation, (5) Regional Regulations

---

20 Rahmatullah H. Sahil, Relevansi Kearifan Lokal Provinsi Maluku Utara dalam Penyelenggaraan Pemerintahan Daerah, Universitas Hasanuddin (Thesis for Master Degree), 2015, p. 66
(Provincial Regulations, Regency/City Regulations, Village Regulations/Regulations that are equivalent). If we pay close attention to this law, especially in the provisions of Article 7, it is clear that Law of the Republic of Indonesia Number 10 Year 2004 explicitly places Regional Regulation (Perda) as part of the legislation.

3.2 Ternate Local Wisdom Values in the Regional Governance of Ternate.

Various values possessed by a group or community in the life of the nation and state are an integral part of the social life of society which can be interpreted as the philosophy of life. In such contexts, these values must be implemented in various aspects of social life, not only limited to a dimension. Confirmation of this matter is important because local wisdom is interpreted as a philosophy that lives in the hearts of the community, in the form of wisdom for life, way of life, traditional rites and the like.21

The meaning of life philosophy can at least show that local aphorism is a collection of knowledge created and believed by a group of people from generation to generation who live together and harmonize with nature. In this context, the state in this case the regional government must conduct various studies by mapping various values of local wisdom that are still alive and developing in accordance with the times, especially in Ternate, so that it can synergize with various policies made by the city government the expectation becomes important so that in realizing good governance in the region is not only seen from one dimension but other dimensions as well.

Such thing at least shows that the synergy between local government and various societies has a strong correlation because the integration between various values of local wisdom can be practiced in both formal and informal contexts in local government management. Local wisdom always develops through oral traditions of speech or through informal education and the like and always get additional from new experiences, but this knowledge can also be lost or reduced. Such a concept actually gives hope that in carrying out various interests of the community, the presence of local government is always needed in various aspects, because the values of local wisdom in Ternate always synergize with the central and regional governments, because it has several values such as (1) as a genuine knowledge of a society that comes from the noble values of cultural traditions to regulate the order of community life, (2) Able to withstand external cultures, (3) have the ability to accommodate elements of external culture, (4) has the ability to integrate elements of external culture into indigenous culture, (5) has the ability to control, and is able to provide clear direction and goals by paying attention to various things that can be generated from these various interactions.

The Ternate Emperor, as well as other sultanates/emperors in North Maluku, has various values of local wisdom which are manifested in the management of good governance. Of course, it must be seen as the most important part in the linking of regional government based on the Law of the Republic of Indonesia Number 23 Year 2014 in Article 1 paragraph 3 asserts that the Regional Government is the regional head as an element of the regional administration that leads the implementation of government affairs which is the authority of the autonomous regional affairs22.

21 Armada Riyatno, et.al., *Kearifan Lokal-Pancasila Butir-Butir Filsafat Keindonesian*, Yogyakarta: PT Kanisius, 2015, p. 28
The city of Ternate in which there is a Sultanate, the Ternate Sultanate, which until now still exists, has the principles and philosophy of the administration of an inherent constitution being a value of the philosophy of the administration of the Sultanate government in carrying out its government based on law that has been compiled together according to the existing tribal unit into the Ternate Sultanate state philosophy known as the six basic precepts (Kie se gam magogugu matiti rara) related to social relations with its people. But in reality on the ground, the principles which are local wisdom have not been accommodated in the practice of regional governance in the concept of regional autonomy that customary law and local wisdom can be offered as an alternative solution in anticipating and overcoming all forms of inequality in governance in North Maluku Province, both as an ethical basis, in the form of Regional Regulations (Perda) or other policies in achieving good governance.

Good governance, is a concept in government management that has been popular since the nineties as if it were a new formula for therapy towards the mechanism of governance of a country to run democratically. Indeed, the principle or principles have long been the joints of government in a democratic country, as in the State of Indonesia the principles or principles have long existed, especially the values and customs of the culture of society as social capital and in line with the principle of participation, transparency and accountability, as well as opening space for community involvement. But these principles or principles as laws that live in society are simply ignored so that they are not used as a reference in public services.

The principles that live in society are basically tested, this can be proven by being there, living, and still surviving the value of local wisdom up to now in local communities and made as a guide to living in relationships between fellow human beings and between leaders and their people. Regional development as an integral part of national development is carried out based on the principles of good governance. Thus the regulation of national resources, the hope to be able to provide opportunities for increasing democracy and regional performance to improve the welfare of society towards civil society that is free from various bad habits such as corruption, collusion and nepotism can be avoided at least such practices can be controlled by all elements. Since the Indonesian government from time to time such problems still color the administration.

Strengthening the governance of Ternate should be able to adopt what is called Bobato Dunia and Bobato Akhirat in the Ternate Sultanate. Both of these philosophies contain the meaning of the division of power, which regulates the problems of government or the world, and regulates the religious problems of Bobato Akhirat. Both of these concepts can actually provide a clear color in the management of local government in the City of Ternate, so the synergy between the values of the Ternate Sultanate becomes a necessity. Thus, the two structures by prioritizing the concepts of the government elite and diversity elite in the Ternate

---

23 In using the name of the Sultanate in this proposal the author likens the same meaning to the Kingdom, but in North Maluku it is more appropriate to use the Sultanate because it is led by the Sultan (Kolano) who has Islamic nuances.
24 The Ternate Sultanate was founded in 1257 marked by the coronation of Manshur Malamo as the first Sultan (in the ternate sultanate called Kolano) in M. Adnan Amal, Op.Cit., p. 55
27 Rustam Hasyim, “Bobato Dunia dan Bobato Akhirat Dalam Kesultanan Ternate”, Malut Pos, 2018, p. 8
Sultanate can at least provide good governance model by prioritizing the values of local wisdom.

Bobato Dunia concept or government elite in a clear concept or structure or authority, especially in its hierarchy by establishing a Sultan occupying the highest place, then followed by the nobility. In order for the sultanate government to proceed as expected, the Sultan can be accompanied by a royal council called Bobato which deals with government and religion. In the government Bobato Dunia structure there are several royal institutions such as Gam Raha (Supreme Council of the Kingdom), Bobato Nyagimoi Se Tofkange (Legislative Institution), Fala Raha (Kolano Advisory Council or Sultan), Sabua Raha (Four Supreme Judges), and The Council of Ministers or called Bobato Madopolu consisting of Jogugu (Prime Minister), Kapita Lau (Admiral of the Navy), Soa-Sio Law (Minister of Home Affairs), Sangaji Law (Minister of Foreign Affairs), Tuillamo (State Secretary), and Sangaji (Regional Government or Governor).

All of these officials were sworn in by the Sultan and a process like this went on until now from the process of transfer of the sultanate's position which occurred. Based on the formadiyah agreement, positions in the nobility were handed down from generation to generation or called dabo se barasi from various sources which up to now remain firm in the Ternate Sultanate, such as the Marasa Oli clans, Toma Gola, Toma Ito, Jiko, Tobala and Tora Ngara. Based on existing data up to now these clans which occupy various strategic positions in the Ternate Sultanate, there are at least four strategic positions namely Gam Raha (Supreme Council of the Kingdom), Bobato Nyagimoi se Tufkange (Legislative Institution), Fala Raha (Kolano or Sultan Advisory Institution), Sabua Raha (Four Supreme Judges).

Whereas Bobato Akhirat or religious elite is one of the most important functions in the Ternate Sultanate which acts as the leader of the Islamic religion. How important the role of religion, especially Islam, is that in the structure of the Ternate Sultanate institution has a very strategic and santral position. But in its structure, it is still held by the Sultan as a religious leader (amir mukminin) or substitute for Rasul or tubaddilur Rasul. In carrying out the process, it still shows that it can happen because of a value system that gives legality to the position of a Sultan. In order to carry out its function and role as a cadre as expected, it can be assisted by five Imams, namely Imam Jiko, Imam Sangaji, Imam Moti, and Imam Jawa. Apart from the four Imams, Imam Nangsa is in charge of broadcasting religion, taking care of death ceremonies, marriages, and distributing inheritance at the district level. Whereas Imam Bangsa specifically only manages and organizes problems concerning the sultan, nobility and his family.

But based on the data in the field the values of local wisdom contained in the Ternate Sultanate cannot yet be implemented in good governance in Ternate. This shows that local government is still running with its own governance structure. If in fact these two government structures can be well combined and hopeful to realize local government that has wisdom that can be realized. Examining more deeply the various structures and institutions that exist with the existing authority both within the local government and government contained in the Sultanate of Ternate is not contradictory either in concept or theory but actually has a variety of similarities that complement each other because they all want to realize the city of Ternate which is fair and prosperous based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

28 Ibid.
29 Ibid., p. 9
4 Conclusion

First, the values of local wisdom in North Maluku which have relevance in supporting the administration of the government with the concept of Se Atorang local wisdom which means customs and rules, Jago loa Se Banari or honest and fair and Ceng se Cange or Popular and Humble. Local wisdom has a foundation with what is called the philosophical aspect called Philosophy: "Jo Se Ngofa Ngare", which means: "You" (ruler) and "I" (people), while in the sociological aspect called Balo Kesu Sean canoeing and normative aspects. These values provide important lessons for the community so that, thus, governance is not only in the context of formal values that apply such as the value of unity, courtesy, ethics and procedures for social interaction. but also adopting the value of local wisdom, then these two values synergize in governance as expected in a social life. Therefore, there needs to be political will from the local government to encourage various regulations, especially local regulations and various policies that are made must reflect as well as animate the various values of local wisdom because it becomes a social capital that is not only desirable from the people of North Maluku but has become the hope and desire of Indonesian society in general. Second, Understanding the values of the local wisdom of the Ternate Sultanate with the concept of Bobato Dunia and Bobato Akhirat shows that both of these philosophies contain very philosophical meanings in the relation of local wisdom values in the management of local government with the concept of power sharing which governs the problems of government or Bobatu Dunia and there are regulating religious problems Bobato Akhirat. Both of these concepts are expected to synergize in the management of local government in the Ternate. Bobato Dunia concept or government elite in a clear concept or structure or authority, especially in its hierarchy by establishing a Sultan occupying the highest place, then followed by the nobility. In order for the sultanate's government to work as expected, the Sultan could be accompanied by a royal council called Boboto which deals with government and religion, which is also assisted by several royal institutions. Therefore, the values of the local wisdom must be able to synergize with the institutional structure established in the regional government because it is a living law that has not been used as a foundation in the administration of regional government, but local wisdom from the normative aspect is guaranteed in the 1945 Constitution of the Republic of Indonesia and other laws and regulations.

References

The Countermeasure Effort of Child Delinquency Not to A Legal Case in Criminology Perspective

Abnan Pancasilawati

{abnanpancasilawati@gmail.com}

State Islamic Institute of Samarinda, Indonesia

Abstract. The Child is 12 to 18 years of age and not married yet. The child is considered that has not knowledge but also has a unique and exclusive personality. Child's world is the dream world so that he can not differ from the real world. The child also a great imitator, so he able to imitate adult action. In the growth time, child experience puberty which is identical with identity finding. It’s the critical point of a child to show existence, in the social world of his family as well as intercourse environment because they will be showing to existence for his family and his social environment. Over exist of children make his behavior personality can deviate from society older than called juvenile. At the and the behavior can violate legal, religion and cultural norm. The implication is the child can be labeled as rude, the religious called the cursed child and the law called a crime perpetrator. Juvenile Court is regulated under Law Number 3 the Year 1997 Article 1 section 2 Brat is: a. A child who commits a crime b. A child who commit acts that are prohibited for children, either by law or other norms in society. Any crimes committed by and hence chargeable to a crime perpetrator, even it is a light crime. The criminology study can see a crime perpetrator, how child commits a crime. The study can analyze how a child does a commit crime and then find a solution of prevention effort in order the child not get a legal case.

Keywords: The Countermeasure Effort, Child Delinquency.

1 Introduction

Indonesia is the largest population state, on July 1st 2015, it is 255,461,700 or 3.45% of world population. This can be problem and challenge. Therefore the state has authority to regulate. If the state cannot manage, it will increase unemployment and at the end, family welfare decreased. This impacts to parent attention on their children. The over existence of children make their behavior can deviate from norms.

Globalization era has no good effect because foreign culture will influence the child behavior. So, he is able to imitate foreign culture which fell dashing. Development of science and technology has an influence on insight and thought. On the other hand, the development can open negative content which can not be prevented by the government, like pornography, hoax and else. This impact can harm their behaviour.

A Family is a small group of people consist of a father, mother and children (Law Number 4 the Year 1979 about the child’s welfare). The small group is an entity who cannot be separated from father, mother, and children. Everybody in this family has a right and obligation to guarantee their survival. Parent have a role to children, so they give education and guiding according to values and attitudes regarding morality to their children.
when the child has entered the period of puberty which is the phase of identity searching. The child’s puberty is 8 to 16 years in age. This is the period of their hormones begin to develop so the voice changes, the feather grow in certain places and women have menstrual experience. This is according to knowledge which increase and begin identity molding. All of them will arise problems began by seeking for attention both from family and social environment. If the attention is not gotten, so he against every obstacle he face. Uncontrolled action will violate customary, social and legal norms that are called mischievous and when violates the law is crime perpetrator.

Managing a naughty child problem is not easy. This mainly, in developing countries, children are not ready to accept such rapid changes. In one side, the child has strict behavior through culture environment who become their personal self, so he has established a certain contradictory attitude to change whatever. The soul of a child is unstable attitude and easily influenced by something that comes to him, which often leads conflicts in his environment. It will influence their behavior and possess a problem to the environment which they live and also to themselves.

Children behaviour is uncontrollable by norm and law, this is mischievous, if he cannot control, although age is still considered immature, his actions can injure other people, so the children can violate law. The problem of child delinquency is not the only problem of national law in particular state but it is a legal problem of all countries in the world or global problem. Many delinquencies are contrary to the law which occur within the community. This must be put attention seriously law enforcement from officials and the community.

The mass media show concrete facts of child behavior such as brawl among student, villages, drunkenness, drugs, inconsiderate in driving a vehicle, a student is pregnant out of wedlock and others. Therefore, parents and all parties should be careful and always give education and guidance to their children.

In general, causes of child mischiefs not only his own but also parent role mistake to educate or too hard, too indulgent, environmental influences and others. To overcome this problem not only focus on juvenile, but also parents must give an understanding and guidance on appropriate education and always provide monitoring so that morally damaged.

The increasing of child delinquency and violence occurred in Indonesia, so that it would damage child mentality. Violence is a way to resolve conflicts practically. Violence must be solved so that it cannot entrench community.

Will Indonesia children grow and develop into a great generation?. Thus it takes an effort to overcome child's mischief and one of them from criminology perspective.

2 Discussion

2.1 Children has a unique

Humans are a mystery whose difficulty to guess because they are a dynamic person, and act on both empirical and psychological stipulations. Human nature changes always because of abstract human nature and depends on the conditions. If conditions are not favorable so directly turns to act differently.

The Child is 12 to 18 years of age and not married yet. The Children as a human being who has a mysterious person, unique and exclusive. They are the next generation who forwards leadership of the nation and state. Therefore they need education by related parties included parent, community, and others. The children cannot be independent yet, so related
parties must realize children welfare in growth and development spiritually, physically and socially. As a person needs consideration both clearly and precisely. Thus, children become an independent people.

Children behavior is changeable who is not the same as adult. The children also a great imitator, so they are able to imitate adult action. Many aspects resolve on child problem like criminology approach. This approach prevents the brat so they spare the law. However, if they violate law, so they are treated who conform is age and no as adults.

Children have a unique personality who try to adjust the circumstances in their environment, they can do without thinking, like protection of themselves from threats or act which violate of the norm, religion, and law called brats.

The kind of deviation/ delinquency has relation with a rampant culture of violence among children as follows;
1. races on streets that interfere traffic security, and endanger themselves and others
2. Impulsive behavior, rigidity, disrupt the environment. This behavior is caused by excessive energy and cannot control and terrorizing the environment.
3. Fighting between gangs, groups, schools, tribes and thus effect casualties
4. Skipping school to gather on the street, or hiding places in doing immoral acts.
5. Dangerous acts, intimidation, extortion, robbery, stealing, pickpocketing, robbing, others.

The problem of violence is an aggressive action which can act such as hitting, poking, kicking, slapping, punching, biting, all forms of violence. Although violence is a normal action, the same action in a different situation will violate norm, religion, and law named deviation.

Violence can damage both physical or psychological. This violates regulation called a crime. Thus, the term of violence is more obvious which show a crime who violate the law.

Delinquency of children is detrimental to society. There are 2 (two) forms of motivation who a person or group moves to perform a misconduct because want to achieve the desired or satisfied actions namely intrinsic and extrinsic motivation.

1. Intrinsic Motivation of Child Delinquency
   a. The Factor of intelligence
      The factor of intelligence is ability to acquire and apply knowledge and skills. Meaning an ability to weigh and make decisions. In general, the delinquency of these children have lower verbal intelligence, this effect such as miss out on lower school achievement so that social insight is less sharp, and cannot know either good or bad of action.
   b. The factor of age
      The factor of age influence to commit of crime. Children of age behave as children who assume the world is a game, but different behavior can commit both offenses or crimes.
   c. The factor of Gender
      Law is not distinguished between the sexes of men and women because both sexes have potency for naughty. But the men do more evil and women will be victims of sexual harassment and casualties
   d. The factor of child position in family
      The order of birth influence of a child in family, such as first child, second and so on. usually for single children is spoiled. The standard cannot be applied because all
wishes are fulfilled. As a result, it can not adjust other environments. If the child cannot adjust, so can desperate, finally commit a violation or a crime.

2. Extrinsic Motivation Of Child Delinquency
   a. The Factor of Family
      The child growing in a lovely family is different from them who grow both in a rough family and broken home. The increasing of crime and delinquency because social control does not function well by family and society. Thus, the family fails to educate children, this causes them act of deviation that social sanctions imposed by society.

   b. The factor of education and School
      School is an education and media for child who interacts each other or intermediary for development of children soul with the teacher. Schools have responsibility for the education of children, whether scientific education or character education. The inability interacts with the school so create negative of effects for the child mentality development, thus the child commits a deviation behavior.

   c. The factor of Child interaction
      The parent must know about influence by the social environment to children. If the child friends like to behave deviation so the child will commit deviation. The child does not follow so be ridiculed and humiliated.

   d. The Influence of Mass Media
      The mass media has an influence on the development of children. The child commits a crime which is caused such as of the influence of reading, inappropriate images, films of violence and pornography. For a child spends his spare time to commit which deviate from an action, it will be dangerous for child's future.

2.2 The Child Delinquency Is A Stigma

   Mischief is a stigma given to a child when the child not follow norm. The child commits anything without realizing whether the act injure him or others. The brat has different both between individuals and cultures. This means that children's delinquency problems and standards are different and it is strongly influenced by individual perceptions and culture. This view of difference is called relativism. Relativism sees that an acquaintance should not be universally assessed but the concept of delinquency must be judged by the value of the individual or the culture itself. An act is called naughty by one individual but not for another individual. Likewise in the cultural context, an act was called naughty but not called brat by other cultures.

   Childhood is a turbulent time. At this time the behavior can change quickly. This change is caused the burden of homework, school work, or daily activities at home. Despite the behavior of child change rapidly, it is not a psychological problem.

   Children show their existence to others because they assume that other people admire or criticize them, as same as they admire or criticize themselves. The assumption makes confidence increase. For girl will dress up for hours in front of the mirror because believes that people will glance and are interested in her beauty. While boy try to looks unique and great so he believes whoever is an impress.

   Children often think of themselves as capable, so they do not think of the consequences of their actions. Impulsive actions are often performed because they are unconscious and unknow the effects.
The concept of age regulation in Indonesia is diverse which depend on which law is used. Because the child's age is conditioned by the rule of law, the Act of Indonesian regulate the children under age or immature.

Based on the above, the age limit used in Indonesia's positive law and other legislation, including:

1. Article 330 of the Civil Code: immature is those who have not reached the age of 21 years and are not married yet.
2. Law Number 1 The Year 1974; Marriage is the prospective bride by marriage law must have reached of 19 years old of men and 16 years old of women.
3. Act No. 3 of 1997 on Juvenile Court: the child is a brat in the case who has reached the age of 8 (eight) to 18 (eighteen) years old and has never married.
4. Law Number 23 The Year 2002 regarding Child Protection: a child who is not yet 18 (eighteen) years of age, including a child who is still in the womb.  

Understanding the delinquency of child can be known on the definition what is meant by child mischief, as quoted from the book Romli Atmasasmita (1983), that any act or behavior of a person under the age of 18 years and not married yet which is a violation of legal norms in effect and may harm the child's personal development.

Meanwhile, according to Article 1 point 2 of Law Number 3 the year 1997 concerning Juvenile Court, mean by brat is:

1. A child who commits a crime
2. A child who commit acts that are prohibited for children, either by law or other norms in society.

Crime and delinquency of children cannot be separated by the context of the socio-cultural conditions of his day, because at each period is characteristic, and give special challenges to the young generation. In this regard, delinquency of children commits a crime both alone or in groups.

According to Wagiati Soetedjo, the child delinquency is an act or a violation of the norm, both legal norms and social norms conducted by young children (Wagiati Soetedjo, 2008). Furthermore, his opinion, child mischief as delinquency which is not the child crime, because it is too extreme, if a child commits a crime is said or labeled as a criminal, while the incident is a natural process which it is not every human experience.

According to Romli Atmasasmita (1992) the child delinquency: first, the stamp or label attracts attention the observer which be given by the observer; second, the label or stamp be influenced by a person, so acknowledges itself as the stamp or label who is given by the observer. These processes can increase the behavior of deviation and form a criminal career. A person has obtained a stamp or label by itself who will be the attention of the people around him. Furthermore, the vigilance or concern of those around him will affect the person and crimes will be possible again.

In the Indonesian Criminal Code, a crime must contain elements:

1. The existence of human actions;
2. The act must be in accordance with the provisions of the law;
3. An error;
4. People who do should be accountable.
Based on the above provisions that the person commits something so he must accountable. He knows the act is prohibited by applicable law. A child is a certain age, he has not been able to be categorized as an adult who knows the consequences of his actions, so he can be accountable for all the actions he chooses because of he is an adult position. But the child, in this case, has unstable psychology.

His action is a manifestation of puberty without any intention to harm others as what is implied in a criminal act (Criminal Code), that know and aware the consequences of his actions and the perpetrators can be responsible.

2.3 Relativisme of Delinquency Culture

A culture of delinquency or violence among children is very much happening, both in big cities and small towns. Such deeds are essentially either from themselves or others. Usually delinquency or violence background from economic conditions and the surrounding community. Criminal acts are secretly and blatant. Crime is still a unity with poverty, including poor science, poor self-esteem, poor hearts and many others.

That criminology is a science of crime. Criminology as a science must be able to provide benefits for the person who studies. Benefits of criminology include
1. To overcome the crime that exists in society;
2. Eliminating thoroughly;
4. To avoid negative feelings or to avoid unhealthy and unhealthy sympathy for the offender
5. Increase the horizon of the criminal law itself which in this case will be known later in criminal law the term criminalization, decriminalization, penalization, depenalization.

The establishment purpose of a science of criminology as a tools analysis to examine, explore and understand the subject matter, so the criminology theory aims to:
1. Provide a conceptual framework to aid careful observation and description of the crime and social reactions to crime.
2. Formulate a system of basic postulates can explain crime and social reactions.
3. Upholding a basis of knowledge and methods so that under certain circumstances enabling control of crime and social reactions.
4. Forming a conception of criminal justice work.

Thus, criminology is very important to development in assisting the disclosure of delinquency of children who leads to alleged violations and crimes for criminal law enforcement.

2.4 The Kriminology Of Child Delinquency

According to experts the definition of Criminology as follows (Topo Santoso dan Eva Achjani Zulfa, 2010) [4], sebagai berikut:

According to Bonger, the definition of Criminology is a science that aims to investigate the symptoms of crime as possible.

The definition of Criminology by Sutherland is the whole science that binds to crime deeds, which are categorized as social phenomena. Sutherland says that criminology includes processes of legal action, violation of law and reaction to lawlessness.
The definition of Criminology by Thorsten Sellin extend by adding conduct norms as one of the scopes of criminology research, so the emphasis here is more as a social phenomenon in society.

According to Soedjono Dirjosisworo (1984), Criminology is a science that studies causation, improvement, the crime as a human phenomenon by collecting various contributions of science.

Elements of criminology According Soedjono Dirdjosisworo
1. Criminology is a science;
2. Who study causes of evil;
3. With the cause of crime consequences then arise awareness to make improvements and prevention

Criminology is a science of crime itself, its object is crime and criminals. The aim is to study the causes so the person commits to a crime which using a methodology both sociological and economic. (Rusli Effendy. 1978)

Romli Atmasasmita (1984) criminology has two senses is: Criminology in the narrow sense is the study of crime. And Criminology in its broadest sense is the study of penology (developmental punishment) and methods related to crime and the problem of crime prevention with non-punitive actions.

Restrictions on crime in a juridical sense are human behavior that can be punished under Criminal Law. restrictions on criminology, namely: (Soedjono Dirjosiswono 1984)
1. Gaining a picture of human behavior from the social institutions of society that influence the tendencies and deviations of legal norms.
2. Seeking better ways to use criminological understanding in implementing social policies that can prevent or reduce and cope with crime.

Criminology consists both pure and applied criminology. Pure criminology that includes (Bawengan, G.W, 1991):
1. Criminal anthropology is the science of crime human (somatic). This science provides answers to the question of the crime perpetrator has signs like what? Is there a relationship between tribes with crime and so on.
2. Criminal sociology is the science of crime as a symptom of society. The subject matter is answered by this field of science which causes of crime in society.
3. Criminal psychology, the science see a criminal from his soul.
4. Psychopathology and Criminal Neuropathology is the science of criminals are mentally ill or nerves.
5. Penology is the science of growing and developing of the decide.

Whereas the applied criminology consists of:
1. Criminal hygiene is an attempt to prevent the occurrence of crime, such as the efforts undertaken by the government to apply the law, life insurance system and welfare to prevent the crime.
2. Criminal politics is a crime prevention effort who has occurred in a crime. This is important to know the cause who commit a crime. Example, the cause is economic factors, so the effort improve skills or open employment, thus not with the imposition of sanctions.
3. Criminalism (police scientific) is the science of conducting criminal investigation techniques and criminal prosecution.
Thus criminology is a collection of a science of crime which the aim can knowledge and understanding of symptoms of crime by studying and analyzing scientifically, uniformities, patterns and causal factors relating to crime, perpetrators of crime and public reaction to both.

Romli Atmasasmita (1992) formulated that criminology is a science that uses scientific methods in studying and analyzing order, uniformity of patterns and factors, causes related to crime and criminals, and reactions social to both.

Understanding of criminology According to Soedjono Dirjosisworo (1984),

Criminology is a science studies causation, improvement, crime as a human phenomenon. The elements of criminology include:

1. Criminology is science;
2. Who study causes of evil
3. With the cause of crime consequences then arise awareness to make improvements and prevention.

Sutherland developed the theory of Differential Association (Topo Santoso, Eva Achjani Zulfa 2007) child delinquency due to social relationships. The more social interaction, so the more of delinquency.

Definition crimes according to R. Soesilo (Topo Santoso, Eva Achjani Zulfa 2007)

1. Definition of Crime from a juridical point of view, Crime is a border of behavior which contrary to the rules of the law.
2. Understanding of crime from a Sociological point of view, Crime is an act or behavior which not only harm the sufferer but also the community. this leads to loss of balance, tranquility and order

Crime cannot escape the lives of the people. A person interacts with the other who can lead to conflict. The definition of crime is an act which violates the rules of society.

According to Howard Becker(Topo Santoso, Eva Achjani Zulfa 2007), a person is a perpetrator crime which is given to him. The behavior of a person is influenced by the stamp of others. Then the stamp is attached to him who commits a crime.

An act is a crime or violates the law which fulfills of crime elements is:

1. The first element of a crime is an act which causes harm to others.
2. The second element of a crime is regulated in the Criminal Law Code.
3. The third element of a crime is the mental element of a person's intention to commit a crime or knowledge that one's action or lack of action would cause a crime to be committed.
4. The fourth element of a crime is the fusion of crime deed and intent.
5. The fifth element of the crime is regulated both deed and injury by the Criminal Law Code.
6. The last element of a crime is a criminal sanction which threatens the act.

2.5 The countermeasure of Child Delinquency

The factors of cause is a behavior who deviant among children, this occurs is a conflict between norms prevailing in society and the values of life owned by individuals.
Child misbehavior in puberty growth is causing unpredictable child behavior, but this is not justified child behavior. However, this puberty needs strict supervision to keep guiding and directing the child well.

One of the other factors must attention is the age friends who have an important role in increasing criminality among children. according to Sutherland, criminal acts are not natural but can learn it. If child delinquency commits brawls and other crime. In terms of social control theory, the delinquency and crime have related with sociological variables, such as family structure, education, and dominant groups.

This social control is caused by three kinds of development of criminology. That is; first, the reaction to labeling and conflict orientation. second, the emergence of the study of Criminal Justice as a new science which brought criminology to become more pragmatic and system oriented. Third, social control theory is a new research technique especially for the behavior of children, namely self report survey.

The problem, the most important is how to find the right solution to solve this problem. So it becomes a serious concern for the whole community that is parents, teachers, schools, community leaders, religious leaders and government who increase supervision as a preventive effort.

Based on the problem of child mischief, then there are several solutions that can be done to overcome or minimize the problem of mischief, among others by:

1. Establish a good environment

   As mentioned above, the environment is the most important factor which affecting human behavior. Creation a good generation influence human behavior so it must create a good environment because bad environment makes damage on human behavior.

2. coaching in the family

   The first coaching and planting of behavior are within the family. The family is the place of instruction for the child as the formation of moral values and instill the values of goodness to the child so it can become a habit for the child. Errors in shaping behavior if the attention of the family to child coaching is left to the helper because the demands of the needs of both parents must work. There are also parents who can not guide their children because they have no knowledge and bad habits.


   School is a formal educational institution established to provide knowledge in order to facilitate and shape behavior. The role of teachers in educating become role models for children, so that what is expected can be achieved. School is a place to form the character of the child, but not only submitted to the school alone.

   The third attempt above is a preventive effort which controls all social change with maintaining a stable (equilibrium) and sustainable (continuity) social system, through two different social mechanisms in the form of socialization and integrated social control, so as to prevent the child from dealing with the law.

   In fact, if a child cannot be controlled by his or her family, so the parent may hand over his or her child to the state for upbringing by the state. Parent feel guilty but for correct the child so it can be done. For example, a child is addicted to drugs, steal money to fulfill his wishes and sometimes threatened his parents, so this child's actions cannot be allowed. The parent role report child to the related parties so that to get a comprehensive handling so that children do not traps drug.
Restorative Justice and Diversity is an alternative effort to solve the problems of children in conflict with the law. In this diversionary effort, the Police Agency may use its discretionary authority. Among others are not holding the child, but setting an action in the form of returning the child to his parents or submit it to the state. At the prosecution level, a diversion attempt cannot be made because the prosecution has no discretionary authority. Whereas at the authority of the court is to impose a jail sentence or imprisonment. Therefore, there should be a clear regulation on the effort to be diverted both at the level of the police, prosecutors and courts as regulated in Law No. 11 the Year 2012 on the criminal justice system of children. So that police officers do not use their authority is not clear, but based on the provisions of applicable law. Then in the implementation of the judicial process of Law No. 3 of 1997 has not prioritized the legal approach with Restorative justice as well as the approach contained in Law No. 11 of 2013 which prioritizes restorative justice approach.

3 Conclusion

The Child is 12 to 18 years of age and not married yet. The child is considered that has not knowledge but also has a unique and exclusive personality, but the child has deviant behavior, in perspective criminology, an act is a form of deviant behavior that forms a brat stigma as self-actualization of the child in the association to find the identity. In order, the behavior does not become an act that will deal with the law so handling must also be more comprehensive and integrated, for example, must perform diversion, principles of child protection and so on, in order to prevent child misbehavior.

The child delinquency is a stigma in family or culture which is relative because child delinquency is not universal but relativistic. The tendency of child delinquency due to intrinsic and extrinsic motivation, therefore it is necessary to handle the child delinquency, so as not to become a troubled child or dealing with the law. based on relativism of child delinquency has a standard of delinquency. Every culture of society has values to guide child mischief.

Prevention is the effort to find the problem, such as doing preventive efforts (before the crime) and repressive efforts (after the occurrence of crime). Prevention efforts can be done with the help of another science is Criminalistik science, this science finds causes a person committed a crime and what caused the crime. While Penology is the science of how to punish a prisoner but not torture in order not to commit crimes again.

Restorative Justice is a diversity process. All parties are involved in a particular offense to jointly solve problems and create an obligation to make things better. So it necessarily involves the victim, the child, and the community in finding solutions to reconciliation, reconciliation, and reassurance, there are not based on retaliation. Diversi is the transfer of settlement of child cases from the criminal justice process to proceedings outside the criminal justice.

Not all parents can educate, guide and advise their children well. Obedient children are the hope of all parents, but there are children dare to snarl and beat the parents. So it is necessary to do extreme efforts is to revoke custody of parents or parents. then the parent must be willing to relinquish custody and give it to the State through the Stipulation of the Court to be a Civil Child or a State Child, in the interest of the child as a generation of nation and State.
References

[8]. ibid
[11]. ibid
[12]. ibid
[13]. ibid
[14]. ibid
Analysis of Implementation of State Householder State Housing (Case Study at Country Household Storage House of State Class 1 Samarinda)

Marwiah Johansyah¹
{Marwiahjo1987@yahoo.com¹}
Lecturer of FKIP Universitas Mulawarman ¹

Abstract. The purpose of this study is to clearly see the management of state seized goods in Class 1 Samarinda Rupbasan, as well as the dangers that arise in the management of state seized objects in Class 1 Samarinda and PT. settlement efforts. This research is a descriptive type of research and if viewed from the understanding it includes empirical legal research. The research approach used in this research is qualitative analysis. Based on the results of the research that has been done, it can show that the implementation of the management of objects regulated in the Regulation of the Minister of Justice of the Republic of Indonesia Number: M.05.UM.01.06 Year 1983. Meanwhile, the implementation guidelines are regulated in the Decree of the Director General of Corrections Number: E2. UM.01.06 of 1986 which has been enhanced by the Decree of the Director General of Corrections Number: E1.35.PK.03.10 of 2002 concerning Implementation Guidance and Technical Guidance of State-Made Goods and State Seized Goods at the State Conspiracy Storage Center. The implementation mechanism for the management of state goods and state booty in Rupbasan includes receipt, registration, registration, maintenance, removal, rescue, security, release and deletion as well as reporting. In the implementation of the management of confiscated materials at the Class 1 Rupbasan Samarinda, there are still problems that fall within the internal and external domains.

Keywords: Implementation, Management, Rupbasan.

1 Introduction

Indonesia is a legal state. Thus the affirmation of Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia 1945. As a state of law, the state guarantees all citizens at the same time in the law and government, and is obliged to uphold such law and government with no exception. So all the behavior and deeds of Indonesian society must be based on the applicable law, both written law and unwritten law. So that any problems arising relating to violation of law then be resolved by law in effect at that time.

In the Criminal Procedure Code, Indonesia has Law No. 8 of 1981 on Criminal Procedure Code. With the creation of the Criminal Procedure Code (KUHAP), for the first time in Indonesia a complete codification and unification shall be encompassed in the sense of covering all criminal proceedings from the beginning of the investigation to the Supreme Court appeal, even to include the Herziening and the execution of the decision.
In carrying out its role as procedural law, the Criminal Procedure Code regulates the existence of forcible attempts in the investigation of arrest, detention, searches, seizure and examination of letters. Regarding the seizure according to Article 1 point 16 stated:

"The seizure is a series of investigative measures to take over and or to retain under his control of immovable or immovable, tangible or intangible objects for the sake of proof in investigation, prosecution and judicial proceedings."

In connection with foreclosure, confiscated items may include:
1. Objects or bills of a suspect or defendant wholly or partially derived from a crime or part of proceeds of a criminal offense.
2. Objects that have been used directly to commit a crime or prepare it.
3. Objects used to prevent criminal investigations.
4. Made specifically for committing a crime.
5. And other objects directly related to the crime committed.

The five objects can be used and categorized as evidence and function in the process of examination of a criminal case, so that in the process of obtaining evidence and confiscation and placing the confiscated goods needed a place which is the central storage of all kinds of confiscated goods.

Regarding the storage of state confiscated items as evidence in a criminal case, the Criminal Procedure Code (Criminal Procedure Code) is contained in Article 44 paragraph (1) which reads: "State Confiscated Objects are kept in Storage House of State Treated Objects". In the Samarinda region there is a House of State Confiscated Storage House, but its function and role can not be said maximally, due to the absence of a functional policy which stipulates that the need for Rupbasan in a criminal court proceeding process concerning the storage of evidences which has been used by the general public Rupbasan has not functioned properly with regard to the safeguarding, storing, securing, and saving of confiscated objects. Structurally and functionally, Rupbasan is under the Ministry of Justice environment which will be the storage hub of all sorts of confiscated goods from various agencies. Establishment of Rupbasan is based on Article 44ayat (1) KUHAP and also PP. 27 of 1983 and the Minister of Justice Regulation no. M.05.UM.01.06 Year 1983.

In relation to the so-called RUPBASAN arranged in the Criminal Procedure Code, PP No.27 of 1983 and the Minister of Justice Regulation no. M.05.UM.01.06 In 1983, it was not yet clear on the implementation of the implementation. To clarify the implementation, it is necessary to know how the Mechanism of Implementation of State Seizure and State Confiscated Management in Rupbasan, so that it is then regulated in the Decree of the Director General of Corrections No. E1.35.PK.03.10 of 2002 on the Implementation Guidelines and Technical Guidelines for the Management of State Stamped and State Confiscated Goods in RUPBASAN, as the elaboration of the Regulation of the Minister of Justice no. M.05.UM.01.06 Year 1983.

In order to implement the Management of State Confiscated State and State Confiscated Goods in Rupbasan, it is necessary to have a good cooperation from various related institutions such as Courts, Police and Attorney General as well as other agencies to submit confiscated objects to be stored in Rupbasan its security can be maintained and protected and if in the judicial process the decision to be returned can be returned completely without any defects or damages. According to Anton.M.Moeliono, management is the process of providing supervision on all matters involved in the implementation of policy and achievement of goals (Anton.M.Moeliono, 1998: 534).
Based on the above considerations the authors want to conduct research in order to find out more in depth about the mechanism of implementation of confiscation of state confiscated objects and spoils of state in Rupbasan and to know the obstacles that arise in the implementation and efforts to solve it.

2 Research Methods

In this research method using qualitative descriptive research method. (Sugiyo, 2010: 165), declared descriptive qualitative research is a method conducted with the aim to lift facts, circumstances, variables, and phenomena that occur when research takes place and presents what it is.

Descriptive research can also be defined as research that aims to make a description of the phenomena found, both in the form of risk factors or effects or results. The phenomenon of research results is presented as is, without trying to analyze how and why the phenomenon can occur. (Arikunto, 2002: 44).

Through this type of qualitative description research the author uses the normative-empirical legal approach. This study focuses on legislation in relation to one another and its relevance in practice. And the topics in this study is the problem of optimization of a legal entity, the role of legal institutions or legal institutions, and the implementation of the rule of law in accordance with legislation.

3 Result and Discussion

The definition of seizure, formulated in Article 1 of the 16th item of the Criminal Procedure Code, which reads: "seizure is a series of investigative actions to take over and / or keep under the control of immovable or immovable, tangible or intangible objects for the purpose of proof in the investigation, prosecution, and justice (Criminal Procedure Code, Article 1 point 16).

Foreclosure is a legal action in the process of investigation conducted by the investigator to legally control of a good, both movable and immovable goods allegedly closely related to the crime being committed (Hartono, 2010: 182).

A means by a competent authority to temporarily control the goods belonging to a suspect or defendant or not, but deriving from or related to a crime and useful for proof (Darwin Prinst, 2002: 69).

The purpose of seizure, for the sake of "proof", is primarily intended as evidence in court. Most likely without evidence, the case can not be submitted to the court. Therefore, in order for the case to be completed with the evidence, the investigator forecloses to be used as evidence in the investigation, in the prosecution and examination of court proceedings (M.Yahya Harahap, 2007: 265).

By looking at the provisions governing seizure, within the law there are different forms and procedures for foreclosure. Are as follows:
1. Ordinary foreclosure
2. Foreclosure in circumstances necessary and urgent
3. The seizure is caught red-handed
4. Indirect confiscation
5. Confiscation of other letters or writings

The foreclosure action can only be conducted by the investigator with the permission of the local District Chief Justice. In a very urgent circumstance, if the investigator must act immediately and it is impossible to obtain a permit first, without prejudice to the requirement of the permission of the Chief Justice, the investigator may confiscate only the moving object and shall immediately report to the District Court Chief to obtain approval (Bima Priya Santosa, et al, 2010: 12).

In the Minister of Justice Regulation no. M.05.UM.01.06 of 1983 on the Management of State Confiscated Materials and State Confiscated Goods in RUPBASAN, explains the definition of confiscated and confiscated objects of the State, namely:

a. State confiscated items are objects confiscated by an investigator, public prosecutor or an official whose position has the authority to confiscate goods for the purposes of evidence in the judicial process.

b. The spoils of the State are evidences that have obtained permanent legal force, are seized for a State which is subsequently executed by: destroyed, auctioned for the State, submitted to the agency designated for use and submitted in RUPBASAN for the purposes of evidence in another case.

c. The provision of Article 44 of KUHAP stipulates that the storage of confiscated objects is in RUPBASAN. Furthermore, the storage of confiscated items shall be regulated in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, Article 27 paragraph (1) that in the RUPBASAN shall be placed items to be kept for the purposes of the evidence in the examination at the level of investigation, prosecution and examination in court including goods which are declared seized based on judge's decision (PP No. 27 year 1983, Article 27 paragraph (1).

In this case, M. Yahya Harahap gives some functions RUPBASAN, namely:
1. Function and responsibility of acceptance
2. Maintenance and security functions
3. The function of expenditure and destruction of seized objects

Factors that affect less optimal task and function RUPBASAN:
1. RUPBASAN officers are still not very good in terms of quality and quantity.
2. Land and buildings and warehouses RUPBASAN not adequate.
3. Limited security equipment.
4. Very minimal maintenance cost.
5. Minimal implementation of Training for RUPBASAN officers.
6. Interest becomes a low RUPBASAN officer.

Efforts to optimize the tasks and functions RUPBASAN can be done as soon as possible without the need to add much burden on the state budget to manage it, that is by adding or expanding Rupbasan building and with the addition of its human resources, but also add the necessary operational costs, either to optimize auction sales activities or destruction of confiscated objects under Article 45 of KUHAP.
4 Conclusion

The definition of seizure, formulated in Article 1 of the 16th item of the Criminal Procedure Code, which reads: "seizure is a series of investigative actions to take over and/or keep under the control of immovable or immovable, tangible or intangible objects for the purpose of proof in the investigation, prosecution, and justice (Criminal Procedure Code, Article 1 point 16).

The type of research used is qualitative description research using normative-empirical law approach. This study focuses on legislation in relation to one another and its relevance in practice. And the topics in this study is the problem of optimization of a legal entity, the role of legal institutions or legal institutions, and the implementation of the rule of law in accordance with legislation.

Constraints that arise in carrying out the tasks and functions of state confiscated objects, especially in Rupbasan Class 1 Samarinda covers internal constraints and external constraints. These constraints include the following:

a. In terms of readiness Rupbasan personnel are still limited human resources (officials/officers) are viewed from the point of quality and quantity.

b. Limitations of facilities and infrastructure concerning buildings/warehouses and budgets in support of the implementation of Rupbasan function.

c. The presumption of law enforcement officials that Rupbasan Surakarta is considered not able to store/manage confiscated objects state.

d. There is no common perception of society towards Rupbasan, especially related institutions.

Efforts to overcome the obstacles that arise in carrying out the tasks and functions of State confiscated objects in Rupbasan Class 1 of Samarinda are as follows:

a. In terms of readiness Rupbasan personnel are still limited human resources (officials/officers) are viewed from the point of quality and quantity. For Rupbasan support personnel now there are 18 people. This is when viewed from the work area and the existing workload of course is still inadequate. Facing such obstacles, Head of Rupbasan has filed an application to the Head of Regional Office of the Department of Justice for the addition of personnel assistance.

b. Limitations of facilities and infrastructure related to buildings/warehouses and budgets in support of the implementation of Rupbasan function to overcome the limitations of facilities and infrastructure concerning buildings/warehouses, Head of Rupbasan have applied to the Local Government of Samarinda City in order to cultivate the land in a representative manner. Regarding budget constraints in support of Rupbasan's function, the Head of Rupbasan has submitted an application to the Head of Regional Office of the Department of Justice for additional budget.

c. The presumption of law enforcement officials that Rupbasan Class 1 Samarinda is considered not able to store/manage confiscated objects state. Rupbasan Class 1 Samarinda is still new since it was established in 2003 so that law enforcement officers assume Rupbasan has not been able to store confiscated objects professionally. The obstacle is overcome by the Head of Rupbasan by coordinating with the apparatus or related institutions.

d. There is no common perception of society towards Rupbasan, especially related institutions.
Poor public image of the management of state confiscated objects and spoils of state, this is because the community is difficult to know how the actual process that occurred after the police as investigators seized / seized the property belonging to the people who are in the hands of the apparatus. Confiscated objects that should be stored in Rupbasan but many of the relevant agencies are still not willing to release the goods and sometimes confiscated objects are used by themselves by relevant agencies without any accountability. To overcome these obstacles, Head of Rupbasan Samarinda held socialization to the public and related institutions through counseling about Rupbasan, in addition Rupbasan also hold MOU with Poltabes.

References
[7]. Sugiyono, 2010. Qualitative Research Data Analysis. Jakarta: Raja Grafindo Persada
[8]. Setyadi, Sigit, 2016. The Role of Household Storage State Objects in Law Enforcement, Yogyakarta: Janabadra University
Legal Protection of Patients as Victims of Sexual Harassment in Indonesian The Health Service

Siska Elvandari¹
{siska.elfandari@yahoo.com¹}

University of Andalas, Indonesia¹

Abstract. A doctor in his professional practice will always come into contact with humans who expect help, and in carrying out his professional duties, he must respect and always respect the rights of patients based on noble values, masculinity and glory for the benefit of the patient. The right here is the freedom given by the community over power, freedom and status, while the obligation of health workers to provide services to the community, prevent abuse and maintain the quality of their profession and discipline the quality of its members. In practice, there are often various violations in an effort to maintain the quality of the profession and the quality discipline of its members, such as: deviations received by patients in the recovery period after treatment, due to the patient's loss of consciousness after treatment, such as the occurrence of sexual harassment by professional health professionals, so that legal protection is required for patients as victims of sexual harassment crimes. This condition is certainly not in line with or contrary to the objectives of criminal law and health services, namely: providing protection against crimes against the body and human life, extending life, reducing suffering, and accompanying the patient to the end of his life. All of this must be done as an effort to humanize the patient as a whole person and humanity itself.

Keywords: Legal Protection, Sexual Harassment, Health Services.

1 Introduction

The Universal Declaration of Human Rights adopted and announced by the UN General Assembly 217 A (III) on 10 December 1948 constitutes a milestone in the development of international human rights to humanize and humanize humanity, focusing on the basic human rights principles. Basic Principles of Human Rights, covering:¹

1. Human rights are universal. Everyone around the world is tied to human rights. Universality refers to certain shared moral and ethical values in all regions of the world, and the Government and community groups must recognize and uphold it. However, the universality of rights does not mean that these rights can not change or must be experienced in the same way by everyone. The universality of human rights is embedded in the words of Article 1 of the Universal Declaration: "All human beings are born free and equal in dignity and rights.

2. Human rights can not be taken away (inalienability). This means that the right of each person can not be revoked, submitted or transferred.

3. Human rights can not be separated (indivisibility). This refers to the equal importance of each human right, whether civil, political, economic, social or cultural. All human rights have equal status, and can not be placed in a hierarchical arrangement. The right of a person can not be denied because others decide that the right is less important or not the main one. This principle of indivisibility was reinforced by the Vienna Declaration, 1993.

4. Human rights are interdependent (interdependency). This refers to the complementary framework of the law of human rights. The fulfillment of one right often depends, in whole or in part, on the fulfillment of another right. For example, the fulfillment of the right to health may depend on the fulfillment of the right to development, on education or information. Equally, losing one right will also lead to the exclusion of other rights.

5. The principle of equality refers to the view that all human beings are blessed with the same human rights without distinction. Equality does not mean treating people equally, but rather taking the steps necessary to further promote social justice for all.

6. The principle without discrimination (non-discrimination) is a unity with the concept of equality. The non-discriminatory principle includes the view that people can not be treated differently on the basis of additional and unauthorized criteria. Discrimination on the basis of race, color, ethnicity, gender, age, language, disability, sexual orientation, religion, political or other opinion, societal or geographic origin, ownership, birth or other status established by international human rights standards, violates human rights.

7. Participation and Inclusion Principles: Everyone and everyone has the right to participate in and access information relating to decision-making processes that affect their lives and whereabouts. The rights-based approach requires high participation from communities, civil society, minorities, women, youth, indigenous peoples and other groups.

8. Principles of accountability and rule of law. States and stakeholders should be able to answer about human rights performance. In this case, they must comply with the norms and legal standards expressed in international human rights instruments. If they fail to comply with it, the victim's rights holders have the right to apply for appropriate reimbursement in the face of a competent court or other courts in accordance with the rules and procedures prescribed by law. Private, media, civil society and the international community play an important role in making the government accountable about its obligations to uphold human rights.

The seven basic principles are indirectly started the right that was born from the beginning of human existence that is the Right to Life and Maintain Life which became the embryo and is an inherent right of man, which is very basic and absolutely necessary for human beings to develop according to his talents, ideals and dignity. Furthermore, human rights can also be regarded as the basic rights inherent in human beings by nature, universal, and eternal as a gift of God Almighty, including the right to life, the right to marry, the right to self-development, the right to justice, the right to freedom, communications rights, security rights and welfare rights that should not be ignored or taken by anyone, one of which is the right to health.

The right to health cannot be separated from the definition of health itself. The World Health Organization (WHO) Health Definition is: “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” (Health is a prosperous state of body, soul, and social that enables everyone to live productively socially and economically), and in the 1945 Constitution (hereinafter briefly the 1945 Constitution) as the basic law (staatfundamental norm) clearly set out the main lines of Indonesian law, and is the basic source of written State of the Republic of Indonesia contains the basis and outline of law in the implementation of the state. The 1945 Constitution has experienced 4 amendments. In the original text of the 1945 Constitution (before the amendment process) was not written the word “health”.

After the amendment process comes the word “health” which has a more detailed description can be seen in the 1945 Constitution Article 28 H Paragraph (1), Article 28 H Paragraph (3), Article 34 Paragraph (1), Article 34 Paragraph (2), and Article 34 Paragraph (3). Article 28H Paragraph (1) states that: Every person has the right to live a physical and spiritual prosperity, to live, and to obtain a good and healthy living environment and be entitled to health care. Article 28H Paragraph (3) states that: Everyone is entitled to social security which enables his complete development as a dignified human being. Article 34 Paragraph (1) states that: The poor and the abandoned children are kept by the state. Article 34 Paragraph (2) states that: The State develops a social security system for all peoples and empowers the weak and incapable in accordance with human dignity, and Article 34 Paragraph (3) states that: The State is responsible for the provision of health-care facilities and decent public services facilities.

Provision of health service facilities and appropriate public service facilities in the effort of providing health services, the essence of the profession is a life call devoting to humanity based on 3 (three) required standards, including Profession, Service, and Standard Operational Procedure (SOOP). Profession Standard is basically distinguished grammatically on standards and professions. Standard is a value or reference that determines the level of practice to staff or conditions in patient or system that has been established to be accepted to certain authority, while the profession is defined as a work that requires the body of science as a basis for systematic development of theory to face many new challenges, requires long enough education and training, have a code of ethics with a primary focus on service, and has the following professions characteristics:

1. Supported by body of knowledge in accordance with the field, clear scientific work area and its application.
2. Professions are gained through planned, continuous and gradual education and training.
3. Professional work is governed by a professional code of ethics and legally recognized through legislation.
4. The rules and regulations governing the life and professional life (education and training standards, service standards and codes of conduct) and supervision of the implementation of these rules are carried out by the professionals themselves.

---

Article 50 of Law Number 29 of 2004 on Medical Practice states that: Professional standard is a minimum knowledge, skill and professional attitude that must be mastered by an individual to be able to conduct his professional activities on society independently made by professional organizations. Veronica Komalawati provides the limits in question with the professional standard is a guide that should be used as a guide in carrying out the profession well. With regard to medical services, the guideline used is the standard of medical service that is mainly focused on the process of medical action. Professional standards in this standard form of medical service should also be used by hospitals, as fixed procedures within the professional standard are made in accordance with each area of specialization, facilities and available resources.\textsuperscript{6}

In Indonesia there is no standard setting of the general medical and basic profession as adopted in the Netherlands. The existing arrangement in the form of medical service standard as regulated in Decree of Minister of Health RI No. 595 / Menkes / SK / VII / 1993 on Health Service Standards in every health service facility that provides medical services in accordance with the needs and applicable service standards, as a follow up in order to anticipate Article 32, Law Number 23 Year 1992 on Health governing the Implementation of Medication and Treatment.\textsuperscript{7} Furthermore, Service standards refer to the concepts and rules that have been enacted in the legislation. Any health institution or institution authorized for health services shall comply with any such designated reference. Health services are the right of every person guaranteed in the 1945 Constitution of the State of the Republic of Indonesia which must be realized with the effort to improve the highest degree of public health.

In Indonesia, health service standards are in fact set fundamentally with practices that should not violate any such provisions that prioritize service excellence or optimal service, every health agency is responsible for all obligations they hold from the level of puskesmas to hospitals, hospitals are institutions of health services for the community with its own characteristics influenced by the development of health science, technological progress, and socio-economic life of the community who must still be able to improve service quality and affordable by the community to realize the highest health decree and each plays a role in maximizing public health services. They are responsible to the local government that has regulated the law on public health services.\textsuperscript{8}

Public health services have very strategic role in accelerating the improvement of public health status. Hospitals are required to provide quality services in accordance with established standards and can be covered by all levels of society must be in accordance with Standard Operational Procedure (SOP). SOP based on Regulation of the Minister of Health of the Republic of Indonesia Number 512 / Menkes / PER / IV / 2007 About Practice License and Implementation of Medical Practice Chapter I Article 1 clause 10 states that: SOP is a set of standardized instructions / steps to complete a work process specific routines where SOPs provide the right and best way of action based on mutual consensus to carry out various activities and service functions created by health care facilities based on professional standards, and application of this SOP refers to various policies and procedures that should be


\textsuperscript{7} Hermien Hadiati Koeswadji, \textit{Medical Law: The Study of Legal Relationships In Which Doctors As. One of the party}, Bandung, Citra Aditya Bakti, 1998, p. 151

\textsuperscript{8} \textit{Health Service Standards}, in \texttt{http://gofaztrack.com/blog/standar-pelayanan-kesehatan/} accessed on March 8, 2018
available that reflect management of medical record unit and become reference for medical record staff on duty.  

These three standards are expected to be special feature of health workers and other professions to perform a particular medical action that has characteristic, where its peculiarity is seen from the existence of justification given by law that allowed to perform certain medical actions on the human body in an effort to maintain and in improving health, and in practicing the profession will always be in touch with the human being who is hoping for help, and it is appropriate to perform the duties of the profession must always respect the rights of patients based on noble values, virtue and glory in the interest of the patient. The right here is the freedom that society gives to power, freedom and status, while the obligation of health workers to provide services to the community, prevent abuse and maintain the quality of the profession and discipline the quality of its members.

In practice, it often happens variety of abuse in effort to maintain the quality of the profession and discipline the quality of its members, such as: irregularities received by patients in the recovery period after medical treatment, due to loss of awareness of patients after medical treatment, such as the occurrence of sexual harassment committed by health profession, which is nurse so that a legal protection effort is needed for the patient as a victim in criminal act of sexual harassment. Setiono states that the protection of the law is an act or attempt to protect the public from arbitrary acts by a ruler who is inconsistent with the rule of law, to realize public order and serenity so as to enable humans to enjoy their dignity as human beings.

Philipus M. Hadjon states that: the protection of law for people in the form of government actions that are preventive and repressive. Preventive means the government is more cautious in decision-making and taking because it is still in the form of preventive measures, while repressive means the government should be more assertive in making and taking decisions for violations that have occurred. Violations that have occurred and are deemed to have tarnished the health profession of sexual harassment cases committed among health professionals to patients.

The case of sexual harassment that struck a female patient with initials W, at a hospital in Surabaya, on Saturday, January 27, 2018, conducted by a nurse, and then the victim uploaded a video of indecent acts against her through social media account. The action of a nurse was done when the victim was still affected by the drug after undergoing surgery. The Indonesian National Nurses Association or East Java PPNI as a nursing profession organization still needs "ZA" information that alleged perpetrators of harassment, before it will impose sanctions. In imposing sanctions there are several stages, whether the ethical guidance such as coordinating with the Department of Health for the temporary revocation of work permits or done under the applicable legal procedures, given the case has been getting from the beginning of attention from the law enforcement officers, where the Police Resort Surabaya through the head of the Criminal Investigation Unit has secured "ZA" at a hotel in south Surabaya, and is now officially suspected of undergoing intensive examination of alleged sexual harassment of hospital patients who were then weakened by the effects of drugs after operation.

---

10 Setiono, Rule of Law (The Supremacy of Law), Surakarta, Master of Law Science Graduate Program Sebelas Maret University, 2004, p. 3.
12 Rio Audhitama Sihombing Lagi, Sexual Harassment Occurred at Surabaya Hospital
On the other hand the "WR" wife of a nurse working in a hospital in Surabaya, "ZA" reported the victim, "W", and the victim's husband to the Criminal Investigation Police. "W" is a patient who feels abused by "ZA" in the hospital. While the victim's husband recorded the incident when "ZA" was accused of harassment. The video was viral and resulted in the determination of "ZA" as a suspect, and from the study of the Indonesian National Nurse Association (PPNI), the East Java PPNI Secretary Misutarno stated that "ZA" did not violate the nursing ethics code. Sukendar's lawyer, said that his client did not accept the allegations of abuse to her husband, and reported the victim and the victim's husband for alleged defamation of viral videos on social media.  

At that time the officer had not issued a letter of police report because it has not been completed by the power of attorney from "ZA" and the next day, the attorney returned to Bareskrim Police and submitted the power of attorney, so issued Police Report No. 213 / II / 2018 / Bareskrim on Information Electronic Transactions (hereinafter brief with the ITE Act) Articles 27 and 28, and "WR" or the nurse's wife (suspect) assume the videos spread on social media has harmed her husband. According to "WR" before her husband was accused of being suspect, "ZA" was intimidated to acknowledge her actions, whereas "ZA" only removes medical equipment on the patient's chest and does not harass, and there is pressure and intimidation from the police, and "ZA" was persuaded to get a light sentence if confessed. If not acknowledging in accordance with the video, "ZA" shall be liable to punishment and shall be subject to Article 290 of the Criminal Code of Sexual Harassment to an unconscious person. The case was processed by police after "ZA" apologized to the female patient at a hospital in Surabaya claiming to have been sexually harassed in the recovery room following the operation. However, the Ethics Assembly of the Indonesian National Nurses Association of East Java called what the "ZA" was in accordance with the standard operating procedures of nurses when handling patients after undergoing surgery.

Based on the description above, the authors are interested in taking the title in this paper as follows: Legal Protection Of Patients As Victims Of Sexual Harassment In Indonesian The Health Service.

2 Formulation Of Problem

Any scientific writing will certainly always be accompanied by the formulation of a clear problem, as well as with this scientific writing. Based on the background that the author has described in the previous section, then the formulation of the problems in this writing is as follows:

1. How is the legal protection of patient as victim of sexual harassment in Indonesian health service?
2. How is criminal liability for the occurrence of sexual harassment in Indonesian health services?

http://news.liputan6.com/read/3240497/lagi-pelecehan-seksual-terjadi-di-rs-surabaya, on March 8, 2018


Ibid.
3 Discussion

3.1 Legal Protection Efforts on Patients as Victims of sexual Harassment in Indonesian Health Services

Article 1 Number 10 of Law No. 29 of 2004 on Medical Practice states that: Patient is any person who conducts healthcare consultations to obtain necessary health services either directly or indirectly to a doctor or dentist. Article 32 Part Four Law no. 44 of 2009 on the Hospital states about the rights of patients, as follows:

a. Obtaining information on the rules and regulations applicable in the Hospital;

b. Obtaining information about the rights and obligations of the patient;

c. Obtaining services that are humane, fair, honest, and without discrimination;

d. Obtaining quality healthcare services in accordance with professional standards and standards of operational procedures;

e. Obtaining effective and efficient services, avoiding patients from physical and material harm;

f. Filing a complaint on the quality of service obtained;

g. Choosing a doctor and class of care according to his wishes and regulations in hospital;

h. Requesting consultation about the illness he/she has suffered from other doctors who have a Practice License (SIP) both inside and outside the Hospital;

i. Obtaining privacy and confidentiality of illnesses including medical data;

j. Obtaining information covering the diagnosis and procedure of medical action, the purpose of medical action, alternative actions, risks and possible complications, and the prognosis of the action taken and the estimated cost of treatment;

k. Approving or rejecting the action that the health worker will take on the illness;

l. Accompanied by his/her family in critical condition;

m. Conducting worship according to his/her religion or beliefs as long as it does not disturb other patients;

n. Obtaining security and safety during hospitalization;

o. Submitting suggestions, improvements over the treatment of the Hospital;

p. Refusing the ministry of spiritual guidance that is inconsistent with the religion and beliefs he/she embraces;

q. Sue and/or prosecute the Hospital if the Hospital is suspected of providing services that are not in accordance with the standards, both civil or criminal; and

r. Complaining Hospital services that are not in accordance with service standards through print and electronic media in accordance with the provisions of legislation.

Article 31 Part Three Act no. 44 Year 2009 on Hospital states about Patient Obligation, as follows:

1. Each patient has an obligation to the Hospital for the services he/she receives.

2. Further provisions regarding the patient's obligations are regulated by Ministerial Regulation.

Based on the above description, it is clear that the rights and obligations of the patient can be regarded as a benchmark to measure the health service has been run in accordance with existing standards in health services, and if there are various irregularities, then based on Article 32 letter q and r Part Four Act no. 44 of 2009 concerning Hospitals, that the patient is entitled to sue and/or prosecute the Hospital, if the Hospital is suspected of providing services that are not in accordance with the standards of civil or criminal, and complain about
Hospital services that are not in accordance with the standards of service through print media and electronics in accordance with the provisions of legislation, so that in the case of the object of this article where patient who became victims of sexual harassment has made a statement in several print media, electronic media, and social media as well as conducted by health workers, namely nurses.

Article 1 Sub-Article 2 of Law no. 38 of 2014 on Nursing Practice states that a nurse is a person who has passed higher education of Nursing, both inside and outside the country recognized by the Government in accordance with the provisions of the Laws and Regulations. Article 1 paragraph 1 of Decree of the Minister of Health No. 1239 / MENKes / SK / XI / 2001 concerning Registration and Practice of Nurses, states that the Nurse is a person who has passed the nursing education both inside and outside the country in accordance with the provisions of applicable legislation.

Article 2 of Law no. 38 of 2014 on Nursing states that the provision of nursing services should be done with the basis of humanity, scientific value, ethics and professionalism, benefits, equity, protection, and health and safety of clients. Article 3 of Law no. 38 Year 2014 on Nursing states that the purpose of the provision of nursing services is to improve the quality of Nurses, improve the quality of Nursing Services, provide protection and legal certainty to the Nurse and Client, and improve the public health degree, and carried out responsibly, accountable, qualified, and affordable by nurses with high competence, authority, ethics and morals, and this is necessary to provide legal protection and certainty to nurses and communities.

Protection and legal certainty to the public are addressed to patients as victims of sexual harassment. The Criminal Code is not familiar with the term sexual harassment. The Criminal Code only recognizes the term obscene acts, which is regulated in Articles 289 up to Article 296 of the Criminal Code. Obscenity can be described as an act that violates the sense of decency, any deed if it has been considered violating decency / morality, can be included as lewd act. Meanwhile, the term sexual harassment refers to sexual harassment, which is defined as unwelcome attention, or legally defined as the imposition of unwanted sexual demands or creation of sexually offensive environments. (The imposition of unwanted sexual demands or the creation of a sexually offensive environment).

Thus, an essential element of sexual harassment is the unwillingness or rejection of any kind of sexual concern, and if it is not desired by the recipient of the act it can be categorized as sexual harassment, so that sexual harassment may be charged with an abusive article (Article 289 to Article 296 of the Criminal Code). In the event that there is sufficient evidence, the Public Prosecutor shall file the charge against the perpetrator of the sexual harassment before the court.

Law Number 13 Year 2006 concerning Protection of Witnesses and Victims Article 1 point (2) which reads: "Victim is someone who suffers physical, mental, and / or economic loss caused by a crime." Arif Gosita stated that victims are those who suffer bodily and spiritually as a result of the actions of others seeking self-fulfillment or others who are contrary to the human rights interests that suffer. 15

According to Bambang Waluyo, the victim and the crime have a close relationship of causality, he argues that between victim and crime is like the saying "there is smoke there must be fire", the victim because of the crime as the cause of the victim's birth, he also believes in the birth of the victim is a form a person's losses, and the offender is a person who

---

benefits from a person's loss, and Von Hentig reveal 4 (four) victim roles that are considered to have a role in the occurrence of crime, ie:

1) The victim wants a crime.
2) The victim makes the crime event to gain a greater profit from the loss.
3) The victim works with the perpetrator in a crime.
4) The victim provokes the crime to happen.

The four victim roles over the occurrence of a crime in a health service, should have obtained legal protection for the effort to achieve a balance, so that legal protection efforts are required in the legislation, such as Law no. 36 Year 2009 on Health, and Law no. 44 Year 2009 on Hospital, Act no. 29 of 2004 on Medical Practice, and in Law no. 38 Year 2014 on Nursing.

The legal protection contained in Article 51 of Law Number 36 Year 2009 on Health, states that:

1) Every person shall have the right to claim compensation against a person, health worker and / or health provider who incur losses due to errors or omissions in the health services he receives.
2) The provisions concerning the procedure for filing a claim as referred to in paragraph (1) shall be regulated in accordance with the provisions of the regulation

Legal protection contained in Act No. 29 of 2004 on Medical Practice, encompasses the medical code of ethics and its professional standard as a form of responsibility and obligations of a physician in providing quality and appropriate health services for the patient. Efforts to protect victims are the compensation of immaterial and material losses. Replacement of immaterial losses focuses on losses which, in principle, can not be assessed by money, such as causing lifelong disability, and according to subjective criminal law (ius puniendi) the right of the victim to threaten a crime and require the convict to carry out the imposed penalty. Replace material losses focuses on losses which can be essentially assessed by money, and the nature of the compensation in the form of material compensation that is morally reimbursable in the form of rehabilitation and compensation (financial) against the victim, and this is in line with the provisions in Article 51 Law Number 36 Year 2009 About health.

Law No. 29 of 2004 on Medical Practice, if the incident carries a health institution such as a hospital, can also be applied Law Number 44 Year 2009 on Hospitals, Hospitals are considered as a sterile place of recording both voice and video based on Article 48 and Article 51 of Law Number 29 Year 2004 regarding Medical Practice as well as Article 40 of Law Number 36 Year 1999 concerning Telecommunication. and because the perpetrator of his crime in the case of sexual harassment is done by a nurse, so in this case the nurse can be said to be facing the law. If the nurse is proven to sexually harass the patient, then the nurse who in this case as the perpetrator of course will be threatened against ethical sanction and dismissal from Indonesian National Nurses Association (PPNI). The sanction of dismissal is the heaviest sanction as a member followed by the proposed revocation of permit to the local government of the licensor, and this case is already in the search of the Honorary Ethics Council of

---

17 Rena Yulia, *Victimology of Legal Protection Against Victims of Crime*, Yogyakarta, Graha Ilmu, 2010, p. 8
Nursing (MKEK). MKEK also has ethical settlement guidelines including MKEK Central and Provincial parties will hold an ethical trial of the case.

Meanwhile, for violations of patient and nurse relationship SOPs, the consequences are entirely under the authority of the workplace instructions, and if the patient has been traumatized, the patient must be completely protected, both rehabilitation and legal counseling. Based on the above description, the legal protection effort is not only aimed at compensation only in the field of civil law, or in other words Criminal as still being placed as Ultimum Remedium, so it must experience a shift by applying the criminal as Primum Remedium in health service which emphasizes on the right to live and sustain life as part of Pro Life, and not as a Pro Choice (For Choice). This condition is intended as an effort to provide respect and protection against the evil of body and soul in achieving the purpose of what is the purpose of health services, such as: reduce suffering, prolong life, accompanying patients until the end of his/her life.

3.2 Criminal liability for the occurrence of sexual harassment in Indonesian health services.

Criminal accountability contains the principle of error (principle of culpability), which is based on the monodualistic equilibrium that the principle of error based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty. Although the principled concept that: criminal liability is based on errors, but in some cases does not rule out the possibility of vicarious liability and strict liability. The problem of error either error about its condition (error facti) or misguidance about its law in accordance with the concept is one of the reasons forgiving so that the perpetrator is not punished unless his error is to blame him.\(^\text{18}\)

A person shall be held liable for such acts, if the act is unlawful and there is no justification or exclusion of any unlawful nature for the criminal acts committed. Viewed from the point of responsibility, only a responsible person can be held accountable for his/her actions. Crime if there is no mistake is the principle of criminal responsibility, therefore in the case of a person who committed the act as threatened, it depends on whether in doing this act he/she has errors. Responsibility is an element of error, then to prove the existence the error of the element must be proven again. Given that it is difficult to prove and takes a long time, the element of accountability is thought to be secretly always there because in general every normal person is in a soul and capable of being responsible, unless there are signs indicating that the defendant soul may not normal. In this case, the judge ordered a special examination of the circumstances of the defendant's soul even if not requested by the defendant. If the results still doubt the judge, it means that the responsible ability does not stop, so the error does not exist and the criminal can not be imposed based on the principle of not being punished if there is no mistake.\(^\text{19}\)

The issue of responsible ability is contained in Article 44 Paragraph 1 of the Criminal Code which states that: Any person committing an act which is not accountable to him because his soul is flawed in growth or disrupted by disability, is not punished. Criminal liability in cases of sexual harassment of a patient by nurse can be categorized as a criminal act of abuse. In the Indonesian Criminal Code, it has stipulated that the crime in the form of obscenity is regulated in Article 289 of the Criminal Code. This chapter is set out in Book II of

\(^{18}\) Barda Nawawi Arief, Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan, Bandung, PT. Citra Aditya Bakti, 2001, Hlm. 23

\(^{19}\) Moeljatno, Asas-Asas Hukum Pidana, Jakarta, Bina Aksara, 1987, Hlm. 41
Chapter XIV on crimes against decency. Whereas Article 289 of the Criminal Code states that: Any person with violence or threat of force to force a person to commit or allow a lewd act, is punished for wrongdoing violating the decency with imprisonment for nine years.

The notion of "obscene" is not described in detail in the Criminal Code. Indonesian Dictionary contains the meaning of "Vile, dirty, indecent (violating decency, decency)". According to the comments of the Dutch authors, the act imposed in Article 289 of the Criminal Code of obscenity is a general notion which includes the intercourse of Article 285 as a special understanding. The criminal act of abuse is also contained in Article 289-296 of the Criminal Code. Article 290 of the Criminal Code states that: It is threatened with imprisonment for a maximum of seven years: whoever commits a lewd act with a person, knowing that the person is unconscious or powerless, whoever commits a lewd act with a person who knows or should duly assume, fifteen years or if generally unclear, concerned is not the time to be married, whoever persuades a person he/she knows or should duly suspect that he/she is not yet fifteen years old or if the general is unclear in question or is not time to be married, to do or allow to do lewd acts, or intercourse outside marriage with others.

Article 291 Paragraph (1) of the Criminal Code If any of the crimes under article 286, 287, 289, and 290 result in serious injuries, a maximum imprisonment of twelve years shall be imposed, and (2) If any of the crimes under article 285, 286, 287, 289 and 290 resulted in the death penalty for a maximum of fifteen years. Article 292 An adult who performs lewd acts with another sex, knowingly or duly to be presumed immature, shall be subject to a maximum imprisonment of five years.

Article 293 Paragraph (1) states that: Whosoever gives or promises money or goods, abuses the carrier arising from the relationship of circumstances, or by misleading deliberately moves an immature person and his/heer good conduct to commit or lets a lewd act with him/her, not yet mature, known or should be presumed to be, threatened with a maximum imprisonment of five years. Article 293 paragraph (2) Prosecution shall only be made on the complaint of a person against whom the crime is committed. Article 293 paragraph (3) The time limit referred to in Article 74 for this complaint shall be nine months and twelve months respectively.

Article 294 Paragraph (1) Anyone committing lewd acts with his or her child, stepdaughter, adopted child, child under immature supervision, or with an immature person whose stewardship, education or immature care shall be punishable by imprisonment of a maximum of seven year. Article 294 Paragraph (2) Threatened with the same criminal offense if an officer who commits an obscene acts with a person who is in office is his/her subordinate, or with a person whose guardianship is entrusted or handed to him/her, the administrator, doctor, teacher, employee, supervisor or janitor in prison, state employment, educational place, orphanage, hospital, psychiatric institution or social institution, who commits lewd acts with the person put into it.

Article 295 Paragraph (1) shall be threatened with a maximum imprisonment of five years in jail whose person intentionally causes or facilitates obscene acts by his or her child, stepson, adopted child or child under immature supervision, or by an immature person whose guardianship , the education or guard thereof shall be assigned to him/heer, or by his/her bachelor or his/her subordinate, to another person, with a maximum imprisonment of four years whoever intentionally connects or facilitates lewd acts, except those mentioned in point

---

1 above, by the person he/she knows is immature or who should reasonably expect it to be with another person.

Article 295 Paragraph (2) If the perpetrator committed the crime as a search or habit, then the criminal may be added one third. Article 296 of the Indonesian Criminal Code states: Whoever deliberately causes or facilitates obscenity by others with others, and makes it a search or habit, is punishable by imprisonment of a maximum of one year and four months or a fine of fifteen thousand rupiah. Based on the above description, the criminal act of sexual harassment to the patient conducted by the nurse is considered to have violated the provisions in Article 294 paragraph (2) of the Criminal Code. Furthermore, the case of nurse abuse is a violation of the nurse's oath, the nurse's code of ethics as well as the violation of the criminal law, and urges the Hospital to continue to evaluate the nursing ethic, through the Nursing Committee of the Hospital and the Komisariat of the Indonesian National Nurses Association (PPNI) related errors in the implementation of the system, related to the presence or absence of systems that have not run properly, even if still not regulated a system related to problems in a particular hospital environment.

Furthermore, this case may also be said to be the negligence of the hospital as one of the violations against the Law No.8 Year 1999 on Consumer Protection, and the violated aspect of one of the consumer's right to comfort, safety and safety in consuming goods and or services, provided for in Article 4 Sub-Article a of the Consumer Protection Law. This is because a consumer is entitled to the comfort, safety and safety in consuming goods and / or services, and to the perpetrators of abuse against the defenseless person may be subject to Article 290 paragraph 1 of the Criminal Code with the threat of 7 years of confinement.

As a profession, the behavior of nurses in hospitals is also regulated in the Nursing Code of Conduct. In the nurse section 4 nurses and practice mentioned that the nurse must show professional behavior and always uphold the good name of the profession. Nurse maintain and increase the competition in the field of nursing through continuous learning. Nurses always maintain high quality nursing service along with professional honesty applying knowledge and skill of nursing in accordance with the needs of the client. Nurses in making decisions are based on accurate information and consider the ability and qualifications of a person when consulting, receiving delegates and giving delegates to others.

Criminal liability in cases of sexual harassment by remaining guided by the rules and legal norms laid down in various legislation that as author has described in the previous section on patients in health services, basically only aimed to prevent criminal acts by enforcing legal norms for the sake of protecting the community, resolving conflicts generated by criminal acts, restoring balance, bringing peace to the community, promoting the convicted person by conducting guidance so as to become a good person and free the guilty of the convicted person so that what is the ultimate goal in the application of rules and legal norms achieving an effort to humanize the patient as a whole person and humanity itself.

4 Closing

The legal protection effort is not only aimed at compensation in the field of civil law, or in other words Criminal as still being placed as Ultimum Remedium, so it must undergo a shift by applying the criminal as Primum Remedium in health service which focuses on the right to live and maintain life as part of Pro Life, and not as a Pro Choice (For Choice). This condition
is intended as an effort to provide respect and protection against the evil of body and soul in achieving the purpose of what is the purpose of health services, such as: reduce suffering, prolong life, accompanying patients until the end of his/her life.

The Criminal Code regulates the different penalties based on the criminal acts committed, in which case negligence and deliberate can be processed in accordance with applicable law, in an attempt to realize criminal responsibility which basically only aims to prevent the commission of criminal acts by enforcing legal norms for the sake of community protection, resolving conflicts caused by criminal acts, restoring balance, bringing a sense of peace in society, popularizing convicts by coaching so as to be good people and free guilty to the convicted, so what is the end purpose in the application of rules and legal norms can achieve efforts to humanize patients as a whole person and humanity itself.

Bibliography

Books:

Legislation:
[1]. 1945 Constitution
[3]. Law no. 36 Year 2009 on Health.
[4]. Law no. 44 Year 2009 on Hospital.
[5]. Law no. 29 of 2004 on Medical Practice.
[6]. Law no. 38 of 2014 on Nursing Practice.
[7]. Law no. 8 of 1999 on Consumer Protection.
[8]. Law Number 36 Year 1999 on Telecommunication.
[9]. Law Number 19 Year 2016 on Information and Electronic Transactions / UU ITE.
[10]. Law Number 13 Year 2006 regarding the Protection of Witnesses and Victims. The Criminal Code
[11]. Regulation of the Minister of Health of the Republic of Indonesia Number 512 / Menkes / PER / IV / 2007 About Practice License and Implementation of Medical Practice
[12]. Decree of the Minister of Health No. 1239 / MENKes / SK / XI / 2001 on Registration and Practice of Nurses.

[13]. Decree of the Minister of Health RI No. 595 / Menkes / SK / VII / 1993 on Health Service Standards.

Other Sources:


[5]. Schroeder, Descriptive Analysis of Inventory Management, in http://www.k@ta.petra.ac.id, accessed on March 9, 2018.


Suryaningsi
{suryaningsih.kmd@gmail.com}
Lecturer of FKIP UNMUL, Samarinda, Indonesia

Abstract. The purpose of the study is to describe the function of supervision in the system of government in the region after the change to Law no. 23 of 2014 on the management of mineral and coal resources. The type of research used is normative legal research. With analytic descriptive type aimed at explaining about State Policy Function on supervision aspect by Inpektor Tambang for mineral and coal resource management. Data collection techniques through observation, interview and documentation. Analyzed by using a resistance that conveyed Miles and Huberman. The results and discussion on the function of government policy on the management of mineral resources and coal post in Law No. 23 of 2014 on local government in review of the supervision aspect is not running as expected in Law No. 4 of 2009 Mineral and Coal Mining. This is due to constraints with infrastructure and facilities in the form of budget, as well as instructions from the KPK and BPKP so that guidance and supervision runs on a budget basis, given the very challenging mining field.

Keywords: Good gavernance, Policy, Utilization, and Justice.

1 Introduction

While still in the implementation of Law no. 32 of 2004 Regarding local governance, the supervisory function runs even though it has not reached the optimal target due to limited personnel who will act as supervisor (mining inspector) can be further called IT. Superintendent Inspector who has attended the IT training and passed as many as 899 people, although the actual government target of 1000 people but empirically functioning only 102 people. allegedly there is a deviation of IT procurement budget and the functioning of IT post-training as a trigger of uncontrolled management and exploitation of mineral and coal resources, which impact on the state of theft and also as a result of the stipulation of Law no. 23 of 2014 on the system of Regional Government without going through socialization.

The legal basis of IT task and function can be seen in Law no. 4 of 2009 on Mineral and Coal Mining. The lack of optimization of the function of IT based on minerba mining regulations, causing problems in mining management more complicated, which is also caused by the role of regents and mayors that dominate so that the sale of licensing in the area occurred. And this is increasingly happening thus there is a suspicion that there is a tendency of dick and coaching from the center also does not go as expected. One side of the KPK found that there is a huge but very low-cost IT procurement budget, the KPK's findings reinforce the government's intention to issue regulations no. 23 of 2014. Therefore, through the above
phenomena and issues the authors would like to examine and describe the function of government policy towards implementation of supervision and guidance of Kepasca in Law No 23, 2014 on Regional Government,

2 Research Methods

The type of research used is normative legal research. With an analytical descriptive type aimed at explaining the State Policy Function on the supervision aspects of mineral and coal resource management.

In describing the variables in this study contained therein indicators as part of a scientific search effort that will be described and analyzed by using the following approach: The philosophy approach is to know the role of East Kalimantan provincial government in memknai and implement the regulation of management of mineral and coal resources. The approach used is the conceptual approach (conceptual approach), namely by moving the views and doctrines that developed in the science of law so that can be found a new idea and the principles relevant to the problem under study. Approach in the Law (Statute approach) and Concept Approach (Concept approach).

The legal substances used in this study consist of; primary, secondary and tertiary legal materials. The primary legal materials are laws and regulations relating to violence against women and children and their implementing regulations. Secondary legal materials in the form of legal literature related to the management of coal mining, legal materials obtained from the internet, seminar results, research results, symposia and results of workshops related to the object of research. While tertiary legal material that is supporting documents, such as statistical data and monographs and other similar.

3 Result And Discussion

After the enactment of Law No. 23 of 2014 on Regional Government, the management of IT becomes the authority of the Central Government c.q KESDM. Currently the East Kalimantan Provincial Government has 58 civil servants (PNS) in the ESDM sector who have been appointed to the Mine Inspector. The 58 who experienced the transfer process from the District / City including those from the province alone which amounted to seven people so that the overall total reached 58 people IT. This guidance and supervision is conducted on all minerba mining business actors together with the Provincial Government, Regency / Municipal Government, Holders of Mining Business Licenses, and other related parties in East Kalimantan.

The guidance and supervision in IT regulation is arranged based on Article 141 paragraph (2) of Law No. 4 Year 2009 on mineral mining, that supervision conducted by IT is among others: technical supervision, conservation supervision, supervision of OSH, supervision of mining operation, supervision of environmental management life, post-mining reclamation, supervision of the mastery of mining technology. In addition, minerba regulations decrease Government Regulation no. 55 Year 2010 on Guidance and Supervision then through the PP which explains related to mining technical. Mentioned in Article 36, "Supervision of the Mine Inspector is done through; Evaluate reports, periodic checks, and assessments of the success of conducting activities."
The mechanism of implementation of supervision as follows:
Initially starting from the planning of supervision (Work Plan) which is of course compiled in advance, just running. So for example implementation in 2017 then the preparation of work plan including budget issues carried out in 2016. Once approved budget plan and its implementation then carried out supervision.

Associated with SOPs or work guidelines prior to conducting supervisory activities in the field, first write to the company including the names that will conduct supervision as well as the timing of the implementation of activities how many days must be listed.

Before conducting surveillance, first learn what related documents should be supervised then do the monitoring. For example, the implementation of environmental monitoring, of course, the IT study document implementation report, management, and environmental monitoring. After the study and then doesekusi spaciousness, then the process of supervision. The results of field supervision activities in pour in the form of reports of results of supervision activities; what his findings, what suggestions. If in the Mining Inspector important things are written in the book mine, the time of its implementation when, the completion of when. Subsequently reported to the head of the supervisory activities.

After reporting, then create a letter again to the relevant company related to the results of follow-up surveillance. For the types of surveillance performed are:
1. Administration supervision is to evaluate the reports.
   a) Direct supervision or spaciousness, be it inspection of routine routine
   b) Examination such as environmental monitoring, case finding.
   c) Testing is testing technology tools used mining companies.
2. Inspection is a planned supervision usually once every three months, six months, and once a year. Depending on the budget made in accordance with the work plan. If in the Inspection rules implemented once a year.
3. Inspection is an unplanned supervision, if there are reports, complaints, we are directly down the spaciousness. Especially for the examination does not first with the letter no what. Unplanned meanings are not scheduled so that time can go down if there is a complaint report. At most we only tell via via sms if it will do the checking.

Reports from the public prihal environmental damage can also be reported to KEDM if true there are findings can be directly sent to the department that the community environment there are case findings. Well therefore the head of the service will officially assign us, but nature emergency for example we die immediately dive accidental field if it is accidental.

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, determining the earth and water and natural resources contained therein are controlled by the state and used for
the greatest prosperity of the people. The connection with the implementation of local government oversight is already in line with Law no. 23 Year 2014 which mengahapuskan authority District / City. This is in line, because in essence the oversight remains and is not removed because the management needs to be supervised, both administratively and in the field. Assuming the management of natural resources contained in law 23 including licensing is withdrawn to the province, I think one of the factors of service is also the supervision. And it ultimately needs adjustment, but I think the future can be better.

The mandate of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia contains the meaning that a good and healthy environment is the right of every citizen. In line with the presence of Law no. 23 of 2014 in connection with the government oversight function. For now it has not run yet, but in the future hope can be effective because that rule has been run for three years. But for environmental monitoring activities not only the
Mining Inspector, there are also environmental agencies, they also have environmental supervisory officials, they have an important role in implementing Article 28 H.

The existence of districts / municipal authority over the management of mineral resources as regulated in Law no. 4/2009 on Minerba, and one side of Law no. 23 of 2014, that the district / city authorities have been abolished. UU no. 4 year 2009, related to supervision supervision, supervisory authority is the responsibility of the minister of KESDM, in the Article stipulated that "the minister can delegate to the governor the authority of supervision". meaning the central government authority is in the Minister. Cuman indeed ultimately need a revision of the law. Because the article / rule of interpretation rules each person is different.

After being enacted by Law No. 23 of 2017, supervision activities remain, but as IT status is withdrawn into a central employee and remains in the province. The constraints that occur are about the budget. Budget issues impact on facilities and infrastructure and performance of bimwas (IT). The budget is indeed the responsibility of the province and for the year 2017 this is not budgeted 2018 possibly also does not exist. Because Kaltim suffered a deficit or a lack of budget. Under conditions such as those found to be ineffective from the performance of IT, this is justified by BPK and BPKP who advocate not to conduct surveillance activities without any budget. The presence of Law no. 23 Year 2014 Regarding local governance, does it cause problems with the oversight function of mineral and coal resource management.

In response to the post-conditions, initially it became a problem that is the problem of personnel switching, which lasted long enough, ranging from data collection, evaluation and until declared central employee takes a long time and is running less than perfect. Finally, what happens is contrary to the regulation if the IT policy is a central employee, but the rules of the game still use the provincial policy. for example status as a central employee but using the provincial budget. The meaning is related to the regulation and the like has not been related to the budget to be used, the budget from the regional employees from the center. Well this is the first time like this.

Staffing problems are clear, only in the implementation of central government needs / mendagri re-publish or add related rules. keterbukaan or transparency of information in the management of mineral resources and coal from the company. Now can not be covered up again, let alone mining activities are open, easy access community, the company also if the cover-up even a little trouble. For now it is open for them to report, just maybe the distribution of information that needs to be seen, social media is a lot and easily accessible.

Constraints / obstacles encountered in performing supervisory functions as follows:
• Geographical factors (difficult to reach remote areas)
• There is no operational facilities and infrastructure. The amount of IT does not fit the place
• Operational budget

Efforts made are:
• Implementation of monitoring that can be done in the form of evaluation reports and case findings.
• Operational budgets, from ministries seeking and conducting evaluations, not many provinces have budgeted. Because it is still constrained rules, because the umbrella law that does not exist. While the accountability report of East Kalimantan Province IT become a problem.
• Infrastructure facilities, this effort continues to be lobbying
• Geographical location, there is currently no activity. Our initiative is still encouraging the provincial government to procure the budget for operations. Although located far away but if there is a budget is not a problem and we can reach.
The coordination system of IT, companies, and local government, works well, because the Head of Department (KESDM) once a month holds regular meetings with companies, discuss some issues or coordination or provide input related to the implementation of mining management.

1. Legal Certainty

Various regulations at the local level, both in the form of regional regulations and regulations of regency / municipality heads, which regulate natural resources management that were originally their authority, should be reviewed and even revoked or declared invalid. This is important, in order to realize order and provide legal certainty. In contrast, the provincial and / or central government need to make new regulations as the basis or legal umbrella in the implementation of what is their authority in managing natural resources.

Legal certainty is needed by the company because in doing the mining other than subject to the provisions of the law as well as other related provisions and can not be released away. Legal certainty is that the consistency of regulations is indicated by the existence of non-conflicting regulations between one rule and another, and can be used as a guide for a sufficient period of time so as not to impress any change of officials is always followed by change of conflicting rules.

The response of the company in the management of the licensing there is a lack of synchronization between the policy of the director general with the ministry of ESDN East Kalimantan Province, an experience when the processing of shipping licenses in charge and dance while the company knows that the policy of the director general does not regulate the collection, because a policy then, by the company even though in the sense of unclear and until now the budget is manifested cause unclear.

Responding to conditions above the law or supremacy of the law is very important, to realize the true law and equitable justice. Thus the manifestation of legal certainty according to Soerjono Soekanto is as follows: is the regulations of the central government generally accepted throughout the country. Another possibility is that the rule is generally accepted, but only for certain groups. In addition, local regulations can also be made by local authorities that apply only in the regions, such as municipal regulations.

Based on the above description it is clear that the role of law in creating a conducive investment climate is an absolute requirement, since investors will not invest in places that do not have legal certainty this can lead to a very high legal risk.

As expressed by PT. Indominco Mandiri in Kutim regency that people do demo because they want to use Indominco Mandiri road for public transportation truck. As well as the various demands of society on the company in this foundation the company felt uncomfortable and needed legal certainty of the government.

Basically, the obligation of the local government is to ensure the certainty and security of the business for the execution of the bans. To ensure the certainty and security, it is necessary to regulate the authority of the government, provincial and district / municipality in the implementation of clear mining. The current condition of the province of East Kalimantan is that the regional government has not been able to provide security for the investors of both foreign investors and domestic investors to develop business in the region. Some things that haunt miners in East Kalimantan have not been answered, namely legal certainty and security guarantees, supporting infrastructure conditions, and ulayat land rights. Whereas a conducive investment climate can increase economic activity, both large scale and economic activities populist.
The existence of legal certainty is a hope for justice seekers against the arbitrary actions of law enforcement officers who are sometimes always arrogance in performing their duties as law enforcement. Because with legal certainty the company will know the clarity of rights and obligations according to law. Without legal certainty, people will not know what to do, not knowing whether his actions are right or wrong, prohibited or not prohibited by law. This legal certainty can be manifested through a good and clear normation in a law and will be clear to its application. In other words, the certainty of the law means the exact law, the subject and the object and the threat of the law. However, legal certainty may not be considered an absolute element at all times, but the means used in accordance with the situation and conditions with due regard to the principle of benefit and efficiency. This is in line with the theory of good governance that put forward by G.H Addink, related to the activities of the implementation of functions to organize the public interest. good governance regarding the implementation of three basic tasks of the government are:

first, to guarantee the security of all persons and the society itself (the guarantor of the security of everyone and society). Second, to manage an effective frame work for the public sector, the private sector, and civil society (managing an effective structure for the public sector, the private sector, and society). And thirdly, to promote economic, social and other aims in accordance with the wishes of the population (advancing economic, social and other objectives with the will of the people). In realizing the G.H Addink theory, it is necessary to synergize through the effort of principle of certainty (principle of legal certainty, which is the main principle in implementing good governance.

The explanation of the government's policy on mineral and coal mining management aspects After the Law No. 23 of 2014 on Regional Government is stipulated that the aspects of Licensing, Development and Supervision, Facilities and Certainty are needed for National stability. Mining Mining Management is a National Strategy that affects the state revenue and also has implications for the welfare and prosperity of the people. According to Carl I. Friedrick Policy as a series of actions proposed a person, group or government in a particular environment, with threats and opportunities that exist. The proposed policy is aimed at exploiting the potential as well as overcoming the existing obstacles in order to achieve certain goals.

This is where the role of government to be able to act firmly against the mining aspect of minerba, as the main potential revenue of the state. Arrangements and policies as defined in the Constitution of Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia set that: "The earth and the water and the natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people". It is very clear that if the minerba management takes place under the applicable regulations, there is a firm policy of government, good management and rightly managed through the licensing system accompanied by continuous guidance and supervision, the goal to create the greatest prosperity of the people can be realized. This is in line with the theory of justice according to Theory Mixed Economic Systim. which was put forward by W. Friedman. "mixed economy" is a variety of ways in which state power is used to control or supervise the country's economic system, although the economy is run by private companies. W. Friedman argues that the four functions of the state in a mixed economic system, namely: a) Function State as a "Regulator" State Function As "Entrepreneur" d) State Function As "Umpire" Conditions in Indonesia if it refers to Provider's principle that which guarantees the survival of society within a country is so that the concept of welfare state can be implemented in the form that the state not only acts as night watchman or security guard, night watch, but also able to guarantee the survival of the society substantially so that people can feel stable life without feeling any
anxiety. Regulator conditions, the role of the government is to make regulations to create order, orderliness, security in the life of the state. Rules can be realized by the existence of mutual coordination, synergy and harmony between the government and the raktat, the responsibility of government in the management of natural resources for the welfare of the people.

The condition of entrepreneurs, who state that the state as ruler Cq. The government should act as an entrepreneur. Business actors manage mineral and coal resources within a state of power. But empirically it should be understood that mining has the following character, has a risk of basic, high technology, large capital. For conditions such as Indonesia the ability of capital to conduct business is still very much considering the capital in pengelolaan mining is like a parable to build a country that needs big capital. Strongly associated with high-risk characters, which means that in the management of minerals dragon minerba give goods in sacks, which is not clear the contents exist or not. This means that at the beginning of the work has been issued a large capital that does not necessarily have succeeded, so kerugiaan already absolute in preparing. Conditions like this, for the State of Indonesia, certainly not able, so that efforts can be done in the aspect of exploitation is to open a large-scale investment. Therefore, this effort should be accompanied by strong regulation and placing the role of government higher than entrepreneurs.

High technology in the management of mineral and coal mining is significant, that it is in the need of human resources who really have a specific science in minerba mining management, and in addition also requires infrastructure facilities with high technology.

Umpire Condition, Country Cq. The government becomes a referee or mediator, in the management of mining minerba, as an effort to realize as much as possible for the prosperity of the people.

The virtue of understanding the mixed economic system as proposed by W. Friedmant, the government has three important roles in overcoming the problems in the market economy system (free), namely:

1. Addressing inefficient allocation of resources, such as: monopolies, externalities, and public goods.
2. Addressing the distribution of uneven income.
3. Addressing macroeconomic issues, such as: inflation, unemployment, and economic growth.

Efforts to overcome the monopoly, the government issued a regulation that prohibits companies to monopolize and unfair business competition. In Indonesia this regulation is contained in Law Number 5 Year 1999 concerning the prohibition of monopolistic practices and unfair business competition.

• To overcome external costs (externalities), the government issued a regulation that prohibits pollution and environmental pollution. In Indonesia this regulation is contained in Article 21 of Law Number 5 Year 1984 regarding industry.

• To address the commercialization of public goods, the government provides education, transport and health facilities.

• To overcome the uneven distribution of income, the government imposes progressive tax rates, subsidies, and minimum wages.

• To overcome macroeconomic problems, the government provides stability by issuing macroeconomic policies (fiscal and monetary), and providing stimulus.

The economic system of democracy is an economic system aimed at realizing people's sovereignty in the economic field. This system is an economic system implemented in Indonesia. The role of the state in the people's economic system is:
• Arranging the economy as a joint venture based on the principle of kinship; develop cooperation (Article 33 paragraph 1).
• Mastering the production branches that are important to the state and which affect the livelihood of the people; developing SOEs (Article 33 paragraph 2).
• Master and ensure the utilization of the earth, water and all the wealth contained therein for the greatest prosperity of the people (Article 33 paragraph 3).
• Managing the state budget for the welfare of the people; impose a progressive tax and subsidize.
• Maintain monetary stability.
• Ensure that every citizen has the right to obtain employment and a decent living for humanity (Article 27, paragraph 2).
• Maintaining the poor and neglected children (Article 34).

Just to compare with the economic system ala Capitalism, that country generally defined as an economic system in which the commercial economic activity (to seek profit) is done by the state. The production factor is governed and managed as a state enterprise (SOE), or an open company whose controlling shareholder is a state (en: State Holding Enterprise). Many people argue that China's modern economic system is another form of this system, also the former Soviet Union is unwittingly using this system.

The socialist market economy system is an economic system based on the dominance of state-owned sectors in the open market economy. This system is a system used by the state of China and is widely known as another form of the state capitalist system. Slightly different from the state of capitalism, the factors of production are regulated and managed not only by state enterprises (SOEs) and open companies whose controlling shareholders are state (SHE), but also private companies. The Nordic Model System or also called Nordic Capitalism is an economic system which is a combination of free market capitalism with comprehensive state prosperity and collective bargaining at the national level. This system is used in Nordic countries, namely: Denmark, Finland, Norway, Iceland, and Sweden.

Characteristics of the system include:
• A detailed social safety net, coupled with public services such as free education and universal health services
• Strong property rights, contract enforcement, and ease of doing business
• Public pension plans
• Low barriers to free trade
• The lack of regulation of products in the market, etc. The advantages of a mixed economic system include:
  • Most businesses and industries can be delivered to private companies that tend to be more efficient than state-controlled companies
  • Individual / private rights are clearly recognized
  • Economic systems the mix allows government intervention to address problems in free market economies, such as: monopolies, externalities, and public goods
  • Mixed economic systems can create equity and provide a "safety net" to prevent people from living in extreme poverty. At the same time, the system can also make people enjoy financial rewards from hard work and entrepreneurship
  • The government can create macroeconomic stability with fiscal and monetary policies. The weaknesses of mixed economic systems include:
    • It is difficult to know how far governments should intervene in markets and macro economics
• Mixed economic systems by socialist system experts are perceived as allowing too much market power, causing differences in inequality and inefficient allocation of resources. By the experts of the free market system, the mixed system is considered too much to intervene in the market.

• The government is generally a bad economic and business manager, because the government is influenced by political interests and other short-term factors.

As a result, state enterprises become inefficient and the emergence of corruption, collusion, and nepotism. The Role of Supervision and Supervision by the Mining Inspector is very large in the management of mineral and coal resources, both on safety, post-regulation in the enactment of Law No.23. The year 2014 did not go well even became a vacuum due to the government budget deficit. The condition of the budget deficit that occurs in the government by the company assesses do not want to know, which is clear if it becomes a rule and stipulated in legislation should be on the run. This opinion is true if in review of aspects of legal benefits such as the rule of law. The law will not be suprem if it is not upheld by people who have power (government) and all its people. B. Policy Forms SOPs, Implementation Procedures, Norms, and Criteria: The legal basis for the adoption of a policy by government officials is Article 5 and Article 20 of the 1945 Constitution of the State of the Republic of Indonesia. Later it is stipulated by Law Number 30 Year 2014 Administration of Government which aims to: a) Improving the quality of governance, agencies and / or government officials in the use of authority should refer to the general principles of good governance and based on the provisions of legislation. b) Resolve problems in governance, governance arrangements are expected to be a solution in providing legal protection for citizens, communities and government officials; dan c) Creating good governance especially for government officials, the law on government administration becomes the legal foundation needed to base the decisions and / or actions of government officials to meet the legal needs of the community in organizing the government. State control over mineral and coal resources by function policy is a series of decisions or government activities designed to address public issues, whether the problem is real or still planned as stated in official documents even in the form of legal regulations directed to the realization of the National objectives of; 1) To protect the entire nation of Indonesia and the entire blood of Indonesia 2) To promote the common prosperity 3) To educate the nation, and 4) Participate in world order based on independence, eternal peace and social justice. In order for the management of mineral and coal resources to be managed properly and true, the government sets regulation number 4 of 2009 as a form of implementation of the legislation, then the government regulation is set for the regulation of mineral mining and coal can be implemented. The Government Regulation with the intention is stipulated: 1) Government Regulation No. 23/2010 concerning the Implementation of Mineral and Coal Mining Business Activities, which is subsequently revised by several articles, namely Government Regulation No. 24/2012 on the Implementation of Mining Business Activities and coal. 2) Government Regulation Number 22 Year 2010 regarding Mining Area. 3) Government Regulation No. 55/2010 concerning the fostering and supervision of the management and implementation of mineral and coal mining business; and 4) Government Regulation Number 78 of 2010 on Reclamation and Post-mining. 5) Government Regulation Number 1 Year 2014 on Mineral Processing and Purification Five Government Regulations as a form of implementation technician from Law Number 4 Year 2009 which then by the Minister of Energy and Mineral Resources issued Decree Number 28 of 2009 concerning the Mining and Coal Mining Business. Regulation of Minister of Energy and Mineral Resources No. 07/2012 on Increase of Mineral Added Value through Mineral Processing and Purification Activity, then revised by Minister of Energy and Mineral
In addition to concrete policies through the above-mentioned laws and regulations, the government or state officials authorized to make efforts to realize the welfare of the people and the greatest prosperity of the people as mandated by Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stipulated the policy of priority of coal for domestic needs (Domestic Market Obligation). This means that coal can still be exported when domestic coal needs are met first so that coal becomes more and more as a source of energy for electricity, cement, fertilizer, textile and domestic industries. The policy of prioritizing the fulfillment of coal and minerals for domestic purposes has the main objective of national energy security. Energy is a basic human need that can not be avoided, and very significantly affect the survival of a nation today and the future. Therefore, national energy security must be achieved, especially those sourced from coal. Furthermore, based on government regulation number 1 of 2014 which requires companies to process and refine mineral in the country. It is necessary to ensure the supply of raw materials for processing and refining facilities to be built, because given the cost of processing and purification machines are quite expensive. In order to overcome and prevent the occurrence of scarcity of mineral and coal supplies, as well as ensure the supply of minerals and coal in the country, it is necessary to apply the priority of the supply of minerals and coal for domestic purposes. Increase in domestic added value can not be separated from the basic characteristics of minerals, ie non-renewable resources. Indeed, it belongs to all the people of Indonesia, therefore the management and utilization must be aimed to increase the added value for the national economy. So the government seeks to implement the increase in added value of minerals. In terms of policy the government has set Presidential Instruction number 3 of 2013 on accelerating the increase of added value of minerals through processing and refining in the country. Based on the above description to increase the contribution of mineral and coal sub-sectors to the national economy, the Directorate General of Mineral and Coal establishes several policy directions in the development of the mining sector. The policy direction becomes a foothold in the establishment of programs and the sharing of activities in order to encourage the optimization of mineral benefits within the framework of national development, namely: a) implementing mineral and coal fulfillment priorities for domestic needs; b) provide certainty of transparency in mining activities; c) carry out improved supervision and guidance; d) encourage increased investment and state revenues; e) encouraging the development of added value of mining commodity products; and f) maintaining environmental sustainability through environmental management and monitoring including reclamation and post-mining. Implementation of mineral and coal management policies in 2013 is undertaken by: 1. Encouraging the development of value added commodity products; 2. To carry out improvement of supervision and supervision on mining activities; IUP reconciliation settlement; 4. Completion of renegotiation of amendments to COW and PKP2B; 5. Encourage increased investment and optimization of state revenue through Increased work

Cooperation with relevant agencies (PEMDA, BPK, BPKP, KEMENKEU and KPK); 6. Provide certainty and transparency in mining business activities with regulation supporting Act no. 4 year 2009; and 7. Ensuring domestic coal supply through DMO. Pasca in Law No. 23 of 2014 on regional government, there is a transfer of authority of regency / municipality government to provincial government in this case is the office of the Ministry of Energy and Mineral Resources and Coal (KESDM). At the same time the management of minerals by the provincial government (Governor) followed up by issuing a moratorium on the temporary suspension and immediate dilakukan arrangement of the licenses of the problem. A qualified license is given a CnC symbol, for those who qualify for the operation if it has not been given an opportunity to pass the permit and is temporarily categorized as non
CnC. Actions undertaken by the governor in synergy with the Minister of Energy and Mineral Resources Circular Letter no. 04.E / 30 / DJB / 2015, which stipulates that the Bupati / City shall immediately submit a license file to the Governor. Files in the form of documents that must be submitted are: Furthermore, the Minister of Home Affairs also issued Circular Letter (SE) Minister of Home Affairs no. 120/253 / Sj which is set on 16 January 2015. This Circular Letter is a reference from section 404 of Law no. 23 of 2014, which advocates the immediate transfer of Personnel-Funding-Infrastructure and Equipment-Document (P3D), as a result of the distribution of government affairs between the central government, provincial and regency / municipal areas, which is regulated by this law, 2 (two) years from the date of enactment of this law. With due observance of the provisions of Article 404 above, the budget cycle in APBN and APBD, and to avoid stagnation of local government administration resulting in cessation of services to the public, the implementation of concurrent government affairs that are of service to the public and massive, whose implementation can not be postponed and can be implemented without the support of P3D, still carried out by the level / structure of government which is currently carrying the concurrent government affairs up to the submission of P3D. With the transfer of authority, the district / city is urged so that all documents are also transferred to the provincial government. The file that has been transferred to the province will be followed up by: 1. Inventory of valid Licensing, while filing and or ending; 2. To inventory regulations and policies related to the EMR field; 3. Preparing ESDM; 4. Technical coordination with the Ministry of Energy and Mineral Resources mineral mining and coal must be in the village properly, because it is a national strategy, if the government does not take the role, it will have a bad impact for the Unitary Republic of Indonesia. Therefore, the programs and activities of the Directorate General of Mineral and Coal should be done based on the mandate of the 1945 Constitution, the Strategic Plan Plan for the sub-sector of Mineral and Coal. Findings in the field through interviews with the company, especially in PT. Indominco Mandiri located in Bontang Kutai Timur, said that the fulfillment of DMO (Domestic Market Obligation), already implemented, and for coal condition of PT. Indominco Mandiri has a very satisfactory quality and a great selling point to send abroad then the effort made to improve the state's cash income is to sell coal out of the country and the profits are used to buy the type of coal in the DMO to meet domestic needs. Given for the type of coal in need Domestic does not need a high quality. Speaking of mining which is a National Strategy Involvement of PT. Indominco Mandiri to the State is very large, among others, has an obligation to build a sustainable environment by planting trees throughout East Kalimantan and not just the area around the mining of PT Indominco Mandiri in Bontang alone. Similarly, if there is a national disaster PT. Indominco Mandiri also contributed in providing humanitarian assistance call it in 2004 tsunami disaster in Aceh, Lapindo Mud and others, especially if coverage in Bontang area. The efforts of the National strategy undertaken by PT.Indominco Mandiri is certainly in line with the direction of Minerals and Coal Subsector policy. In its implementation, the provincial government of East Kalimantan made a policy by stipulating governor regulation No. 17 of 2015 concerning the arrangement of permits and non-permits as well as improvements to the Licensing Governance in the Mining, Forestry and Oil Palm Plantation sectors. Until now the provincial government of East Kalimantan does not issue a new Mining Business License (IUP) for Minerba mining business activities. Authority issuance of the permit, is on Pro Government of East Kalimantan Province. Given the many problems in the District / City that must be resolved. The problems that exist are not only related to the authority but also related to the problem of work which is also problematic. This is in accordance with Government Regulation No. 23/2010 concerning the Implementation of Minerba Mining Business Activities. In relation to the above governor regulation which is the
policy or step taken by the Provincial Government to overcome the problems that accumulate. The nature of government policies is: 1) There is a reality or problem that needs to be solved; 2) There is a reason for an action chosen by the government in solving the problem; and 3) There is a correlation between the action and the objectives to be achieved. In relation to state taxes on the management and exploitation of mineral and coal resources, the government policy is public with its implementation to the public, so the role of the community to participate in deciding whether or not to do is necessary to participate. This role can be given directly to the government can also through a representative agency to be channeled to policy makers. The policy of a provision that applies and is characterized by a consistent and repetitive actor, both who make and who obeys it. Public policy is a set of more or less interconnected choices including inaction decisions made by government agencies and agencies. The issue of policy is an urgent thing that is currently hotly discussed, especially in industrial countries such as Indonesia. Policy implementation is not just a mechanism for translating policy objectives in technical and routine procedures but also concerning other factors, especially on resources, relationships between institutional units, levels of government, which may not agree with established policies. This is in line with Rondinell and Cheema's opinion that the relationships between factors affecting policy implementation are: 1) the compliance approach, ie implementation is considered only a technical and routine problem so that the implementation process is pre-determined by political leaders; dan2) The political approach, which is a political approach, views administration as an integral part of the policy-setting process whereby cultivation is modified, redefined and even a heavy burden in the implementation process. According to the authors agree with the views of Rondinell and Cheema, that policy is only seen as a technique and routine and solely an administration will put the policy only within the limits of government decisions established and announced regardless of the extent to which the policy can achieve the desired goals when the policy will taken by the government. Policies that are taken are just formalities that ultimately lead to a policy vulnerable to errors and uncertainties to the community, so that repairs or replacements are made. The authors argue that an ideal policy is a policy that preceded by the participation of the community so that the implementation in line with the interests of the community and will gain public support. In connection with the management and exploitation of mineral and coal resources, should be done with caution because the policy will affect the state revenue for community development. This is an image of government that is responsive to the various aspirations and needs of community development. Besides, it gives direction towards the achievement of the goal of the state that aspires to the welfare of the people.

4 Conclusion

The government's policy function on mineral and coal resources in post-regulation stipulates Law no. 23 of 2014 on regional governance which is a legal umbrella for the regulation horizontally related to the environment, forestry and marine sectors. The function of government policy on the aspect of Development and Supervision is not maximal to attribute its duties and functions as it has been fixed in Law no. 4 of 2009 on mineral and coal mining, caused by the limited state budget. Besides, the Legal Certainty System is not yet supremakan so that it can not provide benefits for the needy in this case the entrepreneurs including investors.
5 Recommendation

Soon the government to review the regulation especially the aspects of guidance and supervision to be synergized with the needs of empirical considering the management of mineral and coal resources is the national strategy for post-regulation stipulation Act No. 23 of 2014 on regional governance of Supervision and Supervision by IT not functioning because there is no budget as a means of infrastructure implementation of guidance and supervision. This condition is expected to last long until 2018, the management of mineral and coal mining is in great need of guidance and supervision considering that in the regulation it is explained that the management of minerba is not related to criminal but the function role of IT in empowering for the management of mining can be effective and optimal especially affect the state income, the truth in mining and safety in working in mining.

Reference

Assessing the Indonesian General Election 2019: Election and Human Rights Relations

Tri Sulistyowati 1, Zulkifli Aspan 2
{ trisulistyowati98@yahoo.com ulkifliaspan@gmail.com2}
Trisakti University 1, Hasanuddin University 2

Abstract. In the 2019, legislative elections and the elections that will take place in 2018 in several regions there are debates that arise at this time, namely the rights of suspects and former prisoners to run for candidates for legislative and regional head candidates. On the one hand, it is the right of the suspects and the prisoners to take part in the election process, but on the other hand, there is the right of the people who must also be protected to get their representatives with their criminal records. As it turns out in practice, however, the problem is whether the suspect of corruption case, (in the name of equality before the law and the name of equality of human rights), still have a suffrage? There are two parties whose rights should be protected, namely suspects based on the principle of presumption of innocence and the rights of the people to have a clean and integrity leaders and people’s representative. These problems are needed to learn in terms of Indonesian national legal provisions and international human rights provisions.

Keywords: Election, Human Rights, Constitutional Rights.

1 Introduction

Indonesia is a constitutional State. This has been clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia. In a constitutional State, restrictions on the power of State and political must be made clearly that no one can violate. Therefore, in a constitutional State, the law plays a very important role and above the power of State and politics. Hence, it come the term "government under the law".

The entrenchment of democratic rights and political reform will be a second major challenge for the government. The period of Indonesian constitutionality expand normative facts, that the reform era gives big expectation for the renewal of State administration in order to deliver the Indonesian into a democratic constitutional State. One of them is through the implementation of general election in Indonesia.

In general, elections are the only means for the people to determine who will be elected as the leader of the country and who will be elected as the people's representatives who will sit in

---

the legislative body. Therefore, the Election becomes an obligation for the state to implement it. However, in the concept of a democratic state, human rights and elections are important elements that must exist. In accordance with the provisions of Article 22E of the 1945 Constitution, that General election shall be held directly, publicly, freely, secretly, fairly, and justly once in five years.

In practice, general elections must be held periodically or periodically, so that democracy can be guaranteed regularly and continuously. The implementation of elections in each country is determined based on the needs of each country. There are countries that determine that elections are held once in five years like Indonesia, and there are also countries like the United States that determine the election of the president and vice president within four years. In addition, countries that adopt a parliamentary system of government, general elections can also be held more often according to needs. With this legal construction, it can be concluded that the relation of elections is one of the very principles means of channeling citizens' rights (look at the Article 28E of the 1945 Constitution).

Hence, in the framework of implementing the human rights, it is imperative for the government to guarantee the implementation of general elections in accordance with the determined state administration schedule. In accordance with the principle of popular sovereignty where the people are sovereign, all aspects of organizing the general election must also be returned to the people to determine it. Likewise, the state must ensure that the rights of every citizen to participate in elections are protected by law, even guaranteed in the 1945 Constitution as a constitutional right.

As it turns out in practice, however, it has certain weaknesses, particularly in view of the accountability and legitimacy aspects of its establishment. In the 2019 legislative elections and the elections that will take place in 2018 in several regions there are debates that arise at this time, namely the rights of suspects and former prisoners to run for candidates for legislative and regional head candidates. Even the decision of the General Election Commission (hereinafter, KPU) to issue a KPU Regulation that prohibits former prisoners of corruption cases from being nominated as legislative candidates has drawn controversy. The Indonesian House of Representatives as the legislative body also disagrees with this limitation. Therefore, it is very interesting to do a juridical study, especially a review of aspects of human rights.

Above all, on the one hand, it is the right of the suspects and the prisoners to take part in the election process, but on the other hand, there is the right of the people who must also be protected to get their representatives who sit in the legislative and regional leaders who are clean without criminal records. Is this in accordance with the purpose of the provisions of Article 28J of the 1945 Constitution? However, as a constitutional state, every act or policy made by the organizer must be based on the law.

2 The Indonesian General Election as A Manifestation of Human Rights

Normatively, the provisions of Article 22E of the 1945 Constitution of the State of the Republic of Indonesia declare that general elections held in direct, general, independent, secret, honest and fair every five years held to elect members of the House of Representative, Regional Representative Board and Regional House of Representatives as organized by an
election commission that is national, permanent, and independent.\textsuperscript{3} General elections are complex activities involving multiple parties. Not only voters, electoral participant and/or candidate, electoral organizer and government (central and local), it also involves election observers (domestic and international), civil society organizations, law enforcer, procurement and distribution partners of electoral logistics, and mass media. Since the election is a process of converting the people vote to the seat of State organizers, and the election participants (political parties and proposed candidates and/or individuals) who fight to obtain and fill the seat of State organizer, the election results in winning and loser participants.

The electoral process is vulnerable to irregularities, temptations and potentially hijacked by irresponsible individuals. At the same time, there is great expectation from the public that elections are held with integrity. The choice of a particular electoral system will also be a measure of the extent of consistency in the realization of the sovereignty of people in the 1945 Constitution. The greater of electoral system to provide a wide space for the people to decide, then the electoral system will be closer to the nature of popular sovereignty.\textsuperscript{4} If the electoral system narrows the space for the people to make their choice, then the electoral system will be further away from the nature of sovereignty contained by the 1945 Constitution.

The General Election is a manifestation of the political rights of the people to determine the course of government and the functions of the State guaranteed by the constitution. These political rights are the fundamental rights of the people. Therefore, the implementation of the General Election, in addition to embodying the sovereignty of the people, is also a means of implementing the human rights of citizens.

Both the 1945 Constitution and Law No. 39 of 1999 have regulated and guaranteed human rights, especially civil and political rights. The suffrage of citizens in the General Election is one of the most important substances that must be guaranteed and protected by its existence as a constitutional right of citizens which is a manifestation of the guarantee of the rights of political rights, which in turn will strengthen the existence of democracy. Thus, it can be said that human rights and elections are both interrelated, mutually reinforcing and influencing each other.

A free and fair election is an important pillar of democracy, because from it a government will be produced with strong political legitimacy from the people. Therefore, the general election must guarantee the participation of all people directly. Non-democratic elections will result in the absence of legitimacy and popular support for the government. This is stated in the Declaration of Principles for Election Observation that:

\textit{Genuine democratic elections are a requisite condition for democratic governance, because they are the vehicle through which the people of a country freely express their will, on a basis established by law, as to who shall have the legitimacy to govern in their name and in their interests. Achieving genuine democratic elections is a part of establishing broader processes and institutions of democratic governance.}\textsuperscript{5}

Elections are positively correlated with human rights in three important aspects, namely (1) the right to take part in government; (2) the right to vote and to be elected; and (3) the right


to equal access to public service. With this rationale, the election must be carried out in accordance with international standards and in fact normatively it is affirmed through Perpres No. 6 of 2013 concerning Ratification of the International Statute of Democracy and Election Aid.

The Statute, known as the Stockholm Statute in 1995 and later revised in 2006 and effective in 2008, in its consideration emphasizes that democracy is essential for promoting and guaranteeing human rights and that participation in political life, including government, is part of human rights, classified and guaranteed by international treaties and declarations.

3 Former Prisoners and Suspect Rights in Elections: Judging from the Human Rights Perspective

Douglas W. Rae argues that an electoral system will work well if it is divided into 3 (three) phases in which each phase is important to note. These phases include: First, balloting or voting as a specification of the voter people’ role in deciding whether to participate in the elections or not. Second, districting as a restricting factor in translating votes into seats; and Third, the electoral formula as determinant factor in translating votes into seats.

As above view that the concept of democracy in general elections has a requirement, that democracy only means if people have the opportunity to accept or reject the person or group of people who lead it. The opportunity to accept or reject it can only be done through general elections. Therefore, the general elections actually are an absolute requirement (conditio sine qua non) for the organizing of governance based on the principle of representative.6

General election activity is also a most fundamental means of distributing human rights. Therefore, in the framework of the implementation of the citizen’ human rights, it is imperative for the government to guarantee the implementation of the general election in accordance with the predetermined administration schedule, as argued by Asshiddiqie,7 that:

“As the principle of people sovereignty in which the people are sovereign, all aspects of the holding of the elections must also be returned to the people to decide it. It becomes a violation of human rights if the government does not guarantee the holding of elections, delaying the holding of the elections without consent of representatives, or do nothing so that elections are not held properly.”

For instance, it is different with Jean Bodien that sovereignty is often interpreted as “supreme authority”, a full and supreme authority within a State to regulate its entire territory without interference from the governments of other States. However, the theory of sovereignty is rejected by political-pluralism thought, according to Jean Boedin that theory of sovereignty is a narrow view and not based on strong reasons for rejecting a pluralist society. None of these groupings can take precedence or higher than others. To these problems arise several theories that give answers, each gives rise to a theory or doctrine of sovereignty.

Hence, general election is a realization of the fulfillment of civil and political rights. This right is guaranteed not only in international human rights law, as stipulated in Article 21 of the UN UDHR and Article 25 of the ICCPR, it is also constitutionally guaranteed through the provisions of Article 22E and Article 28D paragraph (3) of the 1945 Constitution, Law No. 12 of 2005 concerning the Ratification of the ICCPR and the provisions of Article 23 paragraph (1) of Law No. 39 of 1999 concerning human rights.

---

The 1945 Constitution in Article 28D Paragraph (1) states that: "Every person has the right to a just recognition, guarantee, protection, and legal certainty and equal treatment before the law". This article shows that the state will treat every citizen equally and fairly by promoting equality before the law. Subsequently Law No. 39 of 1999 Article 3 paragraph (2) states that every person has the right to recognition, guarantees, protection and fair legal treatment and to obtain legal certainty and equal treatment before the law.

On the contrary, KPU Regulation Number 3 of 2017 concerning the Nomination of Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors. Article 4 KPU Regulation No. 3 of 2017 states, "Never as a convicted person based on a court ruling that has obtained a permanent legal decision, convicted of minor negligence (culpa levis), convicted for political reasons, convicted person who is not serving a sentence in prison is openly and honestly tells the public that the person in question is serving a sentence not in prison".

Although according to the provisions of Article 23 paragraph (1) of Law Number 39 of 1999 stated that "Everyone is free to vote and have political confidence". Furthermore, according to the provisions of Article 43 paragraph (1) of Law Number 39 of 1999, it is stated that "Every citizen has the right to be elected and elected in general elections based on equal rights through direct, public, free, confidential, honest and fair voting in accordance with the laws and regulations". The two provisions of the article above clearly indicate that there is an inherent juridical guarantee for every Indonesian citizen himself to exercise his right to vote.

In fact, the General Election Supervisory Body (hereinafter, Bawaslu) stated that there were 199 former convicts of corruption cases registered as candidates for provincial, district and city candidates. They are registered with each political party to contest the 2019 General Election. Of the 199 details, 30 former corruption prisoners registered as candidates for DPRD candidates in 11 provinces, 148 former corruption prisoners registered as candidates for DPRD candidates in 93 districts, and 21 former corruption prisoners registered as prospective DPRD candidates in 12 cities.

From the document of recapitulation of legislative candidates of former prisoners of corruption received, Bawaslu did not disclose the names and political parties carrying 199 former corruptors as the candidates. Bawaslu only details the distribution of ex-prisoners of corruption registered.

The regulations and their implementation guarantee the implementation of human rights, especially civil and political rights. For example, there is a guarantee of equal rights or non-discrimination (free from discrimination in race, color, sex, religion, language, nationality or social origin). Likewise, there is a guarantee of freedom of opinion, association, and assembly, movement, guarantee of the right to security, and proper legal process. Therefore, elections have a positive relationship with the development of democracy, if political parties as constituents are given the guarantee of competing to obtain the people's votes (voters).

The right to vote for citizens in the General Election is one of the most important substances that must be guaranteed and protected by its existence as a constitutional right of citizens which is a manifestation of the guarantee of political rights. Where both will strengthen the existence of democracy.

---

As a result, it can be concluded that both human rights and elections are interrelated to strengthen and influence each other. Election progress will strengthen human rights (political rights) of every citizen where the election is a manifestation of the guarantee of human rights (political rights) of citizens. In the context of a democratic country both are elements and support for the existence of a democratic state.

4 Conclusion

The General Election is a manifestation of the political rights of the people to determine the course of government and the functions of the State guaranteed by the constitution. These political rights are the fundamental rights of the people. Therefore, the implementation of the General Election, in addition to embodying the sovereignty of the people, is also a means of implementing the human rights of citizens (constitutional rights). The right to vote for citizens in the General Election is one of the most important substances that must be guaranteed and protected by its existence as a constitutional right of citizens which is a manifestation of the guarantee of political rights. Where both will strengthen the existence of democracy. As a result, it can be concluded that both human rights and elections are interrelated to strengthen and influence each other. Election progress will strengthen human rights (political rights) of every citizen where the election is a manifestation of the guarantee of human rights (political rights) of citizens.

References

The Legal Liability of Dead Children Drowns in Coal Mine Pit on Human Rights Perspective

Haris Retno Susmiyati
{harisretno@yahoo.co.id}

Law Faculty of Mulawarman University, Samarinda, East Kalimantan Province, Indonesia

Abstract. Children who live in Kalimantan, especially in Samarinda, Kutai Kartanegara and Paser Regency, should be in an unsafe situation due to economic policies that based on exploitation of coal mine. Since 2010 – 2017 there were 28 victims, 26 children and 2 adult drowned in coal mine pit. However, the legal process of this case is unfair or far from the sense of justice for the victims and people, when the case was happening, the mining company approach to the victim’s family for granting sum of money in return for a statement letter that it would not prosecute the drowning of children in the coal mine pit. Two cases were settled legally but those filed to the trial are field workers and punished lightly. The legal liability has not touched the responsible person of the business. The case of children drowning in coal pit, under national and international human rights provisions/instruments is a violation of the child rights, especially the fundamental right of the child that is the right to life. The removal of a person’s right to life is a crime against humanity. The rights of the child that being violated are (1) The Right to Life; (2) The Right to Live Safe; (3) The Right to Obtain the Legal Protection; (4) The Right to a Healthy Environment; (5) The Right to equal and Equality in Law. The fast and concrete steps must be taken by the state to provide the sense of justice and prevent further casualties.

Keywords: Mining, Coal, Liability, Child, Human Rights

1 Introduction

Mining is a sector of business which is always considered to contribute to economic growth in a region. It is an assumption that drove many Governments that provide a variety of ease licensing for the mining business to be able to operate. Economic choices that rely on mining, often ignoring the fact that the resulting economic growth unsustainable mining sector, and thus result in environmental damage and result in bad for health and robs the community living space that constantly occur. the potential negative impact of mining caused the mining venture characteristics taking the resources stored in the Earth, made by digging the soil to a depth of tens even hundreds of meters in the belly of the Earth, which causes a change in against the landscape, environment, and space of human living.

Mining permissions granted through regulation that is supposed to minimize damage to nature, the environment and people's lives due to mining. But the prerequisites set forth in the provisions of the law, in its implementation does not meet expected goals. As was the case in East Kalimantan province on the island of Kalimantan, Indonesia. There are 1,404 coal mining business license issued by the Central Government and the regions, with the mining area...
covering 5.2 million acres\(^1\). Mining affects the economy of East Kalimantan within a short time only about 10 years and the economy will go down even until minus 6\% as well as the impact of damage to nature and the lives of the people. It also happens to a threat to the life of the community with the victims of the 29, mostly children who drowned in a pit coal mine in East Kalimantan.

Problems that occur due to the operation of the mining company shows the occurrence of a violation of the basic human rights that are part of the provisions of human rights (human rights). Human rights is a fundamental right that is inherent to the human self is not supernatural, is universal and lasting, therefore it must be protected, respected, maintained, and should not be ignored, downplayed, or taken away by anyone. That view is appropriate in line with the Universal Declaration of human rights, at the United Nations on human rights mentioned: “Recognition of the inherent dignity and the equal and unacceptable rights of all member of the human family is the foundation of freedom, justice and peace in the world.”\(^2\)

Human rights are the most basic rights and attached to it wherever it is. If there are not human rights means that reduced its value as a human being. Human right is an assertion that can be morally justified, a thing that was supposed to get legal protection\(^3\). Unitary State of the Republic of Indonesia guarantees the welfare of everybody in their country, including the protection of the rights of the child which is a basic human right. The son is the mandate and the grace of God, which is inherent in their value and dignity as a whole person.

Human rights (human rights) is a right inherent in every human being, are fundamental and essential for a dignified life as human beings. Article 1 of LAW Number 39 Of 1999 on human rights, in this law the definition of human rights is a set of rights which is inherent in the nature and existence of man as a creature of God and His grace that must be respected, then protected by State laws and Government, not only that but also all the people should be protect the value and dignity of human being. Children’s rights are part of human rights. The child's group who is vulnerable often experiencing acts of human rights violations. The rights of the child has been stated in the Geneva Declaration on the rights of the child the year 1924 and in the Declaration of the rights of the child approved by the General Assembly on 20 November 1959 has been recognized in the Universal Declaration of Human Rights, which, in the International Treaty on rights of economic, social and cultural, and then in the provisions and guidelines of the relevant execution device from the specialized agencies and the international organizations dealing with child welfare\(^4\).

Based on these considerations, which became important to review is the content of human rights including the rights of the child, not be as a precondition or the consideration of policy makers in the mining sector. The protection of HUMAN RIGHTS is not a consideration in the granting of permits, though the situation in the exploitation of the mine showed the occurrence of human rights violations. What kind of human rights violations and responsibility of the State case against children who drowned in a mine pit.

---

4. Mukadimah CRC, Children Right Convention, Majelis Umum PBB, 20 November 1989
2 Research Problem

The child is the next generation. Losing a child is a total harm for the nation's future. Victims of children who were killed at the mine hole each year continues to grow, this is a humanitarian problem that should not be ignored. The child's right to life is part of human rights that are inherent and cannot be reduced (non-derogable) in its fulfillment. Permasalahan which will be examined in this paper deals with the children who drowned in a pit mine that is:

a. What kind of human rights violations in the case of children who drowned in a mine pit
b. How is the responsibility of the State case against children who drowned in a mine pit in the perspective of human rights?

3 Research Methods

The method used is the normative Legal research. This method is the legal research that aimed to find the solution of legal issues by way of researching the references or mere secondary data.

4 Discussion

A. Dead Children Drowns In Coal Mine Pit

1. Human rights violations and State responsibility in the case of children who drowned in the mine Pit

Rights of the child based on article 1 point (12) of law 39 of 1999 About HUMAN RIGHTS: rights of the child is part of the human rights that must be guaranteed, protected, and were met by parents, families, communities, countries, Governments, and local governments. The principle of the rights of the child based on the Convention on the rights of the child including the right to life, survival, and development of the child has the right to life of the child must get the care needed to ensure the physical, mental health, and their emotions as well as also the development of intellectual, social, and cultural.

The rights of children are part of human rights according to Article 52 section of 2: “Child's rights are human rights. in the interests of the child's rights, it is recognized and protected by law ever since in the womb. “Human rights violations according to Article 1 number (6) of Law 39 of 1999 concerning Human Rights, are any acts of a person or group of people including intentional or unintentional state apparatus or negligence which violates the law to reduce, obstruct, limit and or revoke human rights human person or group of people guaranteed by this law, and not getting, or worried not getting a fair and right legal solution, based on the applicable legal mechanism.

5 www.unicef.org. diakses 26 mei 2017 pk 15.43
All of the threats and bad actions that cause the loss of children's lives are the action that cannot go unpunished. Based on a review of international and national human rights instruments, it is seen that there have been violations of human rights, especially the most fundamental rights for children, namely the right to life. The removal of one's right to life is a crime of humanity.

Table 1. Violation of Children's Rights based on International Human Rights Instruments in the Case of Children Drowning in the pit of coal mining

<table>
<thead>
<tr>
<th>Rights are violated</th>
<th>International Instruments that are violated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Universal Declaration of Human Rights</strong></td>
</tr>
<tr>
<td>Right To Life</td>
<td>Article 3</td>
</tr>
<tr>
<td>Rights to get protection</td>
<td>Article 7</td>
</tr>
<tr>
<td>Protection rights before the law</td>
<td>Article 26</td>
</tr>
<tr>
<td>State policy, the private sector must consider the best interests of the child</td>
<td>Article 26</td>
</tr>
<tr>
<td>Right to a healthy environment</td>
<td>Article 26</td>
</tr>
</tbody>
</table>

Table 2. Violation of the Children's Rights Based on the National Provisions of Human Rights The Case of Children who Drowned in the Pit of Coal Mining

<table>
<thead>
<tr>
<th>Rights are violated</th>
<th>National Human Rights Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children’s right to life</td>
<td>Constitution 1945, Article 28A; Article 28B (2); Article 28 I (1)</td>
</tr>
<tr>
<td>The right to live safely</td>
<td>Law of 23/2002 Concerning Child protection, Article 3 and 4</td>
</tr>
<tr>
<td>Right to protection and legal protection</td>
<td>Law of 35/2014 Concerning Human Right, Article 4, 9 (1), 53 (1)</td>
</tr>
<tr>
<td></td>
<td>Law 32 of 2009 concerning the Protection and Management of the Environment, Article 9 (2) and 35</td>
</tr>
<tr>
<td></td>
<td>Article 5(3), 52 (1) and (2), Article 29</td>
</tr>
</tbody>
</table>
The right to a healthy living environment

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation of the right to obtain justice, file a lawsuit, equality in law</td>
<td>Article 27 (1)</td>
<td>Article 17</td>
</tr>
</tbody>
</table>

Violations of children's rights in the case of children who are drowning at the pits of Coal Mine, based on national and international human rights provisions/instruments are violations of children's rights that is:

a. Children's right to life

Article 3 of the Universal Declaration of Human Rights: “everyone has the right to life, liberty and security of person. Part 3 in Article 6 of the International Covenant on Civil and Political Rights (ICCPR): “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The right to life is a basic right in the ICCPR which is classified as rights in a non-derogable type, namely absolute rights which cannot be reduced by the fulfillment of the state parties, even if in an emergency. States that violate the rights of non-derogable types will be criticized as a country that has committed gross violation of human rights. Provisions in the Convention on the Rights of the Child (CRC) of the Convention on the Rights of the Child. Indonesia has ratified through Presidential Decree No. 36 of 1990. Provisions Article 4 (1) recognizes that every child has inherent rights to life: "States Parties recognize that every child has the inherent right to life" (participating countries recognize that every child has rights that is attached to life).

Recognition of the right of life of every person in the Constitution of the Republic of Indonesia in Article 28A of the 1945 Constitution, namely that everyone has the right to live and has the right to defend his life and life. Article 28B (2) Every child has the right to survival, growth and development and has the right to protection from violence and discrimination. Article 28I (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on a retroactive law is human rights that cannot be reduced under any circumstances.

Article 3 of Law 23 of 2002 in conjunction with Law 35 of 2014 concerning Child Protection Child protection aims to ensure the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity and dignity, and to be protected from violence and discrimination, for the sake of creating quality Indonesian children who are noble and prosperous. Article 4 of Law No.23 of 2002 jo. Law No. 35 of 2014 concerning Amendments to the Law on Child Protection Every child has the right to be able to live, grow, develop and participate naturally in accordance with human dignity and dignity, and to be protected from violence and discrimination.

Article 4 of Law 39 of 1999 concerning Human Rights. The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, the right not to be enslaved, the right to be accepted as a person and equality before the law, and the

---

right not to be sued on a retroactive law is human rights which cannot be reduced under any circumstances and by anyone.

Right to Life on Article 9 (1) Everyone has the right to live, maintain life and improve their standard of living. Article 53 (1) of the Human Rights Law "Every child from the womb, has the right to live, maintain life and improve his standard of living." The case of the sinking of children in the mine pit in East Kalimantan is a form of violation of the rights of children's lives, both violate international human rights instruments and national human rights instruments.

b. The right to live safely

Based on the provisions of human rights regulated by Law 39 of 1999, everyone is recognized as entitled to live. even it is not only to live but also a life that guarantees a sense of security. This is in accordance with Article 9 paragraph (2) of Law 39 of 1999 concerning Human Rights. Everyone has the right to live in the system of society and statehood that is peace, security, peace, happiness, physical and spiritual prosperity. The existence of mine holes which are left without reclamation efforts includes the people who cannot live comfortably and safely. The threat of safety of children who are forced to live surrounded by dead holes, while playing facilities for children are not available. Article 35 of Law 39 of 1999, Everyone has the right to live in a peaceful, safe and peaceful society and state that respects, protects and fully implements human rights and basic human obligations as regulated in this law.

c. Right to protection and legal protection

The 1989 Convention on the Rights of the Child states children, because their physical and mental immaturity requires special protection and care, including proper legal protection, before and after birth. Article 3 (2) Convention on the Rights of the Child Participating countries seek to guarantee that children will receive protection and care as needed for their welfare, by paying attention to the rights and responsibilities of their parents, guardians or other individuals who are legally responsible for the child, and for this purpose, will take all legislative and administrative steps right. This provision is in line with the Universal Declaration of Human Rights article 7 "everyone is equal to the law and entitled to the same legal protection with no difference.

On the Article 24 paragraph (1) of the Convention on Civil and Political Rights (ICCPR), confirms the right of children to get protection from family, society and the state without discrimination: "Every child must, without discrimination based on ethnicity, color, sex, religion, the origin of nationality or social wealth or birth is given the right to all protection measures needed for his status as a minor, from the family, community and country.

The Convention on Civil and Political Rights (ICCPR), Article 26 states specifically that in addition to general protection for children there is a need for legal protection: "All people are equal before the law and entitled to the same legal protection without any discrimination. Regarding this law the law prohibits all discrimination and guarantee everyone the same and effective protection (effective).

The right to protection for children is also recognized by the Indonesian state constitution, Article 28D (1) of the 1945 Constitution, Everyone has the right to a recognition, guarantee, protection and legal certainty and equal treatment in the law. Article 28G (1) of the 1945 Constitution: Everyone has the right to personal, family, honour, dignity and property protection under his authority, and has the right to security and protection.
Special protection for children is needed as a form of commitment to protect vulnerable groups. Children are vulnerable groups, vulnerable in the sense that if a policy change is made, the lives of vulnerable groups will be directly affected by these changes. In the provisions of article 5 paragraph (3) protection of vulnerable groups is stated every person who belongs to a vulnerable group of people has the right to receive more treatment and protection with regard to their specificity. In the explanation of the article what is meant by vulnerable groups include the elderly, children, the poor, pregnant and disabled women.

Based on the provisions of article 52 paragraph (2) of the Human Rights Law which the rights of children are human rights, therefore, the rights of the child are recognized and protected by law ever since in the womb. Article 29 of the Human Rights Law (1) Every person has the right to the protection of his personal, family, honour, dignity and property.

d. The right to a healthy living environment

The rights to the healthy living environment are fundamental human rights. The right is inherent as that which strengthens the construct of human life. The Rio Declaration on Environment and Development in 1992 emphasized that governments around the world have an obligation to commit to the fulfilment of human rights to a healthy and clean environment. Based on the Fourth Principle (Principle 4) of Rio Declaration: in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

The Indonesian Constitution states that a good and healthy environment is a human right. It is the constitutional right of every Indonesian citizen. Therefore, the state, government and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development so that Indonesia's environment can be a source of life for supporting the people of Indonesia and other living things.

Based on the provisions of Article 28H of the 1945 Constitution Every person has the right to live physically and mentally, live and obtain a good and healthy environment and has the right to obtain health services. Article 9 paragraph (3) Human Rights Law Everyone has the right to a good environment and health. Right to the environment Article 65 paragraph (1) of Law 32 of 2009 concerning Environmental Protection and Management: Everyone has the right to a good and healthy environment as part of human rights.

The environment intended is the provision in the article 1 point (1) of Law 32 of 2009 concerning the Protection and Management of the Environment: Unity of space with all objects, power, circumstances, and living things, including humans and their behavior, which affect nature itself, the survival of life and the welfare of humans and other living things.

e. Violation of the right to obtain justice, file a lawsuit, equality in law

The Indonesian Constitution recognizes that every citizen has the same position in the law, this provision is contained in article 27 paragraph (1) of the 1945 Constitution: Every citizen is simultaneously in the law and government and must uphold the law and government with no exception.

---

on the Article 17 of Law Number 39 of 1999 concerning Human Rights, Everyone is without discrimination, has the right to obtain justice by submitting an application, accusation, and lawsuit, both in criminal, civil and administrative matters as well as being tried through a free and impartial judicial process, according with procedural law that guarantees objective examination by honest and fair judges to obtain fair and correct decisions.

2 The Government's responsibility in the human rights perspective on cases of children drowning in the pit of coal mines

Children need special care and protection, they depend on the aid adult, especially in the early years and their lives. It is not enough that children are given the same rights and freedoms as adults. Children themselves are unable to fight or change the conditions they experience effectively to be better. Therefore, effective action is needed to change things better for children.  

<table>
<thead>
<tr>
<th>No</th>
<th>The Form of Responsibility</th>
<th>Human right Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Responsibility to grant protection</td>
<td>Convention on The Rights of the child (CRC) article 3 (2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Article 20 of Law 23 of 2002 in jo Law 35 of 2014</td>
</tr>
<tr>
<td>2</td>
<td>State policy, private sector must consider the best interests of the child</td>
<td>Convention on The Rights of the child (CRC) Konvensi Hak Anak Pasal 3 (1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Article 21 of Law 23 Tahun 2002 jo Law 35 of 2014</td>
</tr>
<tr>
<td>3</td>
<td>The obligation of Guarantee the survival and development of children</td>
<td>Convention on The Rights of the child (CRC) article 6 point (2),</td>
</tr>
<tr>
<td>4</td>
<td>The obligation to make children rights implementation policies</td>
<td>Convention on The Rights of the child (CRC) article 4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Law 23 of 2002 jo law 35 of 2014 on thr article 21</td>
</tr>
<tr>
<td>5</td>
<td>The obligation to conduct surveillance</td>
<td>Law 23 of 2002 jo law 35 of 2014 on the article 23 point 2</td>
</tr>
<tr>
<td>6</td>
<td>The obligation of Guarantee the survival and development of children</td>
<td>article 71 and article 72 of law 39 of 1999</td>
</tr>
</tbody>
</table>

according to Juridical, government legal responsibility in cases of children drowning in mine pits is:

a. Responsibility to grant protection

The right of children to get protection raises the obligation to fulfil these rights. Based on the Convention on the Rights of the Child (CRC) Convention on the Rights of the Child

---

Article 3 (2) : States parties undertake to ensure the child such protection and care as is necessary for their rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and this right and all appropriate legislative and administrative measures.

The participating countries endeavour to ensure that the child will receive protection and care as needed for his welfare, taking into account the rights and responsibilities of his parents, guardians or other individuals who are legally responsible for the child, and for this purpose, will take all appropriate legislative and administrative steps.

Responsibility for child protection according to the Article of 20 in the Law number 23 of 2002 jo. Law Number 35 of 2014 concerning Amendments to the Law on Child Protection: States, governments, regional governments, communities, families and parents are obliged and responsible for the implementation of child protection. Child protection according to the Child Protection Act article 1 number (2) is all activities for guarantee and protect children and their rights in order to live, grow, develop and participate, optimally in accordance with human dignity and dignity, and to be protected from violence and discrimination.

The implementation of child protection is based on Pancasila and is based on the Constitution of the Republic of Indonesia in 1945 and the basic principles of the Convention on the Rights of the Child include non-discrimination; best interests for children; rights to life, survival and development; and respect for children's opinions.

On the article 52 paragraph (1) of the Human Rights Law, Every child has the right to protection by parents, family, society and the state. Based on these provisions, the parties, namely parents, family members and the state have an obligation to provide protection to children. This protection in the case of children drowning in a mine pit is certainly needed in a concrete way to make children no longer being victims.

b. State policy, private sector must consider the best interests of the child

That the best interests of children must be the main consideration, completely this provision is regulated in the Convention on the Rights of the Child (CRC) Convention on the Rights of the Child Article 3 (1) In all actions concerning children, whether it is carried out by public or private social welfare institutions, courts of law, administrative authorities or legislative.

The choice of regional development policies that allow the operation of mining companies in areas that can threaten children's lives is a proof of policy that is made without considering the best interests of the child. Even when children have become victims, there are not policies from the central or regional governments to overcome them.

c. The obligation of Guarantee the survival and development of children

On the Article 6 paragraph (2), the Convention on the Rights of the Child: Participating countries will guarantee to the maximum extent of child development and survival. This obligation is affirmed considering the survival of children will affect the dignity and civilization of the nation.

d. The obligation to make children rights implementation policies

Convention on the Rights of the Child Article 4, the participating countries will take all legislative, administrative and other steps for the implementation of the rights recognized in the Convention on the Rights of the Child. Responsibility of the government according to article 21 paragraph (4) : the Child Protection law To guarantee the fulfillment of the Rights of the Child and carry out the policies as referred to in paragraph (3), the Regional
Government is obliged and responsible for implementing and supporting national policies in the implementation of Child Protection in the region. Paragraph (5) The policy as referred to in paragraph (4) can be realized through the efforts of the region's government to develop decent districts/cities for Children.

e. The obligation to conduct surveillance

According to the Law No. 23 of 2002 jo. Law No. 35 of 2014 concerning Amendments to the Child Protection Act, Article 23 paragraph (2) "States, governments and regional governments oversee the implementation of child protection.

f. The obligation of Guarantee the survival and development of children

Responsibility for fulfilling, upholding and advancing human rights. The obligation of Human Rights Fulfillment and Enforcement in accordance with Article 71 on Law 39 of 1999: The Government is obliged and responsible for respecting, protecting, enforcing, and advancing human rights regulated in this Law, other laws and international human rights law received by the Republic of Indonesia. The real form of the implementation of the obligations in question is an effective implementation in all sectors. Like the provisions of Article 72: The obligations and responsibilities of the Government as referred to in Article 71 include effective implementation steps in the fields of law, politics, economics, social, cultural, national security and other fields of defence.

5 Close

a. Conclusion

1) All of the threats and bad actions that cause the loss of children's lives are the action that can not go unpunished. Based on a review of international and national human rights instruments, it is seen that there have been violations of human rights. The removal of one's right to life is a crime of humanity. The rights of children who are violated are (1) Right to Life; (2) Right to Safe Life; (3) Right to Legal Protection; (4) Right to a healthy environment; (5) The right to obtain justice and equality in law.

2) The responsibility of the state in the case of a child sinking in a mine pit is (1) the obligation to provide protection; (2) Making a state policy, the private sector must consider the best interests of the child; (3) Ensuring child survival and development; (4) Making policies for the fulfillment of children's rights; (5) Supervision of Child Protection; (6) Meet, uphold and promote human rights.

b. Suggestion

1) The real action is needed to realize the protection of children's rights. Protection of children's rights is an important action and must be done immediately because protecting children is protecting the future of the nation and the future of civilization. Concern and concrete actions from various parties will be needed.

2) The government as soon as possible took concrete steps to ensure that were no more child deaths in the coal mining pit. the action against the person in charge of the ex-
mine pit needs to be carried out so that accountability and reclamation of the mine pit are carried out.

3) The government should enforce the law against mining companies that have a responsibility to ex-mining pit that is not reclaimed and effect the loss of children's lives.

Literature

[2]. Dalizar Putra, 1995. HAM Hak Asasi Manusia Menurut Al-Quran, Al-Husna Zikra, Jakarta,
[4]. Mokadimah CRC, Children Right Convention, Majelis Umum PBB, 20 November 1989
[10]. www.unicef.org. diakses 26 mei 2017 pk 15.43
The Role of the State Against the Fulfillment of Human Rights of Person with Disabilities in Indonesia

Yohanes Suhardin 1, AL. Sentot Sudarwanto 2
{ johnsuhardin@gmail.com1 alsentotsudarwanto@staff.uns.ac.id 2 }

St. Thomas Catholic University of Medan 1, University of Sebelas Maret, Surakarta 2

Abstract. Modes of transportation and road facilities as well as security in traffic area the basic human rights of persons with disabilities, especially wheelchair users. In developed countries, transportation modes such as buses have been designed for facilitate wheelchair user by bus. So the streets are already marked for wheelchair user. In particular the human rights of persons with disabilities are guaranteed by the law of Republic of Indonesia number 39 of 1999 on human rights. But in really not yet. All modes of transportation such as city buses and intercity buses and intercity buses are designed to facilitate wheelchair users. Even if there is very limited. Even if there is very limited. Should the state through its apparatus be at the forefront of the fulfillment of the human rights of disabled people especially the wheelchair users in traffic in Indonesia. This is done not only by making laws about people with disabilities but also ensuring their rights are well done.

Keywords: The Role of The State, Human Rights, Persons with Disabilities.

1 Introduction

The role of the state in protecting vulnerable groups is still a problem in Indonesia. Vulnerable groups are parts of society that are either consciously or not and directly or indirectly, are often marginalized to enjoy their rights. The marginalization of these vulnerable groups is mainly because they often receive unequal and discriminated treatment. They often lose access to be able to participate and contribute, as well as in determining and maintaining their existence. Not only that, they also often have to lose their rights, which causes them to face various obstacles or limitations to enjoy a good standard of living. Meanwhile, those who can be categorized as vulnerable groups include the elderly, children, the poor, people with disabilities, women (especially pregnant women), refugees, internally displaced people, minorities, migrant workers and indigenous people.

Based on the Sakernas 2017 data the national working age disability population is 21,930,529 people. In addition, according to Data from the National Commission on Human Rights (Komnas HAM), there are tens of millions of people with disabilities in Indonesia whose fate is still marginalized. Need concrete care and action from the government, community, and related parties so that they can enjoy their rights. The United Nations (UN) estimates that there are around 600 million people with disabilities worldwide. Of that total 82

1 Komisi Nasional Hak Asasi Manusia (Komnas HAM), Potret Buram Hak Asasi Manusia Indonesia (Kumpulan Tulisan Rubrik Utama Buletin Wacana HAM 2015), Jakarta, hlm. 53.
percent live in rural areas in developing countries and about 70 percent of the 500 million people are estimated to have very limited access or do not have access to the services they need.

Related to being able to enjoy their rights, in terms of getting access to public facilities, for example road facilities in urban areas have not been specifically designed for people with disabilities. Road facilities generally in Indonesia are only for general citizens who do not have physical disabilities such as people with disabilities or disabilities. Persons with disabilities do not get adequate public facilities. Persons with disabilities often have difficulty using city transportation which is not equipped with special facilities for them and there are no pedestrian bridges designed specifically for persons with disabilities. In the construction of frequent public facilities from architects, urban planning, landscapes experts, developers, building owners, even government officials still do not care about accessibility for persons with disabilities.

2 Literature Review

The word disability is a new term in place of the word disabled. In various Indonesian dictionaries, the term disability is not found. But the word that means the same is the word "disability" which means damage to a person's body, both body and limb, both physical loss, abnormal form and reduced function due to innate birth or due to diseases and other disorders that arise real to carry out life's tasks and adjustments.

According to the World Health Organization (WHO), disability is an inability to carry out certain activities / activities as normal people do, which is caused by conditions of loss or disability both psychological, physiological and structural abnormalities or anatomical functions. In other words, disability is the inability to carry out certain activities / activities as normal people are caused by conditions of impairment related to age and society.

In the past the term disability was known as a disabled person. The Law of the Republic of Indonesia Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities) no longer uses the term disabled, replaced by persons with disabilities. Based on the convention, people with disabilities are people who have physical, mental, intellectual, or sensory limitations for a long time, where when they are faced with various obstacles, this can make it difficult for them to participate fully and effectively in society based on equal rights.

2.1 Rights of Persons With Disabilities

The regulation on disability in the 1945 Constitution of the Republic of Indonesia is contained in Article 28H paragraph (2) which states "every person has the right to get special

---

2 Ibid., hlm. 54.
3 Kompas, Dukungan Kemandirian Penyandang Disabilitas, Kamis, 31 Mei 2018.
facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice. In addition, it is also regulated in Article 281 paragraph (2) which states: "every person has the right to be free from discriminatory treatment on any basis and has the right to protection from such discriminatory treatment.

In addition to being regulated in the 1945 Constitution of the Republic of Indonesia, disability is also regulated in Article 5 paragraph (3) of Law Number 39 of 1999 concerning Human Rights which states that "everyone who is a vulnerable group is entitled to more treatment and protection with regard to its specificity. In the explanation of the paragraph stated that what is meant by "vulnerable community groups" include elderly people, poor children, pregnant women and people with disabilities.

Based on these provisions, people with disabilities are one of the elements of vulnerable community groups. In its development, the term commonly used by people is disabled. Up to now, Indonesia has twice enacted a special law on Persons with Disabilities. First; Law Number 4 of 1997 concerning Disabled Persons. Second; Law Number 8 of 2016 concerning Disabled Persons. In the law, it is stated that persons with disabilities are those who experience physical, intellectual, mental and / or sensory limitations for a long time in interacting with the environment to experience obstacles and difficulties in participating fully and effectively with other citizens based on similarities right.

Persons with disabilities have the right to life; free of stigma; privacy; justice and legal protection; education; employment, entrepreneurship, and cooperatives; health; political; religious; sports; culture and tourism; social welfare; accessibility; public service; protection from disasters; habilitation and rehabilitation; concession; data collection; live independently and be involved in the community; express, communicate, and obtain information; move places and citizenship; and free from acts of discrimination, neglect, torture and exploitation (Article 5 paragraph 1).

In addition to being regulated in various national legislation concerning persons with disabilities, it is also regulated in the International Convention. Among other things, the Convention on the Rights of Persons with Disabilities and its Optional Protocol (A / RES / 61/106) was adopted on December 13, 2006 at UN Headquarters in New York, and was opened for signature on March 30, 2007. There were 82 signatories to the convention, 44 signatories Optional Protocol, and 1 convention ratification.

The Convention on the Rights of Persons with Disabilities aims to promote, protect and guarantee the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for the dignity attached to them. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory damage that in interaction with various barriers can hinder their participation in society and be full and effective based on the principle of equality.

Conventions related to disability, discrimination on the basis of disability is when a person is excluded, obstructed from doing something or treated differently because of the person's disability, in a way that prevents the person from exercising or enjoying all human rights and freedoms as well as other people. This includes rejection of adequate accommodation for that person.

The general principles in this convention are respect for the dignity of individuals, autonomy and independence of individuals; non-discrimination; full and effective participation and inclusion / participation in the community; respect for differences and

---

6Bambang Sutiyoso, Konsepsi Hak Asasi Manusia dan Implementasinya di Indonesia, (Jakarta: UII Press, 2002), hlm. 23.
acceptance of persons with disabilities as part of humanity and human diversity; equal opportunity; accessibility; equality between men and women; respect for the capacity of children with disabilities and their right to maintain their identity.

2.2 Country Role

The state which in this case is the government, especially the regional and municipal governments has the role of fulfilling and providing comfortable and safe pedestrian facilities for people, especially persons with disabilities. Relevant to this, as Kleinfield points out, that a function of the state is to protect the ownership and safety of citizens from violations and attacks by other citizens.  

The safety of citizens, especially people with disabilities, should be the government's attention. Therefore, the role of the government in fulfilling social rights for diffables, one of which is the fulfillment of formal legal rights for mobility. The police and other related parties, that driving safely, do not endanger the safety of other road users.

In addition, in the new discourse of thinking about democracy, one of the important points is that democracy must give a place to the existence of marginal groups in society so that they can articulate their existence in the system and structure of society. Included in groups that are called marginal include persons with disabilities.

Solo is a city that is often referred to as a haven for people with disabilities because it is disability friendly and has concrete programs to build accessibility for people with disabilities. This can be used as a serious basis for the concern of the central government regarding disability issues in Indonesia. Solo is a city that has a complete sidewalk with block guiding for blind people. Solo is also one of the cities that pioneered the drafting of the Disability Regional Regulation.

At present, various public facilities such as transportation in Jakarta and other big cities are still processing efforts to establish accessibility to the rights of persons with disabilities. Among other things, accessibility in public spaces such as sidewalks or roads in parks that have ramps, thus facilitating mobility of wheelchair users. All of these processes require substantial support from local, central and local communities. Be it policy support, regulation, funding or socio-cultural support from various community groups. Disability affairs are a shared responsibility between the government and society.

However, considering that Indonesia is a welfare state as stated in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (2), Articles 33 and 34, the state is required to be responsible for fulfilling basic needs, overcoming poverty and guarantee work for all of its people. For people with special needs such as persons with disabilities, supporting facilities must be provided to fulfill the rights of persons with disabilities.

Article 2 of Law No. 39 of 1999 concerning Human Rights states that the State of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as a right inherent in and inseparable from human beings, which must be protected, respected and enforced for the enhancement of human dignity, welfare happiness and intelligence and justice.

In Indonesia there is what is known as the Road Safety for Humanity, but facilities related to people with disabilities have not received much attention. There are three facilities for people with disabilities on the sidewalk which until now have not been fulfilled, even many do not understand the function and existence.9

First is Guiding Block. This facility acts as a guiding path and guidance for people with disabilities, especially blind people, using yellow tiles with straight lines and round textures. Presently the facility has started on several sidewalks in Jakarta, but it does not work according to its function. Second is Ramp. The function of Ramp is as a substitute feature of stairs that is usually used by the elderly or persons with disabilities to go to higher places or when going to public transportation such as buses and trains. Third is Portas S which is useful to protect wheelchair users. As the name implies, the portal form is designed like the letter S which is made of stainless and is located at the ends of the sidewalk. In Jakarta, this facility is very minimal.

Therefore, the state then makes legislation in order to realize the basic needs of citizens. Moreover, Indonesia is categorized as a welfare state as implied in the Preamble of the 1945 Constitution of the Republic of Indonesia. Characteristics of a welfare state that does not hold the prices of facilities that can be used by the community, but the state is obliged to provide various services including health services, education, road construction and procurement traffic facilities, postal and telecommunications, radio and television facilities, various social services, creating or providing assistance to cultural institutions; and especially in modern countries, various ways to develop the nation’s economic capacity with the aim that all members of society, at a minimum, can live free from excessive poverty and economic dependence.

The state should guarantee the fulfillment of the human rights of persons with disabilities in traffic, namely traffic security and road transportation. According to Article 30 Article 1 of Law No. 22 of 2009 concerning Road Traffic and Transportation, traffic safety and road transportation is a condition of liberation of every person, property, and / or vehicle from interference with acts of resistance, and / or fear in traffic. Furthermore, in point 31 of Article 1 of the law, it is stated that traffic and road transport safety is a condition of avoidance of everyone from the risk of accidents during traffic caused by humans, vehicles, roads and / or the environment. In this connection, traffic order and road transportation are a traffic condition that takes place regularly in accordance with the rights and obligations of each road user.

Part Six Support Facilities Article 45 paragraph (1) of Law No. 22 of 2009 concerning Road Traffic and Transportation states that supporting facilities for the operation of Road Traffic and Transportation include sidewalks; Bike Lane; pedestrian crossings; stop; and / or special facilities for people with disabilities and elderly people.

Provision of supporting facilities as referred to in paragraph (1) shall be carried out by the government for national roads; provincial government for provincial roads; District government for district and village roads; City government for city roads; and toll road business entities for toll roads.

Special treatment for people with disabilities, elderly people, children, pregnant women and sick people. Part one Special Scope of Treatment. Article 242 of the Act is stated:

(1) The Government, Regional Government and / or Public Transportation Company are obliged to give special treatment in the field of Traffic and Road Transportation to people with disabilities, elderly people, children, pregnant women and sick people. What is meant by special treatment is the provision of facilities, in the form of general physical and non-

physical facilities and infrastructure, as well as information needed for people with disabilities, elderly people, children, pregnant women, and sick people to obtain equal opportunities.

(2) Special treatment as referred to in paragraph (1) includes Accessibility; service priority; and service facilities. The priority of service is the prioritization of the provision of special services.

Law No. 39 of 1999 concerning Human Rights implicitly requires the state to play a role in realizing the rights of persons with disabilities. In the international convention the rights of persons with disabilities states that countries need to ensure that persons with disabilities enjoy all human rights and fundamental freedoms without discrimination in any form due to disability. In doing this, countries agree to implement rights at the convention; remove or change laws, policies, or ways that discriminate against persons with disabilities; pay attention to the rights of persons with disabilities in policies and programs; ensuring that government officials act in line with the obligations at the convention; eliminate discrimination on the basis of disability caused by any person or organization; carry out or encourage research and development of goods, services and facilities that can be accessed by persons with disabilities, and at a lower cost; provide easily accessible information about new technologies that can help people with disabilities, assistive devices and mobility devices; encourage the training of the rights of persons with disabilities for people who work with people with disabilities; carry out the parts of the Convention that are immediately applicable in accordance with the international standard, and pay attention to the available resources, and gradually carry out the parts related to economic, social and cultural rights; and ensure that persons with disabilities, including children, can express their opinions on the way the Convention is implemented, through the organizations that represent them.

3 Conclusion

Normally the juridical role of the state in realizing the rights of persons with disabilities as part of human rights is adequate. However, at the level of implementation it is still very weak. Public facilities that support the fulfillment of the rights of persons with disabilities are not well available, especially the rights of persons with disabilities in traffic. Even though the Road and Traffic Transport Law has regulated the rights of persons with disabilities in traffic, but in reality, the road conditions of big cities in Indonesia are not yet possible for persons with disabilities to travel safely and safely. There are no special roads available for people with disabilities, city buses are not designed to make it easier for people with disabilities to use them safely and safely. Likewise, special crossings for people with disabilities on the Railway track in big cities are not yet available.

The various problems faced by persons with disabilities must be immediately resolved if the Indonesian people are committed to upholding human rights for all. This is done by making and or improving policies so that they can guarantee the rights of persons with disabilities, help create social conditions that enable people with disabilities to take part in development, and eliminate all discriminatory actions.
References

[3]. Komisi Nasional Hak Asasi Manusia (Komnas HAM), *Potret Buram Hak Asasi Manusia Indonesia* (Kumpulan Tulisan Rubrik Utama Buletin Wacana HAM), (Jakarta: 2005).
[8]. Suhardin, Yohanes, *Hukum dan Hak Asasi Manusia (Suatu Pengantar)*, (Semarang: Badan Penerbit Universitas Diponegoro, 2011).
[12]. Undang-Undang Negara Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.
[13]. Undang-Undang Negara Republik Indonesia Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan.
State Protection to Human Right Because of Crime

Muhammad Helmi1, Nyoman Serikat Putra Jaya2, RB. Sularto3
{mhelmi354@yahoo.co.id.1 , putrajaya1948@yahoo.co.id 2, sularto@live.undip.ac.id3}

Student of Doctoral Program In Law Science, Diponegoro University, Semarang, Indonesia
1,Diponegoro University, Semarang, Indonesia2,3

Abstract. A State is a group of people who live in a particular territory and organization under legitimate government whose sovereignty. State protection grant the people’s rights depend on the state sovereignty. Sovereignty will depend on state needs. When the state gives justice to people, that give their rights, named human rights. Thus the state must increase protection of human rights over the crime committed by a person. Crime may cause a material and nonmaterial injury. However, the state sovereignty influences the form of state protection. Historically, according to Thomas Hobbes, state protection by the king is an obligation to his people neither felon nor misdemeanor. The people can’t sue to the Royal Court, it is not his right, but the king’s kindness The preamble of Constitution of the Republic of Indonesia at the fourth paragraph mention "...... 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 then ......". Then based on these provisions the government has an obligation to protect its people. Recently Indonesian must make a regulation to protect its people from the crimes. Now, sue for crime in Indonesia is represented by a prosecutor, but the prosecutor does not involve the victim.

Keywords: State Protection, Human Right, Crime.

1 Introduction

Background

Based on history, the man always lived together in a group of people (zoon political) from a long time ago. In the group of people, they struggle together to find food, protect himself from danger, disaster and pursue his life. They interact in social relations. So their life depends on a particular place as a source of viability, there must someone of people or a group of people to regulate and lead his group. The leader has power from people and every one of people must be faithful to his rule.

A state is an agency to fulfill people desire. The more social interaction, so the more of needs. The state role to protect people's right to human rights. The aim of an applying to human rights on based approach is happiness all of human being.
Therefore right is a normative element embedded in every human being as a guidance behavior, protect of right, and ensure of dignity. Thus, the state makes a regulation on forbidden behavior.\textsuperscript{2}

The increasing social interaction is unavoidable, will increase crime. Because people’s needs increasing and the character of each person is different, being an individualist and disregard needs of others. The state role must be a protector of people right on mental and physical injury for a crime.

The injury person of a crimenamed the victim. How state must protect the victim because ignored victim. The crime is undesired by the victim, but crime can happen to whoever. The state must pay attention to injured the victim. The state must prioritize regulation as punishment for the crime perpetrator.

According to Arif Gosita, Victim is they who suffer injury physically and spiritually because of other people action for individual or other interest which violate victim interest and human right. This definition is extended by Arif Gosita, not only to the person but to the other legal entity are a legal body, a group of people, and corporation. The victim has tight relation to crime.\textsuperscript{3}

An action is considered as a crime or not, so the state stipulate of action is a crime or a group of people consider of action is a crime. So the government is granted authority to make a charge and punishment to crime perpetrator, the crime perpetrator’s right is reduced because that action violates the regulation. The government must have authority to exercise his power.

The different type or form of government distinguished according to the state sovereignty, so the protection state to person according to the sovereignty. The sovereignty may confine the government on the hands of one single magistrate or a particular people or the whole people. The three form of government may give protection to person because the state found for protecting the people.

Based on history, while the state is found, the group of people made an agreement to regulate their liberty. This agreement is named as Social Contract. Social Contract Theory is a liberal thought in The Enlightenment Era. They are three people who told about Social Contract Theory, namely Thomas Hobbes, John Locke, and Jean Jacques Rousseau. Each of man has different life background, so a result of though is different.

The preamble of Constitution of the Republic of Indonesia at the fourth Paragraph mention "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, Indonesia’s National Independence shall be laid down in a Constitution of the State of Indonesia, which is to be established as the State of the Republic of Indonesia with sovereignty of the people and based on the belief in the One and Only God, on just and civilized humanity, on the unity of Indonesia and on democratic rule that is guided by the strength of wisdom resulting from deliberation / representation, so as to realize social justice for all the people of Indonesia".

\textsuperscript{2} James W. Nickel, \textit{Hak Asasi Manusia : Refleksi Filosofis Atas Deklarasi Universal Hak Asasi Manusia}, (Gramedia Pustaka Utama, Jakarta, 1996), hal 24.

\textsuperscript{3} M. Ali Zaidan, \textit{Bahankuliah Viktimologi Fakultas Hukum Universitas Pembangunan Nasional}, Jakarta Selatan, 2008, hal 46
The fourth Paragraph mentioned 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. The regulation confirms that the foundation of Indonesian government in exercising its authority to protect individuals and the whole nation of the Indonesia.

Analyzing on the shifting of thought on law development through the understanding of thought historical development that emerged in a certain era is very important. Thus, analyzing the problem must consider characteristic of Indonesia. Because it is defined by space and time which form the rule of law.

State duty priority finds a solution to the human right problem. It is protected by the state. The state protection to the human right is the authority which to act as a legitimate government in a particular territory. People desire is happiness and protection by the state.

Based on the description above, so the problem in this study is how state protection to human right because of crime?

2 Analysis

Based on history, persons sue to the royal court but are not their rights, however, it is kindness by kingdom authority. The person sues a case must demanding to royal officials name chancellor.

The Sovereign act which is necessary for the defense of state interest, this is the aim. To obtaining this aim, so the sovereign make an agreement with the people together. Thus he has duty and authority.

For all human being, their right is the central achievement, however, it is duty by the state. State duty to act is authority under a legitimate government. The sovereignty has tight relation to contract social. They told about contract social theory. They are Thomas Hobbes, John Locke, and Jean Jacques Rousseau. The sovereignty is not a static concept. The conditions evolved continuously parallel with social growth which found in contract social.

According to Thomas Hobbes about the social contract as cited in F.M. Suseno’s book, the social contract is not contract among individuals with their state (the state is not founding yet, while they make a contract), however among individuals their self. The contract will form the state, so it is individuals right is handed in wholly to the state. After the state has power however it has not an obligation to people.

Thus, the absolute power of nature to govern men’s actions, Hobbes now opposes an absolute freedom of action, regardless of the conditions which disposed the individual to act. It is this opposition which lurks behind the contradiction as to whether the sovereign has or has not the right to punish granted to him by his subjects.

But Hobbes goes further than this. He also states that the individual does give the Sovereign the right to punish and that no subject may protest against any punishment meted

---

4 Adji Samekto, Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisme, Jakarta: Konstitusi Press, 2015, hlm. 200
6 Alan Norrie, Thomas Hobbes And The Philosophy of Punishment, Law and Philosophy, Faculty of Law University of Dundee: Scotland, Volume 3 Issue 2 1984, P.306
out to him by the Sovereign because [since] every Subject is by this Institution Author of all the Actions, and a decision of the Sovereign Instituted.\footnote{Alan Norrie, \textit{Thomas Hobbes And The Philosophy of Punishment}, Law and Philosophy, Faculty of Law University of Dundee : Scotland, Volume 3 issue 2 1984, p. 304}

Where laws rule, the young Hobbes suggests, the skillful prince is unnecessary. Where no laws rule, “such confusion would follow in government, that the differences of Right and wrong, Just and unlawful, could never be distinguished.” Conversation and commerce would be overthrown, all right would be perverted by power, and all honesty swayed by greatness.\footnote{YishaiyaAbosch, \textit{The Conscientious Sovereign: Public and Private Rule in Thomas Hobbes’s Early Discourses}, California State University : American Journal of Political Science, Volume 50 issue 3 2006, pp. 625}

Thus, according to Thomas Hobbes, the authority of protection has not state obligations, the form of state protection make a regulation of punishment. The victim has not right to sue, except kindness by kingdom authority.

Franklin said Locke, search a conceptual understanding of sovereignty in a mixed constitution convincing. To make this point is not to undervalue Two Treatises as a political document suitable for the events unfolding around Locke in the 1680s. What Franklin’s thesis about Locke’s quest for consistency shows is the way in which Locke’s thinking was driven by the rational motive for consistency. There is at least one other example of this motive in Two Treatises: Locke’s analysis of the property. The question there was: How is it possible if all was given to man in common, for private property to emerge? The doctrine of property plays an important role in Locke’s social philosophy, but he had to satisfy himself on the conceptual move from common to private first.\footnote{John W. Yolton, \textit{John Locke and the Theory of Sovereignty: Mixed Monarchy and the Right of Resistance in the Political Thought of the English Revolution} by Julian H. Franklin, Sage Publications, Inc : Political Theory, Vol. 9, No. 2 (May, 1981), hlm. 268}

Eduardo A. Velasquez, \textit{Washington and Lee University} John Locke’s vision of the prepolitical and political condition of human beings, of the inherent powers by which so-called individuals appropriate and master the gifts of nature through labor, and of the use of those powers to create governments for the protection of their persons and property stands at the fountainhead of liberal political philosophy. This vision is no mere abstraction. Locke’s doctrine of right which chief among them the right to the fruits of our labors.\footnote{Eduardo A. Velasquez, \textit{John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality} by Matthew H. Kramer, Washington and Lee University Vol. 92 Issue 3 Tahun 1998, p. 685}

Numerous critiques and limitations have emerged. Hargrove ascribes Locke’s strong endorsement of private property rights in part to his attempt to justify transferring ultimate rights to property from the monarchy to individual owners.\footnote{Brent M. Haddad, \textit{Property Rights, Ecosystem Management, And John Locke’s Labor Theory Of Ownership}, University of California volume 46 Issue 1 Tahun 2003, p. 24}

Explanation of John Locke and Thomas Hobbes about contract social is different. According to John Locke, the people’s right is not handed in wholly to the king, therefore their rights must be protected. So Kingdom authority and people must regulate in the contract social. Therefore, if in the contract social has regulation as an instruction to the state which gives a protection to a person, so they get it. This depends on the agreement.
One of two key elements in Locke's treatment of rights distinguishes it from Grotius's natural law position. For Locke, construct of an "individual rights" which he understands as "sanction to restrict behavior of another". Rousseau borrows from Hobbes the argument that sovereignty is an absolute power; it cannot be divided and remain sovereign; and it cannot be subject to "fundamental laws" and remain sovereign. At the same time, Rousseau takes from Locke and the jurisconsults the idea that sovereignty is limited. Sovereignty is absolute, but not unlimited. The limits are those imposed by natural law and by the considerations of a public good. Sovereignty does not pass the bounds of public advantage. As an example of what Rousseau means by a natural law limitation, we may note his argument in the social contract that no agreement to enter into slavery could be a valid one because any agreement which wholly to the advantage of one party and wholly to the disadvantage of the other is void in natural law.

In a way, Rousseau's response to the challenge of Hobbes is wonderfully simple. Clearly, men can be at the same time ruled and free if they ruled themselves. For them the obligation to obey will combine with the desire to obey; everyone in obeying the law will be acting only obedience to his own will. In saying this, Rousseau was going a good deal further than liberal theorists such as John Locke, who associated freedom with the people's consent to obey a constitutional monarchy in whom they invested sovereignty. For Rousseau there is no investment or transfer of sovereignty: sovereignty not only originates in the people, it stays there.

On the whole, however, Rousseau, Law, and the sovereignty of the people stand as an important contribution to both Rousseau studies and democratic theory. It correctly insists that Rousseau's political theory, while at times abstract, is often remarkably practical and relevant to those who seek to find ways of broadening democratic participation in lawmaking and governance.

The sovereign and the government. The Sovereign, according to Rousseau, is a general will or the community as a whole. The government is that group of individuals who rule the society. The government, not the Sovereign, confronts the issues of ruling a society, formulates the policies, and sets out the regulations for the society.

Every people should have a vote upon the question when it is finally put in its general form to the Sovereign; the debating, stating of views, and the making of proposals belongs to the members of the government, not of the Sovereign.

So based on explanation, every violation of a law is considered as rebellion. The crime perpetrator violate the agreement by his act: his rights are reduced of him as an immoral person and can be exiled or put to death.

A study of state protection institutions and practices reveals about the way that state actors choose of state sovereignty. This choice influence form of protection. The Main

---

principle of people to obtain right and happiness. Therefore those people who make contract together to form the Commonwealth must be bound by the decision of the majority as to the selection of the Sovereign. so the people give to a power of the sovereign.

The example, theory of sovereignty delivered by Thomas Hobbes. The state has authority in making regulation on punishment and protection to victims who are injured. The state must consider condition or ask the victim. Is there a right of intervention? How and when should it be exercised? The state has power, so that can do it. This intervention depends on the agreement in the social contract.

The form of sovereignty, which ultimately influence on the form of protection. In situations is not according, so sovereignty creates a conducive condition to a human being. This depends on how state exercises its sovereignty.

The modern states choose a form of sovereignty which is compatible with development. Thus unswerving allegiance to the Sovereign, the selection of ‘true’ ideas and the suppression of ‘false’ ideas, because this is the agency of control. So can be stipulate “the behavior of people of error, mistake or negligence. When discusses the particular details of what should duty as part of the Sovereign’s duty. Such things as to respect rights of others and not to injure others.

Forexample is the form sovereignty of the people will make the new norm of the responsibility to protect. This hand in those concepts of sovereignty offers an elegant, so potentially a new constructive.

The state has a duty to prosecute and make a decision to crime perpetrator. The people must believe in a verdict by state. How is protection state to a victim who got an injury?. How is the state say to justice but not involving the victim?. In Indonesia protection state to a human being is regulated by Constitution of Indonesia.

The Constitution of the Republic of Indonesia offers an apparently compelling solution to this study: the state should view the relationship between sovereignty and intervention as complementary rather than contradictory. The idea of reshaping of sovereignty more closely to the responsibility of states to their citizens. Therefore, sovereignty is no longer conceived as undisputed control over territory, but rather as a conditional right, upon respect for a minimum standard of human rights to a victim.

According to the preamble of Constitution of the Republic of Indonesia at the fourth Paragraph mention "..... 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 then .....".

The regulation to form a Government of the State of Indonesia that must protect the whole people of Indonesia. The state duty must give protection to people including the victim. Therefore the state must intervene to protect the victim. There must attention that is the primary purpose of the intervention must be to the victims concerned.

The Commission turned the idea of sovereignty on its head and stated that the primary responsibility of a state is to protect all its citizens. When a state is unwilling or unable to halt or avert serious harm to its population.18

The idea of protection depends on a concept of human right which secures people’s right, respect for their dignity and worth as human beings. Protection of state is responsible, like which is related to state duty. Although this is the same as saying that states to intervene, it raises the question whether justice and law should be more closely aligned.

18Mary-Wynne Ashford, The responsibility to protect: A new notion of state sovereignty, Medicine, Conflict and Survival, Washington State University Libraries, volume 19 issue 1 thn 2003, p. 36
Although the crime perpetrator committed a crime, so he has rights. The same also the victim has rights which are injured by an act of crime. What basis which precede the responsibility to protect interesting of crime perpetrator, rather than the responsibility to victim right. Understanding the issue by noticing, whatever the executive action, its authority must come from the sovereignty which is further regulated by laws.

The state sovereignty has a responsibility to protect its citizens from avoidable catastrophe. When a victim is unable to do, that responsibility must be taken over by the state. Several reasons why its formulation must be taken over by the state because it has power. On the victims suffering who seek assistance, on the claims, so state has rights intervening.

Based on above regulation, Whose sovereignty it is? sovereignty in the hand of people, but the sovereignty is executed according to the laws. Thus only the laws bring the right to direct authority. This is regulated by Constitution of Indonesia Chapter I Form of the State and Sovereignty Article 1 section 2 Sovereignty is in the hands of the people and implemented according to this Constitution. Then Article 4 section 1 The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.

The regulation as Rousseau said the people invested sovereignty to a constitutional monarch. Sovereignty is not executed by people, but it stays there. However, the regulation said sovereignty is implemented according to this Constitution.

The entire framework to know state purpose rests on the idea of sovereignty. The sovereignty of people gives them freedom of speech, freedom of association, and freedom to get happiness. However, they lose their right because of a result of their action. On base Article 28j(2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes to guarantee the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

The regulation such as Locke said, the concept of an "individual right" to protection, so can regulate sanction to restrict the behavior of another. This as a form of protection by the state.

So the concept of people sovereignty is not only political but also moral and the protector. The protection can be conceived as a norm imposed is not only to citizens but also the individual. “Each individual, as a part of citizens, can have a particular will which must is protected.

Therefore the government act on sovereignty must protect people, particularly injured people. This regulation is Article 28G (1) Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right. (2) Every person shall have the right to be free from torture or inhumane and degrading treatment and shall have the right to obtain political asylum from another country.

Based on the regulation, the state has the capacity to assume the responsibility. This becomes problematic when the responsibility of state must involve the victim. If State protection to a victim is put victim’s interest as part of state obligation. So the state involves victim to sue his injury. This is a human right which to be the expectation of people.
Analysis of regulation, the obligation to act on behalf of a state. The state has the power to intervene. The power must take the necessary and proper measures in order to restore and ensure public order and life.

The protection of a victim that can avoid the conundrum surrounding right of intervention. This obligation of responsibility and protection. It rests on a constitution of Indonesia and its regulation. State intervention to act term process of rebuilding. The recommended priorities are to respect the dignity and basic rights all people within the state.

Van Boven, a special pioneer of United Nations, explains that right of victims of a crime comprehensively, that is not only right to know and right to justice but also right to reparation. The human right is regulated merge in various regulatory instruments, and include explicitly in jurisprudence by the judiciary.19

Compensation is an obligation in cash or another form, like health care, give a job, house, education, and land. While restitution is an obligation to return of property or payment of injury, or loss of injury by the crime. And rehabilitation is an obligation to heal the victims medically and socially.20

If peace and justice are to be obtained and maintained, it must be well governed. Thus the state has duty and power not only to decide on punishment the crime perpetrator but also protect victim’s right.

3 Conclusion

State protection grant the people rights depend on state sovereignty. Sovereignty will depend on state needs. Based on history, sovereignty of kingdom make an absolute. Everything must following to the king desire. Like, persons sue to the royal court but are not their right, however, it is kindness by kingdom authority. The person sues a case must demanding to royal officials name chancellor. Analyzing on thought on law development through the understanding of thought historical development that emerged in a certain era is very important. Thus, analyzing the problem must consider characteristic of Indonesia. This is influence by space and time is different which form the sovereignty. Based on the regulation Sovereignty is in the hands of the people and implemented according to this Constitution. The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution. In exercising their right and freedom, every person shall have the duty to accept the restrictions established by law and next. The regulation confirms that the foundation of Indonesian of government in exercising its authority to protect individuals and the whole nation of Indonesia. So protection of state is responsible. The protection to people is an obligation to responsible and protection by the state. It rests on the constitution of Indonesia and its regulation. The recommended priorities are to respect the dignity and basic rights all of the people within the state including the victim. Now, crime sue in Indonesia is represented by a prosecutor, but the prosecutor does not involves the victim. Although based on regulation provisions the state has an obligation to protect its people. The state has duty and power not only to decide punishment to crime perpetrator but also protect victim’s right. If state protection to a

victim can be done through putting the victim’s interest as part of state obligation. So the state involves victim to sue his injury. This is a human right as expected by people.

References

[1]. C.S.T. Kansil, Ilmu Negara Umum dan Indonesia (Jakarta :PTPradnyaParamita, 2001), hlm. 133
[6]. Alan Norrie, Thomas Hobbes And The Philosophy of Punishment, Law and Philosophy, Faculty of Law University of Dundee : Scotland, Volume 3 issue 2 1984, P.306
[7]. Alan Norrie, Thomas Hobbes And The Philosophy of Punishment, Law and Philosophy, Faculty of Law University of Dundee : Scotland, Volume 3 issue 2 1984, p. 304
Providing Legal Protection for Victims of Child Trafficking and Women (Case Study: North Sumatera, West Sumatera and South Sumatera)

Mety Rahmawati¹
{Metyargo@gmail.com/ metyargo@trisakti.ac.id¹}
Universitas Trisakti, Jakarta Indonesia¹

Abstract. North Sumatera, West Sumatera dan South Sumatera is an area for transit and purpose for human trafficking. The victim is suffering physically and psychologically. This can cause trauma on victims. Victims usually withstand psychological trauma that occurs the investigation process where the victim recalls the event. The purpose of this study is to get an overview of the legal protection efforts carried out by local governments against child trafficking victims and women with case study in North Sumatera, West Sumatera and South Sumatera. Analitical Descriptive method by using secondary data and supported by primary data. All area in this study already have regional regulation which has regulated preemptive and preventive prevention, by organizing the task force for the prevention and handling of crimes human trafficking. Providing legal protection for victims child trafficking and woman are done by mentoring, giving health service, legal assistance, repatriation and reintegration. Providing legal protection for trafficking victims varies, this is due to the different modes in each region, as well as available facilities and funds. The poverty factor, reluctant to report and awareness of the need for legal protection for trafficking victims, is an obstacle that must be overcome by the regional government gradually.

Keywords: Legal Protection, Child Trafficking, Women Trafficking

1 Introduction

1 Arist Merdeka S, as chair of the antional commission for child protection/ National commission, said that there were networks in west Sumatera, Jakarta, Lombok, Bali, Batam and Lampung, which were neatly organized¹. The human trafficking network is one of the modes of criminal trafficking in persons, which is organized crime. By way of debt bondage, the promise of a big salary and guaranteed a happy life, can get free pilgrimage, contract marriages, illegal adoption, abuse of abuse of authority, service integration, identity change and others². Whereas for syndicates who trade people will benefit greatly: with relentless payment of debts from victims, benefits by employing children (because they are easily persuaded and paid low), transplanting organs at high prices but paid to the

victims a little or from kidnapping people whose organs are taken for sale, etc. Victims can be identified as poor people living in slums/remote areas; child victims of domestic violence; street children; immigrant workers and other victims. Another victim was an elderly man who has a mental illness, then exploited as a beggar.

Suffering suffered by Demisien J Silitonga who has reported the case of trafficking in persons who befell his wife, then the existence of his wife is unknown, after being given a high salary. Demisien reported the case to the North Sumatera Regional Police on 15 December 2016, but there is no clarity, this is because the employer has fled.

Medan and Padang were place of transit and the purpose of trafficking children and woman according to internal considerations local regulation Medan No.3 of 2017 about prevention and handling woman and child as victim human trafficking.

Three teenagers from Duren Tiga, Pancoran, South Jakarta, became victims of trafficking cases (human trafficking) who were employed without the knowledge of their parent. They were hired as guest assistants at a café in Pasaman, West Sumatera As revealed by the head of Public Information at the National police headquarters, Comr. Martinus Sitompul, there were three daughters who were victims of the initials P (18), SZ (15), dan D (12).

On August 15, 2018, it was reported that a woman from the southern Sumatera province of Empatlawang has been a victim of trafficking, in Lombok (NTB), a victim sold in NTB planned to be employed in Malaysia.

Human trafficking can cause suffering, there are 2 kind of exploitation in human trafficking, according to migrant care: a) work exploitation occurs in women and men with the type of work in farm sector (4.6%), construction sector (2.1%), factory sector (2.4%). Domestic workers both women and children come from 56.2% of Indonesian migrant workers, the majority of female servants come from 2.4% of Indonesian migrant workers. Exploitation such as physical violence, psychological violence, sexual violence, unpaid wages, deprivation of food and water, ideological pressure to ban worship and the pressure to consume narcotics. b) sexual exploitation occurs in 16% of victim of Indonesian women’s trafficking and as many as 35% are girls. Similarly, women who work in the sex industry experience violence and food an water deprived. While girls who work in the sex industry are under pressure from consuming narcotics and alcohol.

The impact on victims of trafficking is the emergence of trauma to victims who are often in the form of physical and psychological damage to the victim. Victims usually withstand psychological trauma that occurs during the investigation process where the victim recalls the event. In addiction, difficulties were also felt in the criminal justice process where the victim refused to participate because of fear, stigma attached to him, revitalization, and loss of confidence in the justice system.
In addiction, based on the trafficking report of United Embassy in 2017, stated that many cases of trafficking in criminal acts were unclear, due to a lack of understanding of anti-trafficking laws causing some prosecutors and judges to reject cases, or to use other laws to prosecute traffickers. So that legal protection is not achieved against the victims, so the victims feel that their rights are not valued.

Protection is all efforts to fulfill the rights and the provision of assistance to provide a sense of security to witnesses and/or the victims that must be carried out by the LPSK (witness and victims protection agencies) or other institutions in accordance with the provision of this law. (Art. 1 paragraph (8) Law No. 31 of 2014).

Legal protection was very important for many people, because we can be victim or can be a criminal.

2 Problem

What have government done for providing legal protection and what are the obstacles in the field? (Case study: North Sumatera, West Sumatera, and South Sumatera)

3 Research Method

Research uses secondary data and is supported by primary data. The regulations used are Law No. 21 of 2007 concerning the eradication of human trafficking; Law No. 31 of 2014 concerning Change of Law No, 13 of 2006 concerning witness and victim protection; Law No. 26 of 2001 concerning Human Rights Court; Government Regulation No. 9 of 2008 concerning Procedures and Integrated Service Mechanisms for witnesses and/or Victims of Human Trafficking; Presidential Regulation No. 69 of 2008 concerning the Task Force for the Preventon and handling of crimes in Human Trafficking; Regulation of the State Minister for Women’s Empowerment and child protection Republic of Indonesia No. 22 of 2010 concerning integrated Service Operational standard Procedure for Witnesses and/or victims of human trafficking; Medan area Regulation No 3 of 2017 concerning prevention and handling of human trafficking; Regulation of the Governor West Sumatera No. 28 of 2017 concerning the description of the main task and functions of the Office of Women’s Empowerment and child protection and Local Regulation South Sumatera Provision No. 13 year 2017 about Prevention and handling woman and child human trafficking.

Resource persons are KPAID (Regional Indonesian Child Protection Commission) North Sumatera, the Center of integrated service for women and children empowerment (P2TP2A) Kaban Jahe North Sumatera, BP3TKI Medan, Nurani Perempuan (Padang), P2TP2A Limpalpei Rumah Nan Gadang Wet Sumatera, KPAI South Sumatera, P2TP2A women’s quality of life section PP Bureau, South Sumatera Regional Secretary, south Sumatera BP3A, South Sumatera Provincial Crime Prevention and Handling Task Force.

9 https://id.usembassy.gov/id/laporan-tahunan-perdagangan-orang-2017/ (download, Augst 3, 2018; at 09.00 AM).
Research location are North Sumatera, West Sumatera and South Sumatera. The analysis is carried out qualitatively, with the nature of analytical descriptive research.

Research locations are North Sumatra, West Sumatra, and South Sumatra.

4 Discussion

In article 1 law No. 21 of 2007, human trafficking is:

“The act of hiring, transporting, storing, sending, transferring, or accepting someone with the threat of violence, the use of violence, kidnapping, confinement, forgery, fraud, abuse to the power or vulnerable position, debt bondage or giving a fee or benefit, so as to obtain approval from the person hold control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or resulting exploitation”.

Based on the Article, that the crime of human trafficking is: the existance of acts in the form of recruitment, transfer or acceptance of someone, by using the threat of violence, use of violence, kidnapping, confinement, counterfeiting, fraud, abuse of power of vulnerable position, debt bondage or paying or benefits, so get the approval of the person who holds control over the other person.

Whereas exploitation according to art. 1 paragraph (7) Law No. 21 of 2007 is: action with or without the consent of the victim which includes but is not limited to prostitution, forced labor services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organs, or against the law of transferring or transplanting body organs and/or tissues or utilizing the power or ability of a person by another party to benefit both materially and immaterially.

Victim is a person who experiences psychological, mental, physical, sexual, economic and/or social suffering, which is caused by a crime of trafficking in persons. (Based on Art. 1 paragraph (3) Law No. 21 of 2007).

According to Stephen Scaffer, there are victims who are biologically and socially potentil victims. Among others, children, parents, people who are physically or mentally disabled, the poor, minorities and so on are people who are easily victims. Victims in the case cannot be blamed, but the community must be responsible. Society is a group of individuals who have an obligation to participate in preventing and overcoming a crime. As set out in Art. 57 paragraph (1) ang paragraph (2) and Art 60 Law No, 21 of 2007. Community participating is realized through the act of providing information and/or reporting the existence of criminal acts of human trafficking to law enforcers or authorities, or participating in dealing with victims of acts criminal trafficking.

Neither is the country based on Art 58, the government, regional government is obliged to make policies, programs, activities, and allocate budgets to carry out prevention and addressing the issue of human trafficking, in the context of preventing and handling victims of criminal acts of people. As well as to streamline and guarantee the implementation of measures the Government forms a task force consisting of

---

representatives from the government, law enforcement, community of organizations, non
governmental organizations, professional organizations and researchers / academics. The
Regional Government forms a task force consisting of representatives from the local
government, law enforcement, community organizations, non governmental organizations,
professional organizations and researchers / academics. The task force is the coordinating
agency in charge:

a. coordinate prevention and handling of human trafficking;
b. carry out advocacy, socialization, training and cooperation;
c. monitoring the progress of implementation of victim protection including
   rehabilitation, repatriation and social integration;
d. monitor the progress of law enforcement;
e. carry out reporting and evaluation.

The central task force is led by a minister or minister level official appointed based on
the Presidential Regulation.

a. Providing legal protection in Law No. 21 of 2007 about human trafficking and Law
   No. 31 of 2014 about amendment for Law no 13 of 2006 about witness and victim
   protection.

Protection provided to victims of human trafficking is also given to the victims
families. Victims are also witnesses, therefore Law No. 31 of 2014. The protection
provided in Law No. 21 of 2007 is:

1) Obtaining identity confidentiality (art.44), this right is given also to the families victims
   and / or witnesses to the second degree, if the family of the witness and / or the victim
   is physically or psychologically threatened by another person relating to the testimony
   of witnesses and / or victims.

2) In order to protect witnesses and / or victims, in each province and district / city a
   special service room must be established at the local police office to conduct checks at
   the investigation level for witnesses and / or victims of human trafficking. (Art. 45
   paragraph (1) and (2).

3) To protect witnesses and / or victims, in each district / city integrated service centers can
   be established for witnesses and / or victims of human trafficking. Further provisions
   regarding integrated service procedures and mechanisms are regulated by government
   regulation. (art 46 paragraph (1) and (2).

4) In the event that witnesses and / or victims and their families are exposed to threats that
   endanger themselves, their lives and / or property, the Republic of Indonesia National
   Police must provide protection, both before, during and after the proceedings. (Art 47
   paragraph (1) and (2).

5). Every victim of human trafficking or their heirs has the right to get restitution.
   Restitution in the form of compensation for: loss of wealth or income; suffering; cost
   for medical and / or psychological treatment ; and / or other losses suffered by victims
   as a result of trafficking. (Art. 48).

6) Victims are entitled to health rehabilitation, social rehabilitation, repatriation, and social
   reintegration from the government if the person is experiencing physical or
   psychological suffering due to the crime of human trafficking. The rights as proposed
   by the victim or family of the victim, friend of the victim, police, escort volunteer, or
   social worker after the victim reports the case he experienced or another party reports it
   to the Indonesian National Police. The application is submitted to the government
through ministers or agencies that deal with health and social problems in the region. The minister or the agency that handles rehabilitation must provide health rehabilitation, social rehabilitation, repatriation and social reintegration no later than 7 (seven) days counted since the application is submitted. For the implementation of health rehabilitation services, social rehabilitation, repatriation and social reintegrated, the Government and Regional Government are required to form social protection homes or trauma centers. For service delivery, the community or other social service institutions can also form social protection homes or trauma centers. In the event that a victim experiences trauma or an illness which endangers him due to a crime in human trafficking so that he needs immediate assistance, the minister or agency handling health and social problems in the region must provide first aid no later than 7 (seven) days after the application is submitted. In the event that a victim is abroad requires legal protection due to a crime in human trafficking, the Government of Republic of Indonesia through its representatives abroad must protect the personal and interest of the victim, and endeavour to return the victim to Indonesia at the expense of the state. In the event that the victim is a foreign national residing in Indonesia, the government of the Republic of Indonesia seeks protestin and repatriation to their home country through coordination with their representatives in Indonesia. Provision of protection in accordance with the provisions of legislation, international Law, or International customs. The victim of a crime in human trafficking, other than as referred to in this law also has the right to obtain rights and protection in accordance with the provisions of other laws and regulations. (Art 51; 52, 53 and 54).

Based on Art. 5,6,7,7A Law no 31 of 2014, witnesses and victims are entitled:

1). Obtain protection for personal, family, and poverty security, and be free from threats relating to the testimony that will, is, or has been given;
2). participate in the process of selecting and determining forms and security support;
3). Provide information without pressure;
4). Get a translator;
5). Free from entangling questions;
6). Get information about the progress of the case;
7). Get information about court decisions;
8). Get information on case the convict is released;
9). Keep their identity secret;
10). Get a new identity;
11). Get a temporary residence;
12). Get a new residence;
13). Get reimbursement of transportation costs according to needs;
14). Get legal advice;
15). Get Temporary living expenses until the deadline for protection ends; and / or
16). Get assistance.

These rights are given to witness and / or victims of criminal acts in certain cases in accordance with the Degree of the LPSK (witness and victim protection agency) . In addition to the witness and / or victim, the rights granted in certain cases can be given to the perpetrator witness, reporter, and expert, including the person who can provide information relating to a criminal act. Victims of criminal trafficking, in addition to being entitled to the 16 rights above, are also entitled to:
1). Medical assistance;
2). Psychosocial and psychological rehabilitation assistance.

Assistance is given based on LPSK decree.
Victims of criminal acts are entitled to get a Restitution in the form of:
1). Compensation for loss of wealth or income;
2). Compensation resulting from suffering directly related to a crime; and/or
3). Reimbursement of medical and/or psychological care cost.

Submission of applications for restitution can be done before or after a court decision that has obtained permanent legal force through LPSK. In the event that a Restitution application is filed before a court decision that has obtained permanent legal force, LPSK may submit a Restitution to the public. Prosecutor to be included in the claim. In the event that a Restitution application is filed after a court decision that has obtained permanent legal force, LPSK may submit a Restitution to the court to obtain a determination. In the event that a victim of a crime dies, restitution is given to the victim’s family who are the heirs of the victim.

Witness, victim, perpetrator witness, and/or reporter cannot be prosecuted, both criminal and civil for the testimony and/or report that will, is, or has been given, unless the testimony is given not in good faith. In the event that there are lawsuits against witnesses, victims, suspect and/or reporters for testimony and/or reports that will, are, or have been given, the lawsuits must be postponed to cases that they report or give testimony have been decided by the court and obtain permanent legal force.

In article 10A Law No. 31 of 2014, perpetrator witness can be given special handling in the examination process and appreciation for the testimony given. Special handling in the form of:
1). Separation of places of detention or places of criminal conduct between the perpetrator witness and the suspect, defendant, and/or prisoner whose criminal acts are disclosed;
2). Separation of filling between the perpetrator witness’s file and the file of the suspect and defendant in the process of investigation, and prosecution of the criminal act disclosed; and/or
3). Giving testimony before the court without dealing directly with the defendant whose criminal actions were revealed.

b. Government regulation No. 9 of 2008 about Procedure and mechanism Integrated service for witness and/or human trafficking victim.

Integrated services are a series of activities to protect witnesses and/or trafficking victims carried out jointly by relevant agencies and institutions as one unit of health rehabilitation providers, social rehabilitation, repatriation of social integration and legal assistance for witnesses and trafficking victims. Integrated services must provide services and handling as soon as possible of witnesses and/or victims; provide convenience, comfort, safety and free of cost for witnesses and or victims; maintain the confidentiality of witnesses and or victims and ensure justice and legal certainty for witnesses and/or victims.

Integrated services are carried out by local governments. Including social rehabilitation, health rehabilitation, repatriation, advocacy, counselling and legal assistance. If the child is a victim, then the service is given specifically in the best interest of the child.
Social rehabilitation is carried out to recover witnesses and victims from disturbances in psychosocial conditions and return to normal social functioning both in the family and in society. Social reintegration by reuniting witnesses and / or victims with family members, substitute families or communities who can provide protection and fulfillment of the needs of witnesses and / or victims.

Standards service minimum and operational standards for return and social reintegrated procedures must be used as guidelines for the implementation of integrated services. Including provision of facilities and infrastructure. Witnesses and victims are entitled to health rehabilitation, social rehabilitation, repatriation, social reintegrated and legal assistance.

Integrated service leaders within 24 hours of receiving witnesses and / or victims who are being treated or recovery for their health, must report it to the nearest police officer. Local governments that already have a social protection house or trauma center can be used to support the integrated service. If there are private institutions and the public is willing to provide these services, it can be carried out by following the mechanism and procedures for service delivery.

Victims are Indonesian citizens who outside Indonesia, through representatives of Republic of Indonesia who are in that place. Representative of the Republic of Indonesia must provide personal protection and the interest of witnesses and / or victims and return them to Indonesia at the expense of the state. The local government is obliged to pick up and repatriate to the area of origin and other actions needed to protect witnesses and / or human trafficking.

Coordination with the regional head is carried out to take action to protect and return witnesses and / or victims. The Regent/ mayor from the origin is obliged to immediately deal with matters related to the protection interest.

In the case of witnesses and / or victims of foreign nationals, the foreign minister of the Republic of Indonesia must coordinate with representatives of relevant countries. To help repatriate. For the handling of victims, an integrated service center is obliged to network with government or private hospitals for the care and recovery of victims’s health.

All PPT activities are evaluated and monitored by the ministry of empowerment of women and children.

c. President Regulation No. 69 year 2008 concerning about Task force Prevention and Handling of crimes in Human trafficking.

Task force for the prevention and handling of criminal Acts for centrak Trade Persons, hereafter referred to as the Centrak Task Force, is the coordinating agency tasked with coordinating efforts to prevent and deal with human trafficking at the national level.

The centrak task force has the following tasks: a) coordinate prevention efforts and address the problem of criminal trafficking in persons; b) carry out advocacy, socialization, training and cooperation both national and international; c). monitor the progress of the implementation of victim protection which includes rehabilitation, repatriation and social reintegration; d. monitor the progress of law enforcement; and e. carry out reporting and evaluation.

In the province the provincial task force is formed in accordance with the provisions of the legislation. The provincial task force is under and responsible to the Governor. In District / cities a district / city task force is established in accordance with the provisions
of the legislation. The district / city task force is under and is responsible to Regent / mayor.

To ensure the synergy and continuity of measures to eradicate criminal trafficking in an integrates manner, the central Task Force, the provincial Task force and the District / city Task Force coordinated and direct relations with relevant agencies and other related parties to formulate policies, programs, and activities in the from of National Action Plans and District action plans.

Monitoring the progress of the implementation of duties by the central task force is carried out periodically and from time to time, both through National coordination, plenary coordination, coordination of sub task forces, and special coordination, as well as direct monitoring to the field or using available communication facilities (Art. 25).

d. Regulation of the State Minister for Women’s Empowerment and child protection Republic of Indonesia No. 22 of 2010 concerning integrated Service Operational standar Procedure for Witnesses and/ or victims of human trafficking.

Integrated service operational standar procedure for witnesses and / or victims of human trafficking including: a) complaint / identification service; b) health rehabilitation; c) social rehabilitation; d) legal assistance; e) return; Regulation of the State Minister for Women’s Empowerment and child protection Republic of Indonesia No. 22 of 2010 concerning integrated Service Operational standar Procedure for Witnesses and/ or victims of human trafficking and f) social reintegration. Integrated service operational standar procedures for witnesses and/ or victims of human trafficking can be used as guidelines for Government, Indonesia citizen service units in Indonesian Representatives abroad community based integrated service centers/ community that organized integrated services for witnesses and / or victims of human trafficking. Integrated service operational standard procedure for witnesses and / or victims of criminal human trafficking carried out systematically, coordinated, integrated and sustainable in order to fulfil the rights of witnesses and / or victims of human trafficking. In the event that witnesses and / or victims of human trafficking are children, the operational standard procedure is carried out by taking into account the fulfilment of children’s rights and the best interest of child. In implementing the standard operating procedure, the integrated service center can cooperate with the community and other relevant institutions in accordance with the provisions of the legislation. Provision / district / city trade crime prevention and handling task force monitors and evaluated the implementation of integrated service operational standard procedure for witnesses and / or victims of human trafficking at integrated service centers in their regions. Monitoring and evaluation includes system development, human resources, and networks which include: a) planning standar operational procedures; b) implementation of services and development; and c) monitoring and evaluation. The results of monitoring and evaluation are reported to the Governor, Regent and Mayor. (Based on art. 1,3,4,5,7,8,9).

e. Providing legal protection in North Sumatera.

Local government in North Sumatera, has been seek regulation to protect trafficking victims of children and women by enacting Medan Regional Regulation No 3 of 2017 concerning the prevention and handling of child and female trafficking victims.

The North Sumatera regional government has sought regulations to protect human trafficking of children and women by enacting the Medang Regional Regulation No3 of 2017 concerning the prevention and handling of child and female trafficking victims.
Aimed at preventing and handling trafficking victims with preemptive prevention and preventive prevention. The Medan Regional Government is just trying to socialized the regulation in Medan city.

The North Sumatera region is the Simalungun (consisting of Pematang Bandar district, Huta Batu Raja and Ujung Padang; Regional District II Dairi (consisting of Parbuluan sub-district); Area II Medan (consisting of: Medan Petisah sub-district, Medan Tembung, Medan Helvetia; Medan Polonia, Medan Maimun, Medan Selayang, Medan Amplas and Medan Area). All regency areas are in the North Sumatera Province area.

The North Sumatra Region is the territory of Karo District II (consisting of Brastagi and Marinding Sub-districts), Regional District II Simalungun (consisting of Pematang Bandar District, Huta Bayu Raja and Ujung Padang); Regional District II Dairi (consisting of Parbuluan sub-districts); Area II Medan (consisting of: Medan Petisah sub-district, Medan Tembung, Medan Helvetia; Medan Polonia, Medan Maimun, Medan Selayang, Medan Amplas and Medan Area. All Regency Areas are in the North Sumatra Province Area.

Trafficking victims in North Sumatera, who are victims are those (children) employed on jermal; women employed as domestic servants with low salary; women employed in entertainment centers related to sexual exploitation; sale of organs by kidnapping, trafficking in babies, becoming workers abroad but not in accordance with agreement that have been signed and cases that are not recorded. The victims complains to the authorities.

P2TP2A Medan, giving data on the families of the victims coming to bring victims to be given assistance and legal assistance. Then victims who are traumatized are taken to the nearest hospital and get medical and psycho medical assistance. If the trafficking case is continued by the court, the victim will be accompanied during the examination in the court proceedings. If trafficking victims are workers who are abroad, then the repatriation is carried out by Republic of Indonesia Embassy, then reintegration. Social reintegration is done at the RPC (Home trauma center protection) owned by the Indonesian ministry.

KPAID, handles cases of child trafficking, and accompanies children and delivers to the RUPA (child protection house) owned by North Sumatera KPAID, or at other child protection homes with assistance from North Sumatera KPAID together with social workers or social ministry volunteers Republic of Indonesia related.

The existence of child friendly madrasas and child friendly schools, played a significant role in reducing the number of child complaint cases. In 2017, there were 3849 cases affecting children and 293 cases of child victims of trafficking and child exploitation. More children as perpetrators of crime.

The repatriation has been carried out by BP3TKI (National agency for placement and protection of Indonesia workers) in Medan several times, repatriating Indonesian workers from Malaysia. This is in collaboration with the Malaysian Non Governmental Organization and Medan P2TP2A.

The granting of restitution and compensation as regulated in Law No. 21 of 2007 and Law No. 26 of 2001, has not yet been given.

Providing protection for victims of trafficking of children and women cannot be done completely. It can not be done completey, this happens sometimes when victims are reluctant to report criminal acts of trafficking. People are less concerned, this is due to the state of the economy they are facing. Although legal awareness is a preventive prevention effort that has been announced by the Medan regional government.
Providing legal protection in West Sumatera.

Government Regulation West Sumatera No. 28 year 2017 about description of the main task and function of the office of women's empowerment and child protection of West Sumatera Provision regulate efforts to prevent and deal with child trafficking victims and women with preemptive and preventive prevention.

West Sumatera region consists of 19 districts, among others: Agam; Dharmasraya; Kepulauan Mentawai; Limah Puluh Kota; Padang Pariaman; Pasaman; Pasaman Barat; Pesisir Selatan; Sijunjung; Solok (Arusuka); Solok Selatan; Tanah data; Bukit Tinggi; Padang; Padang Panjang; Pariaman; Payakumbuh; Sawahlunto; Solok.

Trafficking victims are children and women. The form of trafficking of children with a mode of persuasion, and children are handed over to school, but are found by the police as elementary school children and cannot Bahasa; women and children brought to West Sumatera are used as entertainment servants, who are then known to be non-indigenous people of West Sumatera, but from outside Sumatera; and child prostitution.

Data on women as trafficking victims according to crisis Nurani is from 2013 to 2016 there were 14 cases. Victims of domestic violence in West Sumatera.

P2TP2A, help provide protection to trafficking victims, by assisting assistance and bringing to the hospital, if the victim is physically and / psychologically / traumatized. Recovery is done privately and returned to each family.

Providing legal protection to victims of trafficking in children and women is carried out practically. The local regulation on West Sumatera has been set up for preemptive and preventive prevention, but there has been no reduction in the number of trafficking victims.

g. Providing legal protection in South Sumatera.


 Victims of child trafficking and woman are victims of trafficking crimes with the following modes: become a servant in the entertainment world; become a female workforce but treated improperly, used as prostitution; made the bride of the order; children sold; the girl sold by her boyfriend; children are made into prostitution / sexual exploitation. However, there is one case recorded in the Task Force for the prevention and handling of criminal trafficking in persons in 2017.

P2TP2A South Sumatera, do services for human trafficking victims, not as many as victims of domestic violence and rape. P2TP2A has facilitated victims access to information, also how to do reports and complaints, as well as information on education and job training. Safe home services are not available in South Sumatera, but served medically, if the victim suffers from physical or trauma/ non psychic. Psychological service is provided to trauma victims. BP3A South Sumatera have done it.

The public is reluctant to report about trafficking, likewise children and woman. Trafficking occurs because of poverty.
5 Conclusion

Difference modus in human trafficking, can cause difference providing legal protection for the victim. Providing legal protection for child and woman in North Sumatera, West Sumatera and South Sumatera, done by each regulation. Preemptive prevention and preventive prevention are set up in each regulation in South Sumatera, West Sumatera and South Sumatera. But there is obstacles in many aspect. Such as infrastructure and services not already done. Protection are information service, accompaniment, legal assistance, return and reintegration already done. Providing legal protection base on each area condition. But, cultural factor that is still inherent, such as kesadaran akan perlunya protection for human trafficking victim, reluctant to report and poverty factor.

Reference

[4]. Law No. 21 of 2007 concerning the eradication of human trafficking;
[5]. Law No. 31 of 2014 concerning Change of Law No. 13 of 2006 concerning witness and victim protection;
[6]. Law No. 26 of 2001 concerning Human Rights Court;
[7]. Government Regulation No. 9 of 2008 concerning Procedures and Integrated Service Mechanisms for witnesses nd/ or Victims of Human Trafficking;
[8]. Presidential Regulation No. 69 of 2008 concerning the Task Force for the Preventon and handling of crimes in Human Trafficking;
[9]. Regulation of the State Minister for Women’s Empowerment and child protection Republic of Indonesia No. 22 of 2010 concerning integrated Service Operational standar Procedure for Witnesses and/ or victims of human trafficking;
[10]. Medan area Regulation No 3 of 2017 concerning prevention and handling of human trafficking;
Protection of Children as Victims of Terrorism Crimes

Vience Ratna Multiwijaya
{vienceratna@yahoo.co.id}

Faculty of Law, Trisakti University, Jakarta, Indonesia

Abstract. Incidents of riots in the Mako Brimob Detention Center and a series of terror incidents that occurred in Surabaya and surrounding areas involving minors. This is contrary to the Child Protection Act. In one of the rights the child provides special protection to the child victims of terrorism, both directly and indirectly. While what is meant by victims according to Arif Gosita are those who suffer physically and spiritually as a result of the actions of others who seek fulfilment of their own or others' interests that are contrary to interests and human rights. Terrorism is an alternative that radical organizations can choose to fight against ideology or a country that is considered to create injustice to certain groups of people in society and nation. Terrorism is specifically designed to cause fear that outside the target or victim. The main problem is "How is Legal Protection for Children victims of terrorism?" The research method uses normative research, with secondary data and analysed qualitatively. Protection of children victims of terrorism is necessary for rehabilitation, compensation or restitution, protection from identity reporting through the mass media and fulfilment of basic rights of religious education in schools are included in the correct learning curriculum and reinforcement of family resilience and awareness.

Keywords: Protection of Children, Victims, Terrorism Crimes

1 Introduction

Background

The incident of riots in Marko Brimob Detention House and bombing in three Surabaya Churches was widely criticized. In the incident, the bombing involved minors. This is very concerned, because the child is the next generation of the nation and the State that must be protected. In this case, the Government must pay attention to the implementation of the basic rights of children according to Article 59 paragraph 2 letter H Law No. 35 of 2014 regulates special protection for children victims of terrorism. The occurrence of terrorism involving children encourages National Police Chief Gen. Tito Karnavian to urge the government to immediately revise the Law on the Eradication of Criminal Acts of Terrorism (Law Number 15 of 2003). In addition, the theoretical law does not regulate the legal protection of children involved in terrorism. Changes to terrorism law are also expected to provide changes to children involved as perpetrators and victims of terrorism. The radicalism process carried out by terrorists must be stopped. Terrorism is carried out by radical organizations to take opposition to ideologies or countries that are considered to create injustice to certain groups of people in society and

1 https://news.detik.com/kolom/d-4025271/perlindungan-dan-hak-korban-terorisme
nation. Terrorism is specifically designed to cause fear. Terrorism is different from other forms of crime. Although using the same method by means of violence such as kidnapping, shooting, even victims suffer the same physical, mental and economic suffering. But the purpose of criminal acts of terrorism and general crime is very different. Based on Koespramono in the act of terrorism has the aim of using violence to achieve political goals by intimidating so that:

1. Receive recognition and attract attention through violent incidents
2. To draw attention to those who approve the method of terrorism that there is a reliable force
3. Want to master the government with the aim of supervising the State and the people.

With the development of terrorism, the purpose of terrorism is not only political life but has penetrated, damaged and destroyed human life, which is damaging economic activity. The way terrorists who use explosives in the form of bombs is a serious threat to all nations, an enemy for all religions, and can occur throughout the world. Threats can disturb security and order which can threaten national security and stability, which is carried out by establishing a network of terrorism networks. The resulting consequences can result in victims of all levels of adults, adolescents and even young children. Acts of terrorism are now undergoing changes by involving children as perpetrators, as happened at the time of the bombing of three churches in Surabaya. The perpetrators consisted of one family headed by DitaOepriarto (47), the wife of Puji Kuswanti (43), and also the perpetrators of their children Yusuf Fadhil (18), Firman Halim (16), Fadhila Sari (12) and Famela Rizqita (9). The involvement of children as perpetrators according to KPAI is an act that is not humanitarian in nature. The child has been given indoctrination of radicalism by the family. Child involvement in terrorism, according to Minister of Education and Culture Muhadjir Effendy, children of both perpetrators and victims are victims of criminal acts of terrorism. The inclusion of children is a new mode as a result of parents' ambition by misleading children. The impact of criminal acts of terrorism is not only global or worrying about a nation. But the impact is also felt by other nations in the world. Therefore the UN since September 8, 2006 formulated the Global Counter Terrorism Strategy which contains 4 pillars, namely:

1. Addressing the conducive to the spread of terrorism
2. Preventing and combating terrorism
3. Building States capacity and strengthening the role of UN
4. Ensuring Human rights and the rule of Law.

Children who are involved as terrorists are feared after adulthood, the child becomes terrorism. The government in this right must immediately take action to save the children of the nation in order to present successors of good quality people not as perpetrators of terror or acts of terrorism. In accordance with Article 76 of Law No. 23 of 2002 concerning Child Protection, the Indonesian Child Protection Commission (KPAI) must play an active role in disseminating legislation relating to child protection, supervising supervision of child administrators. One of the manifestations is that children of terrorism who are involved by the parents must be protected by observing the principle of restorative

---

2Koespramono Irsan, Terrorism, ISSN Police Study Journal 0216 2563, Edition 057 July September 2003, Jakarta p. 3
3http://kompasiana.com//stevenagalileo794/5b164a26IPROTECTEDe746180/protect children of terrorists protecting children from perpetrators of terrorism
justice in accordance with Law Number 11 of 2012 concerning the Criminal Justice System of Children. This is also in accordance with the legal principle of child protection that best interests for children and deprivation of liberty and punishment as a last resort. While parents and adults who involve children who must be convicted are even given a criminal weight according to Article 76 B of Law Number 35 of 2014 that everyone is prohibited from placing, letting, involving, ordering children to engage in situations of wrong treatment and neglect. If that happens then according to Article 77 B can be subject to a maximum imprisonment of 5 years and a maximum fine of Rp 100,000,000 (one hundred million rupiahs). In this context, special protection is needed for children who are terrorists and terrorism victims, both in child protection law and legislation on terrorism.

a. Formulation of The Problem

In relation to child terrorism and victims of terrorism, the subject matter to be discussed is "What is the legal protection of children of terrorism and victims of terrorism?"

b. Protection of the Children as Terrorist Crimes

A child is someone who is not yet 18 years old including a child who is still in the womb (Article 1 number 1 of Law Number 35 of 2014). Even children as weak parties must get protection from the State, Government, Regional Government, Community and Parents / guardians are obliged and responsible for the implementation of Child protection (article 20). The definition of child protection is all activities to guarantee and protect children and their rights to live, grow, develop and participate optimally in accordance with human dignity and dignity and to be protected from violence and discrimination. In carrying out the duty of protection, the protection is provided in an integrated manner, which means that regardless of ethnicity, religion, race, gender, ethnicity, culture and language, the legal status of the birth order and physical condition and / or mentoring 21).

The involvement of children as terrorists is a criminal act that can be subject to criminal sanctions both against the perpetrator. The meaning of a criminal act according to Simon is that an act (doing or not acting) that is subject to sanctions and is against the law is carried out by a person who is capable of being responsible and done with errors. Van Hamel defines a criminal act as a human act that is unlawful and committed with wrongdoing and deserves to be punished.4

The meaning of the word "terrorism" comes from the word 'to terror', in English, which means to tremble or vibrate. In the Big Dictionary, Indonesian language defines terror as an attempt to create fear, horror and cruelty by a person or group. C. Manullang interpreted terrorism as a way to seize power from other groups, triggered by many things, such as religious (ideological), ideological, ethical, economic inequality, understanding and community communication with the government or because of separatism and fanaticism ideology.5 Whereas the meaning of terrorism revised Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism is an act that uses violence or the threat of violence that creates a widespread atmosphere of terror or fear, creates mass casualties, and / or causes damage or destruction to strategic vital objects, environment, public facilities or

---

4 Soedarto, Revisi Edition of Criminal Law 1, Semarang, Sudarto Foundation, , 2013, hal 68
5 Manullang A.C.Reveals Terror Intelligence Taboo, Motives and Regime, Jakarta :Panta Rhei, 2001, hal. 10
international facilities, with ideology, political motives or security disturbances. Based on this definition, the elements of criminal acts of terrorism "every form of use of violence that causes widespread fear or causes victims who have mass membership".

The involvement of children in criminal acts of terrorism is a new model as happened in the bombing case of three churches in Surabaya. This is clearly very dangerous because children are the next generation of a nation. Children who should have the right to grow and develop according to the principle of child protection is the interest for the sake of children\textsuperscript{6}. Children are born as adults have the right to basic rights and every anal born with white and holy.

Children can become perpetrators, there are several factors, including environmental factors, economic and social factors. One of the environmental factors is the family in the case the parents\textsuperscript{7}. The family is the main unit responsible for the socialization of juvenile delinquency. The child must be a criminal. Children are born as well as basic rights as adults and each child is white and holy. The parents are responsible for shaping the character, mentality, principles and choices of the child's life view. This social environment influences the life of children. This is very unfortunate since childhood the child has been filled with the understanding or teachings of the doctrine of violence and intolerance by involving children with violence and acts of terrorism. Obviously, this method raises concerns about the child's future. Therefore, there must be special protection from the government. Even according to the Witness and Victim Protection Agency children of terrorists are victims of parental behavior.

The meaning of children according to several laws and regulations:

1) Article 1 number 1 of Law No. 23 of 2014 is a person who has not had 18 years of age including a child in the womb.

2) UU no. 11 of 2012 concerning the Criminal Justice System of Children, children in conflict with the law, called children are children who are 12 years old but not yet 18 years of age who are suspected of committing a crime. Whereas children facing the law are children who are in conflict with the law, children who are victims of criminal acts and children who are witnesses of criminal acts.

3) Law Number 15 of 2003, does not explicitly explain what the child means, but in Article 19 contains provisions that impose a special minimum crime in Article 6, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, Article 16, and the provisions concerning capital punishment or life imprisonment as referred to in Article 14, do not apply to perpetrators of terrorism who are under 18 years of age.

Crime of terrorism committed by children with adults in the case of criminal imposition must be different. In Article 18 of Law No. 23 of 2002 regulates that every child who is a victim or a criminal is entitled to legal assistance or other assistance. This is corroborated by Article 59 paragraph 2 that special protection is given to victims of terrorism networks. Therefore, the handling of the legal process against children in criminal acts of terrorism must be based on Law Number 11 of

\textsuperscript{6} M. Nasir Djamil, Children Not To Be Sentenced, Jakarta, Sinar Grafika, 2012, hal 30

\textsuperscript{7} A. Syamsudin Meliala dan E. Sumaryono, Child Review and Psychological, Existence and Implications, Yogyakarta, Liberty, hal. 31
2012 concerning the Criminal Justice System of Children by prioritizing a restorative justice approach (Article 5). Besides that, the process of investigating until a criminal imposition must pay attention to the provisions of a child aged 14 years and over and allegedly committing a crime with a threat of 7 years and above.

Against the criminal that can be handed down by a judge must pay attention to Article 71 of Law No. 11 of 2012, namely:

1) Principal Crimes for Children consist of:
   a. Commemorative warning
   b. Criminal terms:
      1. Coaching outside the institution
      2. Community service
      3. Supervision
   c. Job training
   d. Coaching in institutions
   e. Prisons

2) Additional Crimes consist of:
   a. deprivation of profits obtained from a criminal act or
   b. fulfillment of customary obligations

In the case of imprisonment of a child the offender must pay attention
a. Article 81:
   1. The child is sentenced to imprisonment in the Child Correctional Institution (LPKA) if the child's circumstances and actions endanger the community
   2. Criminal imprisonment can be imposed on the child no later than 1/2 of the maximum threat of imprisonment for adults
   3. Criminal imprisonment is only used as an effort last
b. Article 60:
   (1) Judges are obliged to consider social research reports from Community Counsel before making a case decision
   (2) In the event that a social research report is not considered in a judge's decision, the decision is null and void. As for the reasons for the involvement of children in becoming a criminal act of terrorism are:
      1. Doctrine of obedience
         Children must submit and obey parents. Because parents feel as assets that can be treated anything. Parents who play a role in shaping their future lives, education and social life.
      2. Theological View
         In this view, it is taught that they must enter S urge together so that children must help their parents in realizing the crime of terrorism
      3. Victims of terrorism do not think children will be able to act as sadly as

In accordance with the Theory of Development Law from Mochtar Kusumaatmadja, that law as a tool becomes a means to build society. By Romli the theory of Mochtar Kusumaatmadja put forward the key to this theory which is to guarantee changes that occur in an orderly way through the help of legislation, court decisions and both terrorism so that prevention is not directed against children of
terrorists. Especially for the issue of terrorism in accordance with the aim of the theory of development law in order to create order in society, there will be a change to Law Number 15 of 2003 into Law Number 5 of 2018. Particularly the meaning of terrorism acts Article 1 number 2 is an act that uses violence or threats of violence that creates an atmosphere widespread terror or fear, which can cause mass casualties, and or cause damage, or strategic destruction of objects, environment, public facilities, or international facilities with ideological, political or security disturbances.

Jeremy Bentham as a Classical stating that criminality was imposed on to prevent crime, guarantees criminals no longer commit crimes by guiding criminals in carrying out punishments. This is in accordance with the principle of determinism which requires the existence of criminal individualization with the aim of holding resocialization of perpetrators.

Based on this, children who are involved in terrorism do not know what is being done is at high risk. In other words, children of terrorist are victims of parental sacrifice. Children who are involved in terrorism in the case of imposing criminal sanctions must pay attention to the provisions of Article 81 paragraph 6 of Law No. 11 of 2012, a criminal offense that is subject to a death sentence or life imprisonment, a criminal that can be imposed is a sentence, and a maximum of 10 years in prison. This is in accordance with Article 19 of Law No. 15 of 2003 that capital punishment or life imprisonment as referred to in Article 14 does not apply to perpetrators of criminal acts of terrorism under the age of 18 years. Criminal provisions for the offender's child are appropriate. Even the Witness and Victim Protection Agency explicitly said that children of terrorists are victims of parental behavior.

Legal protection provided to children who are victims of criminal acts must cover all aspects of both the principle and purpose of protection for the best interests of the child, life and growth, avoid violence and discrimination in order to realize quality, moral, noble and prosperous Indonesian children. Rights of rights that must be considered:

a. Law Number 23 years 2002
   Article 13
   (1) Every child has the right to protection from treatment:
   a. Discrimination
   b. Economic and sexual exploitation
   c. Abandonment
   d. Cruelty, violence and persecution
   e. Injustice 'wrong treatment

Article 15:
Have the right to get protection from
a. Abuse in political activities
b. Engagement in armed disputes
c. Engagement in social unrest
d. Engagement in violent events

---

8 Shidarta (ed), Mochtar Kusumaatmadja and Legal Theory of Development, Existence and Implications, Jakarta, Epiterna Huma, 2012, pl. 13
Article 16:
(1) Every child has the right to receive protection and targets of mistreatment, torture, or imposition of inhuman penalties.
(2) Every child has the right to obtain freedom in accordance with the law
(3) Arrests, detention or criminal acts of child prisons are only carried out if they are in accordance with the applicable law and can only be carried out as a last resort

Article 17 Law Number 23 years 2002
(1) Every child deprived of his liberty has the right to:
   a. Get humane treatment and placement separated and adults
   b. Obtain legal assistance and help others effectively at each stage of the applicable effort
   c. Defend yourself and obtain justice before an objective and impartial child court in a closed session for the public
(2) Every child who is a victim or perpetrator of sexual violence or who is dealing with a law that must have an identity is kept confidential

With regard to the protection of children, specifically concerning children with criminal acts of terrorism, there are obligations from the Government, Regional Governments and other State institutions to provide special protection to children such as children in the network of theorists, children with deviant social behavior and children who are victims of stigmatization and labeling are related to parental conditions (Article 59 of Law Number 35 of 2014). As for Article 59 A of Law Number 35 of 2014, special protection is given through:
   a. Quick handling including physical and psychological treatment and / or rehabilitation, and prevention of diseases and other health disorders
   b. Psychosocial assistance during treatment until recovery
   c. Providing social assistance to children from disadvantaged families
   d. Provision of protection and assistance in every court process

Article 69 B of Law Number 35 of 2014, special protection for children victims of terrorism networks is passed through efforts:
   a. Education about education, ideology and nationalism values
   b. Counseling about the dangers of terrorism
   c. Social rehabilitation
   d. Social assistance

Children who are involved in terrorism in the case of imposing criminal sanctions must pay attention to the provisions of Article 81 paragraph 6 of Law No. 11 of 2012, a criminal offense that is subject to a death sentence or life imprisonment, a criminal that can be imposed is a sentence, and a maximum of 10 years in prison. This is in accordance with Article 19 of Law No. 15 of 2003 that capital punishment or life imprisonment as referred to in Article 14 does not apply to perpetrators of criminal acts of terrorism under the age of 18 years. Criminal provisions for the offender's child are appropriate. This is caused by the child terrorism perpetrators do not know what he will do has a big risk. In other words, children are victims of parents. Even the Witness and Victim Protection Agency explicitly said that children of terrorists are victims of parental behavior. In Article 16 A, every person who
commits a criminal act of terrorism by involving a child with a criminal threat plus one third.

Children as victims of acts of terrorism before the revision of Law No. 15 of 2003 only contains 2 things, namely compensation and restitution. In the revision of Law No. 15 of 2003 added 4 additional articles as victims' rights (Article 35 AB and Article 36 AB), so that the victims' rights were six in the form of medical assistance, psychological rehabilitation, psychosocial rehabilitation, compensation for dead victims, this right is granted shortly after a criminal act of terrorism is carried out by the witness protection agency and the victim can cooperate with relevant agencies or institutions, and give restitution and compensation provided by the perpetrator to the victim and his heirs.

Law No. 31 of 2014 concerning Witness Protection and victims also contains safeguards for victims of acts of terrorism which are regulated in:

a. Article 5:
   (1) Witnesses and victims are entitled:
   a. Obtain protection for personal, family and property security and be free from threats relating to the testimony that will, is or has been given
   b. Participate in the process of selecting and determining forms of security protection and support
   c. Provide information without pressure
   d. Get a lecturer
   e. Free of trapping questions
   f. Get information about the case
   g. Get information about court decisions
   h. Get information in case the convict is released
   i. Confidential identity
   j. Get a new identity
   k. Get a temporary residence
   l. Got a new residence
   m. Obtain temporary living expenses assistance until the protection deadline expires and / or
   n. Get assistance
   (2) The right in paragraph (1) is given to witnesses and / or victims of criminal acts in certain cases in accordance with the decision of the witness and victim protection agencies

b. Article 6:
   (1) Victims of severe human rights violations, victims of acts of terrorism, victims of trafficking in persons, victims of criminal acts of torture, victims of crimes of sexual violence and victims of severe abuse, in addition to the right as intended in Article 5, also entitled to:
   a. Medical assistance
   b. Psychosocial and psychological rehabilitation assistance
   (2) Assistance under paragraph (1) is given based on the decision of the witness and victim protection agencies

c. Article 7
(1) Every victim of severe human rights violations and victims of terrorism in addition to obtaining rights as Article 5 and Article 6 are also entitled to compensation.

(2) Compensation for victims of gross human rights violations submitted by victims, families or their proxies to the human rights court through witness and victim protection agencies.

(3) The payment of compensation is given by the witness and victim protection agencies based on a court decision that has obtained permanent legal force.

(4) The granting of compensation for victims of acts of terrorism is carried out in accordance with the provisions of the law on regulations which regulate the elimination of criminal acts of terrorism.

d. Article 7A

(1) Victims of criminal acts get restitution in the form of:
   a. Replace losses for loss of wealth or income
   b. Replace damages resulting from suffering directly related to a crime and / or
   c. Replacement of medical and / or psychological care costs

(2) Criminal acts in paragraph (1) are determined by witness and victim protection agencies decision.

(3) Submission of applications for restitution can be done before or after a court decision that has obtained permanent legal force through witness and victim protection agencies.

(4) In the event that a request for restitution is submitted before a court decision that has obtained legal force, LPSK can submit a Restitution to the public prosecutor to be included in the claim.

(5) In the event that a request for restitution is filed after a court decision that has obtained permanent legal force, LPSK may submit a Restitution to the court to obtain a determination.

(6) In the right of the victim to die of a crime, restitution is given to the family of the victim who is the heir of the victim.

2 Conclusion


a. Obtain compensation and restitution.

b. in the form of medical assistance, psychological rehabilitation,

c. psychosocial rehabilitation, compensation for death victims

d. not sentenced to death or life sentence for children under the age of 18

e. Child identity must be kept secret in mass media reporting.
f. Education about education, ideology and nationalism values  
g. Counseling about the dangers of terrorism

Reference

[9]. Law Number 23 of 2002 concerning Child Protection
[10]. Law 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection
[11]. Law Number 5 of 2018 concerning Amendments to the Law Number 15 of 2003 concerning
[12]. Determination of the Substitute Government of the Republic of Indonesia Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law
Professional Performance of The First Middle School Teacher in School Head Master Management

Deti Rostini1, Otto Fajarianto2, Umi Fatonah1, Mesra Betty Yel4
{yankty59@gmail.com1, ofajarianto@gmail.com2, marcello06.uf@gmail.com3, mey.mesra@yahoo.com4}

Universitas Islam Nusantara, Bandung, Indonesia1, Universitas Swadaya Gunung Jati, Indonesia2, Universitas Ibn Khaldun Bogor, Indonesia3, STIKOM CKI, Jakarta, Indonesia4

Abstract. Development of Professional Performance Teachers are always considered in the world of schooling education given the weak performance of teachers, the lack of participation of teachers in carrying out their duties, still only a routine without change both in strategy, methods, techniques, media, and others, as well as issues regarding the role of the Head school as a motivator and manager in human resource management that does not work as it should. The purpose of the study was to find out the description of the professional development of teachers in the management of principals in state junior high schools in Cipongkor sub-district, West Bandung District. The approach theory used in this research was a naturalistic qualitative approach. While the solution to overcome it can be done by the principal in implementing a guidance system for teachers so that the quality and performance of teachers can be improved. Management of teacher professionalism fostering is the right step to overcome this problem. The steps that can be taken are the school principal and his staff to make plans for coaching, organizing, implementing guidance, and evaluating the results of coaching.

Keywords: Development Theory, Professional ,Principal Management

1 Introduction

The teacher is the front guard in education, the teacher is a professional educator with several main tasks of educating, teaching, guiding, directing, training, assessing, and evaluating. The main task of a teacher will be effective if the teacher has a high degree of professionalism which is reflected in four teacher competencies he has. The four competencies that must be possessed by a teacher are professional competence, social competence, personality competence, and pedagogic competence.

Professional competence can be interpreted as a teacher's skill in delivering teaching material to students he faces. This competence is seen in a teacher, if he can create effective, efficient, fun learning. Supported by methods that are relevant to teaching materials, as well as the delivery of learning that is not boring. The most important professional teacher can motivate students to be passionate about learning. This is important because professional competence is closely related to planning and implementing learning in teaching and learning activities.

According to Syaodih (1988) teachers play an important role both in planning and curriculum implementation. Teachers are planners, implementers, and curriculum developers for their
class. In addition the teacher also acts as an evaluator and completes the curriculum. Realizing this is how important it is to increase teacher activity, creativity, quality and professionalism.

Teachers who meet the criteria of professionals are expected to be able to carry out their main functions effectively and efficiently to realize the process of education and learning in achieving national education goals, namely: “The development of the potential of students to be faithful, devoted, noble, healthy, knowledgeable human beings, capable, creative, independent, and responsible”.

Professional principals will implement the vision and mission into action. Vision and mission are not just meaningless slogans to a professional school principal. The function and role of the principal as an educator, manager, administrator, supervisor, leader, innovator, and motivator are truly run by a school principal who has competence.

At a school principal who has competence, SWOT analysis can easily be done SWOT Analysis The scope of the research on teacher professionalism development is based on the limitations of the problems in the management of the principal, namely planning, organizing, implementing, and evaluating. With the aim of knowing the description of the professionalism performance of teachers in the management of principals in West Bandung District Junior High School.

Theoretical Basis

a. Teacher Profession

According to Dedi Supriyadi (1999) states that teachers as a profession in Indonesia is new in the growing level (emerging profession) whose level of maturity has not yet reached what has been achieved by other professions, so the teacher is said to be a semi-professional or semi-professional profession.

Professional work is different from non-professional workers because a profession requires special skills and expertise in carrying out their profession in other words professional work is work that can only be done by those who are specifically prepared for it.

Teacher professional development must be recognized as a very fundamental and important thing to improve the quality of education. Professional development is the process by which teachers and principals learn, improve and use knowledge, skills and values appropriately.

The teacher profession has the task of serving the community in the field of education. The demands of this profession provide optimal services in the field of education to the community. In particular teachers are required to provide professional services to students so that learning objectives are achieved. So that the teacher who is said to be professional is a person who has special abilities and expertise in the field of teacher training so that he is able to carry out his duties and functions as a teacher with maximum ability.

b. Headmaster Management

According to Burhanudin (1990:530) said that the skill is commensurate with the word skill, and intelligence is called skill. Meanwhile, managerial is an adjective related to leadership and management. In many libraries, managerial words are often referred to as the origin of words from management which means training horses or literally interpreting as to handle which means taking care, handling, or controlling. Meanwhile, management is a noun that can mean management, governance or management. In principle, the definition of management has the following characteristics: (1) there are objectives to be achieved; (2) as a combination of science and art; (3) is a systematic, coordinated, cooperative and integrated process in utilizing its elements; (4) there are two or more people working together in an organization; (5) based on the division of labor, duties and responsibilities; (6) includes several functions; (7) is a tool to achieve goals.
According Wahjosumidjo (2002: 4) suggests that the description of the duties and responsibilities of the principal can be seen from two functions, namely the principal as an administrator and as a supervisor. The principal as an administrator at the school has duties and responsibilities for all managerial processes that include planning, organizing, mobilizing, and supervising all fields of work which are the responsibility of the school. The management field can include the fields of personnel, students, administration, curriculum, finance, facilities and infrastructure, school and community relations and other supporting units.

Whereas, the principal as a supervisor is concerned with service activities towards improving the professionalism of teachers in order to achieve a quality learning process. To be able to carry out these tasks and responsibilities, the principal needs to have the various abilities needed. According to Katz, managerial abilities include technical skills, human skills, and conceptual skills. Technical ability is the ability that is closely related to the use of tools, procedures, methods and techniques in a management activity properly (working with things). Meanwhile, human relations ability is the ability to create and foster good relationships, understand and encourage others so that they work voluntarily, no compulsion and are more productive (working with people). Conceptual ability is the mental ability to coordinate, and integrate all the interests and activities of the organization. In other words, this conceptual ability is related to the ability to conceptualize (working with ideas) about various things in the institution he leads (Wahjosumidjo (2002: 14).

Along with the change in the paradigm of decentralization of education and autonomy of schools / madrasas with the enactment of a school based management management model, the principal as the top management in schools has a very important and strategic position. Even according to the results of a study from Lipham, it is stated that the success of a school (madrasah) is very much determined by the ability of the madrasah / school head to manage and lead the institution.

2 Method

The method used is a qualitative method with a descriptive approach, according to Nasution (2006: 63) "Descriptive research is called data collection activities to give an idea or idea of a concept or symptom. With the technique of data collection, observation, interviews and documentation studies. With the location of research in Cipongkor District Middle School, West Bandung District. The research subjects selected as samples were considered to represent the entire research subject. Research subjects are needed as a source of data and information. While the data collection procedure for qualitative research is grouped into three groups: orientation stage, exploration stage, member check stage.

3 Result and Discussions

Fostering teacher performance is an important point in efforts to improve teacher professionalism in schools. Although the method of school in an effort to improve teacher performance has a difference in the method, but basically the effort to foster teacher performance leads to the same substance. In the planning stage in an effort to foster teacher performance in schools, according to the results of interviews and observations. Public junior high schools conducted include: the preparation of the school's vision and mission, the preparation of school objectives, the preparation of school objectives, school self-evaluation (EDS), the annual school program, and RKAS.
Guidance and assessment of teacher performance refers to the school's self-evaluation, it will show the goals and programs that have not been achieved, so that the preparation of the improvement program and the development of performance can be improved in the current year or the following year. The stage of organizing performance coaching so that the implementation of coaching will be clear in the direction of the teacher, and in accordance with what is expected. So first made or appointed coordinator of the assessment of sustainable performance in this program. Organizing under the command of the principal is determined through a special meeting that involves all stakeholders in the school at the Stage of Teacher Performance Development.

The guidance and performance appraisal system that occurs in the SMP is carried out after an agreement between the teacher and the head, or between the teacher and supervisor, or between the new teacher and senior teacher. At the implementation stage before the observation is conducted, the principal holds a special meeting with the teacher. Here the matters related to the availability of supporting documents in the framework of the implementation of teacher performance assessment are stated, the schedule for the implementation of teacher performance assessment, as well as the report format that will be used as the final evaluation in the implementation of teacher performance.

The implementation of other coaching carried out in SMPNs in order to improve teacher performance, among others, is to send educational staff in this case the teacher to attend an education or training program. The education program is directed at those who do not have a Bachelor level (S-1) education, the education taken must be linear with the subjects that they receive.

a. Discussion

The discussion of the results of the study is to summarize the research description associated with the relevant theory to be used as material in drawing conclusions.

1) Preparation of Principal Planning in Teacher Performance Management

Planning can be arranged based on the steps that will be carried out to achieve the stated goals. Planning can be arranged based on needs within a certain period of time in accordance with the wishes. The more important planning is made so that it can be implemented easily and on target.

2) Tahap Pengorganisasian Kepala Sekolah dalam pembinaan Kinerja Guru

In order for the teacher performance improvement program to run according to what was planned. First, the organizational structure is arranged so that what, who, and when the program must run, the organizational structure that is made is adjusted to the situation and conditions at that time. Organizational structure formation procedures are needed so that the goals of what is planned are clear. The goals are achieved effectively and efficiently. At this stage teacher performance development activities are formed which consist of stakeholders in the school, among others: the headmaster, the organizing committee chairman in this case is the assistant to the principal, secretary, and senior teachers.

3) Stage of Implementation of the Principal in Teacher Performance Development

Various efforts were taken by the principal in order to improve teacher performance. In both schools the implementation of teacher performance guidance is carried out by: 1) individual and group coaching; 2) participate in activities outside the school such as training, upgrading, equalization of diplomas, MGMP, workshops, IHT, seminars, mentoring curriculum, etc.; 3) adding facilities and infrastructure; 4) teacher performance evaluation (PK); 4) teacher supervision. In the context of applicative professional teacher skills can be realized in the mastery of the following competencies: 1) mastering the
material; 2) can manage teaching and learning programs; 3) can manage classes; 4) can use media and sources; 5) mastering the foundation of education; 6) mastering teaching and learning interactions; 7) assessing student achievement; 8) recognize the function of counseling guidance services; 9) get to know the school administration; 10) understanding the principles of research results for teaching needs (Suryasubrata: 1997: 4). The above applicable context can be realized if the principal as a leader can provide guidance appropriately for the teacher who is his co-worker. Supervision activities are activities that must be carried out in the implementation of education. Implementation of supervision activities is carried out by school principals and school supervisors. This needs to be done because the teaching and learning process implemented by the teacher is at the core of the overall education process as the main role holder.

4) Principal Evaluation Phase in Teacher Performance Development

Purpose of the Principal in carrying out a performance assessment carried out by the teacher within one semester. Not to look for mistakes made by the teacher but to aim at assessing the teacher's ability to apply all the skills competencies needed in teaching and learning activities. Thus the teacher's performance as an illustration of the teacher's strengths and weaknesses will be identified as need analysis or audit assessment skills also intended for planning sustainable professional development to calculate the credit figures obtained by the teacher for performance, for the implementation of additional tasks relevant to the school functions performed in that year if the teacher is a Civil Servant. Assessment of teacher performance is carried out every semester which includes; 1) pedagogic competence; 2) personality competence; 3) social competence; 4) professional competence

4 Conclusion

Based on the findings of the study there are several aspects of the findings, namely the good, effective and efficient managerial role of the principal has a positive impact on improving teacher performance. Through planned activities, organized, supervised, and evaluated, as well as follow-up, teacher performance development activities can foster enthusiasm, work ethic, and positive performance. Because the benefits will be felt both for the teacher concerned and for the principal.

a. In planning the development of teacher performance, the preparation was carried out beginning with an analysis of the problems faced by the teacher in learning, problems raised in school work meetings. Problems include the development of learning plans both syllabus and lesson plan, or in the form of the implementation of teaching and learning activities and the use of information technology.

b. In organizing it first begins by holding a teacher meeting for the preparation of the coordinator or committee for the development of teacher professional performance. The committee involves the principal, vice principal, responsible person, secretary, treasurer, and members.

c. The implementation of teacher performance guidance includes the implementation of teacher's and implementation outside the teacher's such as workshops, seminars, opportunities to continue their studies to the next level, upgrading, training, MGMP etc.
Teacher performance evaluation activities by principals are carried out periodically in the form of planning evaluation, implementation evaluation, evaluation evaluation, and follow-up evaluation. Useful evaluation for the school principal to measure the achievement of the goals that have been set, as well as the material for preparing the work program in the following year. For the teacher, the evaluation becomes an improvement material and material consideration for promotion and class or promotion in addition to improving performance.

References
The Use of Mobile Learning to Improve Students' Cognitive Development

Leni Pebriantika¹, Oktariyana², Aminah³, Henni Kusumastuti⁴, Otto Fajarianto⁵
{lenikabisat@gmail.com, okta14unulampung@gmail.com, aminhdp@gmail.com, henniksa65@gmail.com, ofajarianto@gmail.com}

Education Technology Program, Baturaja University, Sumatera Selatan, Indonesia¹, Health and Creation Physical Education Program, Nahdatul University Ulama, Lampung, Indonesia², Primary Teacher Education Program, Universitas Almuslim, Aceh, Indonesia³, State Administration Program, Sang Bumi Ruwa Jurai University, Lampung, Indonesia⁴, Universitas Swadaya Gunung Jati, Indonesia⁵

Abstract. The rapid development of technology and science has led to the development of the education world today. One effort to improve education and learning quality is inseparable from the role of educators in implementing appropriate and efficient learning media that can support learning to improve students' cognitive development. One of the media that can be used is to utilize mobile learning applications. M-learning can make learning different because teachers and students can access learning, direction and applications related to learning wherever and whenever. It will make the learning process more interesting, increase attention to the material. The purpose of the research was to develop a mobile learning application to improve students' cognitive development. The research method was used namely Research & Development using ADDIE (Analysis, Design, Development, Implementation, and Evaluation) models. The results of this study indicated that mobile learning could improve students' cognitive development.

Keywords: mobile learning, cognitive development, students

1 Introduction

Education is a conscious effort and aims to develop human qualities. As an activity that is aware of the objectives, the implementation of education is in a continuous process in every type and level of education. One part of the effort to improve education and quality of learning is inseparable from the role of the teacher in using strategies, methods, and means in delivering material in learning. Lecturers can also use media that can support learning for students' cognitive development.

Cognitive development of students has an impact on increasing student learning outcomes. The problem of the low learning outcomes of students in this course has a negative impact, given the importance of this course for a prospective educator. Learning outcomes are closely related to the learning process in the classroom. If there are problems in learning outcomes, it can be estimated that several influencing factors are internal factors and external factors. Internal factors are the ability of students to understand the concepts of Student Development, motivation, and attitudes toward Student Development courses. While the external factor is the ability of the lecturer to deliver and facilitate the learning process, the supporting facilities for the learning
process, the time allocation prepared by the study program and the supporting media of the learning process. Hyo Jung Kim (2017) said that learning with mobile learning is a learning approach that is very flexible because the interaction and communication between students and lecturers can occur based on the level and needs of individual learning based on the needs of students [1]. Kalkuse (2015) explained that students must be able to be involved in educational activities without the limitations of time and place [2].

The possibility that appears above shows that the stronger the demand to create an innovation or a renewal regarding learning that can provide alternatives for solving learning problems. A lecturer is deemed necessary to always improve the quality of self in professionalism, expertise, and media that support the learning process.

Mobile learning is a learning model that utilizes information and communication technology. In the learning concept, mobile learning brings the benefits of the availability of teaching materials that can be accessed at all times and visualization of interesting material. The constructivism learning environment imposes a new role for lecturers. Lecturers as facilitators for students who will motivate students to achieve and hone skills. Directing how students learn concepts both inside and outside the classroom. Mobile learning can overcome teacher problems regarding time management and increase student independence to understand learning material [3].

The presence of mobile learning is intended as a complement to learning and provides opportunities for students to learn material that is poorly understood whenever and wherever [4]. Mobile learning can improve students' skills [5]. Mobile learning influences improving students' academic achievement. According to Idris Gosku (2013: 6) "In our modern life, it is possible to outline the mobile devices used in mobile learning as the following: a) Laptops; b) Tablet PC; c) PDA (Personal Digital Assistant) d) Smart Phone "[3]. In modern life, several devices can support mobile learning including laptops, tablet PCs, PDAs, and smartphones. From the research data conducted by Ken Nee Chee (2017: 12) smartphone is the most widely used device in mobile learning [4].

2 Method

The research method was used in this study namely Research & Development. The approach taken was mix methods research which combines qualitative and quantitative methods. It was done to process all data and information, thus a comprehensive explanation can be obtained. The development model was applied namely ADDIE Model with stages, namely Analysis, Design, Development, Implementation, and Evaluation.

Analysis Phase (Analysis)

At this stage, data and information are collected through direct observation in the field. At this stage also, initial needs analysts such as student analysis, technology analysis, and literature study are carried out, especially those related to the concept of mobile learning to improve students' cognitive development.

Design Stage (Design)

The design phase in mobile learning to improve the cognitive development of students produces flowchart and storyboard. Storyboard design includes layout/layout, coloring, and
text. The layout is the layout of each item which is essential to communicate the intent or purpose of each screen.

**Development Stage**

This development stage is a continuation of the design that translates flowchart and storyboard into a product, in this study in the form of mobile learning applications to improve students’ cognitive development.

At this stage, expert validation is carried out before the product is feasible to be implemented.

**Implementation Stage**

At this stage, it is an implementation of a product that has been declared feasible to use. To see the results become better, it is done in several stages:

a. **One - One Trial (One to One)**
   
   One-on-one trials were carried out together with expert evaluations. This evaluation is carried out to measure the level of practicality of the product being developed. At the time of testing 3 students were chosen who had different levels of ability (low, medium, and high).

b. **Small Group Test (small group try-out)**
   
   Small group trials were carried out on 10-20 students. At this stage, the same stage is carried out with one to one. But the difference is that the instrument used is a questionnaire, while the evaluation of one to one uses an interview instrument.

c. **Field Try-out**
   
   Large group trials are field trials that are equivalent to the target or the number of actual students as a whole. At this stage, this is done to get comprehensive information about the quality and effectiveness of mobile learning to improve students’ cognitive development.

**Evaluation Stage**

At this stage, summative evaluation is carried out, this is done to determine the effectiveness of the product on the learning outcomes of students by giving students the pretest and posttest.

These stages can be seen as in the following chart:
Stages of the Research Process

**INTRODUCTION STAGE / NEEDS ANALYSIS**

- Defining the field / scope limitation (Needs analysis)
- Identifying the characteristics of students
- Establishing barriers

- Producing a Style Manual
- Determining and collect resources
- Brainstorming (discussion with lecturers and colleagues)
- Setting the appearance plan

**DESIGN STAGE**

- Preparing the concepts
- Analyzing concepts and tasks / exercises related to the material
- Making flowcharts and storyboards
- Preparing scripts to produce audio and video material

**DEVELOPMENT, IMPLEMENTATION, AND EVALUATION STAGES**

- Preparing the concepts
- Writing the program code
- Making graphic
- Producing audio and video
- Preparing supporting materials

- Producing Product
- Developing evaluation tools
- Alpha test (expert material, design, media, language validation)
- Beta Test (small group trial)
- Field test (field trial)

Figure 1 Research Stage
Data analysis techniques to calculate the percentage of each instrument with a formula that refers to the opinion of Sudijono (2011) as follows:

\[ p = \frac{f}{N} \times 100\% \]

Information:
p: percentage number
f: the frequency that is being sought
N: Number of Cases (number of frequencies)

Then the results are adjusted to the criteria presented by Arikunto (2010) as follows:

<table>
<thead>
<tr>
<th>Percentage interval</th>
<th>Value of Four Scale Changes</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>86 – 100</td>
<td>4</td>
<td>A</td>
</tr>
<tr>
<td>76 – 95</td>
<td>3</td>
<td>B</td>
</tr>
<tr>
<td>56 – 75</td>
<td>2</td>
<td>C</td>
</tr>
<tr>
<td>10 – 55</td>
<td>1</td>
<td>D</td>
</tr>
</tbody>
</table>

Source: Arikunto, 2010

3 Result and Discussions

From the processing of data obtained from the validators and trial subjects, by referring to data analysis techniques in the predetermined results, the results of the analysis of each validator and the trial subjects were obtained. Based on the results of the validation test from media experts, the percentage of values was 87.5% with a good predicate. And the percentage of the results of the material expert validation test obtained the overall percentage was 80.26% with a good predicate. Thus, from the media side and the material produced is categorized as good or valid.

From the data analysis of individual scale trials, with the object of research as respondents, 3 students with an average percentage of all aspects of the mobile learning application was 85.48% with a good predicate. Furthermore, the researcher did was stage III, which was to test small-scale products with respondents of 10 students with an average percentage of all aspects of the mobile learning application was 86.27 with the very good predicate. Then, the researcher did stage IV, which was to test large-scale products with 105 respondents with an average percentage of all aspects of learning with mobile learning was 86.41% with a very good predicate. As a whole, it can be concluded that the product has an excellent level of feasibility and can improve the cognitive development of students.
4 Conclusion

This study produced a product in the form of a mobile learning application to improve students' cognitive development. The development model used is the ADDIE model. From the implementation of the field, the results of the overall aspects of Learning with mobile learning are 86.41% with the very good predicate. Thus, as a whole can be concluded that the product has a level of feasibility that is very good and able to improve the cognitive development of students.

References


Duties and Authority of Fisheries in the State 
Fisheries Management Region of the Republic of 
Indonesia

AL Azhiim Tranggono1*, Amalia Diamantina1, Sekar Anggun Gading P.1 
{alztranggono@gmail.com, amalia_diamantina@live.undip.ac.id2, sekar_anggun_gading@live.undip.ac.id3} 
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2,3

Abstract. Indonesia is the largest archipelagic state in the world, with marine waters covering 5.8 million km². This potential places Indonesia as a rich country based on the high potential of fishing, but at the same, it can be a great target for illegal fishing. This research addresses the phenomenon of the fisheries controller’s duties and authorities in fishery management zones of the State of the Republic of Indonesia 716 in North Sulawesi. Based on the results of the research, it is found out that the fisheries supervisor already carried out supervisory tasks, including the validation checks of SIPI and SIKPI, Operational Feasibility Letter and Sailing Approval Letter, validation checks of fisheries research and development, checks of vessels, fishing equipment, and/or fishing aids, checking the suitability of fish caught with fishing gear, and logbook checks. However, there are still many problems with the control of the fishery management zones of the State of the Republic of Indonesia 716 in North Sulawesi such as the lack of optimization of Rumpon, data, and human resources of controller. More efforts and improvements are needed.

Keywords: Duties and Authorities, Fisheries Controller, Fishery Management Zones of the State of the Republic of Indonesia 716.

1 Introduction

Indonesia is the largest archipelago country in the world which has a wider sea area compared to the mainland with a coastline of 81,000 km and a sea area of about 3.1 million km² or 62% of its territorial area consisting of 2.8 million km² of inland waters and 0, 3 million km² of the territorial sea. It does not include 2.7 million km² of the Exclusive Economic Zone.

This fact shows that the prospect of fisheries and marine development in Indonesia is great and it can be used for the future of the nation and for the use in national development. Besides having economic value, marine resources also have ecological value. In addition, Indonesia’s geographical condition lies in strategic geopolitics between the Pacific Ocean and the Indian Ocean which is the most dynamic region in the world of political, defense and security disputes.[1]
Fish resources that live in the territorial waters of Indonesia are considered to have the highest level of biodiversity (bio-diversity). These resources cover at least 37% of the world’s fish species. In Indonesia’s marine waters, there are several types of fish with high economic value, including tuna, skipjack, shrimp, tuna, mackerel, snapper, squid, reef fish (grouper, baronang, barong shrimp/lobster), ornamental fish and drought including seaweed. However, there are various gaps that still color fisheries development in Indonesia, both nationally and locally administratively are managed by. Various infrastructures built by the government, such as the construction of fishing ports and fish landing places which are scattered in various regions have not produced satisfactory results as expected. Various regulatory models and policies have not been able to touch well on the underlying problems that exist.[2]

The problem of illegal fishing (fishing theft) and weak law enforcement have eliminated the potential for Indonesian fishery exports of 4 billion US dollars. Beside affecting the national economy, illegal fishing also affects traditional fishermen since they use trawling fishing gear that causes damage to the marine environment. Illegal fishing can also weaken the management of fisheries resources in Indonesian waters and cause fisheries resources in several Fisheries Management Areas (WPP) of Indonesia to experience overfishing.[3] Overfishing is a term or status given to an area of water whose fish resources have experienced overfishing. Over-fishing is meant if the rate of fishing carried out has exceeded the ability of these fish resources to recover.[4]

Illegal fishing is very detrimental to the country and traditional fishermen. In addition, Indonesian consumers are disadvantaged because they cannot enjoy sea products in their own country. At a macro level, the stolen Indonesian fish are then processed with qualified equipment, thus increasing the price of sale abroad.[5]

Illegal Fishing also has a very detrimental impact on the country’s finances and even harmed the economy. World Food and Agriculture Organization (FAO) stated that Indonesia’s losses due to IUU Fishing are estimated at Rp. 30 trillion per year. FAO also stated that currently, the catch of fish resources in the world which is still possible to increase its catch is only 20 percent, while 55 percent is already in full utilization and the remaining 25 percent is threatened with its sustainability.[6] Other economic losses are the loss of economic value of stolen fish, Fishery Product Levies (PHP) will be lost, and fuel subsidies enjoyed by unauthorized fishing vessels.

Illegal Fishing problems occur because of two things, overlapping laws and regulations which lead to unclear Indonesian state institutions taking care of Illegal Fishing issues. It will create conflicts of interest between state institutions in managing their respective working areas, such obscurity creating a legal loophole for the perpetrators of the Illegal Fishing crime.[7]

There are also things that needs to be taken into consideration so that the sustainability of Indonesian fisheries resources can still be guaranteed well. The thing that must be done is the rearrangement of the national fisheries system by means of rational management of fish resources (restrictions on catches, and catches). Management of fish resources in a gradual and controlled manner, followed by careful monitoring for the sustainability of fish resources sustainably. There will be careful monitoring, control, and monitoring of fleets, fishing gear and fishermen to reduce the risk of IUU Fishing activities that harm the country.

Based on data from the Ministry of Maritime Affairs and Fisheries (KKP) on the results of the operation of the fishery watchdog the Supervision of Marine Resources and Fisheries (PSDKP) states that during the first half of 2017 there were 95 illegal vessels conducting illegal fishing in Indonesian waters.[8] Earlier in 2016, Minister Susi Pudjiastuti said there were 8 illegal vessels that were captured by the Maritime and Fisheries Ministry’s (KKP)
fisheries surveillance vessel. The eight vessels were suspected of carrying out illegal fishing activities. The Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, said that the arrests were carried out by KP Leopard Shark 001 and Tiger Shark 06 06 on September 22-23, 2016, in the Fisheries Management Area of the Republic of Indonesia (WPP-RI) 716, namely in the waters of the Sulawesi Sea. [9]

Illegal fishing cases also occurred in April 2018, the Ministry of Maritime Affairs and Fisheries (KKP) again arrested Foreign Fishing Vessels that were fishing illegally in Indonesian waters. Sharks 011 fishing vessel (KP) Shark caught two Philippine-flagged foreign vessels in the Indonesian Fisheries Management Area (WPP-RI). The two vessels arrested were FB LB John V (16.47 GT, three crew) and FB LB Luke V (15.60 GT, two crew), all Filipino citizens. During inspection by the Leopard Shark KP 001, the two vessels did not have a single permit document to conduct fishing activities from the Government of the Republic of Indonesia, so both ships were escorted and handed over to the Bitung PSDKP base. [10]

North Sulawesi also has problems besides illegal fishing including the potential of fisheries and marine resources that have not been managed properly, such as pollution of the sea to destructive fishing. In addition, some of Indonesia’s large potential coastal and marine resources apparently have not contributed significantly to national economic development. Utilization has not been optimal yet, and it creates the degradation of natural resources in some coastal waters due to utilization that does not consider the carrying capacity of the environment. [11]

The high level of Illegal Fishing occurring in Indonesian waters especially in the WPP 716 fisheries management area shows a lack of supervision in the area. Utilization of marine and fisheries resources needs to be accompanied by optimal supervision in order to ensure the sustainability and sustainability of marine and fisheries resources. Oversight of marine and fisheries resources is carried out to protect marine and fisheries resources from destruction and illegal activities. [12]

2 Method

This study is qualitative because it focuses more on the depth of the data than the amount of data obtained. Viewed from a scientific perspective, this research is a legal research, with the method of juridical-normative approach. This kind of research places the rule of law as the major premise or determinant factor of a legal research. [13]

The juridical-normative approach method is a research method that emphasizes understanding in obtaining answers by basing on legal principles and principles that are reviewed from the regulations and trying to synchronize the applicable legal provisions with the applicable rules of law in the protection of the law against legal norms or regulations. [12]

In practice to obtain a comprehensive understanding in analyzing the problems of legal research, according to Soerjono Sukanto, normative legal research methods or legal literary research methods are methods used in the legal research conducted by examining existing library materials. [13]

The research specifications used in writing this law are analytical descriptive. A descriptive analytical method is a method that serves to describe the object within a particular area by linking to existing legal theories and in accordance with the laws and regulations under the study. [14]
Based on the approach method used, namely Juridical-Normative, the main data used is secondary data. Secondary data in this study are divided into:

1. Primary legal materials including the provisions of the national laws of Indonesia which are related to the writing of this law.
   a. The 1945 Constitution of the Republic of Indonesia; [15]
   b. Act Number 31 of 2004 as amended by Act Number 45 of 2009 concerning Fisheries; [16]
   c. Law Number 23 of 2014 concerning Regional Government; [17]
   d. Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.01/MEN/2009 concerning the territory of the Republic of Indonesia Fisheries Management. [18]

2. Secondary legal material to explain the primary legal material in the form of scientific work of scholars such as:
   a. Books, both printed and electronic versions
   b. Scientific journals
   c. Website pages that are closely related to the subject matter in this study.

In the data collection method based on the data sources obtained in this study, the data collected by means of library research (library research), which consists of primary legal materials, and secondary legal materials as well as previous research related to the object of this research study that can be in the form of interviews and statutory regulations, literature and scientific papers.

Data analysis is very important in a study in order to provide answers to the problems studied. Before data analysis is performed, data collection is first prepared. The method used in analyzing and processing the collected data is qualitative analysis. [19]

Qualitative Analysis is research that aims to understand the phenomena about what is experienced by research subjects, such as behavior, perception, and action. [20] Qualitative analysis mainly uses library materials as a source of research data.

3 Results and Discussion

3.1 The territory of the Republic of Indonesia fisheries Management

Fisheries Management Area according to the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 18/PERMEN-KP/2014 is a fisheries management area for fishing, fish cultivation, conservation, research, and fisheries development which includes inland waters, archipelagic waters, territorial sea, additional zones, and Indonesia’s exclusive economic zone. The Fisheries Management Area is divided into 11 regions, namely:

1. WPP NRI 571 covers the waters of the Malacca Strait and the Andaman Sea;
2. WPP NRI 572 covers the waters of the Indian Ocean to the west of Sumatra and the Sunda Strait;
3. WPP NRI 573 covers the waters of the Indian Ocean south of Java to the south of Nusa Tenggara, the Sawu Sea and the West Timor Sea;
4. WPP NRI 711 covers the waters of the Karimata Strait, the Natuna Sea and the South China Sea;
5. WPP NRI 712 covers the waters of the Java Sea;
6. WPP NRI 713 covers the waters of the Makassar Strait, Bone Bay, Flores Sea, and Bali Sea;
7. WPP NRI 714 covers the waters of the Tolo Bay and the Banda Sea;
8. WPP NRI 715 covers the waters of Tomini Bay, Maluku Sea, Halmahera Sea, Seram Sea and Berau Bay;
9. WPP NRI 716 covers the waters of the Sulawesi Sea and the northern part of Halmahera Island;
10. WPP NRI 717 includes waters of the Cendrawasih Bay and Pacific Ocean;
11. WPP NRI 718 covers the waters of the Aru Sea, Arafuru Sea and East Timor Sea.

3.2 Republic of Indonesia Fisheries Management Region 716 in North Sulawesi

The Fisheries Management Area 716 covers the waters of the Sulawesi Sea and Halmahera Sea. Administratively, WPP 716 in the north is bordered by the outer boundary of the Indonesia - Philippines ZEE; to the east bordering the outer boundaries of the Indonesia - Palau ZEE; in the south bordering North Halmahera Regency, North Maluku Province, Gorontalo Province, North Sulawesi Province, Tolitoli Regency, Donggala Regency, Central Sulawesi Province; and in the west bordering the Indonesia - Malaysia land border.

In general, WPP 716 in the north bordering the Indonesia - Malaysia land border on Borneo Island which is drawn along the Indonesia - Malaysia territorial sea boundary on Sebatik Island, then following the outer boundary of the Indonesia - Malaysia ZEE, followed by the outer border of the Indonesia - Philippines ZEE, then following the outer boundary of EEZ Indonesia - Palau, then drawn a line to the Sele promontory on Morotai Island, North Halmahera Regency, North Maluku Province; in the east bordering the outer border of ZEE Indonesia - Palau in the west; in the south bordering the North Lengen coastline over Sulawesi Island in North Sulawesi Province, Gorontalo Province and Central Sulawesi Province ending the border between Donggala Regency and Tolitoli Regency in Central Sulawesi Province, continuing towards the border of Berau Regency and East Kutai Regency in East Kalimantan Province; and in the west bordering the border of Berau Regency and East Kutai Regency in East Kalimantan Island then along the East coast of Kalimantan Island and ending at the land border between Indonesia - Malaysia in Nunukan Regency. [21]

The great potential of fisheries and direct borders with other countries makes the 716 State Fisheries Management Area of the Republic of Indonesia vulnerable to illegal fishing. North Sulawesi’s waters are one of the red zones of illegal fishing. [22] The perpetrators of fish theft from several countries often take wealth of fisheries resources, especially tuna and skipjack commodities. According to the Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, Bitung in North Sulawesi is the main satellite city for the center of illegal fishing activities carried out by other countries. During that time, other countries such as the Philippines benefited from that illegal activity and even received significant foreign exchange earnings. Besides the Philippines, other countries such as Thailand, Vietnam and Malaysia did the same things. [23]

In addition, WPP 716 is also filled with fishing activities in destructive ways. Therefore, supervision is needed in the field of marine and fisheries resources and the availability of supervisory facilities and infrastructure.
3.3 Implementation of Duties and Authority of Fisheries Supervisors in Fisheries Management Areas 716 Based on Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fisheries

Indonesian waters which are within the sovereignty of the Unitary Republic of Indonesia and Indonesia’s Exclusive Economic Zone are the place for high seas that contains potential fish resources. By taking into account, the existing carrying capacity and its sustainability to be utilized as much as possible for the welfare and prosperity of the Indonesian people.

Optimal utilization is directed at the utilization of fish resources by taking into account the existing carrying capacity and sustainability to improve the welfare of the people, to improve the living standards of small fishermen and small-fish growers, to increase revenue from the country’s foreign exchange, to provide expansion and employment opportunities, and to increase productivity, value added and competitiveness of fishery products and guarantee the preservation of fish resources, fish cultivation land and spatial planning. This means that the utilization of fishery resources must be balanced with the carrying capacity, so that it will last long. One of the activity to achieve all of those benefits is by controlling the fisheries business through fisheries supervision.

The potential of marine and fisheries resources will be focused on the potential of living natural resources in North Sulawesi Province. The fisheries potential of North Sulawesi Province, namely:

a. Potential of Freshwater Fisheries
b. Potential of Sea Water Fisheries
c. Potential of Sea Cultivation

The fishery supervisory duties are further regulated in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 17/PERMEN-KP/2014 Regarding the Implementation of the Fishery Supervisory Duties, regulating:

3.3.1 Checking the Completeness and Legitimacy of SIPI and/or SIKPI, Operating Declaration, and Sailing Approval Letter

Fishery Supervisors in carrying out a fishery supervision activity are required to check the completeness of SIPI and/or SIKPI, Operational Worthy Letter, and Sailing Approval Letter. Fishing Permit (SIPI) is a written permit that must be owned by every fishing vessel to do fishing which is an inseparable part of SIUP. Fisheries Business License (SIUP) is a written permit that must be owned by a fishery company to conduct a fishery business using the production facilities listed in the permit. Fish Transport Boat Permit, hereinafter referred to as SIKPI, is a written permit that must be owned by every fishing vessel to transport fish.

3.3.2 Checking the Completeness and Legitimacy of SIPI and/or SIKPI, Operating Declaration, and Sailing Approval Letter

Permission for fisheries research and development is given to fisheries research vessels. During this time in WPP 716 there are a number of research vessels that are used to conduct research. The fishery supervisor in this case is also obliged to check the completeness and validity of the research and development permit for the ship’s fisheries. Some research vessels conducting fisheries development in WPP 716 include:

2. Research ship from China, R.V. KEXUE at the Port of Bitung in order to add insight into maritime science in January 2018. [25]

3. Research ship from the National Oceanic and Administration (NOAA) of the United States Department of Commerce, the Okeanos Explorer in North Sulawesi Waters to keep researching about the national environment, maritime affairs, weather and marine security programs in collaboration with the Central Agency for Assessment Technology (BBPT) Indonesia in June 2010. [26]

3.3.3 Checking the Completeness and Legitimacy of SIPI and/or SIKPI, Operating Declaration, and Sailing Approval Letter

The Fishing Vessel Monitoring System (SPKP) has the understanding as one of the fishing vessel monitoring systems using predetermined equipment to determine the movement and activities of fishing vessels. This is regulated in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 42/PERMEN-KP/2015 Regarding Fisheries Vessel Monitoring System. SPKP is the implementation of fisheries supervisory duties in the form of monitoring the movement of ships. SPKP also known as Vessel Monitoring System (VMS) is a satellite-based fishing vessel monitoring system to determine the movement and activity of fishing vessels.

Since 2003, SPKP has been implemented by installing transmitters on fishing vessels of more than 30 GT sizes. [27]

3.3.4 Checking Fishing Vessels, Fishing Tools, and/or Fishing Aids

Applying fishing vessel policy to use fishing gear in accordance with the provisions in Article 6 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 71/PERMEN-KP/2016 Regarding Fishing Line and Placement of Fishing Equipment in the Fisheries Management Area of the Republic of Indonesia.

With eight groups of types of fishing gear. Based on the table above, it can be seen that there are two groups of dominant fishing gear types, namely fishing rods and gill nets, as many as 32,377 units. Therefore, the groups of fish species to be managed are the dominant fish species caught with two groups of fishing gear types.

When conducting a surveillance patrol by inspecting fishing vessels, fishing gear, and/or fishing aids, the fishery inspector in WPP 716 found a foreign fishing vessel with a Philippine flag, namely FB LB John V (16.47 GT with three ABK Filipino citizens) and FB LB Luke V (15.06 GT with two crew of Filipino citizens) in April 2018 who carried out illegal fishing using a type of FAD fishing gear without having a FAD Installation License (SIPR) as regulated in in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 26/PERMEN-KP/2014 concerning FADs. [28]

3.3.5 Checking the Compliance of the Composition of Fishing Vessels by Examining the Existence of Monitors on Fishing Vessels or Fishing Vessels for Specific Fishing Measures and Equipment

The fishery supervisor in WPP 716 checks the suitability of the number of crew on board in accordance with what is stated in the Fishing License (SIPI) by checking the presence of the monitor on a fishing vessel or a fish carrier. Monitoring of fishing vessels and fishing vessels are only done by the experts, which is regulated in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 1/PERMEN-KP/2013 Regarding Vessel Monitoring Fish Catchers and Fish Transport Vessels.
Monitoring of fishing and transportation of fish assigned by the Director General on fishing vessels that use fishing gear fishing groups, ring nets, lift nets, gill nets, trawl trawls, and trawlers for vessels operating in WPP 716.

3.3.6 Checking Compliance with Fish Handling on Fishing Vessels

Examination of the suitability of fish handling on board by the fishery supervisor in WPP 716 is regulated in the Decree of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 52A/KEPMEN-KP/2013 Regarding the Requirements of Quality Assurance and Safety of Fishery Products in Production, Processing and Distribution Processes. The fishing vessels and fish carriers used must meet the sanitary and hygiene requirements of the ship.

Ships must be equipped with equipment to maintain the freshness of fish for more than 24 hours and freezers (freezer), and equipped with hold equipment, tanks, or containers to store fish and keep the cooling temperature at the melting point of ice. Based on the inspection carried out in WPP 716, all ships are equipped with equipment to maintain the freshness of fish on board. Cooling must be undertaken in proper so that the fish are not infected and does not cause physical damage to fish.

The fish must be stored separately and must, stored in a fiber/styrofoam box or insulated hatch with added ice with a ratio of the amount of ice and fish used is 1:1 where the entire surface of the fish must be covered with ice. If the fish are arranged stacked, then the composition is ice-fish-ice-fish-ice and the ice used is ice that has been crushed (bulk ice) because it will contact with the body of the fish evenly.

3.3.7 Checking the Suitability of Fish Catches with Fishing Equipment

Examination of the suitability of catching fish with fishing gear in WPP 716 is carried out by fisheries supervisors in accordance with the Decree of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 52A/KEPMEN-KP/2013 Regarding the Requirements of Quality Assurance and Safety of Fishery Products in Production, Processing and Distribution Processes.

The suitability of the catching fish with the fishing gear must be harmonized to ensure the quality of the catched fish follow requirements by not using fishing technology that can physically damage the fish, by not using fishing gear that can accelerate the decline in fish quality and cause the fish to be contaminated eg catch using poison, by not catching fish in the contaminated area, and not to catch fish in the spawning area and season thus reducing fish quality.

3.3.8 Checking the Application of Fishing Book Log

The fishery supervisor in WPP 716 checks the implementation of the fishing log book. This is regulated in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 48/PERMEN-KP/2014 Regarding the Fishing Book Log. Fishing Log Book is a daily report written by the skipper regarding fishing activities and daily fishing vessel operations which contains information about fishing vessel data, fishing gear data, fishing operation data, and catching fish data.

However, in fact, the use of Log Books manually is not that easy. The paper easily gets wet, and therefore it is hard to read. In addition, the application of the Log Book still does not in advance benefit to fishermen, so they do not feel they have an obligation to fill in the results of their capture in the established Log Book. [29]
To overcome those, an electronic based fishing book has been developed or known as an e-log book. So that more accurate fisheries data and information can be obtained to support optimal and sustainable fish resource management policies and guaranteed sustainability of fish resources.

E-Log Book has several advantages, which is practical, more efficient, and paperless. To report the submission, it does need to go to the office, and instead to just send the ready data when online.[29]

3.4 Obstacles of the North Sulawesi Provincial Government in Supervision and Protection Efforts of the Republic of Indonesia Fisheries Management Areas 716

The 716 Fisheries Management Area is one of the strategic fishing areas in Indonesia. Given the high potential of fish resources in North Sulawesi, Indonesia must make efforts to supervise and protect the marine potential of North Sulawesi. However, fisheries supervisors in the 716 Fisheries Management Area, especially in the North Sulawesi sea, have obstacles in carrying out fisheries supervision activities. There are some alleged violations of the election administration, and can review reports and findings which are then recommended to the authorities, resolve election disputes, appoint and dismiss members of the Provincial Bawaslu.

3.4.1 Not yet optimal management of FADs in WPP 716 so that it has the potential to Catch Unwanted Bycatch

FADs, according to the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 26/PERMEN-KP/2014, are fish collecting aids that use various forms and types of binders/contractors of solid objects, functions to lure fish to gather, which are used to increase efficiency and the effectiveness of fishing operations. FADs in foreign terms are called fish aggregating devices (FAD) or payaos (for Filipino sailors) is a type of buoy that is installed at sea to attract fish gathered nearby before being caught by fishermen.

The use of FADs associated with fishing gear tends not to be selective, such as purse seine nets has increased the risk of catching baby tuna and non-target species such as dolphins, turtles, sharks, or other biota. This could potentially lead to the capture of unwanted bycatch.

Every citizen who wants to install FADs in NRI WPP is required to have a FAD Installation License (SIPR), including WPP 716. However, it was found by fisheries supervisors that the use of FADs that do not have SIPR such as Philippine FB flagged vessels John V (16, 47 GT with 3 ABK Filipino citizens) in April 2018 who used FAD without having a FAD Installation License (SIPR). [28]

Optimum management of FADs can be done by socializing legislation related to FADs as stipulated in the Regulation of the Minister of Maritime Affairs of the Republic of Indonesia Number 26/PERMEN-KP/2014 About FADs, conducting data collection and evaluating the status of FADs distribution, giving FAT permits (new and extension) in accordance with the results of evaluations and provisions of laws and regulations, as well as supervising and enforcing business actors who do not implement the provisions of the laws and regulations related to FADs.

3.4.2 Limited Data to Support Fisheries Oversight in WPP 716

The availability of fisheries data that can meet the interests of fisheries resource management is an important thing that can facilitate fisheries supervision in WPP 716. This
can be done by improving the facilities and infrastructure for collecting fisheries statistics and fishing log books, implementing technical guidance for collection and processing fisheries statistical data, carrying out technical guidance on filling the fishing Log Book, increasing the number of enumerator data collection officers and fishing Log Book officers.

In November 2018, the Ministry of Maritime Affairs and Fisheries has begun implementing an electronic Log Book (e-Log Book) system to record fish catching. However, this application has only been implemented in several regions. Socialization is needed to regions in Indonesia related to the e-Log Book system. This is expected to facilitate the fisheries product data collection system to support supervision, especially in WPP 716.

Improvements continue to be made in WPP 716 in collecting data on catches. Data collection using the e-Log Book continues to be carried out by fisheries supervisors in WPP 716 in the hope that it will facilitate fishermen in providing complete and accurate data to fisheries supervisors in WPP 716.

The improvement in the data collection of fish catching is also done by educating the fishermen conducted by the fishery supervisor by telling them how to use and activate the e-Log Book.

3.4.3 Lack of Human Resources (HR) Fisheries Supervisors

The condition of fisheries supervisors’ human resources that are not in accordance with the conditions of WPP 716 has caused fisheries supervision activities to not run optimally. The factor of human resources supervision is quite important because the condition of the region in WPP 716 is that there are a lot of islands so that with adequate elements of human resources can conduct surveillance activities properly. In WPP 716, in the office of the Tahuna Marine and Fisheries Resources Supervision Station, North Sulawesi only has 12 personnel and consists of 6 Fisheries Supervisors. This number is not proportional to the number of fishing vessels being monitored which has approximately 82 recorded fishing vessels in the Tahuna Marine and Fisheries Resources Monitoring Station and also in the Sangihe Regency District in WPP 716 there are many fishery centers so that fishing activities are not maximized.[30] It is necessary to increase the number of personnel so that fishery supervision activities in WPP 716 can be carried out properly.

4 Conclusion

Based on the description that has been explained in the discussion., it can be concluded as follows:
1. Implementation of the duties and authority of fisheries supervisors in the Republic of Indonesia 716 Fisheries Management Area (WPP NRI 716) is carried out by fisheries supervisors in accordance with Law Number 45 of 2009 amended from Law Number 31 of 2004 concerning Fisheries conducted with patrol supervision and monitoring of fishing vessel movements in the form of:
   a. checking the completeness and validity of SIPI and/or SIKPI, Operating Declaration, and Sailing Approval Letter;
   b. checking the completeness and validity of a fisheries research and development permit;
   c. checking the equipment and activeness of the fishing vessel monitoring system;
   d. inspecting fishing vessels, fishing equipment, and/or fishing aids;
e. checking the suitability of the composition of the fishing vessel crew by checking further on the presence of the monitor on a fishing vessel or fish carrier vessel for a certain size and fishing equipment;

f. checking the suitability of fish handling on a fishing boat;

g. checking the suitability of the fish caught with a fishing gear;

h. checking the application of fishing log books.

2. The obstacles faced by fisheries supervisors in North Sulawesi in conducting fisheries supervision are as follows:
   a. The management of FADs in WPP 716 is not yet optimal so that it still allows to catch unwanted bycatch (Unwanted Bycatch) such as baby tuna, dolphins, turtles, sharks, or other biota.
   b. The data is limited to support fisheries supervision in WPP 716.
   c. The lack of human resources (HR) of fisheries supervisors that prevents fishery supervision activities to run optimally.
References


[18] Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.01/MEN/2009 concerning the territory of the Republic of Indonesia Fisheries Management.


Improvement of Fisheries Management by Marine and Fisheries of Semarang City

Astrid Priscillia¹*, Amiek Soemarmi¹, Amalia Diamantina¹
\{astrid.priscillia@gmail.com¹, amiek_soemarmi@live.undip.ac.id², amalia_diamantina@live.undip.ac.id\}

Fakultas Hukum, Universitas Diponegoro, Semarang, Jawa Tengah, Indonesia¹, ², ³

Abstract. Law No. 45 of 2009 concerning Fisheries grants authority to the government and regional government in accordance with their authority has been the basis to conduct marine management for the greatest prosperity of the people through the utilization and validation of marine resources using the blue economy principle. The research focuses on the efforts of the Marine Service and Semarang City Fisheries to improve the management of aquaculture, and to overcome the obstacles experienced by the Semarang City Maritime and Fisheries Office. In this study, the authors use the normative juridical approach method, an approach that is based on existing legal rules and facts. Using a normative approach, the paper refers to primary legal materials, secondary legal materials, and tertiary legal materials. The results showed that the Semarang City Maritime and Fisheries Service Office attempted to improve the management of aquaculture in an Optimal Enhancement of Aquaculture Fisheries Resources, while maintaining environmental sustainability through improving the quality of human resources, optimally managing the potential of aquaculture fisheries through the programs implemented in Maritime and Fisheries Choice Affairs especially in aquaculture.

Keywords: Management, Aquaculture, Marine and Fisheries Service

1 Introduction

Article 33 paragraph 2 of the 1945 Constitution of the Republic of Indonesia states:

“The earth and water and the natural resources contained therein are controlled by the state and are used for the greatest prosperity of the people.”[1]

In this article, it is required that the wealth contained in the earth and the sea is one of the basic capital possessed by the Indonesian Nation in running and managing various sectors of community life in the context of improving people's welfare. This is reiterated in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that:

“The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.”[2]
Indonesia, as an archipelagic country, has very wide waters containing a variety of resources. Geographically, Indonesia's oceans are located in the equatorial area of fisheries.\[3\] Fish, crabs, shrimps, shellfish, jellyfish, including fisheries that are easily obtained with basic tools. In terms of prospects, fisheries are one of the fields that have a bright future because they have the potential to accommodate various aspects.

Not only technical, equipment, and tropical climate factors that have consequences for the wealth of species and sources of fishing, but the management of fisheries managed in good way and adequate in line with advances in science and technology also supports it.

In accordance with Law No. 23 of 2014 concerning Regional Government states that each local government is given broad authority in carrying out all government affairs ranging from planning, implementation, supervision, control, and evaluation except the authority in the field of foreign policy, defense and security, justice, monetary, fiscal, religious, and other authorities determined by government regulations.\[4\]

The consequence of broad autonomy authority, every local government has an obligation to improve services and welfare of the community in a democratic, fair, equitable, and sustainable manner. This obligation can be fulfilled if the regional government is able to manage the potential of the region, namely the potential of natural resources, human resources, and potential financial resources optimally. Regional governments in carrying out their governance are required to be able to carry out the development process that can encourage economic growth in order to create the welfare of the wider community. In order to achieve this, the regions are given the right and authority to explore their own regional revenue sources to be able to finance governance and development in the regions. As stated in Law No. 23 of 2014 in Chapter VIII concerning regional finance, it is known that one of the sources of the regional revenue and expenditure budget (APBD) is regional original income (PAD), where in the PAD there are regional taxes and levies area.

Contributions to the Local Revenue of the marine and fisheries sector must be able to be utilized optimally. If it misses, it will result in a large number of terrestrial aquaculture in rural areas that will not get the attention and assistance of the Regional Government of Banyuwangi Regency. The fish feed aid project from the central government will also not be able to be used by fish farmers because of high production costs.\[5\]

The existence of fisheries resources is a great deal both in terms of quantity and diverse types. They both can be managed and utilized for the welfare of the community. Management of fisheries resources must be done in a good way based on fairness and equity in their use by prioritizing the expansion of employment opportunities and improving the standard of living for fishermen, fish cultivators, and the preservation of fish resources and the environment.

Fisheries are all activities related to the management and utilization of fish resources and the environment from pre-production, production, processing, and marketing. They are carried out in a fisheries business system. The management of fisheries is very diverse, ranging from fishing and cultivating fish, including various activities such as storing, cooling, or preserving that aim to bring in income and profits for fishermen. One of the expected fisheries business is profit.\[6\]

Law No. 45 of 2009, a Second Amendment of Law No. 31 of 2004 concerning Fisheries, especially in article 3 states that fisheries management is carried out with the following objectives: a). Increase the standard of living of small fishermen and small-fish farmers, b). Increase foreign exchange earnings, c). Encourage expansion and employment opportunities, d). Increase the availability and consumption of fish protein sources, e). Optimizing the management of fish resources, f). Increase productivity, quality, added value and competitiveness, g). Increase the availability of raw materials for the fish management
industry, h). Achieve optimal use of fish resources, fish cultivation land, and fish resource environment, i). Guarantee the sustainability of fish resources, fish cultivation land, and spatial planning.[7]

Aware of the vastness of the territorial waters, the Indonesian government took the initiative to give part of the management of the territorial waters to the regional government, both the provincial government and the district or city government in carrying out the broadest possible autonomy, except for functions determined as the affairs of the central government, in Article 18A Paragraph (2) states that, “financial relations, public services, utilization of natural resources and other resources between the central government and regional governments are regulated and carried out fairly and in accordance with the law.” Therefore in Article 18 of Law No. 23 of 2014 concerning Government Regions emphasize this authority, where in Paragraph (1) states that, “areas that have sea territories are given authority to manage resources in the sea area.”

Meanwhile, in article 14 paragraph (1), (2), and Explanation of paragraph (2) of Law No. 23 of 2014 concerning Regional Government, which regulates mandatory and decentralized functions to become the authority of Regency/City Regional Government, does not mention the existence of Management of affairs/Fishing Port. In selected governmental affairs in accordance with Article 12 paragraph (3) of Law No. 23 of 2014 Includes Government Authority in Managing the Sea. In addition, there are differences in the nature of granting authority in fisheries affairs. If in Law No. 32 of 2004 concerning Regional Government that is decentralized, then in Law No. 45 of 2009 concerning Fisheries is Co-Administration.

As in the attachment of Law No. 23 of 2014 concerning the division of marine/regency/municipal affairs, the authority is only given in capture fisheries, as well as in the case of aquaculture. However, Article 18 of Law No. 23 of 2014 concerning Regional Governments gives authority to the regions in marine management, as well as in Law No. 45 of 2009 concerning Fisheries grants authority to the government and regional governments in accordance with their authority to conduct marine management for the greatest prosperity of the people through the use and authorization of marine resources using the principles of the blue economy. According to the attachment to Law No. 23 of 2014, there are also compulsory and optional functions. The choice of affairs referred to in this article is a government affair that actually exists and has the potential to improve the welfare of the community in accordance with the conditions, uniqueness, and superior potential of the region concerned, one of which concerns marine and fisheries.[6]

In activities related to fisheries in the city of Semarang, they are classified into the agricultural sector. Based on Semarang City BPS data for 2018, the fisheries subsector contributed 5.12% of the 35.92% contribution of the agricultural sector to the Gross Regional Domestic Product (GRDP) of Semarang City. With this contribution, the fisheries subsector became the second largest contributor after the food crops subsector for the agricultural sector. Thus, this sub-sector has a significant role for regional income in the city of Semarang.

This sub-category includes all activities of catching, hatching, and cultivating all types of fish and other aquatic biota, all in fresh water, brackish water, and at sea. Commodities produced by fisheries activities include all types of fish, crustaceans, mollusks, seaweed, and other aquatic biota obtained from capture (in the sea and public waters) and aquaculture (sea, pond, cage, floating net, pond, and rice field). Also included in fisheries activities are services that support fisheries activities on the basis of fees or contracts.

Data on fishery commodity production was obtained from the Directorate General of Capture Fisheries and the Directorate General of Aquaculture of the Ministry of Maritime Affairs and Fisheries. Price data in the form of producer prices were obtained from the BPS
Rural Price Statistics SUBDIT. The price indicator data in the form of the Producer Price Index are obtained from the BPS Statistics Producer SUBDIT and the Index paid by farmers for fisheries group production costs from the BPS Rural Statistics SUBDIT. While the data structure of the cost of fishery activities is obtained from the results of the Agricultural Census and Fisheries Company Survey conducted by BPS Fisheries Statistics Subdit.[8]

If the maritime and fisheries sector of Semarang City is developed intensively through appropriate steps, then this sector will produce a large production value and can be utilized for the economic progress of the people in Semarang City, especially fish farmers and fishermen. A large production value can be used to provide maximum contribution to the Regional Original Revenue.

Based on the background description above, it is important to research the efforts of the Semarang City Maritime and Fisheries Office to improve the management of aquaculture. This is what motivates the author to write and research a legal writing (thesis) with the title “Improvement of Fisheries Management by Marine and Fisheries of Semarang City.”

Based on the background that has been explained before, there are several issues that will be discussed in this paper as follows:
1. How is Semarang City's Office of Maritime Affairs and Fisheries to improve the management of aquaculture?
2. What is the solution to the obstacles experienced by the Semarang City Maritime and Fisheries Office?

This normative juridical approach will start from the approach to the Laws and Regulations that implement the improvement of aquaculture management by the Semarang City Maritime and Fisheries Service. The juridical normative approach method is used to obtain data relating to the improvement of aquaculture management by the Semarang City Maritime and Fisheries Office. This research using the normative juridical approach method provides a real and systematic picture.

According to Ronny Hanitijo Soemitro, an empirical juridical approach is a literature approach that is based on regulations, books or legal literature and materials that have relationship problems and discussions in writing this thesis and taking data directly on the object of research related to the increase in research objects management of aquaculture by the Semarang City Maritime and Fisheries Office.[9]

The research specification used in this paper is analytical descriptive, which is analyzing the current problems and describing all the symptoms and facts that exist related to criminal law policies in diverse for children who repeat the crime.

In researching legal issues with a normative juridical approach, this study makes observations by studying and explaining secondary data, which is called the literature study method.

Data analysis in this study was carried out qualitatively from the data obtained, it then compiled systematically and analyzed qualitatively to achieve clarity on the problem discussed. This research was conducted by collecting data, compiling, analyzing, interpreting and describing it. After analyzing the data, conclusions can be obtained using the inductive inference method, which is a way of thinking in drawing conclusions in general based on specific facts.[10] The reason for using qualitative analysis because the data was collected in the form of question. The data collected contains general information and the relationship between variables cannot be measured by numbers.
2 Results and Discussion

2.1 Semarang City Maritime Affairs and Fisheries Agency's Efforts to Improve Aquaculture Fisheries Management

As a consequence of broad autonomy authority, every local government has an obligation to improve services and welfare of the community in a democratic, fair, equitable, and sustainable manner. This obligation can be fulfilled if the regional government is able to manage the potential of the region, namely the potential of natural resources, human resources, and potential financial resources optimally. Regional governments in carrying out their governance are required to carry out the development process that can encourage economic growth in order to create the welfare of the wider community. In order to achieve this, the regions are given the right and authority to explore their own regional revenue sources to be able to finance governance and development in the regions. As stated in Law No. 23 of 2014 in Chapter XI concerning regional finance, it is known that one of the sources of regional revenue and expenditure budget (APBD) is regional original income (PAD), where in the PAD there are regional taxes and levies area.

In order to contribute to the Regional Revenue of the marine and fisheries sector, it must be able to be utilized optimally, and when it misses, it will result in a lot of terrestrial aquaculture in rural areas that will not get the attention and assistance of the Semarang City Regional Government. The fish feed aid project from the central government will also not be able to be used by fish farmers because of high production costs.

2.2 The Policy Direction of Semarang City Maritime and Fisheries Service Program as an Effort to Improve Aquaculture Fisheries Management

The Policy Direction Program of the City of Maritime Affairs and Fisheries in the City of Semarang as an Effort to Improve Cultivation Fisheries Management is directed at Increasing the Utilization of Aquaculture Fisheries Resources Optimally, while maintaining environmental sustainability through improving the quality of human resources, optimally managing the potential of aquaculture fisheries through the program.

In 2018 the programs implemented in the Maritime Affairs and Fisheries Affairs Affairs are as follows:[11]

1. Aquaculture development program. This program is directed at the development of Superior Fish Seedlings, Improvement of Infrastructure Facilities, and Aquaculture Production.
2. Fisheries extension system development program. This program is aimed at increasing fish consumption.
3. Program for optimizing the management and marketing of fisheries production. This program is aimed at increasing the processing of fisheries human resources to improve the quality and quantity of processed fish products.

Activities that support the achievement of service performance in the Capture Fisheries Development Program include activities for improving and developing fish culture technology; environmental management and fish disease control activities; fish breeding and development activities; revitalization of freshwater aquaculture fisheries; revitalization of brackish aquaculture fisheries and infrastructure and development activities.
This was also supported by several programs included in the Policy Direction of the Semarang City Maritime and Fisheries Service Program as an Effort to Improve Aquaculture Fisheries Management including:

1. Aquaculture development program. This program is directed at the development of Superior Fish Seedlings, Improvement of Infrastructure Facilities, and Aquaculture Production. This program is implemented through the development of smallholder fisheries and the development of superior fish seeds with the aim of enhancing the knowledge and skills of resilient fish farmers and environmentally friendly aquaculture.

2. Fisheries extension system development program. This program is aimed at increasing fish consumption. This program is carried out through the activities of fostering, counseling and promotion of fishery products as well as strengthening and developing fisheries product marketing with the aim of popularizing fishery products.

3. Program for optimizing the management and marketing of fisheries production. This program is aimed at increasing the processing of fisheries human resources to improve the quality and quantity of processed fish products.

2.3 Barriers experienced by the City of Semarang Maritime and Fisheries Office

Semarang City Maritime Affairs and Fisheries Office in carrying out government affairs in the field of maritime affairs and fisheries can not be separated from the problems that prevent in achieving the vision and mission. These obstacles are:

2.3.1 Utilization of Fish Farming Land

Utilization of cultivated land is not yet optimal and there is still low ability of fish cultivators in applying Good Aquaculture Practices (CBIB). A Good Way of Fish Cultivation is the application of how to maintain and or raise fish and harvest the results in a controlled environment so as to provide food security from cultivation by paying attention to sanitation, fish medicine feed and chemicals and biological materials. Improving the quality of aquaculture products is more directed at providing food safety guarantees starting from raw materials to the end products of aquaculture that are free from contaminants as in accordance with global market requirements. How to obtain CBIB certification is by making a submission effort by aquaculture entrepreneurs, both individuals, groups of farmers (POKDAKAN) and business entities with the following conditions:

1. Application for CBIB Certification is addressed to the Head of the Provincial Marine and Fisheries Service, completed with administrative documents and copied to the Head of the Regency/City Maritime and Fisheries Service. Administrative documents include:
   a) Photocopy of Fishery Business Permit (SIUP) for a legal entity business unit or a sign/record of fish cultivation business for an individual business unit or the inauguration of a fish cultivator group;
   b) General data on fish cultivation units;
   c) List of facilities for fish cultivation units;
   d) List of records/records of fish farming unit activities;
   e) The number and education of fish cultivation workforce (organizational structure and job descriptions, for groups or companies);
   f) Drawings of building layouts, maps and conditions surrounding the fish cultivation unit.
2. Requirements for the applicant (fish breeding unit) who submit CBIB Certification include:
   a) Business scale can be in the form of individuals, fish cultivator groups (POKDAKAN) or companies that produce consumption fish species and are marketed locally and for export;
   b) Has conducted a cultivation business of at least 1 planting season;
   c) Aquaculture business activities at the stage of breeding and or enlargement of fish.
3. Applications can be submitted directly or by post, fax and or electronic mail.

2.3.2 The absence of providing aid equipment to the cultivating community

The training materials given by the government could not be used for entrepreneurs because there was no assistance in equipment; while, the community did not have capital for entrepreneurship. In another policy, the Fisheries Service is not permitted to give grants to fish farmers. However, it can only provide counseling, assistance, and propose procurement of goods to the provincial and central government through the KKP.

2.3.3 Land Use

Lack of use of idle land for inland fisheries, especially land that has a source of water for fisheries activities so that the production of freshwater aquaculture is not optimal.

2.3.4 High Abrasion

For brackish water aquaculture, high abrasion and high tides cause coastal ponds bordering the sea to be damaged and often fail to harvest.

2.3.5 Superficiality

The construction of the maritime village area has an impact on fishermen's income because the development of the area has caused river siltation, making fishing boats difficult to enter and exit TPI.

2.3.6 Lack of Community Interest

There is still a lack of community interest in consuming fish, especially among children, so that various counseling efforts are needed that attract children.

2.3.7 The land acquisition

The procurement of conservation land cannot yet be realized in the previous year due to the incompatibility of land acquisition planning documents with the RTRW documents for the location of the aquaculture land. The land acquisition planning document is written for conservation while the allotment of land in the intended location according to the RTRW is for tourism and settlement.

Strategic issues and general issues that are the main obstacles in realizing sustainable fisheries activities in Indonesia are: 1) fisheries management; 2) law enforcement; and 3) fisheries business actors. The weakness of the fisheries management system is a strategic issue and a major general problem in realizing a sustainable fisheries sector in Indonesia. This has been indicated by uneven levels of utilization of fish resources in the territory of Indonesia.

The condition of law enforcement for the fisheries sector in Indonesia is also relatively weak, both in quantity and quality. The lack of law enforcement in the field of fisheries,
besides causing state losses, both economically and environmentally, it also has an impact on the enforcement of the country's territorial sovereignty. Aquaculture is a spatial regulation problem that is often violated or not adhered to without strict action from the government or law enforcement officers. In fact, not a few spatial rules replaced or adjusted to personal interests or groups of authorities.

2.4 Solution to the Obstacles experienced by the Semarang City Maritime and Fisheries Office

In general, the problems faced by fish farmers in Semarang City include capital, cultivation technology (seed quality, water quality, land and canals), feed prices, market and marketing, and diversification of processed products. So that the solutions of the problems found can be classified based on their respective problems, namely:

2.4.1 Capital

Capital for fish farmers in the city of Semarang is a major problem that makes it difficult to develop their business into a large scale business. Provision of Small and Medium Enterprises Loans (KUKM) needs to be intensified with requirements that do not burden farmers. This can be done through recommendations from the local industry and fisheries service and helping groups of fishery business actors to take care of the legal establishment of the group so that they are eligible to receive assistance from the government.

2.4.2 Human Resources

Identification of idle lands close to water sources is carried out to be developed as freshwater fish farming, and to provide socialization and training on fish farming to the community by forming groups of fish farmers. In addition, conducting training for the Group of fish cultivators by following classification is needed:

a. Beginner Group. In the initial stage of development, the Department of Fisheries provides basic training and counseling such as the manufacture of independent feeds, management of clean water sources, and neat and coordinated salinity. So it does not cause a lot of waste and make the quality of fish farming results become better.

b. Associate Group. In the middle group coaching stage, the Semarang City Fisheries Department began to provide a specific understanding of the types of fish culture such as Biofloc and Tilapia Salin. This type of cultivation is relatively new and requires Human Resources who are experienced in aquaculture.

c. Main Group. The Fisheries Service only provides assistance in the post-production stage to the main Group, usually at the stage the main group has cooperated with other agencies such as the trade service for marketing, the industry service for the packaging and industrial cultivation of fish.

2.4.3 Implementation of Permanent Quality Management

The Quality Management assistance method continues to promote interactive discussions in business locations. So the problems that occur can be immediately found a solution together. Preliminary mentoring results show that the farming systems used are mostly still using semi-intensive fish farming systems. This is a concern, and at the same time an opportunity for the team and partners so that fish farming activities can implement an intensive fish culture system, while maintaining the quality of aquaculture media according to fish seed requirements, so that fish seed production can continue and be able to meet
production targets. The next training is how to make independent food and fish feed management. Specifically, partners are given an understanding and skills on how to choose feed raw materials that are suitable to the nutritional needs of fish, especially feed raw materials that have been available at partner locations such as shrimp shell waste, and trash fish that can be used as raw materials for making fish feed, namely silage.

The next step is the management of water quality management. The participation of partners in this activity is very good, the activities include controlling the tub or pool of water filters, installations, tools used in the process of taking sea water, as well as measuring water quality using a water temperature thermometer, oximeter to measure the content of dissolved oxygen in water, and pH test or litmus to measure the pH of water. Through this activity, water quality measurements should have been carried out continuously so that water quality management efforts can continue to be monitored, and appropriate for fish hatchery activities. Based on the analysis of the availability of raw materials for making fish feed which is quite high in partner regions such as shrimp head waste, trash fish, bread waste, and tofu waste. So the initial step taken is the transfer of information related to fish feed nutrition, preparation of feed formulations, how to make independent fish feed, and the use and maintenance of fish feed machines. So that partners are able to produce fish feed independently to meet feed needs during seed production, and are able to reduce production costs.

2.4.4 Cultivation Technology

The cultivation technology applied generally still applies traditional technology and not many have implemented intensive patterns. It is necessary to improve the cultivation techniques by increasing the function of counseling, accompaniment, as well as a Dempon or demonstration plot. Seed quality is a problem because of the slow growth of milk fish. This is allegedly due to the poor quality of the seeds used, so that the support of superior seeds produced by research institutions and the People's Breeding Unit (UPR) that have received certificates is very much needed, through procurement, as well as good management of the parent to produce high quantities of continuous and high quality seeds. The condition of water quality used in aquaculture has declined significantly with the amount of pollution coming from industry, ship washing waste in the middle of the sea, or oil/diesel spills.

In addition, land and water management is generally not carried out optimally due to the malfunctioning of waterways due to siltation of channels. So that it is necessary to stipulate local regulations and strict sanctions for industries that dispose of their waste and have the potential to pollute the surrounding waters, normalization of pond channels with support from the local government and participation of POKDAKAN in the maintenance of the channel independently, as well as the use of modified boat complainants.

The steps to overcome these fish culture problems are to improve the technical development of fisheries and fishing, and to improve the facilities and infrastructure of aquaculture and capture fisheries. This is done by improving land management for fish farming and improving facilities and infrastructure at the Auction Fish Ponds of the pond to maintain the canals.

2.4.5 Price of Feed

Fish farmers often complain that the high price of feed they use, so that in economic calculations the difference between operational costs and the selling price of fish is no longer sufficient, resulting in very little profit received. The development of household-scale feed industry by utilizing local raw materials is needed to overcome the high price of feed.
2.4.6 Market and Marketing

Limited market absorption results in saturated prices, when the production is abundant, there is often a decline in prices and on the other hand, production costs cannot be reduced. It is necessary to stabilize the price of milkfish in the form of warehouses or cold storage that can accommodate milkfish when abundant production. The provision of cold storage that is professionally managed by both private and government. They will be very beneficial, especially when milkfish production is abundant during the main harvest season.

Provision of local markets with adequate facilities such as: the availability of ice and the smooth transportation with the support of the local government. In addition, for the distribution of processed products it is necessary to provide a special market as a place to sell processed products as well as a place of promotion.

To increase per-capita fish consumption, fishery product processing innovations are carried out by making various types of processed fish-based menus and socializing and providing training to the community.

2.4.7 Diversification of Processed Products

The limited knowledge of farmers about fish processing is also a problem that always happens. Therefore, it can be found out that there is a need for training from postharvest institutions in coordination with the local industry and fisheries service, in the field of milkfish processing for both farmers and processors. In addition, so that milkfish cultivation products can be absorbed optimally, it can be done by increasing the number of milkfish processing entrepreneurs and by increasing the role of cooperatives in collaboration with banks, as well as through the promotion of nutritionists who coordinate with local related agencies in order to improve fish eating patterns milkfish in Semarang City.

From these problems, some recommendations that can be used in order to increase production and productivity of fish farming in the city of Semarang include several aspects including: provision of Small and Medium Enterprises Credit (KUKM), refinement of cultivation techniques, market supply and improvement, diversification of milkfish processed products, and providing other supporting facilities.

3 Conclusion

Based on the problems discussed in the previous chapter, the following conclusions can be drawn:

1. The Semarang City Maritime and Fisheries Service Office attempts to improve the management of aquaculture in an Optimal Increase in the Utilization of Aquaculture Resources, they also maintain environmental sustainability through enhancing the quality of human resources, optimally managing the potential of aquaculture Fisheries Development, and the programs implemented in the Affairs The choice of Maritime Affairs and Fisheries especially in aquaculture is as follows:
   a. Aquaculture development program. This program is directed at the development of Superior Fish Seedlings, Improvement of Infrastructure Facilities, and Aquaculture Production.
   b. Fisheries extension system development program. This program is aimed at increasing fish consumption.
c. Program for optimizing the management and marketing of fisheries production. This program is aimed at increasing the processing of fisheries human resources to improve the quality and quantity of processed fish products.

2. The solution to the obstacles experienced by the Semarang City Maritime and Fisheries Service can be seen from several aspects which include the potential of cultivated land, cultivation techniques, production/productivity, marketing, problems and solutions needed, and in order to increase production and marketing in Semarang City, Central Java. As a whole requires a touch of applicable cultivation technology accompanied by comprehensive cooperation between the central government, local governments, and fish farming communities in the city of Semarang so that it can support improved management in the field of aquaculture.

4 Suggestion

1. Developing policies regarding management plans more clearly for fisheries resources is the most important thing to do in the institutional aspect. This is supported by many laws regarding the management of fisheries resources that are not yet clear. In addition, unclear fisheries resource management policies also have an impact on the integration of various parties, both those involved directly or indirectly in fisheries resources. Because the integration is not very good, the practice of coordination between elements that occur in the field is not as good as expected. On the one hand, there are those who want the sustainability of fisheries resources to be maintained while on the other hand there are also those who depend on fishery resources and are often aware of or have not caused a crisis of fisheries resources due to excessive extraction. Fisheries management has not been able to run effectively due to the absence of adequate local regulations and overlapping policies, so the management plan has not been optimal. Therefore, it is necessary to develop a clearer and more appropriate management plan and regulation for fisheries resources.

2. The application of conventional management models has not been able to run optimally. Therefore, a solution is needed so that the management of fisheries resources in Indonesia can run optimally. Ecosystem based fisheries management as a new paradigm is thought to be a solution for fisheries resource management. Although it might be difficult and it takes a long time to see the success of this model if it is applied in Indonesia. To apply this model, it can be adjusted to the conditions and all characteristics associated with fisheries resources. Ecosystem based fisheries management can be applied in Central Java Province, especially in Semarang City. The proposed management plan for fisheries resources in the discussion chapter can be implemented by referring to the policy of Law No. 23 of 2014 concerning Regional Government. In terms of developing strategies for managing ecosystem-based fisheries resources carried out by considering several aspects, namely the aspects of theology, economic aspects, social aspects, institutional aspects, and environmental aspects. Whereas the priority in formulating a strategy for management of fisheries resources is carried out by restoring and maintaining the condition of the living places (habitat) of fish; make fisheries management policies
that are adjusted to the cultural values of the community; and create a database of information on the types of fish being cultivated.
References


Implementation of Law Protection of Work Safety for Workers: PTPN IX Persero

Galih Arif Pramana¹, Sonhaji¹, Nabitatus Sa’adah¹
{Galihap7@gmail.com¹, sonhajimuh19@gmail.com², n4b1t4tuz@yahoo.com³}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹

Abstract. Legal protections for labor safety have become a major topic of discussion in recent years, as the increasing population and development of employment opportunities pose various problems. The problem in this research is the implementation of legal protection for work safety based on Law Number 13 of 2003 concerning Manpower and Law Number 1 of 1970 concerning Work Safety and other related regulations. The approach of this research is qualitative empirical juridical with analytical descriptive writing style. The object of this research is PTPN IX Persero. The results of his research show that the protection of work safety law in PTPN IX Persero is a form of implementation of Good Corporate Governance which is generally implemented based on Law Number 13 of 2003 concerning Manpower, namely that employers are required to guarantee labor protection which is the basis for implementing work safety protection commitments that must be owned and fulfilled by the company.

Keywords: Legal protection, Labor, PTPN IX Persero.

1 Introduction

Labor is a development agent and economic actors both individually and in groups within a company. Its role is very significant in national economic activities in increasing productivity and welfare of the community. Manpower must be empowered, including female workers. The goal is that they have more values in the sense of being more capable, more skilled and quality so that they can make optimal contributions to national development to compete in the global era that engulfs the world. There is also the term labor which contains a broader understanding, including state officials, civil servants or the military, businessmen, laborers, laborers, unemployed and others. Article 1 number 2 of Law No. 13 of 2003 concerning Manpower, the term labor contains a general meaning, that is, anyone who is able to do work to produce goods and/or services to meet their own needs or for the community.[1] Law No. 13 of 2003 concerning Manpower has specifically regulated labor rights and obligations, but in its implementation in companies, there are still many obstacles and problems faced such as lack of fulfillment of rights and lack of company supervision of its workforce.[2] One of the supervision is work safety which aims to protect the rights of workers at work. Work safety is also important for employers to control their workers from hazards when at workplace. Protection of labor law aims to ensure the continuity of the employment relationship system without any pressure from other parties, and therefore every employer is required to carry out such protection in accordance with applicable laws and regulations. Law Number 1 of 1970 concerning Work Safety regulates the obligation of
companies to provide workplaces and workers in carrying out work that is protected in their work safety.[3]

Legal protection of labor can be done by increasing recognition of human rights, physical and technical as well as social and economic protection through norms that apply in the work environment. In this regard, Iman Soepomo divides labor protection into three types, namely economic protection, social protection and technical protection.[4], [1] The advancement of the industrial sector and the occurrence of modernization in many ways increase the intensity of the operational work of the workers, machinery, tools and so on. New technical materials containing poisons, poor work methods, deficiencies work skills and training, lack of knowledge about new sources of danger, are sources of occupational hazards and illness.

Although the government has made regulations to provide protection for workers, in reality, there are still many workers who are negligent and do not pay attention to work safety regulations. If this things keep happening, the work accidents will continue to occur and the employer should be responsible for the incident in the work accident. PT. Perkebunan Nusantara IX, which currently has a working area in Central Java Province, manages the company’s main commodities, namely rubber, sugar, drops, tea and coffee. There are 15 gardens, eight sugar factories, one agro tourism unit and one unit of downstream product production and marketing. In line with the changing business environment of the company, PT. Perkebunan Nusantara IX made a business transformation in the plantation and non-estate units. Business transformation in the plantation unit includes planting sugarcane itself in the right to cultivate (HGU) the result of conversion from rubber plants to meet the needs of sugarcane raw materials. Furthermore, PT. Perkebunan Nusantara IX will be developed into a plantation company with a rubber business as the backbone (an area of close to 50,000 Ha), and the Sugar business as one of the backbone of the company’s revenue. The vast land will absorb a lot of labor, but in the field the supervision of the workforce is still somewhat lacking. A working group consisting of several workers to handle several hectares of land is only supervised by one foreman, which is less effective. In addition, the work carried out at PT. Perkebunan Nusantara IX has a high risk of causing work accidents such as physical damage, damage to production facilities, medical costs, compensation and production disruptions. PT. Perkebunan Nusantara IX is a company that uses high-tech machinery in its production process. This is likely to have a risk of work accidents. To prevent unwanted matters in the matter of work safety, employers must open themselves by obeying the applicable regulations because the main purpose of the regulation is to achieve awareness not just obedience.

Based on the description above, the identification and formulation of the main issues are as follows:
1. How is the implementation of legal protection for the work safety of workers at PTPN IX Persero?
2. What are the obstacles faced by the company in implementing legal protection, and how to overcome them?

2 Methods

The approach method used in this research is the empirical juridical because the type of study is legal research that studies law in action to evaluate the relationship between empirical and normative aspects. The use of the study is also to find a problem formulation which are
sought through field research. The empirical juridical method is used to provide a qualitative
description of the existing problem. This approach, which is carried out in terms of juridical
lies in the use of principles approaches and principles in reviewing, viewing and analyzing
problems. Meanwhile, this climbing method is done empirically or sociologically in practice
or activities carried out directly in the community or the field regarding existing problems.
This research is intended to examine, criticize and is expected to provide solutions to examine
the problems and legal protection of labor in PTPN IX Persero.

3 Results and Discussion

3.1 Overview of PT. Perkebunan Nusantara IX (Persero)

3.1.1 Company Profile

PT. Perkebunan Nusantara IX (Persero) was established on March 11, 1996 and has two
Divisions. First, the Annual Plant Division which cultivates and produces products from
rubber, coffee, cocoa and tea. Second, the Seasonal Plant Division (Sugar Factory) which
produces products from sugarcane. Perkebunan Nusantara IX currently has a working area in
Central Java Province managing the company’s main commodities namely rubber, sugar,
drops, tea and coffee. It manages 15 units of plantations, eight sugar mills, one unit of agro
tourism and one unit of production and marketing of downstream products. Business
transformation in the plantation unit includes planting sugarcane itself on HGU land as a result
of the conversion of rubber plants to meet the needs of sugar cane raw materials.
The company also monocultures timber cultivation on land that is less suitable for staple
commodities and intercrops on marginal lands for land use such as on the right and left sides
of roads and overly steep land. In addition, the company also manages horticultural cultivation
in order to optimize land and increase company revenue with some fruits planted there such as
oranges, dragon fruit, bananas, and plants for essential oils namely citronella. Business
transformation is carried out in non-garden units, namely optimizing potential areas for agro
tourism, resorts and cafes, as well as the production and marketing of downstream products.
Currently PTPN IX has nine agro tourism areas, four resorts consisting of one Banaran Resort
which is managed by a non-estate business unit, and three resorts managed by a garden and
eight Cafe Banaran 9 Coffee and Tea. The company has also developed several downstream
products to consume such as Kopi Luwak, Banaran Premium Coffee, Kaligua Tea, Semugih
Tea, Sugar 9, and Nutmeg Syrup. In front of PT. Perkebunan Nusantara IX will be developed
into a plantation company with a rubber business as the backbone (an area of close to 50,000
Ha), and the Sugar business as one of the backbone of the company’s revenue. So that it can
become an agribusiness company that has a solid foundation, is highly competitive, grows and
develops with partners in a sustainable manner.

3.1.2 Vision and Mission of PT. Perkebunan Nusantara IX (Persero)
   a. Vision

   “Becoming a highly competitive Agribusiness company and growing together with
   partners.”

   b. Mission
1. Producing and selling rubber, tea, coffee, cocoa, sugar and drip products to domestic and international markets in a professional manner to generate profit growth.

2. Using technology that produces value products (delivery value) desired by the market with an environmentally friendly production process.

3. Improving employee welfare, creating a healthy work environment and organizing training to maintain employee motivation in efforts to increase work productivity.

4. Developing downstream products, agro-tourism and other businesses to support company performance.

5. Building synergies with strategic business partners and the business community to realize shared prosperity.

6. Together with sugar cane farmers, supporting the government program to supply the national sugar needs.

7. Empowering all company resources and environmental potential to support national economic development through job creation.

8. Implementing the Community Development Partnership Program (PKBL) as a form of social responsibility and responsibility for the welfare of the community around the company location.

9. Maintaining environmental sustainability through plant maintenance and increased soil fertility.

### 3.1.3 Commodities, Products and Work Areas

PT Perkebunan Nusantara IX produces Ribbed Smoke Sheet (RSS) from rubber sheets that are dried and smoked correctly, and through visual inspection by trained personnel. Salam latex raw materials are produced from 12 gardens spread across Central Java covering ± 21,867 ha. With production of ± 26,000 tons per year. PT. Perkebunan Nusantara IX has 15 RSS Rubber Factories, one TPC Factory, and five BRCR Factories. All factories are certified with ISO9001:2015 Quality Management System and 14001:2015 Environmental Management System and Indonesian National Standard (SNI). PT. Perkebunan Nusantara IX has three Units to produce black orthodox tea, namely The Kaligua Factory, The Semugih Factory, The Jolotigo Factory with a total capacity of 12.1 tons/day. Annual production ± 2,000 tons/year, total tea area ± 1,164.78 ha. It has two garden areas, namely the altitude plateau 1,200 to 2,050 m above sea level (Kaligua Gardens) and the altitude plateau 600 to 1,200 m above sea level (Semugih and Jolotigo gardens). PTPN IX’s tea factory is ISO 9001:2015 Quality Management System certified and has received Rainforest Alliance certification as a sign that it has implemented Sustainable Agriculture Network (SAN) standard agricultural management.

The area of PT. Perkebunan Nusantara IX coffee plantations is spread over four estates in Central Java with an area of ± 951.45 ha, with two types of cultivated coffee, Arabica and Robusta coffee. Coffee Plantation PT. Perkebunan Nusantara IX has a planting density of 1,000 trees per hectare that supports a sustainable ecosystem for coffee plants, as well as with trained personnel in cultivation culture and processing systems to be able to produce quality coffee and the best flavor. PTPN IX Coffee Factory has been certified with ISO 9001:2015 Quality Management System and Environmental Management System 14001:2015 and the National Standard of PT. Perkebunan Nusantara IX has two coffee factories with a total capacity of 35.60 tons/day which has been established since 1911.

Besides processing with modern processing equipment, coffee beans are still past the traditional sorting stage which is carried out by trained and experienced personnel. As for the types of coffee commodities:
a. R/WP: Quality Wet Process Robusta is separated into grade 1, grade 4 and local with large, medium, small sizes (L, M, S)
b. R/DP: Quality Dry Process Robusta are separated into grade 1, grade 4 and local with large, medium, small sizes (L, M, S)
c. A/WP: Quality Wet Process Arabica separated into grade 1 and local with large, medium, small sizes (L, M, S)
d. A/DP: Quality Dry Process Arabica separated into grade 1 and local with large, medium, small sizes (L, M, S)

There are also side commodities, namely since 2009 PT. Perkebunan Nusantara IX began to plant wood as a main commodity support. Timber is planted in monoculture and intercrop areas with varying area of 4,300 ha (monoculture) and 1,583 ha (intercrop). Various varieties planted include Sengon, Jabon, Mahogany, Teak, Myopsis, Suren and Acacia. In addition to timber, PT. Perkebunan Nusantara IX also developed essential oils from Nutmeg and Lemongrass, which were developed from its own area of 202 ha (Nutmeg) and 96.32ha (Seraiwangi) and will be developed into an area of 580.5 hectares in 2019. The main commodity, PTPN IX (Persero) also produces downstream products in the form of: Banaran Coffee, The Kaligua Powder, The Kaligua Celup, The Semugih Powder, Sugar 9 and Nutmeg 9. 9. As a means of sales, promotion and distribution, outlets have been built in the form of cafes namely Kampoeng Banaran Bawen Salatiga Coffee, Banaran 9 Coffee and Tea Guava Regency. Semarang, Banaran 9 Coffee and Tea Majenang Cilacap, Banaran 9 Coffee and Tea Setiabudi Semarang.

![Working Area](image)

Figure 1. Working Area

### 3.2 Implementation of Legal Protection for Work Safety of PT. Perkebunan Nusantara IX (Persero)
3.2.1   Legal Basis for Implementing Legal Protection for Work Safety of PT.
Perkebunan Nusantara IX (Persero)

PT. Perkebunan Nusantara IX (Persero) provides work safety protection for its workers which is expected to reduce the risk of accidents. PT. Perkebunan Nusantara IX (Persero) provides protection based on the Occupational Health and Safety Management System (SMK3) which prioritizes worker safety and health, cares for the environment, and cleanliness and security in the work environment. Safety at PT. Perkebunan Nusantara IX (Persero) is the company’s obligation to carry out work safety protection for its workers. Safety at PT. Perkebunan Nusantara IX (Persero) is based on Law Number 13 of 2003 concerning Employment. According to the legislation, every employer is obliged to guarantee workers’ protection which is the basis of the implementation of work safety protection, and it is a commitment that must be fulfilled by the company. They are all done to increase productivity and harmonious, dynamic and fair relations between employers and employees, in accordance With the applicable laws and regulations and the meaning of Industrial Relations, in PT. Perkebunan Nusantara IX (Persero), Subsidiaries and Associations/Institutions within the scope of Plantation BUMN consider it necessary to prepare a Collective Labor Agreement (PKB) whose formulation includes terms of work, rights and obligations between Employers and Employees.

Safety protection at PT. Perkebunan Nusantara IX (Persero) also refers to “BUSINESS ETHICS GUIDELINES & Code of Conduct” PT. Perkebunan Nusantara IX (Persero). Those ethics stress the importance of implementing Good Corporate Governance as a tool to increase the value and competitiveness of the Company in facing the era of market economy and free trade. One manifestation of this commitment is the preparation and application of the Code of Conduct, a written documentation of the system of values and elaboration into expected attitudes and behavior standards. The PTPN IX (Persero) Business Ethics and Code of Conduct guidelines are guidelines for the Board of Commissioners, Directors and Employees to behave in carrying out daily tasks, interacting with business partners, business partners and other parties so that they are able to maintain and maintain the trust of the Company’s Stakeholders.

Safety protection at PT. Perkebunan Nusantara IX (Persero) is also based on Law No. 1 of 1970 concerning Occupational Safety Work safety is essentially a protection for workers where they get protection for their safety rights in doing their works. The goal is to increase production and productivity by guaranteeing the safety of every worker to work safely and efficiently. Therefore, work safety protection carried out and sought by each party, both employers and workers are expected to prevent or at least reduce the danger of accidents work.

3.2.2   The purpose of implementing Legal Protection for Work Safety of PT.
Perkebunan Nusantara IX (Persero)

PT. Perkebunan Nusantara IX (Persero) provides work safety protection for its workers with the aim to:[5]

1. Provide work equipment in accordance with K3 requirements so that their safety is guaranteed and their productivity is well maintained.
2. Protect production equipment and materials so that they can be used safely and efficiently.
3. Prevent and reduce work accidents and fires.
4. Create a safe and comfortable work environment.
3.2.3. Form of Implementation of Legal Protection for Work Safety of PT. Perkebunan Nusantara IX (Persero)

Medical examination

PT. Perkebunan Nusantara IX (Persero) is carried out to fulfill two needs to diagnose and provide therapy for workers who suffer from common ailments. To conduct prevention and diagnose occupational diseases and determine the degree of disability. This is done by medical examiners either form professional medical workers or doctors.

Workers health checks (initial, periodic, special,) are performed by medical examiners of labor who have been authorized by the government (depnaker) to carry out medical examinations of workers. The doctors must make a report on their inspection activities during a year to the local Labor Department office once a year.

Worker health inspection (before work) according to Minister of Manpower and Transmigration Regulation No. Per.02/MEN/1980 Concerning Workers’ Health Examinations in the Implementation of Occupational Safety Article 2 paragraph (2), the results of the initial examination can be used as a comparison to the data on the results of periodic health examinations to determine the existence of occupational diseases.[6] This examination includes:

Anamnesa (interview)

In this case, the employee is asked about the history of the disease, all the illnesses suffered, the perceived health condition, the history of hospital care, the history of surgery, and habits such as smoking, drinking and so on. the employee is also asked about all the work that has been done in any section, how long have their been working, and whether or not they are examined beforehand.

1. Accidents that have suffered
2. Age
3. Education
4. Family circumstances
5. And others

Anamnesa (interview) specifically for diseases:

1. Allergy
2. Epilepsy
3. Heart abnormalities
4. Blood pressure
5. Tuberculosis (TB)
6. Diabetes
7. Asthma, bronchitis, pneumonia
8. Mental disorders
9. Skin disease
10. Hearing disease
11. Lumbago
12. Disorders of the foot
13. And others
Clinical examination
Like clinical examinations for common ailments, pay more attention to the possible influence of factors in the work environment.

Mental examination
The state of awareness, attitudes and behavior, mental contact, attention, initiative, intelligence, and thought process.

Physical examination
Physical diagnostics from all parts of the body by inspection, palpation, percussion and auscultation, measurement of blood pressure, pulse, breathing, height, weight, examination of visual acuity, hearing, touch, touch, reflexes, physical fitness.

Laboratory examination
To help make the diagnosis (blood, urine)

Special inspection
Special checks are carried out to see and assess the health conditions of the workforce associated with the type of work to be done, for example: Rongent chest, Alergites, spirometry, color blind and others.

Preliminary workforce health examination results
1. Healthy, and (no abnormalities) allowed to work without conditions
2. Allowed to work hard
3. Allowed to work lightly
4. Allowed to work in various parts

Suffering from illness/abnormalities:
Employee allowed to work in certain work conditions, such as network work, work in dusty areas, no contact with chemicals, and others. Refused to work rejected permanently (fixed) or rejected while waiting for the treatment process.

Periodic health checks and periodic examinations according to Minister of Manpower and Transmigration Regulation No. Per.02/MEN/1980 Concerning Workers’ Health Examinations In the Implementation of Occupational Safety Article 3 paragraph (1), the provisions in the legislation must be carried out at least once a year, in accordance with the factor of the level of danger that threatens the health of the workforce, company doctors/doctor examinations can determine the duration of periodic medical examinations (more than once a year). Data from the results of periodic and special health checks can be used to find or determine the presence of occupational diseases. This examination includes:

Anamnesa (interview)
1. Name
2. Age
3. Gender
4. Work Unit
5. Long time of work
6. Overview of what was done, the hazard factors in the work environment, complaints suffered, perceived health conditions.

Clinical examination:
1. Mental examination (mental disorders and mental illness)
2. Physical examination of all parts of the body, especially parts of the body that have abnormalities/complaints by inspection, palpation, percussion and auscultation methods, measurement of blood pressure, pulse, respiration, height, weight, examination of visual and hearing acuity, blood laboratory examination and urine and special tests related to complaints/perceived health problems and the possibility of exposure to hazardous substances in the work environment (biological monitoring) such as: roentgen chest, spirometry test, examination of special organ functions.

Results of periodic/periodic workforce health checks and special examinations:
1. Healthy
2. Pain
3. Common illness
4. Occupational diseases
5. Suspected of occupational diseases, which require further special examination in the form of work environment, special laboratory.

If it is found an employee suffers from illness, special diseases caused by work need to be given advice - control. Conduct periodic health checks, this is done with the aim to prevent and improve health as an effort to protect work safety. In addition, as an effort to improve work safety.

Worker Safety Training
Work safety activities include work safety training or training. All workers must participate actively in this activity. This activity is intended to provide an explanation of the importance of using work safety tools when doing work to reduce the number of work accidents and to anticipate emergencies that occur in the work environment.

The other purpose of holding this training is to give and improve understanding to participants regarding experience, knowledge, physical and non-physical skills of occupational safety and health. The specific goal is to make everyone aware of the potential dangers that could be encountered in the workplace or the possibility of illness caused by work accidents. Then the person who remains and is always alert to the dangers that occur at work will be formed. Not only that, participants will also better understand how prevention should be done at the workplace.

This is in accordance with Article 9 of Law Number 1 of 1970 concerning Work Safety which states that the management is required to show and explain to each new employee:
1. Conditions and hazards and which may arise in the workplace.
2. All safeguards and protective devices that are required in the workplace.
3. Personal protective equipment for the workforce concerned;
4. Safe ways and attitudes in carrying out their work.

Management is also required to provide guidance for all workers under its leadership such as preventing accidents and combating fires and improving occupational safety and health, as well as in providing first aid in accidents. Implementation of the Occupational Safety and
Health (K3) system at PT. Perkebunan Nusantara IX (Persero) based on observations made are as follows:

1. **Personal Protective Equipment (PPE)**

   According to the Minister of Manpower and Transmigration Regulation No. Per.08/MEN/2010 Concerning Personal Protection Equipment Article 1 paragraph (1), personal protective equipment (PPE) is a tool that must be used when working in accordance with work hazards and risks to maintain the safety of the worker himself and those around him.\[7\]

   The types of PPE used vary according to the type of work and place of work in the company. Based on the Minister of Manpower and Transmigration Regulation No. Per.08/MEN/2010 Concerning Personal Protection Equipment Article 2 paragraph (1), generally PPE consists of:
   
   a. head protector;
   b. eye and face protection;
   c. ear protector;
   d. respiratory protection and equipment;
   e. hand protection; and/or
   f. foot protector

   In plantation work areas, workers in the tapping process must use PPE boots to protect workers’ feet, hats and cloth gloves. Personal protective equipment that must be used by latex processing workers are masks, aprons, goggles and boots. Personal protective equipment that must be used by grinding workers is boots, aprons, and gloves to protect the hands when grinding rubber with a grinding machine. Workers in smoke houses are required to wear masks, goggles, and boots so that smoke and dust do not interfere with breathing workers and workers in the sorting line are required to use PPE gloves and masks.

2. **Fire Danger Protection and Prevention**

   In an effort to prevent fire and protect fire hazards, PT. Perkebunan Nusantara IX include:
   
   a. Make an effort to form a fire brigade team. Fire team members are divided into two divisions. The first division is the electrical and engine installation security division whose duty is to cut off the flow of electricity on the equipment that is burning and isolate or block the flow of electricity that is associated with fires to prevent the spread of fires on other equipment. Meanwhile, the second division, namely the APAR division, is tasked with carrying out initial phase outages for the minor fire class, suppressing special equipment and electricity or electronics and assisting in the ongoing advanced phases.
   
   b. Hold fire training. This training aims to enable employees to respond to emergencies in the event of a fire, and that the fire department can carry out its duties. Fire training is conducted in the form of fire simulation. This simulation is in the form of an emergency scenario designed to illustrate the readiness of PT. Perkebunan Nusantara IX in an emergency (fire) by involving all employees in the factory environment.
   
   c. Evacuation route. The path is green and the writing is white, which is posted on the wall with a view of view in general visible to everyone. This path leads to the evacuation gathering area or out of the room. There are three stages of fire fighting associated with the stages of a fire, these stages include:\[8\]
   
   1. Extinguish the fire at an early stage,
2. Prevents fire from growing, and
3. Control smoke.

**Extinguish Early Stage Fire**

Almost every fire starts from a small fire, however, when it is not immediately responded to, the fire will be enlarged or even spread in an area. Based on this, to detect early the presence of fire needed a detector for the occurrence of fires even needed an alarm if there is a flammable gas leak.

Early fire fighting is a very important step in preventing the occurrence of larger fires. Fire fighting that is still small requires the right tools and quick action. Tools needed at this stage are Light Fire Extinguisher (APAR), Hydrant which provides high-pressure water, fixed systems that are usually installed in buildings, and other equipment around that can be used for the process of extinguishing fires such as gunny sack, blankets, and similar items that can absorb water and close the fire to separate it from the air.

APAR is a fire extinguisher which is very popular among the people, however, most of them do not know the type and how to use it. APAR has many types, depending on the ability to extinguish fires on certain types of fuel. Most people do not know how to use APAR, to find out it requires knowledge of the parts/components of APAR tubes and the steps for their use.

APAR placement must meet the requirements so that when a letter fire occurs, it can be reached quickly. These conditions include:
1. Easily visible,
2. Easy to Afford,
3. scattered/not concentrated in one location,
4. unlocked, and according to the situation and conditions.

How to use APAR is actually very easy, the steps include:
1. open the safety lock,
2. hold the APAR tube in an upright position,
3. press the opening handle of the extinguishing material,
4. direct the spray of fire that is burning/not directed at the fire,
5. spray APAR, periodically (every 3 seconds period) if it is operated continuously APAR can only be operated for 8 seconds

**Prevents Fire from Growing**

If the fire is not quickly controlled and is getting bigger, further steps are needed that aim to localize the fire, cool it down, and decompose the burning material. Fire prevention is done by separating the three elements of fire. In three different ways, namely: isolation, cooling, and decomposition. The implementation of these three types of application depends on the situation and condition when a fire occurs, therefore, in the event of a fire we must be biased in making decisions as to which methods can be applied.

**Control Smoke**

Most of the burning material produces smoke. Smoke in the form of gas containing various elements which is very dangerous to health. Even many fatalities in the event of fire caused by excessive inhalation of smoke. Therefore the emergence of smoke must be handled properly. Smoke handling can be done in several ways, including:
1. the application of the air system according to standards in a building,
2. installation of smoke detection devices, and
3. installation of smoke vent installation.

**APAR (Light Fire Extinguisher)**

PT. Perkebunan Nusantara IX (Persero) has APAR installed with a radius of 20-25 meters. PT. Perkebunan Nusantara IX (Persero) has not been able to install APAR with a distance of 15 meters every 1 APAR in accordance with the provisions of APAR installation. This fire extinguisher is placed in an easily accessible place with a height of 120 cm.

### 3.3 Obstacles and Efforts Made in the Implementation of Legal Protection for Work Safety at PT. Perkebunan Nusantara IX (Persero)

#### 3.3.1 Barriers to the Implementation of Legal Protection for Work Safety at PT. Perkebunan Nusantara IX (Persero)

In the implementation of Legal Protection for Work Safety in PT. Perkebunan Nusantara IX (Persero) there are several obstacles. The obstacles are as follows:

a. *Lack of awareness about the importance of occupational health and safety.*

   According to Law No. 1 of 1970 concerning Safety of Work, the government requires all business sectors to implement Occupational Safety and Health (K3) in the workplace as a form of professionalism. The law explains the importance of fulfilling work safety requirements to prevent, reduce and control accidents, detonation hazards, temperature, humidity, radiation, sound, vibration, electrical hazards, extinguishing fires, rescue assistance and personal protective equipment (PPE)) to workers. Thus, companies engaged in any line of business are required to apply K3 in the workplace. In the implementation the level of awareness of using personal protective equipment is still lacking. When working, many workers ignored the use of personal protective equipment and only wore ordinary everyday clothing in carrying out the work both in the stages before production and after the production phase takes place.[9] In addition, there were also some PPE that were lost or were not suitable to wear.

   This is a common problem, namely the lack of awareness about the importance of health and safety at work. Many workers at PT. Perkebunan Nusantara IX (Persero) is still indifferent or not so concerned with work safety. Workers are not all aware of the dangers of accidents on the ground, so the culture and behavior of using PPE is still often ignored. This lack of safety culture is characterized by socio-cultural gaps in the form of low discipline and employee awareness of work safety issues. The behavior of workers who do not fully understand the dangers inherent in industries with advanced technology and the existence of a relaxed and indifferent culture of workers in prioritizing safety in the work he does.

b. *Wide working area and difficult terrain.*

   PT. Perkebunan Nusantara IX (Persero) is a company engaged in the field of production, so it requires workers who are ready to use to carry out their tasks every day. The working area in the form of large plantations which are sometimes located on hills such as being surrounded by steep slopes and near large rivers. During the rainy season, it will be more dangerous. The place has a risk of increasing the number of accidents experienced by workers at PT. Perkebunan Nusantara IX (Persero). Difficult land will also result in the evacuation process proceeding rather slowly in the event of a work accident that befalls one of its workers. The most common causes of work accidents are unsafe environmental conditions and unsafe behavior. The causes of accidents so far are caused by unsafe behavior such as being
3.3.2 Efforts in Overcoming Barriers to the Implementation of Legal Protection for Work Safety at PT. Perkebunan Nusantara IX (Persero)

The efforts made by PT. Perkebunan Nusantara IX (Persero) in overcoming obstacles to implementing legal protection for work safety are as follows:

a. Efforts to increase worker awareness

Overcoming these obstacles certainly cannot be overcome once in a while, therefore the company has efforts in overcoming these obstacles, namely:

1. Safety Induction, it is a fundamental program in disciplining its employees by providing induction and orientation about work and aspects of work safety. Induction is carried out mainly for new or newly transferred employees. Induction is also applied to guests or contractors who will enter the company area.

2. Training and Coaching. Training has the aim to provide knowledge and expertise that supports work functions. Whereas coaching is a direct communication medium between superiors and subordinates to encourage individual development.

3. Re-Training, namely by refreshing one’s knowledge and expertise to maintain ability.

4. Counseling. It is a forum to explore problems or problems that cause a decrease in a person’s performance and encourage that person to improve his performance again.

5. Verbal warning it is a direct warning against violators, every employee has the right to reprimand and remind other employees who commit violations.

PT. Perkebunan Nusantara IX (Persero) strives to review or make company regulations in which there are arrangements regarding better work safety procedures that should be obtained by workers. This is a very important thing to be implemented because it is related to the Occupational Health and Safety of the workers themselves and has also been regulated in Law No. 13 of 2003 concerning Employment. Safety is the main work safety standard to prevent work accidents. This became the basis by PT. Perkebunan Nusantara IX (Persero) to always improve safety standards for its workers to avoid the risk of work accidents that can occur at any time. Work safety measures can include the following:

1. Body protection, including protection of eyes, hands, nose, feet, head and ears.

2. Machine protection, as a protective measure against machines that may arise from outside or from within or from the workers themselves.

3. Electric safety devices, which can be dangerous at any time.

4. Space safety, including alarm systems, fire extinguishers, adequate lighting, hydrant water, good air ventilation.

b. Efforts to overcome broad work areas and difficult terrain

Supervise to support the implementation of the program K3 well, by:

1. Work safety supervision.

2. Occupational health surveillance.

3. Supervision of the work environment.

Activities in work safety supervision are supervision of work machinery and equipment, work procedures, work attitudes, personal protective equipment, and
investigation of accidents that have occurred, while supervision of occupational health includes:
1. Employee health check, both old employees and new employees.
2. Supervision of the quality of drinking water in the company.
4. Supervision of workplace cleanliness.

Supervision of the work environment, the activities carried out include supervision of physical disturbances, namely noise, workplace temperature, lighting and vibration. In addition, supervision is also carried out on disturbances caused by chemicals such as dust, gas, or chemical liquids. Based on interviews, it is known that the company provides various K3 facilities and advice, namely:
1. Personal Protective Equipment (PPE)
2. K3 facilities and facilities: provision of first aid kits in each section, provision of clean water and toilets, drinking water supply, supplementary food in the form of bread and milk for employees who work night shifts, canteens, cooperatives, rest areas, and polyclinics with medical staff who are always ready standby
3. Insurance, including accident insurance and health insurance in collaboration with Jamsostek.

Efforts made by the company in overcoming these obstacles are by giving the right to anyone who sees a friend or fellow employee to reprimand and warn about the danger being violated, and for every employee who sees a violation/condition that allows an accident to arise then for report it to the party appointed by the company. In addition, the company implements programs such as safety induction, training and coaching, re-training, counseling, verbal warning/reprimand, and supervision.

4 Conclusion

The implementation of legal protection for work safety at PTPN IX Persero is a form of implementing Good Corporate Governance as a tool to increase the value and competitiveness of companies in facing the era of market economy and free trade. Legal protection for work safety in PTPN IX Persero is generally implemented based on Law No. 13 of 2003 concerning Manpower, which states that employers are required to guarantee workers protection, which is the basis of implementing work safety protection and commitment that must be fulfilled by the company. Legal protection for work safety at PTPN IX Persero is further regulated in Act Number 1 of 1970 concerning Work Safety and several ministerial regulations that specifically regulate matters relating to labor safety.

The obstacle that often occurs is that there is often a lack of awareness about using personal protective equipment. When working, many workers neglected the use the personal protective equipment and only wore an ordinary everyday clothing in carrying out the work both in the before-production and after-production stage. Other problems include vast area and several fields that are not managed. To overcome this, more incentive monitoring efforts are carried out.

The suggestions for development are about the legal protection for work safety at PTPN IX Persero. The company should update the way or technical implementation of work safety
protection to adjust to the changing times, and new sophisticated machines. It is hoped that labor safety standards become higher. The role of the government in protecting the rights of labor as a weak party is obviously needed by guaranteeing employee to get insurance since their work is mostly outside the room.
References


[9] Interview with Giyarto, the field supervisor of PT. Perkebunan Nusantara IX Persero, Bringin, January 23, 2019.
Debt Collection of Financial Technology Lending

Gika Asdina Firanda¹, Paramita Prananingtyas¹, Sartika Nanda Lestari¹
{gikafiranda@gmail.com¹, paramitaprananingtyas@live.undip.ac.id²}
sartikananda@live.undip.ac.id}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Tembalang, Semarang, Indonesia 50275¹

Abstract. Peer-to-peer (P2P) Lending or known as an Online Loans is an alternative way to borrowing money based on information technology. Unlike credit in banking, P2P Lending does not adhere to the principle of 5C (Character, Capacity, Capital, Collateral, Condition) as a reference for eligibility, and therefore many do not pay it off and this rises the use of debt collectors. Financial services authority (OJK) is a regulatory agency authorized to oversee P2P Lending as a whole. The problem that forms the basis of this research is how financial services authority supervises and follows up towards debt collector’s problems of P2P Lending. The method used in this research is normative juridical approach with descriptive-analytical. The analysis method used is qualitative. This research uses the secondary data obtained from the literature study consisting of primary, secondary, and tertiary legal materials. Based on the research, it concludes the authority and supervision of OJK in P2P Lending based on three ways, namely on-site, off-site, and market conduct. In a market conduct, OJK appoints an association that will assist them in terms of regulation and supervision of P2P Lending. The follow up of the OJK regarding the problem of debt collection is through written sanctions to revocation of the P2P Lending provider’s business license.

Keywords: P2P Lending, Otoritas Jasa Keuangan Supervision, Debt Collection.

1 Introduction

In this digital age, everything is easily accessible and obtainable. The impact of the rapid development of technology has also penetrated the Indonesian financial industry. Economic actors can deal with any transaction online. So this has led to the emergence of a new economic system to develop Indonesia's digital economy, called Financial Technology or commonly abbreviated as Fintech.

There are several classifications at Fintech namely payment startup, lending, financial planning (personal finance), retail investment, financing (crowdfunding), remittance, financial research, and others.

P2P Lending is one of the most popular Fintech products. The number of the company keeps growing. In the end of 2018, the value of P2P lending loans reached IDR. 13.83 trillion. In fact, P2Plending contribution to the domestic reaches IDR. 22.67 trillion in 2018.[1] P2P lending is the organization of financial services to bring together lenders and loan recipients to enter into a loan agreement through an information technology system or more commonly referred to as online loans.
P2P Lending is based on a legal protection after the issuance of the Financial Services Authority Regulation (POJK) No. 77/POJK.01/2016 concerning Information Technology-Based Lending and Borrowing Services.[2] In this regulation, OJK regulates various matters that must be adhered to, especially for P2P Lending actors. The Financial Services Authority (OJK) is an independent institution that has functions and duties in the implementation of an integrated system of regulation and supervision of financial services, one of which is Fintech. Although it is already regulated, there are some problems and legal vacuum in P2P Lending still arise.

Problems caused by various kinds, one of the most widespread regarding the collection of debt that is not appropriate and violates the law committed by the debt collectors (Debt Collector). OJK, in this case, which oversees Fintech should formulate and review the regulations regarding the Debt Collector, in order to provide legal protection for consumers as borrowers and investors as lenders.

Based on the background description above, it is necessary to formulate what is the problem. The formulation of the problem that will be discussed in writing this law is:

What is the authority and supervision of the Financial Services Authority (OJK) over Debt Collectors based on Financial Technology-based online loans in Indonesia?

1. How is the supervision and enforcement of the Financial Services Authority (OJK) over debt collection by a debt collector (Debt Collector) on an online loan based on Financial Technology?

The objectives to be achieved with this research are as follows:

1. To find out and analyze the authority and supervision of the Financial Services Authority (OJK) of Financial Technology Debt Collectors in Indonesia.
2. To find out and analyze how the Financial Services Authority (OJK) follows up if there are problems in the debt collection system conducted by the Debt Collector.

2 Method

The method of approach used in writing this law is the normative juridical approach. Soerjano Soekanto states that the normative juridical approach is a legal research conducted by examining literature or secondary data as a basic material to be investigated by conducting a search of the regulations and literature relating to the problem under study.[3] The research was conducted by examining and looking at the theoretical law related to legal principles, legal comparisons and what happened in the field related to problems.

2.1 Research Specifications

Analytical descriptive research is a method that serves to describe or give an overview of the object under study through data or samples that have been collected as they are without conducting analysis and making conclusions that are applicable to the public.[3]

2.2 Sources and Types of Data

The type of data that will be used in writing this law is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. In addition, previous studies relating to the issues to be discussed also become one of the data sources in the form of laws, regulations, literature and related scientific papers. Secondary data that will be used later consists of:
a. Law Number 21 of 2011 concerning the Financial Services Authority
b. Financial Services Authority Regulation No. 77/POJK.01/2016 concerning Financial Information Technology Lending and Borrowing Services;
c. Code of Conduct of Information Technology Based Borrowing and Borrowing Services Responsibly by the Indonesian Fintech Association.

Secondary legal materials consist of:
1. Books;
2. Journals;
3. Dissertation, Thesis, and Legal Thesis; and
4. Papers.

Tertiary legal material consists of:
1. Large Indonesian Dictionary;
2. Popular Scientific Dictionary;
3. Legal Dictionary;
4. Legal Encyclopedia; and
5. Internet.

3 Research Results and Discussion

3.1 Authority and Oversight of the Financial Services Authority (OJK) Against Financial Technology Debt Collectors in Indonesia

The presence of Fintech in Indonesia does have its own impact on the development of the financial services sector. Like two sides of a coin, this industry has good and bad effects. The good side with the existence of this industry is encouraging expansion of access to financial loans to people who do not have bank accounts or limited credit, making it easier for someone to make loans. Nevertheless, on the reverse side, the lack of regulations governing financial services has led to many cases. Cases arising from a variety of cases ranging from loan interest that is felt to suffocate the borrowers, misuse of personal data, to the most widespread is the problem of debt collection that goes beyond the norm and legal limits.

In Indonesia, there are institutions tasked with overseeing P2P Lending financial services activities. Based on Article 5 of Law Number 21 of 2011 concerning the Financial Services Authority,[4] OJK has the function of organizing an integrated regulation and supervision system for all activities in the financial services sector.

In this case, Fintech entered the Non-Bank Financial Industry (IKNB) sector. Furthermore regarding supervision, in accordance with articles 6 and 9 of Law Number 21 of 2001 concerning the Financial Services Authority, OJK has the authority to conduct supervision, inspection, investigation, consumer protection, and other actions towards financial service institutions, actors, and/or supporting financial services activities as referred to in legislation in the financial services sector and establishing administrative sanctions against those who violate the laws in the financial services sector.

Supervision of P2P Lending in general is three, namely off-site (indirect), on-site (direct) and market conduct supervision. Regarding off-site supervision (indirect) is carried out by examining documents and reports provided by the P2P Lending Operator which later the OJK
will examine based on reports and documents provided by the P2P Lending Provider. Whereas on-site supervision is carried out based on periodic inspection plans which are generally conducted once a year. Finally, market conduct is conducted by OJK by inviting industry players, including organizers, the public, and related institutions to participate in supervising Fintech. In this case the association was appointed as an institution that oversees the running of Fintech.[5]

Market conduct is part of the rules and supervision of financial institutions that focus on the behavior of irregularities and abuse of power in the inclusion of information, this aims to ensure that financial institutions provide good services to consumers.[6] The concrete form of this market conduct is to form an association that will later supervise and help OJK to formulate regulations related to P2P Lending, so it can be concluded that the association is an extension of OJK related to regulation and supervision.[5] The formation of associations is contained in Article 21 paragraph (1) POJK No. 13/POJK.02/2018 Digital Financial Innovation, that the organizer forms the organizers association.[7] Further explained in Article 21 paragraph (3), the association will have the authority to set standards by using a market discipline approach that applies to its members including:

a. Formulate operating rules, industry standards and codes of ethics, according to different types of businesses;
b. Receive and forward reports and receive complaints;
c. Compile financial statistics and monitor risks as well as research on macro and micro financial issues;
d. Become a liaison between the Financial Services Authority and the Operator to improve regulatory support and information exchange;
e. Establish mechanisms of self-regulation and sanctions for violations of members of the rules and code of ethics; and
f. Carry out education, training, and consumer protection and domestic and international cooperation.

In accordance with the mandate of POJK No. 13/POJK.02/2018, OJK appointed 2 (two) official associations recognized by the OJK namely the Indonesian Joint Funding Fintech Association (AFPI) and the Indonesian Fintech Association (AFTECH). In accordance with Article 21 paragraph (3) POJK No. 13/POJK.02/2018, the association has the authority to formulate operating rules, industry standards, and code of ethics by making guidelines or code of conduct that must be obeyed by P2P Lending organizers registered in the association. In this regard, AFPI and AFTECH have established Information Technology-Based Information Lending and Borrowing Guidelines. Although not issued directly by the OJK, but with the FSA giving authority to the association to make regulations, the guidelines must be obeyed by P2P Lending Organizers. In addition, the association has a role as a bridge or container for Fintech actors, to provide legal protection for users of Fintech services and increase regulatory support and information exchange. In the implementation of market conduct, OJK also made a new approach, namely principle based regulation and activity based licensing, which means OJK only outlines the principles, while the translation of these arrangements will be made by industry players.[5]

Based on the principle of principle-based regulation, OJK as a regulatory body only makes principles-based arrangements while further arrangements related to business operational standards are formulated by industry players. It can be concluded that in addition to OJK overseeing itself, OJK also supervises through associations. This is related to the principle of independent monitoring, where industry players supervise their own business
including the principles of information technology governance, consumer protection, education and outreach, data confidentiality including transaction information, risk management and prudential principles, anti-money laundering and funding principles terrorism, as well as inclusive and principles of information disclosure.

The principle of pro-innovation is also applied by OJK through the implementation of regulatory sandbox, which is a testing mechanism by OJK to assess the reliability of business processes, business models, financial instruments, and governance of administrators. This regulatory sandbox is regulated in POJK No. 13/POJK.02/2018 concerning Digital Financial Innovations. Previously, OJK took repressive measures to supervise P2P Lending through associations by reviewing each other and seeing problems in P2P Lending, different from regulatory sandboxes. This approach was chosen because of the rapid development of digital technology that cannot be matched by the speed of rule making. The way this regulatory sandbox works is that before the business idea of the Fintech platform is operational or launched it must go through a trial phase to get permission.

In particular, supervision of debt collection and debt collectors is not explicitly regulated in POJK. As explained earlier based on the principle of principle based regulation, OJK only regulates basic principles that must be obeyed by Fintech industry players while operational activities and standards are regulated by industry players through association. Then the arrangement regarding debt collection and debt collector is the authority of the association to regulate it because it is related to the code of ethics and rules of operation. However, the general provisions that must be carried out by the Provider including regarding debt collection remains regulated implicitly by the OJK. For example in Article 31 POJK No. 13/POJK.02/2018, the Operator is obliged to apply the basic principles of consumer protection, namely:

a. Transparency;
b. Fair treatment;
c. Reliability;
d. Confidentiality and security of consumer data/information; and

e. Handling complaints and solving consumer disputes is simple, fast, and affordable.

The principles mentioned above relate to things that the Operator must do on debt collection but does not explain in detail how to procedure for debt collection that is good and right or the arrangements regarding the services of third parties or debt collectors when debt collection. Because of that, the association that formed more detailed regulations related to debt collection.

AFTECH and AFPI as P2P Lending associations have issued a Code of Conduct for Information Technology-Based Lending and Borrowing Services that contains guidelines on behavior, principles and processes that must be carried out to provide ethical references on the conduct of responsibilities for Organizers voluntarily, jointly, and bindingly. The code of conduct is based on three basic principles, one of which is the application of the principle of good faith, explained that in facilitating the offering and lending activities as a platform or marketplace, each Operator is still required to apply the principle of good faith by taking into account the interests of all parties involved, and without degrading the dignity and user dignity.[8]

Applying the principle of good faith if it is associated with debt collection, the Provider cannot arbitrarily bill the Recipient of the defaulted Loan. Before conducting a collection, the Provider must submit the settlement and billing procedures to the Lender and Receiver of the Loan. This is done so that the Lender and Recipient know what are the procedures that must
be carried out to resolve the problem if there is a loan recipient who defaulted. The steps taken by the Operator in solving problems based on hierarchy must be carried out by the Operator in advance such as giving a warning letter that the payment has passed or is past due in accordance with the agreement. If there is a warning letter, the Loan Recipient does not pay, the Operator makes the loan scheduling or restructuring requirements. Providers in conducting long-distance billing can be done via telephone, email, or other forms of conversation while if you want to visit the Organizer directly through the billing team must first communicate with the Loan Recipient.

The organizer is not allowed to carry out direct billing if it has exceeded the limit of more than 90 (ninety) days from the due date. The organizer is also required to inform the Loan Recipient in detail if the loan is not completed. Although the Loan Recipient fails to pay, the Provider must still pay attention to the consumer's protection of the Loan Recipient because it is a right that must still be granted and guaranteed legal certainty based on Article 3 POJK No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector that:

“Financial Service Institutions have the right to ensure the goodwill of consumers and obtain information and/or documents about consumers that are accurate, honest, clear, and not misleading.” [9]

Same thing with the Loan Recipient, the Provider and Lender also have the right to be paid by the Organizer. So the Loan Recipients, Lenders, and Organizers should know their rights and obligations as a P2P Lending business actor so that problems do not occur in the future.

In the Code of Conduct of Responsible Information Technology Lending and Borrowing Borrowing Services mentioned in Point 4 that the use of third parties in debt collection or called debt collectors is allowed in P2P Lending. However, if the Provider uses the services of a third party, he must pay attention to several things, namely:

- Each Operator is allowed to use a third party billing service company that has registered with AFPI and has a certificate to bill borrowers that are also issued by AFPI through the audit mechanism of the Billing Implementation Guidelines and also the Financial and Operational audits of the company. All billing employees from billing services companies are also required to obtain Billing Agent certification issued by AFPI;
- Each Operator is permitted to use a third party billing service company that has been recognized for bills that have passed the delay limit of more than 90 (ninety) days calculated from the due date of the loan;
- Each Operator is prohibited from using a third party billing implementation company (both individuals and corporations) who are classified in the authority and/or association's blacklist.
- The black list referred to above will be compiled later in the periodic updating of the Code of Conduct.

Organizers in using the services of third parties must pay attention to procedures for billing conducted based on the principle of good faith. Problems with P2P Lending that often occur due to debt collection that is not in accordance with the principles of good faith and misuse of personal data that should be protected by confidentiality. Debt collectors who have violated the code of ethics will be included in the blacklist of the authority and the FSA and can no longer be used services. All forms of physical and mental violence at the time of
collection are also strictly prohibited, this prohibition states that each Operator as the
authorizer of the Lender is prohibited from billing by intimidation, physical and mental
violence, or other methods that offend SARA or lower the dignity, dignity, and price Loan
Recipients themselves, in the physical world and in cyberspace (cyber bullying) both of the
Loan Recipients, their property, or relatives and family.

Code of conduct in the form of Technology-Based Behavior Guidelines for Lending and
Borrowing Money Based on Technology made by associations must be obeyed by P2P
Lending Organizers because association rules are also OJK rules. So that if the P2P Lending
Operator violates the code of conduct, the OJK can act firmly based on sanctions that have
been set both by the association and the OJK. So, the billing procedures that have been
described in these guidelines must be obeyed by registered P2P Lending Organizers.[5]

Based on further explanation regarding OJK's supervision of P2P Lending that has been
elaborated, OJK as a regulatory agency conducts supervision based on the principle of
principle-based regulation and activity-based licensing, which means OJK only regulates the
basic principles of the rest of the regulations regarding the rules of the game formulated by
P2P industry players Lending. Other arrangements regarding the standard aspects of
operations, business conduct, and business ethics are formulated by industry players who are
recognized and jointly carried out. In this case, the Organizer and OJK form an association
that regulates this matter. The association will coordinate intensively with OJK so that
supervision can run effectively, efficiently and optimally. So based on these principles it is not
the authority of the FSA to regulate in detail regarding debt collection, but the FSA continues
to supervise through the association.

3.2 Follow-Up of the Financial Services Authority (OJK) Against Debt Collection
Problems Conducted by Debt Collectors

3.2.1 Problematic and Illegal Debt Collection

Debt collection problems in P2P Lending are increasingly prevalent. Although there are
already institutions that oversee P2P Lending, there are still many cases that occur related to
debt collection that is not ethically appropriate and violates the law and misappropriation of
customer data. Debt collection is the problem most complained of by consumers in 2019.

In 2019, the Indonesian Consumers Foundation (YLKI) received 77 (seventy seven)
complaints related to Fintech. Of the total number of complaints, consumers most often
complain about the way to collect online loans, amounting to 26 (twenty six) complaints.
Furthermore, from the category of default, there were 21 (twenty one) complaints, distribution
of personal data of 12 (twelve) complaints, and high interest of 8 (eight) complaints. [10]
Whereas AFPI has received 426 (four hundred twenty-six) complaints since 2019. The
majority complained about billing in a rude manner and access to personal data by Fintech
loans. Reports about billing that made roughly reached 43 percent of the total complaints.
Then, 41 percent of complaints related to access to personal data. Then, 10 percent reported
that Fintech's interest and penalty fees were too high.[11]

One of them is Mawar (a pseudonym). Mawar is a P2P Lending customer. In February
2019, she borrowed Rp2 million from a P2P Lending Operator.. Since she was unable to pay
them all, she was billed by debt collectors. Mawar said she was threatened by collectors in
abusive language, and had also been told to end her life so that her debts were paid off. Not
only threatening the rose while doing the collection, the debt collectors also spread
information about the loan made by Mawar to friends, family, and even her workplace via
SMS and forced Mawar to quickly pay off her debt.
Felice, also shared his experience with an online loan company. The amount of money borrowed as much as Rp 1 million. Before his loan was due, Felice was billed with a rude language. After piling up debt in the application, Felice receives a call from a debt collector who offers a total write off of all principal costs and interest on the loan but must dance naked in front of the debt collector. This put great pressure on Felice and he finally reported to the Legal Aid Institute (LBH).

The cases described simply explain the polemic that occurred in debt collection in P2P Lending. Although the Provider has the right to pay its debts as the Loan Recipient has promised, the Provider still may not collect debts using violence and threats and the Provider is prohibited from distributing Loan Recipients' personal data.

This case can occur because of the lack of regulations governing debt collection, this can be seen in POJK No. 77/POJK.01/2016 which regulates licensing, registration, risk mitigation, data confidentiality, and the position of loan recipients and loan recipients but does not cover debt collection and debt collectors in detail. Then the sanctions in the code of conduct owned by the association are not strong enough because they do not have strict sanctions to take action if there are problems with debt collection. The association can only provide sanctions in the form of written reprimands, publication of the names of members and provisions violated to OJK and the community, as well as permanent termination of association membership. This sanction is felt to be less strict because it does not provide a deterrent effect to the perpetrators or organizers who violate it.

3.2.2 OJK Follow-Up against P2P Lending, Especially Debt Collectors that Break the Law

Violation of debt collection in P2P Lending will continue to be a problem if the OJK or the Government does not take decisive steps to the perpetrators. OJK as a regulatory agency that has the authority to take action against P2P Lending businesses that violates the basic principles of consumer protection include transparency, fair treatment, reliability, confidentiality and security of data/information, handling complaints and settling consumer disputes in a simple, fast, and affordable cost and good faith in POJK No. 13/POJK.02/2018. In Article 39 POJK No. 13/POJK.02/2018, for P2P Lending that provides data and/or information about consumers to third parties, OJK has the authority to impose administrative sanctions on those who commit violations in the form of:

a. Written warning;
b. Fines, namely the obligation to pay a certain amount of money;
c. Cancellation of approval; and/or
d. Cancellation of registration.

Imposing sanctions against P2P Lending Organizers is seen from the extent of the mistakes which is then reviewed by OJK which sanctions are appropriate for P2P Lending Organizers who violate the rules. Administrative sanctions may be imposed with or without prior administrative sanctions in the form of written warnings and administrative sanctions may be imposed jointly with administrative sanctions. In addition to those stipulated in this article, the OJK has the authority to take certain actions against any party that violates the POJK provisions.

The Code of Conduct for Responsible Lending and Borrowing of Money Based on Information Technology Responsibly also regulates sanctions if association members violate the debt collection ethics. The sanctions are not much different from those in POJK No. 13/POJK.02/2018, only the imposition of sanctions is limited to association members.
Consumers who are victims of debt collectors are basically protected by their consumer rights in POJK No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. For OJK Consumers who feel disadvantaged by P2P Lending debt collection can report the P2P Lending to OJK. OJK has two ways for the settlement process if there are problems between the Provider and the Loan Recipient. In the first stage, OJK will facilitate consumers to be brought together by business service providers with the platform providers to meet. If the meeting does not produce results, the FSA will continue the problem into the realm of law.

3.2.3 Legal Safeguards Against Borrowers in P2P Lending

As a first step towards legal protection and regulation of P2P Lending, OJK has issued POJK No. 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services. This POJK can be said to be the first POJK formulated by the OJK in the Fintech realm. That is because OJK sees the urgency of the strong culture of lending and borrowing in Indonesian society. This POJK regulates the registration and licensing of P2P Lending, this is one of the legal protection efforts for Borrowers. Because P2P Lending is registered and has a license supervised by the OJK, so if there is a problem between the Borrower and the P2P Lending Provider can report to the OJK.

OJK as a regulator has its own authority limits. So it is important for OJK to increase synergy with other institutions that can help OJK to provide legal protection to P2P Lending. The formation of associations is also a step for OJK to seek consumer protection. The association will work closely with OJK to formulate policies related to consumer protection in P2P Lending. Such as formulating a code of ethics through the Code of Conduct for Responsible Lending and Borrowing of Money Based on Information Technology in which it regulates the procedures for billing and debt collectors and provides P2P Lending consumer complaint services.

Education and notification to the public through press releases and seminars organized by the FSA is very necessary so that the wider community is not blind and can be more careful of all aspects of P2P Lending, especially consumer protection.

The consumer or recipient of the loan can complain about the problematic debt collector. In accordance with POJK No. 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector,[12] Consumers who wish to report to OJK must fulfill the requirements stated in Article 10 POJK No. 18/POJK.07/2018, by completing documents consisting of:

a. Consumer Identity and/or Consumer Representative;
b. Special power of attorney;
c. Types and dates of financial transactions; and
d. The problem complained of.

OJK can reject complaints if the documents and requirements submitted are not complete. Furthermore, the FSA is obliged to serve the incoming complaints by conducting internal checks and analyzing the truth of complaints. Complaints can also be submitted to associations such as the Indonesian Funding Fintech Association (AFPI). AFPI opened a complaint center called JENDELA as a channel for information and customer complaints for P2P Lending. AFPI openly listens to customer complaints by providing customer service, hotline centers by telephone or e-mail.
4 Conclusion

1. OJK's Authority and Supervision of P2P Lending in general are 3 (three), namely off-site (indirect), on-site (direct) and market conduct supervision. In addition to conducting these three supervision, OJK as a regulator also makes regulations on financial services authorities. However, OJK does not directly regulate the procedure for debt collection in P2P Lending or debt collector; this is based on the principle of principle-based regulation that OJK only regulates matters that are in principle only subsequently regarding standard operating procedures and rules of play formulated by financial service industry players. Based on market conduct supervision, OJK invites financial service industry players to participate in supervising P2P Lending. So OJK appoints and forms an association that is authorized to make regulations regarding standard operating procedures and codes of conduct on P2P Lending. One of the regulations made by the association is the Information Technology Lending and Borrowing Lending Behavior Guidelines. This guideline regulates good faith in collection of default loans and good faith as well as third-party users in collection, which in essence is to collect debts, the organizer is obliged to collect properly and must not use threats, harsh words, even violence. This guideline must be implemented by P2P Lending business actors registered with OJK and associations. The position of the guidelines made by this association is almost the same as POJK. In other words, if the P2P Lending Operator violates the code of conduct, the association can report this to the OJK and the OJK can act against the P2P Lending Operator. In the end, OJK will impose sanctions according to the extent of violations committed by P2P Lending Organizers.

2. OJK will oversee and enforce P2P Lending Organizers and debt collectors who are proven to misconduct against law and ethics either by providing sanctions in the form of written warnings, fines, or the cancellation of registration to the P2P Lending Operator. Whereas for individual debt collectors who commit violations, OJK will put the debt collector's name in a blacklist of authorities who will later be P2P Lending Providers prohibited from using the debt collector's service again in debt collection. Besides OJK's efforts to protect consumers/customers in P2P Lending in addition to POJK, customers can also report P2P Lending to OJK and its associations. However, this can be done only if P2P Lending is registered and has permission from OJK. OJK can still crack down on P2P Lending perpetrators along with KOMINFO and Bareskrim by blocking illegal P2P Lending sites and applications. OJK also conducts counseling by organizing seminars related to P2P Lending and press releases as a preventive effort so that people can be more careful in using P2P Lending.

5 Suggestion

1. OJK should make more detailed arrangements regarding debt collection and debt collectors on P2P Lending through POJK because the existing regulations are not enough to provide legal protection for borrowers. OJK must be more assertive and detailed in regulating restrictions that may not be imposed by debt collectors and restrictions that may be imposed on debt collection. Moreover, clarify the position of debt collectors on P2P Lending. In addition, OJK along with the government through KOMINFO should also regulate and supervise the protection of personal data by immediately drafting
legislation related to personal data protection. So there is no misuse of personal data as often happens in debt collection.

2. In following up the debt collection problem at P2P Lending, OJK must be more assertive in imposing sanctions on those who violate the ethics of debt collection. OJK must also maximize alternative dispute resolution institutions so that if there are problems with default, it can be resolved through OJK. In this case, the P2P Lending Provider does not have to threaten and force to use force when collecting debt and can find a win-win solution for Loan Recipients with the P2P Lending Provider. In addition, OJK must encourage associations to immediately realize the debt collector certification. In addition, the FSA should be more active in coordinating with the Indonesian National Police and National Police regarding illegal P2P Lending and giving strict sanctions to financial service industry players involved in illegal P2P Lending. Not only blocking illegal P2P Lending applications and sites, they are also cracking down on the perpetrators by providing sanctions in the form of criminal sanctions and fines. So the government felt it was necessary to make a law relating to illegal investment, especially in the Fintech industry.
References


United States Policy on China Steel Products Viewed From GATT/WTO

Hilmi Prabowo1*, Nanik Trihastuti1, Darminto Hartono1
{hlmprbw@gmail.com*, naniklaw@live.undip.ac.id, darmintohartono@live.undip.ac.id}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. International trade should be conducted without discrimination. The study discusses the adoption of China's steel tariffs by the United States, as well as the efforts to be made by the United States and China to settle steel tariff disputes. This method of research is normative juridical. The results of U.S. studies violated the Most-favoured-nation (MFN) found in article 1.1 GATT 1947. The settlement of the tariff disputes is conducted through consultation only if it fails to be submitted to DSB. DSB forms a panel to make decisions. Parties who are dissatisfied with the Panel's decisions may forward the matter to Appealbody, and if this entity fails as well, the dispute resolution then is conducted through the arbitral institutions they choose.

Keywords: United States, China, WTO/GATT, dispute rates.

1 Introduction

International trade is the commercial activities of the country of origin crossing the border into the destination country carried out by the company to transfer goods, services, capital, labor, technology (factories), and trademarks.[1] International trade has been going on for centuries throughout human history, and has been developing and experiencing dynamically, especially in this era of globalization fading between countries. In modern times, international trade is regulated by the world trade organization or WTO (World Trade Organization) which was formed in 1994. The formation of the WTO is motivated by the need for an organization that can overshadow international trade.[2] Before the WTO, international trade was regulated in the international agreement General Agreement of Tariff and Trade (GATT).

WTO members consist of 164 countries since July 29, 2016.[3] WTO members include the United States and China. The United States has been a member of the WTO since January 1, 1995 while China has been a member of the WTO since December 11, 2001. China has been a member of the WTO for the assistance of the United States during the Bill Clinton administration with the issuance of the US-China Relations Act of 2000 which contained normalizing trade relations with China and providing assistance so that China can become a member of the WTO.[4] As a member of the WTO, China and the United States must trade according to WTO rules and principles, in reality however, there is a trade war between the two countries.

The trade war between the United States and China is in fact due to China's superiority in electronics, shoes, machinery, clothing, and toys. These sectors cause the United States trade to experience a deficit against China. Goods produced by China are superior because they are cheaper. China is the country that causes the most trade deficits in the United States. In 2014
nearly half (47.2%), which amounted to 343 billion of the United States trade deficit caused by China. (United States Trade Representative. press releases: USTR finalizes second tranche of tariff on China’s products in response of China’s unfair trade. Washington D.C. Augustus 2018 Washington, DC – The Office of the United States Trade Representative (USTR) today released a list of approximately $16 billion worth of imports from China that will be subject to a 25 percent additional tariff as part of the U.S. response to China’s unfair trade practices related to the forced transfer of American technology and intellectual property. This second tranche of additional tariffs under Section 301 follows the first tranche of tariffs on approximately $34 billion of imports from China, which went into effect on July 6. [5], [6] Steel is not the main cause of the US trade deficit with China. In fact, in 2018, steel exports from China to the United States ranked only tenth below Brazil, South Korea, Canada, Mexico, Russia, Japan, Turkey, Germany and Taiwan. [7] Moreover, the price of steel from China is so cheap that it is able to defeat the steel of the United States. The Chinese government controls China’s financial policy through the People’s Bank of China which functions as the Central Bank of China. One of the policies of the Central Bank of China is to control the exchange rate of the Chinese Yuan or RMB against the US Dollar by selling Yuan or vice versa. The Central Bank of China until 2015 is believed to control the Yuan exchange rate so that it is weaker than the Dollar so that the price of its export products is cheaper on the global market. [8]

Based on this background the problems discussed in this study are:
1. Does the United States tariff policy conflict with the GATT/WTO?
2. What efforts should be made by the United States and China to resolve the tariff problem?

2 Method

2.1 Approach Method

This research was arranged based on the normative juridical method.

2.2 Research Specification

The specification of this research is descriptive analytics. This research is expected to give an idea whether the tariff policy by the United States of China against steel products is in conflict with the GATT/WTO and to describe what steps should be taken by the United States and China to resolve the tariff problem.

2.3 Legal Material Collection Method

This research was arranged based on the normative juridical method, therefore the data collection method used in this study was a literature study. The data used are secondary data as primary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials in this study include 1) General Agreement on Tariff and Trade 1994, 2) Agreement on Subsidies and Countervailing Measures; and 3) Anti-Dumping Agreement. Secondary legal material publications about the law that are not official documents which include textbooks, legal dictionaries, legal journals, and comments on court
decisions. Tertiary legal materials used are legal materials that explain primary and secondary legal materials related to research, in the form of legal dictionaries, newspapers, and the internet.

2.4 Legal Material Analysis Techniques

The data obtained in the study were analyzed using qualitative data analysis methods, while for legal materials were analyzed using qualitative descriptive methods by describing relevant data. Then the reasoning is whether the data collected is contrary to existing legal material to draw conclusions about whether the facts found in this study are that the application of tariffs on Chinese steel and aluminum products by the United States is in line with GATT/WTO or violates GATT/WTO.

3 Research Results and Discussion

3.1 Position Case

Steel is a strategic industry for the United States because it is needed for a variety of constructions ranging from shipbuilding, tanks, bridge parts and energy infrastructure. The United States steel industry is threatened by the rise of the Chinese steel industry supported by government subsidies. This was stated by Steel Imports Surge Threatens U.S. National Security, a report published by American Manufacturing Alliance in spring 2016. The report explains that the strength of the Chinese steel industry can indirectly affect the security of the United States. [9]

The United States requires high-quality steel in large quantities to produce various military equipment, such as nuclear-powered submarines, tanks, and mine-resistant vehicles. Abram tanks for example require 22 tons of steel plates. [8] Types of light tactical vehicles in the class of Humvees Jeep require special steel and ceramic plates to protect their crew from the explosion of Improvised Explosives Devices. Meanwhile, the steel used to make Nimitz class aircraft carriers must be able to withstand the impact of 27 tons warplanes landing on the deck of the ship. In addition, the steel lining of the aircraft carrier must also be able to protect the crew from radiation produced by nuclear reactors that move the ship. Each aircraft carrier requires 50,000 tons of steel plates.[8]

The domestic steel industry in the United States has the ability to produce steel in accordance with specifications required by US military interests.[8] However, the steel industry does not get regular orders from the government. The main income of the United States steel industry depends on the consumption of steel outside the military. The entry of Chinese steel for consumption outside the military at lower prices threatens the sustainability of the United States steel industry because it could cause the American steel industry to close down. If the steel industries go out of business due to the entry of Chinese products, the United States will find it difficult to meet their military steel needs. This means it will threaten the security of his country as well. To prevent that from happening, President Donald Trump has set a tariff of 25% on Chinese steel products. The basis of these tariffs is the Trade Expansion Act of 1962, the contents of which can be implemented by the President of the United States when it is related to state security. This is quite different from the previous tariff implementations which do not need to use the Trade Expansion Act of 1962.
China sells steel at a lower price because the Chinese steel industry is subsidized by the government and the Yuan exchange rate against the US Dollar is deliberately weakened. According to a report made by the Specialty Steel Industry of North America (SSINA) in April 2007, the Chinese government has subsidized the stainless steel industry on a large scale since 2005. The subsidies were not given to infant industries, and instead were given to large producers such as Shanghai Baosteel Group Corporation and Tangshan Iron and Steel. From January to August 2006, subsidies made Chinese steel production rise sharply, so Chinese steel imports continued to decline by 1.4 million metric tons or down thirty percent, and Chinese flat rolled stainless steel exports continued to increase to 60%, which was 252,000 metric ton.[10] Subsidies from China do not only apply to the two steel companies above. A report from the 2015 American Steel Industry Coalition clearly illustrates subsidies by the Chinese government including the names of companies that receive subsidies, types of subsidies and subsidy granting procedures.

In 2014, Heibei Steel Group received assistance of 600,000 Yuan in the form of cash grants to encourage companies to, "innovate any constructive way to support industrial transformation and development." From the Ministry of Industry and Information Technology for the Remote Integration of Information Technology and Industrialization Funding, this funding is based on the 2011-2015 industrial transformation and improvement action plan and the instructions for transforming industrial investment to subsidize local firms to innovate in ecommerce.[10] Whereas in July 2012, the Ministry of Finance and the National Development and Reform Commission planned a program called financing guidelines for the economy aimed at increasing resource use and environmental protection, especially in recycling steel, metals, nonferrous metals, plastics, glass, and glass. The policy must be implemented by the local government, for example the Wuhan Development and Reform Commission and the Wuhan Finance Bureau provided funds of 1450,000 Yuan to Wuhan Wuxin New Construction material Co. Ltd in 2014 aimed at subsidizing energy saving and pollution prevention projects.[10]

Subsidies are in the form of financial policies within the form of Preferential Loans and Directed Credit. An example of a loan subsidy is that in March 2009, the Bank of Communications Shanghai Branch offered a loan of RMB 750 million to Baosteel Group to buy 56.15% of Ningbo Steel Co Ltd.'s shares. This is the first special loan case to support the government's steel industry consolidation policy. In 2009, Tianjin Steel Co. Ltd received an energy emission loan of RMB 43.9 million under the "green credit" program. The loan period is five years and is supported by the Industrial Bank, Beijing Bank, Shanghai Pudong Development Bank, and IFC. The most was in 2014 when the State Ethnic Affairs Commission gave Shougang Group a discount on the interest owed on loans worth RMB 12,791,400, and the Ministry of Trade and Ministry of Finance allocated RMB 13,183,809 in discounted loan interest for imported products, according to a report annual 2014.[10]

The Chinese government, both at the central and regional levels, provides various tax facilities both in the form of tax free policies and tax reductions that directly benefit the steel industry. The Chinese government's policy is to provide tax incentives for certain industries such as the steel industry, especially in industries that export their products to global markets. The Chinese government argues that this policy does not conflict with the WTO, and due to the pressure from international, the Chinese Government reduced the policy in 2014. However, in 2015, a number of parties reported that the Chinese Government still implemented the policy on a smaller scale.[10]

The Chinese government also provides electricity subsidies to the steel industry because the steel industry is one of the metal industries that requires huge electric power. The steel
industry and other metal industries need furnaces that are capable of producing heat to the melting point of steel or other metals produced. The function of the melting furnace is very important because the steel ore must first be thawed to the new melting point after which it can be formed as needed.[10]

The allegations from America are based on research from several steel industry institutions or organizations and US academics which have been started since 2006.[11] The reports include: 1) Chinese Government Subsidies to Stainless Steel Industry by the Special Steel Industry of North America, which was made in 2007; 2) Shedding Light on Energy Subsidies in China: An Analysis of China's Steel Industries From 2000 to 2007 by Usha C.V. Haley, published on January 8, 2008; 3) China's Specialty Steel Subsidies: Massive, Pervasive, and Illegal published by the Specialty Steel Industry of North America in October 2008; 4) China Steel Industries and It's Impact on The United States: Issues for Congress written by Rachel Tang of the Congressional Research Service and published on September 21, 2010; 5) Steel Imports Surge Threaten US National Security by the American Coalition of Manufacturing in 2016. At the peak of the existing reports are summarized in a report titled Report on Market Research Into The Peoples of the Republic of China Steel Industry by the Steel Industry Coalition on June 30, 2016. The report itself consists of 264 pages and is divided into three sections, the Steel Industry Coalition consists of the American Steel and Iron Institute, the Steel Manufactures Association, the Specialty Steel Industry of North America and the American Institute of Steel Construction.[8]

China then complained about the US Tariff policy to the WTO on April 5, 2018. The complaint stated that the US tariffs were not consistent with Articles 2.1, 2.2, 4.1, 4.2, 5.1, 7, 11.1 concerning safeguards and Articles I: 1, II: 1 (a) and (b), X: 3 (a), XIX: 1 (a) and XIX: 2 of the GATT 1994.[12] According to WTO rules, article 3.7 Dispute Settlement Understanding a complaint as made by China the settlement is done through a process of consultation between the disputing countries. If the consultation fails, the WTO will form a panel of dispute resolution on the request of China as the plaintiff. Based on article 17 of the DSU, a party to the dispute may begin an appeal review procedure against the panel report before Appellate Body through notice of appeal.[13] The United States refused the invitation for consultation from China because the invitation was about safeguard issues and not the tariffs.[14], [15]

The Chinese government eventually retaliated a 25% tariff on US steel products by applying a counter import tariff to the United States of 15-25%, and items that would be subject to a tariff of 128 items.[16] The tariff includes tariff concessions that are suspended for 120 products and 8 other products subject to a 25 percent increase in tariffs.[17] Products that are suspended for concession rates include: dried and fresh fruits, almonds, tree nuts (pistachios), frozen pork, grapes, and stainless pipes. Then on July 3, 2018 China again implemented new tariffs targeting ranging from liquefied natural gas to several types of aircraft. The tariffs are estimated to have a total value of 60 billion US Dollars. This was done after the prospect of trade war talks with the United States became increasingly unclear. In August 2019 China imposed a new import duty of 75 billion US dollars or the equivalent of 1,050 trillion Rupiah to imported goods from the United States.[18]

The retaliation tariffs from China eventually received approval from the WTO.[19] The WTO Dispute Settlement Body decided that the tariff policy adopted by the United States violated GATT regulations, after the Chinese request for consultation on April 4, 2018 was unsuccessful. China asked the WTO to form a Panel on December 6, 2018 WTO, and the WTO formed a panel on January 28 2019, and the panel will start working on June 3, 2019.
3.2 United States Tariff Policy and GATT

In 2016, China was not included in the top ten steel exporting countries to the United States, but Chinese steel exports affected the United States steel production. Overcapacity of Chinese steel production makes Chinese steel prices cheap, this causes the United States steel production to compete with Chinese steel. In 2015, China was the largest steel exporter in the world. In 2015, China's steel exports reached 110 million metric tons.[20] 2015 was a turning point for the United States, despite a decline in imports and import penetration, it should be noted that there was a drastic decline in production within one year. The decline in production was due to the close of some steel producers because they were unable to compete with more imported steel from China cheap. The United States Commerce Department noted a 35% decline in the United States steel industry over three decades. The steel industry is not the only domestic industry in the United States affected by the entry of imported products, but this industry is one of the main domestic industries in the United States.[21]

China was only one of the top ten steel exporting countries to the United States in 2018. This further worsened the condition of the United States steel industry. Faced with this situation, the United States government made a tariff policy of 20% for steel products that entered the United States. Some steel exporting countries to the United States can negotiate so they are not affected by the tariff, but China failed to negotiate this is the cause of the United States trade war with China. The actual penetration of imported steel from China is not very significant and ranks only tenth out of the top ten imported steel sources in the US, with a percentage of two percent of the seventy-two percent of total steel imports to the United States. In terms of total import value, the value of imported steel from China in 2018 is less from one hundred million dollars.

The United States from the beginning has accused China of subsidizing and producing excessive steel, so that US steel products are unable to compete and the industry is threatened with closing. American Manufacturing Alliance stated in its report that steel products from China that made the United States steel industry shut down and gave a number of recommendations to prevent the closure of the US domestic steel industry, namely safeguards, Countervailing Measures, and Anti-Dumping Measures.[9]

The United States eventually applied tariffs to China in the form of countervailing measures and antidumping duties but did not apply safeguards. If the United States adopts safeguards, steel products from all over the world must be subject to tariffs without discrimination including those from US allies such as the European Union, Mexico and Canada. At first, the allies of the United States were indeed subjected to tariffs like China, but then the tariffs for Canada and Mexico were revoked after going through a negotiation process. Even in fact, Canada and Mexico are countries with a total steel greater than China in the graph of the top ten countries of imported steel product sources in United States of America. Negotiations with Canada and Mexico are conducted by the United States so that cheese and pork products are not subject to tariffs.

The United States anti-subsidized tariff is also questionable because in Article 6 of the SCM, to be able to apply a country's anti-subsidized tariff must be able to prove in advance that subsidies made by other countries cause losses to the domestic industry because not all subsidies are prohibited. If the United States accuses China of carrying out subsidies it should be consulted, and when it does not succeed, then the problem can be brought to the panel. In this case, the United States must prove. Based on data from the Steel Industry Coalition, there is indeed evidence of subsidies by the Chinese Government to the steel industry, whether it is
done directly by the central government, regional governments, or state-owned banks. With subsidies in the form of direct delivery of funds which include direct assistance, capital injections, loans, taxes, facilities, equipment and ownership of private companies by the state, both directly and indirectly. However, in the end, the Committee on Subsidies will decide whether retaliation is permissible.

3.3 Efforts to Be Made by the United States and China to Resolve the Tariff Issue

The WTO as a world trade organization prohibits dishonest trade, but the WTO does not have the authority to impose sanctions on its member countries that commit unfair trade. However, it gives the right to member countries who are victims of dishonest trade to take retaliatory measures. If the country affected by the counter-action feels that the counter-action imposed on it is wrong, or the country feels that it is not conducting an unfair trade, the country that is the target of the counter-action can consult with the country that is taking the countermeasure. If the consultation resolves the existing problem, then the target country does not need to take the case to the WTO Dispute Settlement Body (DSB). However, if the consultation effort is unsuccessful the problem will proceed to the Dispute Settlement Body.

In this case, the United States has submitted a letter to the DSB chair to be circulated to members of a communication responding to a consultation request from China by requesting the Dispute Settlement Body on April 13, 2018. In order to communicate it, China asked the DSB chair on April 25 to respond to the United States consultation request on 13 April. On October 18, 2018, China requested the formation of a panel, at a meeting suspending panel formation. On January 7, 2019 China asked the Director General to prepare the panel, and the Director General arranged the panel on January 25, 2019. On September 4, 2019 the panel chairperson informed the DSB that the panel was expected to publish its final report to the parties no earlier than spring 2020, the chairman the panel also informed DSB that the latest report would also be available to the public when it was distributed to members in three WTO institutions.[22]

The steps above are the disputing countries. Should the United States accusing China of subsidizing its steel products may take temporary action on Chinese products. However, the allegations of subsidies must still be proven through an investigation by the WTO Committee on Subsidies, and the United States, as a country accused of damage the effect of subsidies should prove the causality between subsidies with serious losses or the threat of serious losses. If there are other factors that cause serious losses, then the subsidy cannot be linked. The United States must not only prove the existence of subsidies from the Chinese Government, but also must prove that the subsidies carried out by the Chinese Government violate the GATT/WTO and can be acted upon. GATT/WTO classifies subsidies as prohibited, not prohibited, actionable, and non-actionable subsidies.

The United States as a country that considers its steel industry threatened by Chinese export products should state explicitly that the action taken by the United States is actually a Safeguard action, and its implementation must be carried out in accordance with the provisions imposed by the GATT/WTO, namely with American conditions. The union has carried out an investigation in accordance with article 10 of the GATT 1994. In addition, the investigation must be made known to all interested parties, importers, exporters and other interested parties must be given the opportunity to submit evidence and views whose contents include whether the application of safeguards protect the public interest, investigation results and conclusions must be published in the form of a report by the investigator.[23] The investigation must objectively demonstrate the causality between increasing imports of the
product concerned with heavy losses or the threat of heavy losses, if there are other factors that cause losses then it should not be associated with increased imports.[23]

4 Conclusion

Based on the analysis described in the previous chapter it can be concluded that:
1. In relation to the US tariff policy on steel products from China, the United States violates one of the principles of non-discrimination GATT/WTO. In this case the Most-favored-nation (MFN) contained in article 1.1 of GATT 1947 because it has created arbitrary tariff barriers. The United States does not impose tariffs on all steel exporting countries such as Mexico, Canada, Argentina, and Australia.
2. In connection with disputes for tariff implementation, the United States and China can resolve their disputes through consultation efforts. If the consultation is not successful, the two disputing countries can submit to the DSB, and the DSB will form a panel. If the panel does not accept the decision, the dissatisfied party can forward the case to the Apellate Body. If this effort still does not work, the United States and China can resolve it through their chosen arbitration institution.
References


Implementation of Good Governance Ombudsman Recommendations

Iga Sukma Devi1*, F.C. Susila Adiyanta, Nabitatus Sa’adah
{iga.sukma.dewi@gmail.com, susila.adiyanta@gmail.com, nabitatass@gmail.com}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. Ombudsman Republik Indonesia (ORI) is an institution authorized to supervise the performance of public service that cannot prosecute or impose sanctions on the reported institution, but it can recommend the institution to conduct self-correction. The nature of Ombudsman’s recommendation is not binding and cannot be forced to execute. This causes the recommendation is often being ignored by the state administrators. This paper was written using the qualitative approach with empirical juridical approach. Based on the result, it can be concluded that the implementation of Ombudsman’s recommendation has not been effective yet since it takes a long time, like what had happened in Central Java. The juridical consequence when the state administrators do not implement the commendation is that they can be given administrative and criminal sanctions. Administrative sanctions are for the reported and the boss, meanwhile the criminal ones are for anybody who inhibits Ombudsman on implementing investigation. Sanctions giving for the state administrators who do not implement the Ombudsman’s recommendation is regulated in Article Pasal 38 and 39 Constitution No 37 of 2008, Article 36 Constitution No 25 of 2009 about Public Service, Article 351 Constitution No 23 of 2014 about Local Government, Article 36 Government Regulation No 12 of 2017 about the Coaching and Supervising of the Local Government Organization.

Keywords: Supervisory Institution, State Auxiliary Organ, and Ombudsman Recommendation

1 Introduction

1.1 Background

The event of the Proclamation of Indonesian Independence on August 17, 1945, was not only a moment of Indonesian independence but at the same time became the moment of the initiation of Indonesia as the rule of law. Regarding the principle of the rule of law adopted by Indonesia according to Soeprapto is “the legal state of the board (verzorgingstaat).[1] When examined the concept of the rule of law adopted by the State of Indonesia, it is more directed to the concept of welfare-state or commonly called the welfare state where the state is obliged to realize public welfare. This means that the state must intervene in people's lives as a step for people's welfare.

The concept of welfare-state itself can be found in the Preamble of the Constitution of the Republic of Indonesia 1945 paragraph IV which reads:
The state protects the nation and all spilled Indonesian blood, promotes public welfare, educates the life of the nation, and participates in carrying out world order based on independence, eternal peace, and social justice.

In order to carry out the objectives of the state in terms of “general welfare,” the state has taken various measures so that welfare can be realized. One of which is by providing services from the government to the community. This is also explained in the General Explanation of Law Number 25 Year 2009 regarding Public Services, stating that the state is obliged to meet the needs of every citizen through a government system that supports the creation of excellent public services in order to meet the basic needs and civil rights of every citizen on public goods, public services and administrative services.

Nowadays, the implementation of public services is still faced with conditions that are not yet in accordance with the needs and changes in various fields of life of the people, nation and state. This happens because there is no readiness to respond to changes in social values in society. Meanwhile, the new order of the Indonesian people is faced with global challenges triggered by advances in science, information, communication, transportation and trade.

Providing quality public services is highly expected by the people of Indonesia. In reality, the implementation of public services are still often colored by the practice of administrative malls, including corruption, collusion, and nepotism. This can lead to material and immaterial losses for the community or individuals. Although public services are still far from expectation, the government is trying to optimize services to the community. Regarding public services, supervision is one way to build and maintain the legitimacy of citizens towards government performance by creating an effective system of supervision, both internal supervision (internal control) and external control (external control) in addition to encouraging community supervision (social control).

The Ombudsman of the Republic of Indonesia (ORI), according to the provisions of Article 1 number 1 of Law Number 37 of 2008, is a state institution that has the authority to oversee the administration of public services, both carried out by state and government administrators. These include State-Owned Enterprises, Agencies Regional-owned Enterprises, and State-Owned Legal Entities, as well as private or individual entities given the task of providing certain public services that part or all of the funds are sourced from the state budget and/or regional budget. The Ombudsman is an external oversight body whose existence is expected to control the duties of state and government administrators in the administration of public services. This institution works based on community complaints. In this case, the community has the right to file a complaint if the rights of the community feel disadvantaged by the state administrator. The Ombudsman is an independent institution carrying out its duties and authority is free from interference from other powers.

The role of the Indonesian Ombudsman is to supervise public services by state administrators, including State-Owned Enterprises or Regional-Owned Enterprises, judiciary, National Land Agency, Police, Attorney, Regional Government, Ministries, Non-Ministry Agencies, State Universities, National Army Indonesia, and so on. The Ombudsman in exercising its authority does not have the authority to demand or impose sanctions on the reported institutions, but instead provide “recommendations” to the agencies to conduct self-correction. Understanding Recommendations according to Law Number 37 of 2008 are conclusions, opinions and suggestions prepared based on the results of the Ombudsman investigation, to the Reported Party's superiors to be carried out and/or acted upon in order to improve the quality of good government administration. The nature of the Ombudsman's recommendation is non-binding and cannot be forced to be executed.
This has resulted in Ombudsman's recommendations being often ignored by state administrators. One example is related to the implementation of the Ombudsman recommendations issued to the Semarang City Government, where the contents of the Ombudsman recommendations are efforts to control and demolish the BTS tower buildings of PT. Linggajati Al Munshurin which is not licensed (does not have a building permit). This case occurred around 2012, but the demolition of the new tower was carried out in 2018. [7]

Another example is the recommendation of the Ombudsman to the Mayor of Yogyakarta related to mal-administration in the process of handling reports of violations of disturbances permits by the Yogyakarta City Government Licensing Service. In this case, the Ombudsman recommendations are only implemented partially and are now final. [8] The two events above illustrate the strength of the Ombudsman's recommendations that are not binding or non-legal binding.

Based on the above problems, research will be carried out for the writing of the law entitled “Implementation of Good Governance Ombudsman Recommendations (Research Study at Ombudsman Representative Offices in Central Java and Yogyakarta).”

1.2 Problem Formulation

1. How is the Ombudsman's recommendations implemented by state administrators in the Central Java Province and Yogyakarta Special Region?
2. What are the juridical consequences for rejecting the implementation of the Ombudsman recommendations by state administrators?

1.3 Research Objectives

Based on the above problem formulation, the objectives expected from this research are as follows:
1. To find out and review the implementation of the Ombudsman recommendations by state administrators in the area of Central Java Province and Yogyakarta Special Region.
2. To find out and assess the juridical consequences of the rejection of the implementation of the Ombudsman recommendations by state administrators.

2 Research Methods

2.1 Approach Method

The writing of this law uses the empirical juridical approach, an approach that is done by looking at the reality that exists in practice in the field. Also, this price used to find the answers of problem formulations that are sought through field research.

2.2 Research Specifications

The research specifications used are descriptive analytical, which is intended to obtain an explanation or description as it is in accordance with empirical facts obtained from research in the field.
2.3 Types and Sources of Data

Types and sources of data used in writing this law use primary data. The primary data is data obtained directly from observations in the field and from interviews and secondary data are data sourced from library research.

2.4 Data Collection Methods

The method used for the collection of legal materials required in writing this paper was obtained by conducting field research, the acquisition of legal material through field research carried out by collecting data and information directly, through in-depth interviews with key informants. The key informants for this legal writing are divided into three research subjects, namely from the Ombudsman, the reported party (Satpol PP Semarang City), and the reporting party (community or individual). The fieldwork was carried out in the Central Java Ombudsman Representative Office, Yogyakarta Special Region Ombudsman Representative Office, Semarang City Satpol PP Office, Ngaliyan District Semarang City, and Gedong Tengen District Yogyakarta. Library research (library research) the acquisition of legal materials through library studies collected by searching and studying and understanding scientific books that contain the opinions of several scholars. In addition, legislation that is closely related to the writing of this law was also collected. The legal materials collected are then subjected to the editing of legal materials, the classification of relevant legal materials and systematic breakdown.

2.5 Data Analysis Method

Data analysis method used in this research is qualitative analysis. Qualitative analysis is done by describing and describing data and facts generated from a field study with a way of thinking based on general facts followed by the creation of a summary that is specific to submit suggestions.[9]

3 Results and Discussion

3.1 Implementation of the Ombudsman Recommendation by State Organizers in the Regions of Central Java Province and Yogyakarta Special Region as an Implementation of the Principles of Good Governance

3.1.1 Independent Ombudsman Institution as Supervisor of Public Services

a. General description of Ombudsman Representatives in the Regions as Representatives of the Ombudsman of the Republic of Indonesia

The establishment of an Ombudsman representative is one of the implementations of Article 5 and Article 43 of Law Number 37 Year 2008 concerning the National Ombudsman of the Republic of Indonesia. The Ombudsman Representative has a strategic position in helping the community to obtain services from the Ombudsman of the Republic of Indonesia. The establishment of an Ombudsman representative for the Ombudsman of the Republic of Indonesia, functions to facilitate the implementation of functions, duties and authority to all
regions of the country of Indonesia because the Ombudsman representative is a stewardship, and has a hierarchical relationship with the Ombudsman of the Republic of Indonesia.[10]

General Explanation of the Government Regulation of the Republic of Indonesia Number 21 of 2011 concerning the Establishment, Composition and Working Procedure of Representative Ombudsman of the Republic of Indonesia states that the formation of Ombudsman representatives is based on community needs, availability of resources, effectiveness, efficiency, complexity, and workload.[11] The formation of Ombudsman representatives is not necessarily carried out in all provinces or districts/cities, but it is based on community needs. The community needs in this Government Regulation are not only interpreted as coming from the community, but also coming from the reconsiderations of the Ombudsman of the Republic of Indonesia conducted by the Ombudsman of the Republic of Indonesia. For example, the community needs a supervisory institution to create a clean government and quality public service delivery. This is the consideration of the Ombudsman of the Republic of Indonesia to establish an Ombudsman representative.

Ombudsman representatives have duties, functions and authorities that are “mutatis mutandis” with the Ombudsman of the Republic of Indonesia.[12] Mutatis mutandis in this case means that the provisions concerning the functions, duties and authority of the Ombudsman that apply to the Ombudsman also apply to the Representative of the Ombudsman by making changes as necessary. The duties, functions and authorities of the Ombudsman representatives are regulated in the provisions of Article 6 and Article 7 of the Government Regulation of the Republic of Indonesia Number 21 of 2011 concerning the Establishment, Composition and Working Procedure of the Representative Ombudsman of the Republic of Indonesia. Representatives of the Ombudsman in the regions are led by a Head of Assistant who is responsible for the Ombudsman of the Republic of Indonesia through the Chief Representative. The tasks assigned to each assistantship aim to realize quality public services, as well as good and clean governance. In addition, representatives of the Ombudsman also have a hierarchical relationship with the Ombudsman of the Republic of Indonesia in carrying out his authority.

b. Legal Basis for the Authority of the Ombudsman in Providing Recommendations to the Government for Public Services

The establishment of a state auxiliary organ in Indonesia is carried out according to different legal basis, some are based on the 1945 Constitution, including the General Election Commission, and some are based on the law including the Indonesian Broadcasting Commission and the Consumer Protection Agency, and based on the Presidential Decree including the Commission National Ombudsman.[13]

Denny Indrayana divides state auxiliary organs into 2 (two) types, namely independent regulatory bodies and executive brunch agencies. The type of independent regulatory bodies refers to institutions that are independent and are not included in any branch of power. Examples of independent regulatory bodies include the Judicial Commission (KY), the Ombudsman of the Republic of Indonesia (ORI), the Corruption Eradication Commission (KPK) and the Indonesian Child Protection Commission (KPAI). The type of executive brunch agencies refers to state institutions that are under executive power. This institution has the main duties and functions to help carry out executive functions, namely carrying out the mandate of the law. The executive body consists of the President, Vice President and ministers.[14]

The establishment of a state auxiliary organ aims to carry out its duties and function optimally as a solution to the limited capabilities of primary state institutions, in addition to
that the tasks and functions of the state auxiliary organ must be adjusted to the goals of the state. The Ombudsman of the Republic of Indonesia, when viewed in terms of its function, is not a primary or primary institution whose authority is clearly stated in the Constitution of the Republic of Indonesia, instead, it is an auxiliary state institution established for the bureaucratic reform aspired to as the initial goal of the state.

**Figure 1.** The existence of the Indonesian Ombudsman in Indonesian State Administration

Based on the picture, it can be seen that the Ombudsman institution is not a main state institution that is clearly stated in the constitution, but it is a state auxiliary organ whose formation is based on the Presidential Decree. In its development the Ombudsman continues to strive to optimize performance. One of which is by designing the right flow and implementation mechanism by simplifying the bureaucracy. Following is the flow of report or complaint settlement by the Republic of Indonesia Ombudsman:
Every citizen and resident, whether living in the territory of the Republic of Indonesia or not, has the right to submit a report to the Ombudsman. Reports submitted to the Ombudsman or Ombudsman representatives regarding acts of deviation that result in poor quality of public services. Reports can be submitted by signing the Ombudsman's office to enable his complaints verbally and in consultation with the assistant Ombudsman. Reports can also be submitted in writing in the form of a letter addressed to the office of the Ombudsman or the representative of the Ombudsman, explaining the chronology of the problem using proper and correct Indonesian. Another way that can be done by the public in submitting reports is by facsimile, telephone, and e-mail as stipulated in Law Number 37 Year 2008. The Ombudsman in practice always encourages the public to submit reports in writing for formal administrative completeness.[12]

Reports that meet formal requirements are then registered and submitted to the head of the Ombudsman to determine the assistant in charge. The Assistant Ombudsman will conduct a substantive selection to find out more whether the report includes the authority of the Ombudsman or not. Reports that are not within the authority of the Ombudsman, the assistant drafts a letter to the reporter to explain that the report reported is not the authority of the Ombudsman.[12]

The draft of a letter made by a young assistant will be examined by a senior assistant who is then conveyed to the chairman of the Ombudsman to request authorization. If the report is the authority of the Ombudsman but is deemed to require further data, the assistant ombudsman will ask the reporter to complete the report. Reports whose substance is the authority of the Ombudsman, the assistant Ombudsman and members of the Ombudsman appointed as supervisors for handling the report will examine more deeply the substance of the report in question, including planning field investigation activities if necessary. The Ombudsman's Assistant will submit a request for clarification or make recommendations.

---

**Figure 2.** Flow chart of the RI Ombudsman Report
which will then be sent to the reported party after receiving approval from the Ombudsman Chair.[12]

Requests for clarification of the Ombudsman which get a response from the reporter, the Assistant Ombudsman who handles the report will learn whether the reporter has given an answer in accordance with the provisions of the applicable legislation. The Ombudsman send a reply the second time to the reported to get further clarity. The Ombudsman immediately send a second clarification if within the specified time period, the reporter has not yet responded.[12]

Reported parties who do not provide responses to the clarification of the Ombudsman are deemed not using the right to answer. Based on the existing authority according to the law, the Ombudsman can issue recommendations that must be implemented by the reported and/or reported superior. If this is also not corrected by the reported party, then the Ombudsman can take the mechanism of delivering the results of investigations regarding the poor service of certain agencies to the media and provide special reports to the President and the House of Representatives to receive follow-up.[12]

c. Implementation of the Ombudsman Recommendation by State Organizers in Central Java and Yogyakarta Special Region

The Ombudsman of the Republic of Indonesia receives a report/complaint from one of the residents having the address at Perum BPI K-7 RT, 004/RW 010 Purwoyoso, Ngaliyan, Semarang, Central Java. The report contained complaints about the actions of the Semarang City Satpol PP for neglecting the legal obligation to control and demolish the construction of BTS towers by PT. Linggajati Al Munshurin which is not licensed (no IMB) and causes interference for residents of Jatisari Taliasih, Mijen, Semarang City.[12]

The reporter is the owner of the land that borders the Tower BTS owned by PT. Linggajati Al Munshurin, some of whom have stood buildings. The ownership of the land has been strengthened by the certificate of ownership rights/HGB. According to the reporter, the construction of the BTS (Base Transceiver Station) tower by PT. Linggajati Al Munshurin began in May 2011, the construction of the construction was without an IMB and socialization had been carried out but only attended by community representatives. The rejection of the residents was done by sending a letter of complaint to the Mayor of Semarang with copies of relevant agencies, so that the BPPT (Agency for Assessment and Application of Technology) did not give permission because the tower owner did not have a principle permit.

According to a recommendation from the City Planning and Housing Office of Semarang City on December 19, 2011 the Semarang City Civil Service Police Unit temporarily suspended the operation of the tower, but due to sealing damage, on February 25, 2012 the City Police Unit was resealing. The City of Semarang City Planning and Housing Office on 4 April 2012 issued a demolition recommendation on 14 May 2012 Satpol PP had made a memorandum of demolition and was sent to the Mayor of Semarang, but until the reporter submitted his report to the Indonesian Ombudsman Representative DIY-Central Java continue as it should. The reporter hopes that the Mayor of Semarang can act decisively and fairly in resolving these problems in accordance with the existing provisions.

Based on the description of the problem above, the follow up from the Ombudsman of the Republic of Indonesia is to follow up on the report through the Ombudsman Representative of DIY-Central Java asking for clarification from relevant officials in the Semarang City Government and the Reporting Party. The clarification of the Semarang City Satpol PP are as follows:[15]
1. Regarding the lack of control over demolition of BTS (Base Transceiver Station) towers owned by PT. Linggarjati Al Manshurin which is unlicensed, Semarang City Satpol PP was concerning more on another issue; and therefore it was neglected.

2. According to the Semarang City Satpol PP, the construction of telecommunications towers and their buildings and equipment are owned by PT. Linggajati Al Munshurin and the BTS (Base Transceiver Station) tower will be used for shared towers, but do not know which cellular operators will use the BTS tower.

3. Another reason Semarang City Satpol PP has not made a demolition effort because there are technical constraints of demolition equipment and insufficient budget of dismantling a tower with a height of 72 m.

4. According to Semarang City Satpol PP, they have terminated the electricity and sealing the tower of the tower building that has been standing, until now this tower is no longer in operation.

5. According to the City Planning and Housing Office of Semarang City, since the beginning of the BTS (Base Transceiver Station) tower, it was built and there is no IMB. Semarang City Government through the Semarang City Planning Office has tried to take action by giving a warning/reprimand to PT. Linggajati tower owners 4 (four) times but have never responded.

6. On April 4, 2012 the Semarang City Urban Planning and Housing Agency also issued a recommendation letter to demolish the tower building, but there has been no follow-up from Satpol PP.

7. Semarang City Urban Planning and Housing Agency has yet to issue a new permit submitted by PT. Linggajati Al Munshurin, because it is still in dispute with local residents and asked to be resolved first.

Clarification regarding this issue is also made to the reporter or the public. Based on information from residents related to the construction of PT. Linggajati Al Munshurin, residents strongly reject the construction due to safety reasons.[16] This case entered the Ombudsman of the Republic of Indonesia and published Recommendation No.009/REK/0084,2012/PBP.02/VII/2013 based on the recommendation the Ombudsman believes that:

a. The efforts of the Semarang City Government to protect and attract investors into Semarang should be carried out by the government and the community. Nevertheless, these efforts should be carried out while respecting and obeying the applicable laws and regulations.

b. The neglect of the Semarang City Government in law enforcement (Perda) should not be allowed to happen as it is a form of legal disobedience in carrying out its duties and functions as a government apparatus.

c. Application for demolition of BTS tower owned by PT. Linggajati Al Munshurin should have been followed up as it should be given the construction of the BTS tower had violated existing legal provisions (there was no IMB permit and Nuisance Permit).

d. The actions of the Head of the Semarang City Satpol PP did not carry out demolition recommendations did not reflect the dedication and loyalty of subordinates to the leadership in enforcing the applicable laws and regulations.

The Indonesian Ombudsman issues recommendations related to these issues in the form of:
a. Take decisive steps to demolish PT. Linggajati Al Munshurin, which was built without a permit, no later than 2 (two) weeks from the date of receipt of this recommendation.

b. Notifying the related staff (Satpol PP) to monitor and coordinate the implementation of the tower demolition.

Based on the chronology of the above problems, if analyzed using the perspective of State Administrative Law, the above case found an alleged maladministration, in the form of:

a. The state organizer (Semarang City Satpol PP) "neglected its obligation" to control and demolish the construction of a BTS (Base Transceiver Station) tower by PT. Linggajati Al-Munshurin which is not licensed (no IMB).

b. Tower construction which was established by PT. Linggajati Al-Munshurin is in violation of the applicable legal provisions because the tower does not yet have a nuisance permit and permission to build buildings, so it can be said that the construction of a BTS (Base Transceiver Station) tower is illegal.

Meanwhile, the case of publishing recommendations in DIY began when there was a report/complaint from one of the residents of Sosromenduran Gedongtengen Yogyakarta who felt disturbed by the operation of a restaurant (cafe) in the area. Residents are disrupted because of the operation of the restaurant (cafe) takes place at night and there is often live music activities while the restaurant (cafe) does not have a soundproof room. Noise reporting was filed since October 2013, until the peak of the Indonesian Ombudsman issued binding recommendations for the Mayor of Yogyakarta. The reason for the issuance of the recommendation was because since 2013 the Yogyakarta City Government was considered not serious in overcoming the problem of restaurants (cafes) as well as the negligence of the Licensing Service that it did not provide proper service to the reporter. [10]

The DIY Ombudsman said the recommendation from the center was issued after it had previously made various clarification efforts with related parties including the reporter and also reported in this case the Office of Order, the Office of Investment and Licensing of the City of Yogyakarta. The Reported Party in this case was considered not serious and allowed them to leave the restaurant (cafe) still in operation today. One of the steps taken by the Ombudsman in the recommendation, the Ombudsman asks the Mayor of Yogyakarta to issue a third warning letter for Oxen Free restaurants (cafes) which have been proven to abuse licenses and noise.

Based on the results of monitoring the Ombudsman's recommendations have been carried out, but another problem in this case around 2017 the issuance of Permendagri policy No. 19 of 2017 concerning Revocation of Regulation of the Minister of Home Affairs Number 27 of 2009 concerning Guidelines for Determination of Disturbance Permit in the regions as amended by Ministerial Regulation In Republic of Indonesia Number 22 Year 2016 concerning Amendment to the Minister of Home Affairs Regulation Number 27 of 2009 concerning Guidelines for Determination of Disturbance Licenses in Regions.” [10]

Based on the above case, if analyzed using the Perspective of State Administrative Law, namely the discovery of alleged maladministration in the form of:

a. Negligence from the Office of Discipline for not providing appropriate services to the reporter (community), in this case the City Government of Yogyakarta has not been responding for a long time and there has been no follow-up for a long time, while the restaurant activities (cafes) continue to run. This is increasingly disturbing residents.
b. Misuse of interference and noise permits carried out by restaurants (cafes) are characterized by the existence, operations of these restaurants (cafes) at night and often there is live music activities while restaurants (cafes) do not have soundproof rooms. This is the reason for local residents submitting reports/complaints to the DIY representative Ombudsman.

The two cases above have similarities when viewed from the perspective of State Administrative Law, namely the discovery of alleged administrative malls. Regarding the implementation of the Ombudsman recommendations in Central Java based on the previous discussion, it was known that the issuance of the Ombudsman recommendations was carried out in 2013 but the implementation of the new recommendations was carried out in 2018. The length of time spent on implementing the Ombudsman recommendations shows that the implementation of the Ombudsman recommendations which in this case was “dismantling the tower The BTS (Base Transceiver Station) “does not necessarily only carry out the recommendations of the Ombudsman, the” demolition of the BTS (Base Transceiver Station) tower “can occur due to a new policy.

3.2 Juridical Consequences for Rejection of the Implementation of the Ombudsman Recommendation by State Administrators

The implementation of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia and Law Number 25 of 2009 concerning Public Services is one of the innovations in the field of the legal system in Indonesia. One of them is by providing Ombudsman recommendations to state officials or administrators who deviate from alleged mal-administration. One of the efforts to enforce the recommendations of the Ombudsman according to the Explanation of Law Number 37 of 2008 is to provide administrative sanctions and criminal sanctions. Administrative sanctions are imposed on reported parties and reported superiors who do not carry out the recommendations of the Ombudsman, while criminal sanctions are imposed on anyone who blocks the Ombudsman from conducting an examination. The purpose of obstructing the Ombudsman in conducting audits according to Article 44 of Law Number 37 of 2007 is when the Ombudsman in conducting examinations, such as summons to reported parties, witnesses, experts and/or translators for questioning, requesting an explanation to the reported, and at the time of carrying out field inspections was deterred. So those who get in the way can be subjected to criminal sanctions in the form of imprisonment for 2 (two) years or a maximum fine of IDR. 1.000.000.000,00 (one billion).[19] The above method is one way to reinforce the legal force of the Ombudsman's recommendations with the aim of creating justice for the people of Indonesia.

Administrative sanctions for state administrators who do not implement the recommendations of the Ombudsman are regulated in the provisions of Article 38 and 39 of Law Number 37 of 2008, Article 36 of Law Number 25 of 2009 concerning Public Services, Article 351 of Law Number 23 of 2014 concerning Regional Government,[20] Article 36 Government Regulation of the Republic of Indonesia Number 12 of 2017 concerning Development and Supervision of the Implementation of Regional Government.[21] This also shows the strength of the recommendations of the Ombudsman although the recommendations of the Ombudsman are not legally binding. However, if the state administrators do not carry out the recommendations of the Ombudsman, administrative sanctions can be subject to compliance with applicable laws and regulations. The administration sanctions are intended for the Reported Party and the Reported Party's
superiors who do not implement the Ombudsman's recommendation. This is in accordance with Article 39 of the Ombudsman Law, the Law on Public Services and the Law on Regional Governments. Reported parties or superiors of Reported parties who do not implement recommendations, in addition to being given administrative sanctions will also be published and reported to the Parliament and the President. The sanctions are based on the results of monitoring the Ombudsman first.

4 Conclusion

4.1 Conclusion

Based on the results of research and discussion in the previous chapter, it can be concluded that:

a. The implementation of the Ombudsman recommendations in Central Java Province and Yogyakarta Special Region has not been effectively implemented, because it takes a long time to implement the Ombudsman recommendations as happened in Central Java Province. Based on the previous discussion, the issuance of the Ombudsman recommendations was carried out in 2013 but the implementation of the new recommendations was carried out in 2018. This shows that the implementation of the Ombudsman recommendations in case of “dismantling the BTS (Base Transceiver Station) tower” does not necessarily only carry out the recommendations Ombudsman, the implementation of the “demolition of BTS (Base Transceiver Station) towers” can occur because there is a new policy.

b. Juridical consequences for rejecting the recommendations of the Ombudsman by State officials may be subjected to administrative sanctions and criminal sanctions. Administrative sanctions are imposed on reported parties and reported superiors who do not implement the Ombudsman's recommendations; while, criminal sanctions are imposed on anyone who blocks the Ombudsman from conducting an examination. Administrative sanctions for state administrators who do not implement the recommendations of the Ombudsman are regulated in the provisions of Article 38 and 39 of Law Number 37 of 2008, Article 36 of Law Number 25 of 2009 concerning Public Services, Article 351 of Law Number 23 of 2014 concerning Government Regions, Article 36 Government Regulation of the Republic of Indonesia Number 12 of 2017 concerning Development and Supervision of the Implementation of Regional Government.

4.2 Suggestion

Based on these problems, some suggestions can be submitted as follows:

a. There should have a support of actions from the State administrators so that the implementation of the Ombudsman's recommendations can be carried out effectively. The supports of action from state administrators is needed because the implementation of the Ombudsman's recommendations depends on the moral awareness of the state administration.

b. Creating quality public services as desired by the Ombudsman Law and the Public Service Act by accepting, accommodating and implementing Ombudsman recommendations so that good governance can be realized.
References


[7] Pre-Research Results with M. Azet Azhar (Primary Assistant, Member of the Report Examination Assistance Team), January 24, 2019 at 15:51 PM, at the Central Java Ombudsman Representative Office.


[10] Interview with Nugroho Andriyanto (Head of Report Inspection Assistant), 25 February 2019 at 11:00 WIB, at the Ombudsman Representative Office of the Special Region of Yogyakarta.


[12] Interview with M. Amhar Azet (Primary Assistant, Member of the Report Examination Assistance Team), January 24, 2019 at 15:51 WIB, at the Central Java Ombudsman Representative Office.


[15] Interview with Marthin (Chair of the Regional Legislation), March 15, 2019 at 08:00 WIB, at the Semarang City Police Office.

[16] Personal interview with a resident of Perum BPI Ngaliyan, Semarang, Central Java, on January 26, 2019, at 11:00.


Analysis of Capital Market Dual Listing in ASEAN Countries

Kevin Situmorang1*, Budiharto1, Paramita Prananingtyas1

{kevinsitumorang11@gmail.com1, budiharto@live.unind.ac.id2 pptyas@live.unind.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. The capital market is an alternative source of corporate finance, so this encourages companies to sell their shares on the stock exchange. However, with the expansion of the business to the world, sometimes, the companies need more than one stock exchange, including foreign ones. The company than carried out a dual listing, namely listing of shares in to different exchanges. Dual listing has also begun to be carried out by a number of ASEAN countries. This study discusses the application of dual listing in a number of ASEAN countries and the possibility of its application in Indonesia. This study uses a normative juridical approach. The research specification used is analytical descriptive by examining secondary data and data that is delivered via the internet. The data presented is based on inductive thinking methods. Based on the results of the study, several ASEAN countries have implemented a dual listing policy by applying certain classifications to foreign companies with the aim of protecting the interests of shareholders and ensuring corporate governance. Indonesia has tried to implement a dual listing policy, but only applied for the Indonesian Depositary Receipt (SPEI). The dual listing mechanism was not immediately implemented because the capital market regulations did not allow foreign corporate legal entities to carry out dual listings.

Keywords: Capital Market, Dual Listing

1 Introduction

1.1 Background

The progress and prosperity of a country can be seen from its economic development. Economic development can only be realized if the government implements development. In the implementation of a country's national economic development funding is needed from both the government and the community. One form of financing is through financing business activities. Financing of share activities can be done through capital market activities.

The term “Capital Market” is used as a translation of the term “Capital Market”, which means a place or system on how to meet the needs of funds for capital of a company, and also a market where people buy and sell securities that have just been issued. According to Law No. 8 of 1995 concerning the Capital Market,[1] the Capital Market is an activity concerned with public offering and trading of securities, public companies related to the issuance of securities, and professional institutions related to securities. The capital market is similar to markets in general, because the capital market also gathers people to trade. For example by buying and selling. In the capital market, what is traded is securities. The capital market is
defined as a market where long-term funds, both debt and equity, are traded. Long-term funds which constitute their own capital are usually in the form of shares.

The capital market is one alternative source of financing for both the government and the private sector. Governments that need funds can issue bonds or debt securities and sell them to the public through the capital market. Likewise, the private sector, which in this case is a company that needs funds can issue securities, both in the form of shares and bonds and sell them to the public through the capital market.

The capital market provides a longer-term source of financing, which is invested as capital to create and expand employment that will increase the volume of healthy and profitable economic activity. The capital can be in the form of production funds or funds for the procurement of capital goods such as goods, factories and equipment that are actually used to produce goods and services.

Given that the capital market is one alternative source of corporate finance, companies are encouraged to sell their shares on the stock exchange. However, with the expansion of the business world, the companies sometimes need more than one stock exchange, and even foreign stock exchanges are also needed. So it is very possible to need more than one stock exchange in more than one stock exchange, even foreign stock exchanges are also needed. So it is possible to need more than one stock exchange in more than one foreign country, for example in an Initial Public Offering (IPO) of a local company that wants to offer its shares to parties in other countries. In this regard, the history of the capital market shows that the attachment and boundaries of the state territory are often the cause of many companies from being able to use and obtain funds from other countries, where the company is not established or does not operate in carrying out its business activities. This area limitation also causes many domestic investors of a country in general to have difficulty in investing (in the form of portfolio diversification) on exchanges in their country and in foreign securities which are considered good enough as one or more investment portfolios. This is usually due to obstacles related to procedural, and legal rules, the provisions of other countries’ capital markets that must be met, and the relationship with relevant authorities, which must be carried out by the company and related to the registration process and trading of securities to be offered on exchanges in other countries.

Efforts to sell shares on the stock exchange abroad can be done through the Dual Listing policy, which is an activity carried out by a company to register and trade its shares not only in one capital market but also sell its shares in another different capital market. The dual listing effort is quite common, both in stock exchanges in the Americas, Europe and Asia. On the American stock exchange (NYSE), dual listings are regulated under The Securities Act of 1933, The Securities Exchange Act of 1934 and The NASD Rules. The dual listing policy is also developing in a number of ASEAN countries. This development was marked by the establishment of the ASEAN Capital Market Forum in 2008. The ASEAN Capital Market Forum (ACMF) is an ASEAN capital market regulator forum aimed at achieving harmony between the capital markets in the ASEAN region. One of ACMF’s latest achievements is the agreement between the Singapore Capital Market, the Malaysian Capital Market and the Thai Capital Market to implement the ASEAN Disclosure Standard. The implementation of the ASEAN Disclosure Standard causes the dual listing policy to be carried out by all capital market players in Singapore, Malaysia and Thailand. In this agreement, capital market investors in the three countries can transact shares with issuers across countries without any regulatory and political policy restrictions. In Indonesia, the Dual Listing policy is implemented indirectly by using the Indonesian Depositary Receipt or SPEI as stipulated in Bapepam Regulation No.IX.A.10 regarding the Public Offering of Indonesian Depositary
Receipts. However, Indonesia currently does not have a Dual Listing policy arrangement that is implemented directly like that of Malaysia, Singapore and Thailand. Seeing this condition, it is interesting to study how the further implementation of the dual listing policy in ASEAN countries and how it might be applied in Indonesia. This topic will then be discussed in the form of a thesis entitled “Analysis of Dual Listing Critical Market Capital Countries in Asean.”

1.2 Formulation of the problem

Based on the background that has been described, the formulation of the problem in this study is as follows:
1. How does the application of Dual Listing work in ASEAN countries?
2. What are the obstacles in implementing Dual Listing in the Indonesian capital market?

2 Method

The method of approach used in this study is the normative juridical approach. The method of normative juridical approach means a study that seeks to synchronize the provisions of the applicable law with the rules that apply in the legal protection of norms or other legal regulations with relation to the legal regulations in actual practice in the field. The use of this method is carried out considering that the research conducted refers more to the laws and regulations, namely the relationship between one arrangement with other arrangements and the relationship with application in practice. The juridical aspect in this research is a study based on the science of commercial law which is about capital market law which specifically covers dual listing policies and legislation relating to the problem under study.

The specifications of this study use descriptive analytical research specifications. In this study illustrates the dual listing policy that will be analyzed using theories, science and the writer's own opinion which will get a conclusion.

The data used are secondary data. Secondary data is data obtained from library materials using primary and secondary legal materials.

The method of data collection is based on the source of the data obtained in this study. The data is collected by means of library research, which consists of primary legal materials, and secondary legal materials as well as prior research related to the object in the form of legislation laws, literature and other scientific papers.

All data that has been collected is then processed and analyzed using qualitative methods. Qualitative analysis, which describes the picture of the data obtained and connects with each other to get a general conclusion. The data that have been analyzed qualitatively, in this case the relationship between theories obtained from library studies will be analyzed and reviewed and then systematized into data analysis compiled in the form of legal writing.
3 Results and Discussion

This Word document can be used as a template for journal. This Word document can be used as a template for journal. This Word document can be used as a template for journal. This Word document can be used as a template for journal.

3.1 Implementation of dual listing in ASEAN Countries

3.1.1 Singapore

SGX-ST has two registration boards, namely Main Board and Catalyst Board. Listing on the Main Board can be either a primary listing or a secondary listing. The Dual Listing in SGX is called the Secondary Listing. Secondary listings can only be done on the Main Board. Foreign companies must first meet the general listing requirements on the Main Board (The SGX Main Board listing requirements) regulated in the SGX-ST Listing Manual before fulfilling the specific rules of the secondary listing. After fulfilling the general requirements, they must fulfill certain rules for Secondary listings.

First, the original Exchange where the issuer conducts a primary listing (Home Exchange) will fully enforce the listing rules on the company. The second exchange on which the company is listed (Host Exchange) generally will instead depend on the Home Exchange to regulate the company. The role of the main regulator and supervision is in the hands of regulators who are in the jurisdiction of the Home Exchange (Home Jurisdiction). SGX, as the Exchange Host, relies on regulators from Home Exchange to manage Home Exchange rules and maintain Home Exchange regulatory standards.

Second, there are different regulations that apply to each company based on the classification of the jurisdiction of the country of origin (home jurisdiction) of the company. This classification distinguishes whether the jurisdiction of the company that wants to do a secondary listing on SGX is included in the “Developed Markets” or “Developing Markets.”

Companies that originate from the Developed Market and have complied with the SGX Admission Standards do not need to get a full review from SGX on the legal and regulatory framework contained in Home Jurisdiction and can conduct secondary listings on SGX by only meeting the following conditions: [5]

1) Subject to Rule 217 SGX Listing Manual.
2) Subject to Rule 751 SGX Listing Manual.
3) The company does not need to fulfill the continuing listing obligations provisions contained in the SGX Listing Manual.

For the companies originating from the Developing Market, SGX will identify and conduct a full review of the legal and regulatory requirements of the Home Exchange to identify areas related to shareholder protection and corporate governance that have the potential for improvement. Companies originating from Developing Markets will be requested by SGX to fulfill Rule 217, Rule 751, continuing listing obligations from Chapter 9, Chapter 10 and Chapter 13 of SGX Listing Manual.[4] If SGX assesses fields related to interested person transactions, acquisitions and realizations, and delisting, it requires an increase.

3.1.2 Malaysia

The company can register in two types of Bursa Malaysia markets, namely Main Market and ACE Market. Foreign companies can only register on the Main Market. Recording can be
done through Primary listings or Secondary listings. Foreign companies wishing to register on the Bursa Malaysia must be incorporated in jurisdictions subject to company law and other relevant laws and regulations, which have standards at least equivalent to those in Malaysia, specifically related to corporate governance, shareholder protection and minority interests, and takeover and merger regulations.[6] Domestic companies or foreign companies that want to do primary listings on the Malaysian stock exchange must meet the quantitative criteria, qualitative criteria, and additional criteria that must be met by foreign companies who want to search for primary listings.[7] On the other hand, foreign companies that want to conduct secondary listings on the Bursa Malaysia only need to meet certain qualitative criteria, additional criteria (additional criteria) and do not need to meet quantitative criteria.[8]

3.1.3 Thailand
Foreign companies must get approval from the Thai SEC to offer their shares to public investors in Thailand, and approval from the SET Board of Governors to register their shares in the SET. Foreign companies must comply with specified approval criteria, disclosure standards and other relevant regulations in a manner similar to those applicable to Thai companies, such as shareholder protection, prevention of conflict of interest and adequate information disclosure.[9] Foreign companies must comply with certain criteria to conduct secondary listings. Secondary criteria considerations for foreign companies are divided into two types of classification, namely whether the country of origin of the company is classified as a Recognized Country or Unrecognized Country. [10]

3.1.4 Analysis of the dual listing process of countries in ASEAN
When the Capital Market Authority of a country opens an opportunity for foreign companies to do dual listing on their bursas, the next problem is how to overcome differences in capital market regulations owned by the country of origin of foreign issuers with capital market regulations provided by the country where the dual listing is conducted. Each country certainly has its own specificities in its regulations, from the legal system, corporate law, and capital market law that is adjusted to the conditions and capabilities of the current stock exchange. These regulatory differences can become obstacles for the dual listing to take place, bearing in mind that the laws of each country have their own level of complexity. It takes a kind of standardization of rules to bridge the differences in rules that become obstacles in implementing this dual listing. ASEAN countries such as Singapore and Thailand use the classification provided by the FTSE and MSCI index providers to determine whether the country of origin of a foreign issuer (Home Jurisdiction) has rules that are equivalent to the country where the dual listing is implemented (Home Exchange). This classification is a reference for SGX (Singapore Exchange) and SET (Stock Exchange of Thailand) to determine the regulatory framework that will be applied to a foreign issuer who wants to do a dual listing in their country.

The Financial Times Stock Exchange (FTSE) and Morgan Stanley Capital International (MSCI) are the two leading providers of data and leading international economic indices that determine market classification in a number of countries. FTSE and MSCI determine the country classification into Developed Market and Developing Market (Advanced Emerging, Secondary Emerging or Frontier). The classification is determined based on economic size, wealth, market quality, market depth, and breadth of a country's market.[5]

Capital market regulators in Singapore, Thailand and Malaysia apply high standards of corporate governance and shareholder protection for foreign companies that want to conduct dual listings with the aim that the interests of shareholders obtain legal protection and capital
market quality can be maintained. The market classification in Singapore and Thailand also aims to protect the interests of investors, because based on the results of this classification, companies originating from the Developed Market are considered to have an established and mature legal and regulatory regime which can then offer a level of shareholder protection and corporate governance standards. Tall one.

3.2 Possible application of dual listing in Indonesia

3.2.1 Constraints on the implementation of dual listing in Indonesia

At present, foreign companies wishing to record secondary listings in Indonesia can only go through the Indonesian Depositary Receipt mechanism (SPEI).

In Indonesia, the Depositary Receipt is called the Indonesian Depositary Receipt or SPEI. The issuance of foreign shares in Indonesia in a modern way, especially those done through the issuance of Indonesian Depositary Receipt, is still relatively new in Indonesia. The issuance of Indonesian Depositary Receipts was only introduced in Indonesia after the issuance of regulations in the form of Bapepam Chairman's Decree No. Kep-49/PM/1997, dated December 26, 1997, which is well known for Rule Number IX.A.10 regarding the Indonesian Depositary Receipt. Bapepam Regulation Number IX.A.10 regarding the Public Offering of Indonesian Depositary Receipt (IDR) allows the main effects not only to be offered abroad, but also to securities offered domestically by local issuers. When the task of supervising the capital market financial industry officially shifted from Bapepam-LK to the OJK in 2012, the process of developing rules regarding the listing of multiple shares (dual listing) as stipulated in the application of the Indonesian Depositary Receipts (SPEI) was recognized as having a number of obstacles. IDX's Managing Director for the 2012-2015 period, Ito Warsito revealed that the desire of foreign companies to list on the Indonesia Stock Exchange was hampered by the regulation of the Financial Services Authority (OJK) which has been vacuum since 2009.[11] Bearing this in mind, until now there has not been a single foreign company that has listed shares on the Indonesia Stock Exchange. [12] Some of the obstacles found in Indonesia's capital market regulations are as follows:

1) The SPEI mechanism is deemed unattractive for foreign companies because it cannot register shares directly, and instead must use an intermediary from the Custodian Bank.

2) Companies that want to register must have a legal entity PT.

3) Capital market investment prospectus must be prepared and signed by the Capital Market Supporting Professionals registered with OJK.

3.2.2 Analysis of constraints on the implementation of dual listings in Indonesia

At the very least, Indonesian capital market law regulates several types of securities to be listed on the Indonesia Stock Exchange, such as stocks and bonds. For foreign companies, the possibility to conduct a public offering of shares on the Indonesia Stock Exchange can only be done by using the Indonesian Depositary Receipt Certificate mechanism. This means that foreign companies cannot register shares directly. While the possibility of listing shares directly through a public offering of shares (going public) on the Indonesia Stock Exchange still faces a number of obstacles. Both of these possibilities have not yet been tried by Foreign Companies because there are still a number of obstacles.

The main problem for foreign issuers in meeting these requirements is a requirement that only Legal Entities in the form of Limited Liability Companies (PT) can do the listing on the Indonesia Stock Exchange.[7] This provision is very deterring foreign issuers because they
already have their own legal entities in accordance with the jurisdiction of their respective countries. This means that foreign issuers cannot register on the Indonesia Stock Exchange while they are still using their original legal entity, and must form a limited liability company. If a foreign issuer must establish a PT in order to be listed on the exchange, this provision cannot be called a dual listing provision, where the dual listing provision means the condition where the issuer is listing on two different exchanges with an existing legal entity. As long as Indonesian Capital Market regulations still require issuers to have a limited liability company, foreign issuers cannot do a dual listing on the Indonesia Stock Exchange.

In addition, this PT Legal Entity requirement also has other obstacles, where PT Law in Indonesia also has Corporate Governance provisions that are not necessarily equivalent to Corporate Governance standards in other countries, so certain adjustments must be made to avoid differences in Corporate Governance standards.

Reflecting the dual listing regulations in Singapore, there are provisions regarding the classification of countries based on their original jurisdiction, namely the classification of Developed Market and Developing Market.[5] The reason SGX applies this provision is that based on the results of the FTSE and MSCI classification. The legal and regulatory regimes in Developing Markets countries may not offer adequate guarantees of the level of shareholder protection and corporate governance standards available in the country. Accordingly, SGX considers it is necessary to increase through the imposition of additional continuing listing obligations to companies from Developing Markets countries, with the aim of protecting the interests of investors. [7]

If re-linked with the provisions of Secondary listing in Singapore, the application of the principles of Corporate Governance in Indonesia has not yet reached the point where Indonesia has capital market regulations that are equivalent to countries included in the Developed Market. Based on the latest FTSE and MSCI indexes, Indonesia is still categorized as a Developing Market country. Based on the FTSE Equity Country Classification September 2019 Annual Announcement, Indonesia is still categorized as Secondary Emerging, [13] whereas based on The MSCI 2019 Global Market Accessibility Review, Indonesia is still classified as an Emerging Market. [14] The results of this classification indicate that the quality of the Indonesian capital market is not as good as the quality of the capital markets of countries that are in the developed market. These results also indicate the need to improve the quality of Indonesian regulations so that they are fully prepared to effectively implement the dual listing policy.

4 Conclusion and Suggestion

4.1 Conclusion

1. Implementation of Dual Listing in ASEAN Countries such as Singapore, Malaysia and Thailand is carried out under the name Secondary Listing. Secondary Listing Policy focuses on the situation where a company already has a primary listing in a country (Home Exchange), but at the same time, the company intends to do a secondary listing on another country's stock exchange (Host Exchange), so that the company is listed in two different countries. The Secondary Listing approach implemented by Singapore, Malaysia and Thailand aims to provide adequate guarantees to the provisions of shareholder protection and corporate governance,
because these guarantees are needed to protect the interests of capital market investors.

2. The current application of Dual Listing in Indonesia can only be done indirectly by using the Indonesian Depository Receipt (IDR) mechanism. However, the SPEI provisions have problems because the SPEI mechanism is considered quite complicated for a number of foreign companies. SPEI must be entrusted to the Custodian Bank as an intermediary so that the safekeeping mechanism is deemed unattractive to foreign companies because companies prefer to register their shares directly without going through intermediaries. The mechanism for direct listing of shares through a public offering of shares also has a number of obstacles because Indonesian regulations so far have not allowed foreign companies to conduct stock listing. In addition, the Company's Prospectus must also be prepared and signed by the Capital Market Supporting Professionals registered with OJK. This also becomes another obstacle because foreign companies must make sure before making a prospectus that is prepared and signed by the capital market supporting profession from other countries that are not registered in the FSA, so it is not possible to use the prospectus to be offered in Indonesia.

4.2 Suggestion

Based on the results of the study, the following suggestions can be submitted:

1) The Government, in this case, the Financial Services Authority (OJK) and the Indonesia Stock Exchange (IDX) must continue to work together in improving the quality of the Indonesian capital market. So, they can compete with the stock exchanges in other countries, especially in the ASEAN countries' stock exchanges that have implemented dual listings such as The Singapore Exchange Securities Trading Limited (SGX-ST), Bursa Malaysia, and The Stock Exchange of Thailand (SET). Until now, the Indonesian Capital Market is still classified as a developing market by FTSE and MSCI. A number of efforts are needed to improve the status of Indonesia as a developed market. Bearing in mind the quality of the capital market of a developed market country is considered more attractive for foreign companies that have plans to conduct dual listings.

2) Harmonization of Indonesian capital market regulations needs to be carried out as soon as possible considering that in addition to the quality of the capital market, differences in regulations are also a major obstacle for foreign companies intending to carry out dual listings. Indonesian capital market regulations must provide facilities for foreign companies, because the Government is also trying to encourage a number of companies to conduct dual listings in Indonesia. The revision of the Capital Market Law must also immediately enter the National Legislation Program (Prolegnas) in order to catch up with the capital market regulations of other countries.
References


Accountability of Business Actors against Expired Imported Products

Khosyi Lathifah¹*, Siti Mahmudah¹, Hendro Saptono¹

{khosyil11@gmail.com¹, sitimahmudah@live.undip.ac.id², hendrosaptono@live.undip.ac.id³}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹

Abstract. Expired imported food found in the community that can endanger human health. Imported foods are regulated under the Food Law and involve distributors, and this research was conducted to dive deep into expired imported food regulations and the responsibilities of distributors as business actors. The research method uses normative juridical methods with secondary data obtained through a literature study on legal materials which include primary, secondary and tertiary data with descriptive-analytical as specifications. The results showed that expired imported food was banned and regulated in the Food Law. Meanwhile, the distributor is responsible for expired imported food. This study concludes that imported food that has expired is regulated in the Food Law related to the permitted and prohibited import food requirements. Expiration is prohibited because it is considered as tainted food. In addition, the Food Law regulates the responsibility of contributors as business operators that circulate expired imported food.

Keywords: responsibility, imported food, expired

1 Introduction

Formally, the definition of food is on Article 1 Number (1) of the Food Law, stating that food is anything derived from biological sources and water, whether processed or not processed, which is intended as food or drink for human consumption, including food additives, food raw materials and other materials used in the preparation, processing and/or manufacturing of food or beverages.[1]

Quality, nutritious, and balanced food are major prerequisite for the interests of the people's health, prosperity, and welfare. Meeting the needs of food and nutrition is an important factor to develop quality Indonesian people in order to improve the nation's competitiveness. These things influence the holding of protection for food, and therefore the legal rules governing food as a part of efforts to protect food.

The protection of food in the form of written regulations, governed by Law No. 18 of 2012 concerning Food. One of the regulation is regarding food imports. Food imports are regulated because countries in the world have not been able to produce all the goods and their own needs because of the limited resources available in these countries, so they must receive assistance from other countries. This process then becomes an activity called trade between countries, or export-import activities. However, in the current era of globalization and technological development, many Indonesian industries are competing to produce goods including food and beverages which continue to grow rapidly. Therefore, the community must
be more careful in choosing food and beverage products that are circulating and marketed in Indonesia. In buying and selling activities, especially in the field of food and beverages (food), there are many problems that arise.  

[2] The tight competition can change behavior towards unfair competition because business actors have conflicting interests between themselves. This unhealthy competition can in turn harm consumers. Some people deliberately to obtain greater profits to perform various actions in the cheat category. [3]

One that happens a lot and endangers the community is expired food products. Expiration is a condition in which a product has been said to be unfeasible because it is past the specified time on its packaging. Expired food is no longer suitable for consumption, and therefore, the government must always supervise the food sold at supermarkets and small shops that have passed the expiration period. Thus, the responsibility of business actors to consumers must be implemented within the framework of economic life in social life in Indonesia and the need for supervision from the authorized institutions. Therefore, the authors are interested in discussing and making a thesis with the title “Accountability of Business Actors against Expired Imported Products under Law No. 18 of 2012 Regarding Food.”

Based on the description of the background above, the writer will examine several issues, namely:

1. How to regulate expired imported food based on Law no. 18 of 2012?
2. How is the responsibility of business actors for distributing imported products that have expired?

2 Method

The method of approach used in this study is a normative juridical approach method, namely legal research conducted by examining library materials or secondary data as a basic material to be investigated by conducting a search of the regulations and literature relating to the problem under study.[4]

This normative juridical approach will begin by reviewing the laws and regulations regarding food, which will then be analyzed the responsibilities of business operators for expired imported food which are expected to provide a real and systematic picture and answers to these problems.

2.1 Research Specification

The research specification that will be used is analytical descriptive, which is a study that describes in full the applicable laws and regulations and is then associated with legal theories and practices of implementing positive law concerning the problems, then analyzes the data obtained to then draw conclusions from that research.[4]

2.2 Method of collecting data

The writing of this law uses a normative juridical approach. Secondary data is data whose source is based on library research. Secondary data can come from primary legal materials, secondary legal materials and tertiary legal materials as well as prior research relating to the object of study in research. The details are as follows:
2.2.1 The primary legal materials used in this study consisted of:
1) Civil Code;
2) Law No. 18 of 2012 concerning Food
3) Law No. 7 of 2014 concerning Trade
4) Government Regulation No. 69 of 1999 concerning Food Labels and Advertisements.
5) Government Regulation No. 28 of 2004 concerning Food Safety, Quality and Nutrition
6) Regulation of the Minister of Trade of the Republic of Indonesia No. 77 of 2018 concerning Integrated Business Licensing Services
7) Regulation of the Minister of Trade of the Republic of Indonesia No. 13/M-DAG/PER/3/2012
8) Regulation of the Minister of Finance No. 161/Pmk.04/2007 concerning Supervision of Import or Export of Prohibited and/or Restricted Goods
9) Regulation of the Minister of Health No. 180/MEN.KES/PER/1V/1985
10) Indonesian Minister of Trade Regulation No. 11/M-DAG/PER/3/2006 concerning Provisions and Procedures for Issuance of Registration Certificate of Agents or Distributors of Goods and/or Services
11) Minister of Trade Regulation No. 48/M-Dag/Per/7/2015 concerning General Provisions in Import
12) Decree of the Head of the Republic of Indonesia Drug and Food Supervisory Agency No: HK.00.05.5.1639 concerning Guidelines for Good Food Production Methods for Home Industries (CPPB-IRT)

2.2.2 Secondary legal materials used in writing this law include:
1) Books on Export-Import Transactions, Business Law, Food, Nutrition, and Agriculture, and Research Methodology;
2) Papers and articles;
3) Journal;
4) Other reference material.

2.2.3 Tertiary legal material consisting of:
1) Legal Dictionary;
2) Large Indonesian Dictionary;
3) Other reference materials.

3 Results and Discussion

3.1 Expired Food Import Regulations According to Law No. 18 of 2012 concerning Food

Article 1 Number (1) concerning Food, hereinafter referred to as the Food Law, gives the meaning of food is anything that comes from biological sources and water, whether processed or not processed, which is intended as food or drink for human consumption, including food additives, food raw materials and other materials used in the preparation, processing and/or manufacturing of food or beverages.[1]
3.1.1 Food Import

According to Law No. 18 of 2012 on food, food import is the activity of entering food into the customs territory of the Republic of Indonesia which includes land, water, airspace, certain places in the Exclusive Economic Zone, and continental shelf. Based on this understanding, imports can be known as buying and selling activities by entering goods from abroad into the country with the aim of meeting domestic needs.

1.1. Food Import Subjects

People who import food are called food importers. Importers are individuals or institutions or business entities, both in the form of legal entities and not legal entities, who carry out imports. [5] Food businesses according to Law No. 18 of 2012 on Food is Every Person engaged in one or more food agribusiness subsystems, namely providers of input production, production processes, processing, marketing, trade, and support.

a) Food Import Subjects Requirements

Food imports are trading activities carried out on the basis of an agreement between the buyer and seller. Therefore, food import is a form of agreement, especially an agreement on buying and selling. The agreement contains terms and conditions cited from Article 1320 of the Civil Code. The first and second conditions are called subjective conditions because both conditions must be met by legal subjects.[6] The subjective conditions are:

a. Agree Those Who Bind Themselves
b. Ability to Make an Agreement

Non-fulfillment of subjective conditions results in an agreement being canceled. The point is that the agreement becomes nullified if there is an application for cancellation. Therefore, subjective conditions must be fulfilled by the parties entering into the agreement.

To become an Importer, there are subjective conditions that must be fulfilled by food importers. Subjective conditions is written both on Civil Code and on Article 8 of the Regulation of the Minister of Trade of the Republic of Indonesia No. 11/M-DAG/PER/3/2006, which are the requirements that must be fulfilled by distributors as food import businesses, namely:[7]

a. Application for registration as a distributor or sole distributor of goods and/or overseas production services is submitted to the Director of Business Development and Company Registration by enclosing following documents:

b. Agreement that has been legalized by the Public Notary and a certificate from the Indonesian Trade Attache or the Official of the Republic of Indonesia Representative Office in the principal country, by showing the original;

c. Copy of authority of the producer's principal only If the agreement is made by the supplier's principal,

d. Copy of Trading Business License (SIUP);

e. Copy of valid Company Registration Certificate (TDP);

f. Copy of valid General Import Identification Number (API-U), specifically for distributors or sole distributors;

g. Copy of Deed of Establishment of Company and/or Deed of Amendment that has been approved by the competent authority;

h. Copy of ratification of Legal Entity from the Ministry of Law and Human Rights for Limited Liability Companies;
Specifically for agents or sole agents, make a statement stating that they do not control and store the goods of the agency;

Original leaflet/brochure/catalog from the principal for the types of goods and/or services that are authorized;

Copy of license or other registration letter from the technical agency that is still valid for certain types of goods in accordance with applicable regulations;

Copy of Permanent Business Permit/BKPM Approval Letter if the agreement is made with a Foreign Investment Company (PMA) engaged in the distributor/wholesaler field;

Copy of Business License for Foreign Trade Representative Companies (SIUP3A) if the agreement is made with a Representative Office of Foreign Trade Companies.

Based on the conditions mentioned above, it can be seen that the importer is one of the parties who entered into an agreement, specifically a sale and purchase agreement. Therefore, to become an importer must comply with the terms of the agreement in the Civil Code as a buyer and the Minister of Trade Republic of Indonesia Regulation No. 11/M-DAG/PER/3/2006 Provisions and Procedures for Issuance of Registration Certificate of Agents or Distributors of Goods and/or Services as distributors.[7]

**1.2 Food Import Objects**

From the definition of food according to the Food Law discussed, it can be concluded that food is anything that is eaten or drunk by humans in order to preserve and maintain the quality and quantity of health. Because of the importance of food to the human body, food needs to be protected by the regulation of food requirements in order to maintain the quality of the food.

*a) Food Import Object Requirements*

The imported food objects which are circulated must fulfill certain requirements. Based on Article 1320 the Civil Code governs the agreement, there are objective conditions mentioned on the third and fourth. These conditions must be fulfilled by the object of the agreement. Failure to fulfill objective conditions will result in an agreement being made null and void by law. This means that from the beginning it was thought that a contract was never born and there was never an agreement.[6] The objective conditions stipulated in Article 1320 of the Civil Code are:

a. Specific Objects/Subject
b. Permitted/halal causes

According to Article 37 and Article 38 of the Food Law, food imports are permitted on the condition that they must meet the following conditions:

a. Meet the requirements of safety, quality, nutrition, and do not conflict with the religion, beliefs, and culture of the community;
b. As well as meeting the expiration and food quality limits.

*b) Prohibition and Restriction of Food Import Objects*

Prohibited and/or restrictive goods are goods that are prohibited and/or restricted from importing or expending into and from customs areas.[8] Prohibitions and restrictions especially in the field of export-import are regulated in Law No. 7 of 2014 concerning Trade Article 50 to Article 54 which regulates the matter of all goods that have a sufficiently long period of time which can cause cancer. Exported or imported, except those prohibited,
restricted or otherwise determined by law. The government prohibits the import or export of goods for the national interest by reason of:

a. To protect national security or the public interest, including social, cultural, and moral of society;
b. To protect intellectual property rights; and/or
c. To protect the health and safety of humans, animals, fish, plants and the environment.

To find out whether an item can be imported or not, you must look at the special provisions governing the item.

c) Out of date
Expiration is prohibited by law because it can harm consumers if they consume it. Expiration has the meaning of having passed or the expiry of the time period as specified and if consumed, then the food can endanger the health of those who consume it. Based on the provisions of Article 90 of the Food Law regulates food that is prohibited from being distributed, namely contaminated food. The polluted means in the Food Law in the form of:

a. Food containing toxic, dangerous or dangerous material for human health or life;
b. Contains contaminants that exceed the maximum threshold set; contain materials which are prohibited from being used in Food Production activities or processes;
c. Contains material that is dirty, rotten, rancid, decomposed, or contains vegetable or animal material which is diseased or derived from a carcass;
d. Produced in a way that is prohibited; and
e. Has expired.

d) Expired Food Features
Meanwhile, the characteristics of food products that have expired or expired can be seen from the form of packaging that has changed, such as:[9]

a. The can is swollen.
b. Food has changed color because it has been moldy.
c. It does not taste like it is promoted on a tin.
d. Cause an unpleasant odor when opened.
e. Product packaging is not the latest packaging but still with the old model packaging.
f. The dusty product packaging is not a guarantee that the product is still suitable or not for consumption.

e) Due to Consuming Expired Foods
Eating expired foods has implications for various parties. These parties are consumers and producers. Consequently for consumers because consumers are those who consume them; whereas, producers are parties that sell or distribute them. The consequences are:

a. For Consumers. Food poisoning is a disease caused by consuming unhealthy foods. Common symptoms of poisoning include heartburn, nausea, vomiting, diarrhea and sometimes accompanied by redness, cramps and fainting. In addition to health problems, the material losses suffered by consumers are losses that are not directly suffered by consumers but rather losses that can be valued in money and these losses are material. [10]
b. For Manufacturers. Expired foods not only affect consumers but producers are also be affected, namely:[11]
a) Expropriation of certain items
b) Announcement of the judge's decision
c) Payment of compensation
d) Orders to stop certain activities that cause consumer losses
e) Obligation to withdraw goods from circulation, or
f) Revocation of business license

3.2 Responsibility of Distributors as Business Executors Against Expired Import Food

Distributor is a national trading company that acts for and on its own behalf based on agreements that purchase, store, sell and market goods and/or services owned/controlled.

3.2.1 Distributor Requirements

The requirements that must be met are based on Article 8 of the Minister of Trade's Regulation No. 11/M-DAG/PER/3/2006, namely:

1) Application for registration as a distributor or sole distributor of goods and/or overseas production services is submitted to the Director of Business Development and Company Registration by enclosing documents:
   a. Agreement that has been legalized by the Public Notary and a certificate from the Indonesian Trade Attache or the Official of the Republic of Indonesia Representative Office in the principal country, by showing the original;
   b. If the agreement is made by the supplier's principal, the supplier's principal is obliged to show the authority of the producer's principal;
   c. Copy of Trading Business License (SIUP);
   d. Copy of valid Company Registration Certificate (TDP);
   e. Copy of valid General Import Identification Number (API-U), specifically for distributors or sole distributors;
   f. Copy of Deed of Establishment of Company and/or Deed of Amendment that has been approved by the competent authority;
   g. Copy of ratification of Legal Entity from the Ministry of Law and Human Rights for Limited Liability Companies;
   h. Specifically for agents or sole agents, make a statement stating that they do not control and store the goods of the agency;
   i. Original leaflet/brochure/catalog from the principal for the types of goods and/or services that are authorized;
   j. Copy of license or other registration letter from the technical agency that is still valid for certain types of goods in accordance with applicable regulations;
   k. Copy of Permanent Business Permit/BKPM Approval Letter if the agreement is made with a Foreign Investment Company (PMA) engaged in the distributor/wholesaler field;
   l. Copy of Business License for Foreign Trade Representative Companies (SIUP3A) if the agreement is made with a Representative Office of Foreign Trade Companies.

3.2.2 The parties

Distributor is a national trading company that acts for and on its own behalf based on agreements that purchase, store, sell and market goods and/or services owned/controlled.
1.1. **Principal dan Distributor**

Principal is an individual or business entity in the form of a legal entity or not a foreign or domestic legal entity that appoints an agent or distributor to sell goods and/or services that are owned/controlled. Whereas a distributor is a national trading company that acts for and on its own behalf based on agreements that purchase, store, sell and market goods and/or services owned/controlled.

Based on the above understanding it can be seen that the principal is the party that sells the goods/services. Meanwhile, the distributor is the party who buys the goods/services from the principal but acts for and on his own behalf based on the agreement. The agreement in question is a distribution agreement.

- **a. Underlying Agreement**
  The agreement made by the distributor with the principal is referred to as the distributor agreement. The distributor agreement (Distributorship Agreement) is specifically regulated in the Minister of Trade Regulation No. 11/M-DAG/PER/3/2006 concerning Provisions and Procedures for Issuance of Registration Letters for Agents or Distributors of Goods and/or Services (lex-specialis). Distributors operate on their own behalf, so distributors and Principals have equal contractual relationships and are not an employment relationship. The relationship between the Principal and the Distributor is usually made by a Distributor Agreement.

- **b. Rights and obligations**
  Based on Article 20 of the Minister of Trade's Regulation No. 11/M-DAG/PER/3/2006 these rights and obligations include:
  1) Agents, sole agents, sub agents, distributors, sole distributors or sub distributors are entitled to education and training to improve skills and after sales service from the principal, as well as regularly obtain information about product developments.
  2) If necessary, an agent, sole agent, distributor or sole distributor can employ foreign national experts in the technical field in accordance with applicable regulations.
  3) Agents, sole agents, distributors or sole distributors are obliged to protect the interests and confidentiality of principals against the goods and/or services that are authorized in accordance with the agreement.
  4) Principals Producers who supply goods that are of sustainable use within a minimum period of 1 (one) year are required to provide spare parts or after-sales service and fulfill guarantees or warranties in accordance with the agreed agreements.

Like agreements in general, Distributor Agreements are subject to the Civil Code (Civil Code), especially Book III on Engagement.

- **c. Responsible**
  The responsibility of the distributor for the principal is limited to expanding marketing, meaning that having a distributor helps the principal to market its products in an area where this is an important factor in increasing the profits of the principal company.

1.2. **Distributors and Consumers**

Distributor is a national trading company that acts for and on its own behalf based on agreements that purchase, store, sell and market goods and/or services owned/controlled. Whereas consumers are consumers who are all users of goods and/or services available in the community, both for themselves, their families, other people and other living things and not
for trade. Based on the above understanding it can be seen the legal relationship between distributors and consumers, namely as sellers and buyers.

a. Underlying Agreement

Because the distributor acts with and on his own behalf, and it does not concern the principal, so when the distributor enters into an agreement with the consumer, the consumer cannot sue the principal but only the distributor can be sued by the consumer. This agreement between the distributor and the consumer is referred to as the sale-purchase agreement. Referred to as a sale-purchase agreement because in a sale-purchase agreement regulated in the Civil Code the distributor is referred to as the seller, while the consumer is referred to as a buyer. The sale and purchase agreement consists of two syllables namely sell and buy.

b. Rights and obligations

[1] Seller Rights

The rights of the seller are:

a. The right to declare null and void, if the buyer does not pay the purchase price, then the seller can demand the cancellation of the purchase of merchandise and home furnishings without giving a warning to the buyer, after the elapsed time has passed for the goods to be sold. (Ps.1518 Civil Code)

b. The seller has the right not to surrender the goods he sells. If the buyer has not paid the price, the seller will not be allowed to delay the payment. (Ps.1478 Civil Code) This is a rebuttal called "exceptio non adempti contractus" is a rebuttal stating that he (the debtor) did not carry out the agreement as it was precisely precisely because the creditor himself did not carry out the agreement as it should.[13]

c. The seller is given the power to buy back goods that have been sold issued from a promise, where the seller is given the right to take back the goods he sold, by returning the original purchase price, accompanied by compensation. (Ps.1519 Civil Code) all costs according to the law that have been incurred to carry out the purchase and delivery, as well as the necessary costs required for corrections, and costs that cause the goods being sold increase in price, this additional amount. (Ps.1532 Civil Code)

[2] Obligations of the Seller

Within the Article 1474 of the Civil Code, there are 2 (two) main obligations for the seller, namely:

a. The seller give up ownership rights on the goods being traded. Obligation to surrender property rights includes all acts that are required by law to transfer ownership of the goods sold and purchased from the seller to the buyer. In the delivery of goods the provisions that must be considered by the seller, include:

b. The delivery of the item is carried out at the place where the goods were at the time the sale occurred, except in other agreements (Article 1477 of the Civil Code).

c. The goods delivered must be intact as stated in the agreement or at the time of sale (Article 1481 in conjunction with Article 1483 of the Civil Code).

d. The seller is obliged to surrender everything that becomes equipment to use the goods that he has sold (Article 1482 of the Civil Code).

e. The seller is not required to surrender the goods before the buyer pays the price (Article 1478 of the Civil Code).
f. The seller is obliged to guarantee the buyer to be able to have the goods safely and securely, and be responsible for hidden defects that can be used as a reason for canceling the purchase (Articles 1491, 1504, 1506, 1508, 1509 and 1510 Civil Code), but the seller is not obliged to bear visible defects by the buyer (vide Article 1505 of the Civil Code).

g. The seller is obliged to bear the loss suffered by the buyer if it turns out that the goods that have been traded must be confiscated or must be taken from the buyer due to a dispute, which is caused by no prior notification when entering into a sale and purchase agreement (Articles 1492, 1495, 1496, 1497, 1499 Civil Code).

h. The seller is obliged to be responsible for anything that is a direct result of the maker so that it harms the buyer, although in the agreement it is determined that the seller does not bear all the risks in the sale and purchase (Article 1494 of the Civil Code).

i. The seller is obliged to use the cost of delivering goods, meaning that in the agreement it is determined that the delivery is carried out in the buyer's warehouse, then the transportation costs from the seller's place to the buyer's warehouse are borne by the seller, while the cost of taking from the buyer's warehouse to the buyer's place is borne by the buyer (Article 1476 of the Civil Code).

j. The seller is obliged to return the price of goods and costs according to the applicable laws and regulations, the buyer has the right to cancel or cancel the purchase (Article 1488 of the Civil Code) on condition that the claim must be made no later than 1 year after the delivery of the goods (Article 1489 of the Civil Code).

k. The seller is obliged to bear the loss suffered by the buyer if it turns out that the goods that have been traded must be confiscated or must be taken from the buyer due to a dispute, which is caused by no prior notification when entering into a sale and purchase agreement (Articles 1492, 1495, 1496, 1497, 1499 Civil Code).

l. The seller is obliged to be responsible for anything that is a direct result of the maker so that it harms the buyer, although in the agreement it is determined that the seller does not bear all the risks in the sale and purchase (Article 1494 of the Civil Code).

m. The seller is obliged to use the cost of delivering goods, meaning that in the agreement it is determined that the delivery is carried out in the buyer's warehouse, then the transportation costs from the seller's place to the buyer's warehouse are borne by the seller, while the cost of taking from the buyer's warehouse to the buyer's place is borne by the buyer (Article 1476 of the Civil Code).

n. The seller is obliged to return the price of goods and costs according to the applicable laws and regulations, the buyer has the right to cancel or cancel the purchase (Article 1488 of the Civil Code) on condition that the claim must be made no later than 1 year after the delivery of the goods (Article 1489 of the Civil Code).

o. The seller bears the pleasure of the goods and bears the hidden damages. The obligation to bear pleasure is a consequence of the guarantee given by the seller to the buyer that the goods sold and levered are really his own that is free from any party.[14]

[3] Buyer's rights
If Article 1495 of the Civil Code is not implemented, the buyer will have the right to claim back from the seller:

a. To refund for damages
b. To receive goods purchased from the seller.
c. To get a guarantee from the seller regarding the enjoyment and absence of hidden damage.

[4] Obligations of the Buyer

Based on Article 1513 of the Civil Code the main obligation of the buyer is to pay the purchase price at the time and place as determined according to the agreement.

Responsible

In the case of a distributor as a business actor who does not fulfill his obligations, he is subject to sanctions. Based on the Food Law, the responsibility of business actors, namely administrative sanctions, are in the form of:

a. Fine;
b. Temporary cessation of activities, production and/or distribution.
c. Withdrawal of food from circulation by producers;
d. Compensation; and/or
e. Revocation of permission.

4 Conclusion

Based on the description that has been stated in previous chapters, conclusions can be drawn including the following:

1. The regulation regarding imported food is regulated under Law No. 18 of 2012 on Food, hereinafter referred to as the Food Law. According to Article 37 and Article 38 of the Food Law, imported foods are allowed for distribution only if they meet the requirements of safety, quality, and nutrition, do not have conflict with the religion, beliefs and culture, and meet the expiration and food quality limits. Furthermore, the laws also regulate any food which are prohibited for distribution under Article 90, which is simply call contaminated food. Contaminated foods referred to Food Law is any food containing toxic, dangerous, or material that can endanger human health or life; contains contamination that exceeds the maximum limit set; contains materials which are prohibited from being used in Food Production activities or processes; contain material that is dirty, rotten, rancid, decomposed, or contains vegetable or animal material which is diseased or derived from a carcass; produced in a way that is prohibited; and has expired. Further arrangements with expiration requirements are regulated in Article 90 of the Food Law which regulates tainted food because expiration is one form of contamination and is prohibited by the Food Law.

2. Distributors as importers of foods are responsible for their actions in distributing expired imported food as stipulated in Article 94 of the Food Law, and they will be charged in the form of Fines; Temporary cessation of activities, production and/or distribution; Withdrawal of food from circulation by producers; Compensation; and/or Revocation of license.
References


[8] Regulation of the Minister of Finance Number 161/Pmk.04/2007 concerning Supervision of Import or Export of Prohibited and/or Restricted Goods.


Google AdSense Publisher Taxation Obligation

Mirza Ramadhan1*, F.C. Susila Adiyanta1, Nabitatus Sa’adah1
{Mirza.Ramadhan999@gmail.com1, susilaadiyanta@live.undip.ac.id2, nabitatass@gmail.com3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. People always strive to fulfill all the needs of materiel. Nowadays, the needs of these materials can be obtained with money and one way of earning money is by doing business. With the development of technology, a business can be done with the help of Internet technology. AdSense is an Internet advertising program that provides an opportunity for website owners or bloggers to earn money by showing AdSense ads on their websites in the hopes of being clicked by website visitors. This research is aimed to know what tax obligations are imposed on websites or bloggers who are professional advertising publishers of Google AdSense. This research uses qualitative methods with a descriptive approach. The results of this study show that Google AdSense advertising publishers are subject to tax income PPh article 23 sourcing from Google AdSense, which is a tax object that can increase state acceptance.

Keywords: Tax Duty, Publisher Google AdSense, Blogger.

1 Introduction

Technological developments continue to be discovered in order to facilitate human life, especially in the field of communication. Discovery after discovery was born until the discovery of the internet in the 1960s [1]. The internet is a long-distance system of various computer networks connected by modems or telephone lines [2]. The emergence of the internet has had a major impact on society. The internet has entered into various segments of human activity, whether in the political, social, cultural, and economic and business sectors. For example, the internet is used to communicate, search for actual news, find information, buy and sell transactions, even to conduct payment transaction[3].

Along with the times and increasing human population, the internet, which was originally used for communication needs only, developed into a source of income, both as a source of side income and a primary source of income. There are various ways to get income through the internet, one of which is through online advertising business. One such online advertising business is Google AdSense. Google AdSense is an online advertising program from Google, which is one of the sources of income from the internet today, people who pursue Google AdSense business are called Google AdSense advertisers.[4] An ad publisher is someone who provides space on his website as a place to advertise a product[5].

One example of Indonesian people who managed to earn income by becoming a Google AdSense ad publisher is Eka Lesmana. The success of Eka Lesmana in earning his income from Google AdSense was published in the Central Java Tribune. The news mentioned that Google AdSense income of Eka Lesmana could reach IDR. 120 million (one hundred twenty million rupiah) per month. Eka Lesmana or known as Eko Purwanto is a duck farmer from Karanganyar who earns millions of rupiah per month from Google AdSense.[6], [7] Based on
the news, of course, a Google AdSense ad publisher can potentially be subject to income tax (PPh), but in capturing the potential tax will be difficult to implement because there are no clear rules governing tax collection for someone who earns income from the internet, especially those who pursue business as a Google AdSense ad publisher.

It is unfortunate if the tax potential like this is not maximally utilized by the tax authorities. Seeing the number of internet users in Indonesia hitting 143 million and will continue to rise every year [8], impacting the growth in earnings of Google AdSense ad publishers.

Based on the description above, the identification and formulation of the main issues are as follows:

1. Is the Google AdSense publisher, including the subject of income tax, and the income of the Google AdSense publisher subjected the income tax object?
2. What are the tax obligations of individual taxpayers who work as Google AdSense ad publishers?

2 Method

This research uses an empirical juridical approach. The method of analyzing the results of this study uses descriptive analytical methods. Scientific activities include verification, comparison with various sources and research informants related to the research topic.

3 Results and Discussion

3.1 Characteristics of Google AdSense Ad Publishers

3.1.1 Potential of the Internet as a Source of Income

The development of technology, especially information technology which is so rapid causing globalization. Understanding globalization according to Manfred B. Steger is:

“Globalization is essentially a process of social transformation that will bring the different and scattered conditions of humanity in many regions of the world to a single condition that knows no boundaries.”[9]

The emergence of computer technology as a data processing tool which is then followed by the emergence of internet technology that is present as a means to facilitate the work of humans to communicate. The internet can be interpreted as a broad and worldwide computer network that connects computer users from one country to another in the world where there are various information resources ranging from static to dynamic and interactive[10], [11]. The internet was originally used for military purposes, in 1969 through the Advanced Research Projects Agency (ARPA). ARPA is the United States defense agency responsible for developing technology for military purposes has developed a computer network system that is spread by connecting computers in vital areas for military communication purposes[12].

Over time and the development of science and technology, the existence of the internet is not only used in the military field, but also used for other fields. One of which is in the field of commerce (e-commerce).[13] According to Nurfansa, e-commerce is an abbreviation of
electronic commerce which can be defined as a mechanism of buying and selling transactions using internet facilities as a communication medium [14].

The Directorate General of Taxes has a simpler classification of e-commerce activities. According to the Directorate General of Taxes in SE-62/PJ/2013, it divides all e-commerce transactions into four models. This classification is made to facilitate the perpetrators of e-commerce. The following is a further explanation of the classification [14]:

<table>
<thead>
<tr>
<th>Ecommerce model</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online Marketplace</td>
<td>Provides a place of business activities in the form of an Internet Shop at an Internet Mall as an online Marketplace Merchant selling goods or services. Related parties are the organizer, merchant and buyer. Example: tokopedia.com, rakuten.com, bukalapak.com, duniavirtual.com</td>
</tr>
<tr>
<td>Classified Ads</td>
<td>Provides a place and/or time to display goods and/or service content for Advertisers to advertise their products or services through a site provided by Classified Ads Providers. Related parties are organizers, advertisers and ad users. Example: Olx.com, kaskus.com, ebay.com</td>
</tr>
<tr>
<td>Daily Deals</td>
<td>Provides a place of business activities in the form of a Daily Deals website as a Daily Deals Merchant site selling goods or services to buyers using vouchers as a means of payment. Related parties are the organizer, merchant and buyer. Example: dealgoing.com</td>
</tr>
<tr>
<td>Online Retail</td>
<td>The activity of selling goods and or services carried out by Online Retail organizers to buyers on the Online Retail site. The parties involved are the organizers who also act as merchants and the other parties are buyers. Example: bhinneka.com, gramedia.com</td>
</tr>
</tbody>
</table>

E-commerce in various forms, has promising business opportunities in Indonesia. Indonesia as a developing country with a population of 264.16 million is ranked 6th in the world as the country with the most internet users in the world after Japan and Brazil[15]. Internet users in Indonesia have experienced rapid growth in the last 5 years [8]. There were around 82 million users in 2013, and the number was doubled in 2017 with 143 million users. Statistical information about internet users in Indonesia which is ranked 6th in the world shows that the internet has the potential to be used as a source of income.

3.1.2 Google AdSense as a way to get income through the internet

Google AdSense is one of the services made by Google to website owners/bloggers to be able to make money by displaying AdSense ads on Blogger’s sites. Blogger is a designation for content creators in the form of writing, images, or videos which are then displayed on his website, the content will later be displayed on the website so that it can be consumed and useful for citizens, for example: websites that contain content about cooking guides, designs home, movie streaming, song downloads and so on [16]. Bloggers who display AdSense ads are called Google AdSense ad publishers. Google AdSense ad publishers will get a commission based on clicks made by site visitors on AdSense ads that appear on the site of the publisher’s ads without any sales having to occur on these ads. this remuneration system is known as a pay per click (PPC) or pay per click system. PPC (pay per click) is a type of online advertising program that provides commissions based on the number of clicks that get on the
ads displayed on the site without any sales having to occur on these ads, and what is needed to get commissions is only through ad clicks [17].

Google chooses a Blogger which has a website with quality content in it to be a Google AdSense ad publisher. The good quality of content will make visitors satisfied to consume the content and the popularity of the website will rise[18].

(a) How Google AdSense works

Google AdWords is Google’s advertising installation service intended for advertisers who want to advertise their products on Google by displaying advertisements from advertisers on websites owned by Google AdSense ad publishers or in Google search results. Any advertisement will reach the desired website visitors/citizens, and citizens will know what products and services are displayed on the ad. Instead, advertisers must pay promotional costs to Google[17].

There is a kind of cooperation between Google AdWords and Google AdSense. Google AdWords acts to serve advertisers who want to advertise their products on Google, and Google AdSense has a role to serve website owners who want to earn money by displaying ads that come from Google AdWords. In other words, Google acts as an agent that connects advertisers who want to advertise their products through website media, and website owners who want to earn money from displaying advertisements.

Advertisers who want to advertise their products on Google pay promotional costs and send advertising material through Google AdWords services. Google AdSense is in charge of displaying ads from Google AdWords through Google AdSense ad publishers’ websites. In other words, AdSense ads that appear on Google AdSense ad publisher websites come from Google AdWords. Google AdSense ad publishers are paid by Google in the form of commissions derived from promotional costs paid by advertisers through Google AdWords, the amount of commission earned depends on the number of visitors click on AdSense ads on the website of the ad publisher [18].

Advertisers will benefit because their products can be seen and known by audiences, especially internet users because they appear on the website of Google AdSense ad publishers so that the product has the potential to sell better in the market. Ad agencies (in this case Google) get benefits from advertisers every time they want ads to be displayed on the internet. At the same time, Google AdSense ad publishers also get commission from Google AdSense for displaying the ads which potentially are clicked by visitors[17].
3.1.3 Criteria for Establishing Subjects and Income Tax Objects for Google AdSense Ad Publishers

Tax is a compulsory levy paid by the people to the state and used for public purposes\[19\]. The state makes tax as the main source of state finance to carry out infrastructure development and finance the running of the government\[20\].

One type of tax that plays an important role in increasing state revenue is Income Tax (PPh), which is regulated in Law Number 36 of 2008\[21\]. An income tax is a tax that is imposed on individuals and individuals and entities relating to income received or obtained for one year tax\[20\].

Generally in Article 2 paragraph (1) of the Income Tax Law, the understanding of the subject of taxation is who is subject to income tax. The tax subjects in the article include individuals, inheritance which has not been divided as one unit replacing the entitled, the body, and a permanent establishment (BUT). Article 2 paragraph (2) of the Income Tax Law still distinguishes the four income tax subjects into two types, namely domestic tax subject and foreign tax subject\[19\].

Domestic personal tax subject becomes a Taxpayer if he has received or received income that exceeds the Taxable Income. The subject of domestic corporate tax has been the taxpayer since its establishment, or domiciled in Indonesia. While foreign tax subjects, both individuals and entities, can become taxpayers if they receive and/or obtain income from Indonesia or receive and/or obtain income from Indonesia through permanent establishment in Indonesia\[22\].

Article 4 paragraph (1) of Law Number 36 of 2008 explicitly states that income is any additional income obtained by the taxpayer both from domestic and abroad, which can be used to increase the wealth of the taxpayer concerned, by name and in any form.
(a) Various income taxes in the Income Tax Law

a. Article 21 Income Tax

PPh 21 is a withholding tax that is imposed on income received by a Domestic Personal Taxpayer (WPOP) for work, services, or activities that it does. Broadly speaking, income withheld by Article 21 Income Tax is divided into two categories, namely the Income Tax 21 Object (which is further divided into “subject to final income tax” and “not subject to final income tax”) and is not subject to Income Tax 21. Detailed by the provisions of the Minister of Finance Number 252/PMK.011/2012 and in Article 5 of the Director General of Taxes Regulation No. Per-16/PJ/2016 are as follows [23]:

<table>
<thead>
<tr>
<th>Income Tax 21</th>
<th>Form/Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income received or obtained by permanent employees.</td>
<td>Regular or irregular income</td>
</tr>
<tr>
<td>Income received or obtained regularly by pension recipients.</td>
<td>Pension or similar income.</td>
</tr>
<tr>
<td>Income related to termination of employment and income related to pensions received simultaneously.</td>
<td>Severance pay, Pension benefits, Old-age benefits or old age benefits, and Other payments of the same type.</td>
</tr>
<tr>
<td>Earnings of temporary employees or casual workers.</td>
<td>Daily wages, Weekly wages, Unit Wages, Wholesale wages, or Wages paid monthly.</td>
</tr>
<tr>
<td>Rewards for non-employees.</td>
<td>Honorarium, Commission, Fee, and Rewards in connection with work, services and activities carried out.</td>
</tr>
<tr>
<td>Rewards for an event</td>
<td>Pocket money, Money representation, Money meeting, Honorarium, Gifts or awards with names and in any form, and Rewards of any name.</td>
</tr>
<tr>
<td>Acceptance in kind and/or other enjoyment by name and in any form given by: 1. not a taxpayer; 2. Taxpayers subject to final income tax; or 3. Taxpayers who are subject to income tax are based on deemed profit norms.</td>
<td>Income in the form of revenue in kind and/or other enjoyment is based on the market price of the goods given or the fair value of the benefits provided</td>
</tr>
</tbody>
</table>

b. Income Tax Article 22

Income tax article 22 according to Law of income tax number 36 of 2008 is:

“The form of withholding or collecting tax carried out by one party to taxpayers and related to the activity of trading goods. This income tax is levied on certain business
entities, both government and private, which carry out export, import and re-import trading activities.”

In general, Article 22 Income Tax is imposed on export, import and re-import trade which is considered “profitable”. Profitable here means that both the seller and the buyer can both take advantage of the trade transaction [23].

c. **Income Tax Article 23**
   Article 23 Income tax (PPh) is a tax withheld for income derived from capital, the delivery of services, gifts or awards, and income related to service fees other than those with income tax Article 21[23].

   Article 23 Income Tax is one type of tax collected with a system of withholding tax (withholding or collecting). This means that the Article 23 tax collector or tax collector is a party who has been appointed by the Income Tax Law and also the implementing regulations for carrying out the deduction. These parties are government bodies, domestic corporate tax subjects, organizing activities, Permanent Establishment (PE) [22].

   As the party receiving income that has been withheld Article 23 Income Tax, then the party receiving income is entitled to obtain proof of withholding from the income tax article 23. The party receiving income withheld Article 23 includes taxpayers (WP) living in the country, such as personal, entity, and Permanent Establishment (BUT) [22].

d. **Income Tax Article 25**
   Article 25 Income Tax (PPh Article 25) is a tax paid in installments. The aim is to ease the burden of taxpayers, bearing in mind that the tax owed must be paid within one year. This payment must be made alone and cannot be represented.

d. **Income Tax Article 26**
   Article 26 Income Tax is income tax that is imposed on income received by foreign taxpayers from Indonesia other than permanent establishment (BUT) in Indonesia.

f. **Income Tax Article 4 paragraph (2)**
   Income Tax Article 4 Paragraph 2/Final Income Tax is income tax on certain types of income which is final and cannot be credited with the income tax payable. The final term here means that the tax deduction is only once in a tax period with consideration of convenience, simplicity, certainty, timely tax imposition and other considerations [24].

Google AdSense ad publishers who are legal subjects as citizens, have a state obligation to contribute to the country’s ongoing implementation and development of the country by paying income tax. Google AdSense ad publishers must carry out their obligations as citizens by paying income tax (PPh) on each income earned from their work as a Google AdSense ad publisher. Google AdSense ad publishers will be subject to income tax if they meet the criteria as subject and object of income tax.

The author has taken the example of Google AdSense ad publishers as follows:

1. Eka Lesmana, an Indonesian Google AdSense ad publisher who lives in Karanganyar, has been a Google AdSense ad publisher since 2013. Eka Lesmana is currently married and has one child but does not yet have a TIN. Based on interviews by the author, Eka Lesmana earned income from Google AdSense as much as Rp.
155 million in 2018. From his income as a Google AdSense ad publisher, Eka Lesmana was able to buy a car, a plot of land and renovate his house [25].

2. Timon Adiyoso, an Indonesian Google AdSense ad publisher who lives in Samarinda City, East Kalimantan, works as HRD and Supervisor at PT Surya Teknik Anugrah Site. In addition to his job, he is also Google AdSense ad publisher since 2013. Timon Adiyoso currently married and has two children and has a TIN. Based on interviews by the author, Timon Adiyoso has a website that has a Google AdSense ad called https://www.mastimon.com/. The website contains articles that discuss Automotive, Health, Science, and so on. Timon Adiyoso promotes his website through Facebook, from the promotion https://www.mastimon.com/ can get around 4,569 visitors every day, 137,070 visitors every month, and 1,667,685 visitors every year. Website visitors https://www.mastimon.com/ come from Google search engines and social media such as Facebook and YouTube. From the number of visitors, the Google AdSense revenue that Timon Adiyoso obtained was as much as Rp. 149 million in 2018. From his income as a Google AdSense ad publisher, Timon Adiyoso was able to buy a car and renovate his house [26].

3. Soim Ramadhan, a Google AdSense ad publisher and online trader, Indonesian citizen who lives in Kartasura. He has been a Google AdSense ad publisher since 2017 and is now married and has two children. Based on interviews by the author, Soim Ramadhan earned 110 million from Google AdSense in 2018 and already has a TIN. From his income as a Google AdSense ad publisher, Soim Ramadhan was able to buy a car, buy a house in Kartasura [27].

(b) Google AdSense ad publishers as Income Tax Subjects

Understanding Tax Subjects in Article 2 paragraph (1) of Law Number 36 of 2008 concerning Income Tax includes individuals, inheritance, entities and permanent establishments. Individuals as Tax Subjects may reside or lives in Indonesia or outside Indonesia. From the two data obtained by the author, Eka Lesmana and Soim Ramadhan are subject to personal taxation, this can be seen from their residency.

Understanding Tax Subjects in Article 2 paragraph (1) of Law Number 36 of 2008 concerning Income Tax includes individuals, inheritance, entities and permanent establishments. Individuals as Tax Subjects may reside or be in Indonesia or outside Indonesia. Based on the tax subject provisions, Eka Lesmana, Soim Ramadhan, and Timon Adiyoso are included in the domestic income tax subject.

Eka Lesmana, Timon Adiyoso, and Soim Ramadhan can be categorized as free workers, since they work as blogger and work on their own behalf. Eka Lesmana, Timon Adiyoso, and Soim Ramadhan create article content without anyone’s command and the three of them are responsible and hold full rights to all websites that they have and their contents.

In terms of its role as a Google AdSense ad publisher. The Google teamed up with Eka Lesmana, Timon Adiyoso, and Soim Ramadhan to display AdSense ads on the websites of the three people. Google wants to collaborate with Eka Lesmana, Timon Adiyoso, and Soim Ramadhan because of the competence of the three of them as professional bloggers who are able to lead many visitors to their websites, with the number of visitors generated, the potential for visitors to click AdSense ads is greater so that AdSense income Eka Lesmana, Timon Adiyoso, and Soim Ramadhan also gained more and more.

In addition, Google as an advertising agency, and advertisers who advertise their products on Google also benefit, advertisers benefit because their products can be known and known by people because they appear on the website of Eka Lesmana, Timon Adiyoso, and Soim
Ramadhan so that advertisers’ products have the potential to sell better in the market. Google as an ad agency also benefits from being paid by advertisers every time an advertisement wants to be displayed on the internet, and Eka Lesmana, Timon Adiyoso, and Soim Ramadhan as Google AdSense ad publishers also benefit from getting a commission from Google AdSense for clicks on AdSense ads that appear on websites owned by Eka Lesmana, Timon Adiyoso, and Soim Ramadhan.

From this description, it can be concluded that Google acts as an agent that uses the services of Eka Lesmana, Timon Adiyoso, and Soim Ramadhan as professional bloggers to display AdSense ads on their sites in the hope of being clicked by many website visitors. So it can be said that Eka Lesmana et al’s activities as a publisher of Google AdSense ads are activities related to free work.

It should be underlined that Eka Lesmana, Timon Adiyoso, and Soim Ramadhan were not paid by Google for creating content for Google, but they were paid for displaying AdSense ads and presenting website visitors who wanted to click AdSense ads. installed on the websites of theirs. they are paid with a pay per click system, meaning that the amount of income earned depends on the number of visitors who click on AdSense ads on the website of the three of them.

In addition, the activities of Eka Lesmana, Timon Adiyoso and Soim Ramadhan as Google AdSense Publishers are included in the type of e-commerce classified ads business, because they provide a place on his site to display Google-provided ads. text, graphics, explanatory videos, information, etc.) intended for users of the advertisement site visitors belonging to Eka Lesmana, Timon Adiyoso and Soim Ramadhan. Article 9 paragraph (1) Regulation of the Minister of Finance of the Republic of Indonesia number 210/PMK.010/2018 concerning the Tax Treatment of Trade Transactions through the Electronic System (E-Commerce) states that:

“The imposition of Value Added Tax, Sales Tax on Luxury Goods, and Income Tax on trade in goods and services through electronic systems (e-commerce) in the form of online retail, classified ads, daily deals, or social media, is carried out in accordance with statutory provisions in the field of taxation.” [28]

So that Eka Lesmana, Timon Adiyoso and Soim Ramadhan as organizers of classified ads with status as PPh 23 tax subject will still be subject to PPh 23. However, specifically for Timon Adiyoso, aside from being a free worker subject to PPh 23, he can also be categorized as an employee. This is because Timon Adiyoso works as HRD and Supervisor at PT Surya Teknik Anugrah Site. So besides being subject to Article 23 Income Tax, Timon Adiyoso can also be subject to Article 21 Income Tax.

(c) Tax obligations of Google AdSense ad publisher taxation

Google AdSense ad publishers are subject to income tax, which can be a taxpayer if they meet subjective and objective requirements according to the provisions of Law Number 36 of 2008 regarding Income Tax. Transferring the position of the tax subject to a taxpayer, tax administration obligations will arise according to the provisions of Law Number 36 of 2008 concerning Income Taxes.. According to that law, tax administration obligations can be categorized based on the classification of work or source of income obtained by the taxpayer concerned [29].

From the subject that the writer examined, the work of Eka Lesmana, Soim Ramadhan, and Timon Adiyoso can be categorized into two types of work. Eka Lesmana and Soim
Ramadhan as free workers, and Timon Adiyoso as employees as well as free workers. Then each uses the principle of meeting different tax obligations. Eka Lesmana, Soim Ramadhan and Timon Adiyoso as free workers use the principle of holding system. Especially for Timon Adiyoso who also works as an employee using the principle of holding system. Thus, the tax administration obligations as free workers of the three taxpayers can be illustrated as follows:

![Figure 2. Tax administration obligations as free workers of the three taxpayers.](image)

3.2 Tax Administration Obligations of Google AdSense Ad Publishers as Article 23 Taxpayer Taxpayers

3.2.1 Obligation to Register Yourself

Based on Article 2 paragraph (1) of Law Number 6 of 1983 (UU KUP) as amended several times, the latest by Law Number 16 of 2009 (UU KUP), taxpayers who have met the subjective and objective requirements in accordance with regulatory provisions Tax legislation must carry out achievements in the form of tax obligations, that is, register at the office of the Directorate General of Tax whose working area includes the residence or domicile of the Taxpayer. Taxpayers register with the Tax Service Office to obtain a Taxpayer Identification Number (NPWP) [30].

Based on interviews conducted by the author, Soim Ramadhan claimed to have NPWP. Soim Ramadhan knows that he has to pay income tax on the income he earns as a Google AdSense ad publisher. Soim Ramadhan also believes that the AdSense income he earns will not be known and collected by tax officials as long as he does not share his AdSense income with others or show off on social media, meanwhile Soim Ramadan does not agree if jobs such as Google AdSense ad publishers, or the like are subject to income tax because it is very small when subjected to income tax, and will only reduce the amount of income earned[27].

While from interviews with Timon Adiyoso, the fact is that Timon Adiyoso already has a TIN. Timon Adiyoso claimed to have a tax ID for tax administration purposes from his main job as HRD and Supervisor at PT Surya Teknik Anugrah Site. Timon Adiyoso also knows that he must pay income tax on the income he earns as a Google AdSense ad publisher. He also agreed if Google AdSense ad publishers were subject to income tax. However, Timon Adiyoso chose not to answer when the author asked whether he had made payment and SPT reporting related to earnings from Google AdSense [25].

In contrast to Eka Lesmana, based on interviews conducted by the author, Eka Lesmana claimed not to have a NPWP. In addition, he also considers the matter of AdSense income tax
already taken care of by Google. Google AdSense ad publishers such as Eka Lesmana only receive only net income. Eka Lesmana also knew that she had to pay income tax on the income she earned as a Google AdSense ad publisher, but she intended not to pay taxes because she thought that tax money would later be corrupted. Eka Lesmana chose to donate part of her AdSense income to orphans and people in need [26].

Based on the description above, it can be concluded that Eka Lesmana, Timon Adiyoso, and Soim Ramadhan are less aware and less concerned about the importance of the role of taxes. Besides that, there is a tendency not to be willing to pay taxes when obtaining income often leads to tax avoidance because in general a person tends to dislike and be reluctant to pay taxes, because it will reduce his income, and consider the results of taxation for the benefit of the authorities to see from the nature of the tax that does not receive compensation in return live [31].

Provisions in Article 39 paragraph (1) of Law Number 16 of 2009 (UU KUP) which states that a taxpayer can be subject to a maximum of 4 (four) times the amount of tax payable which is not or underpaid, if intentionally not registering and therefore it can cause harm to the country.

3.2.2 Obligation to Keep Bookkeeping/Recording

The second obligation of taxpayers is to keep records or records. Definition of accounting according to the KUP Law Article 1 paragraph (29) is a process of recording carried out regularly to collect financial data and information which includes assets, liabilities, capital, income and costs, as well as the total price of acquisition and delivery of goods or services, which closed by preparing a financial statement in the form of a balance sheet, and an income statement for the tax year [24].

In general, Article 28 paragraph (2) of Law Number 16 of 2009 (KUP Law) states that taxpayers who are obliged to hold records are individual taxpayers who carry out business activities or free work in accordance with the provisions of taxation laws allowed to calculate net income by using the Net Income and Taxpayers Norm Calculation of an individual who does not do business or free work. Recording is different from bookkeeping, KUP Law Article 28 paragraph (9) explains the recording consists of data collected regularly about gross circulation or revenue and/or gross income as a basis for calculating the amount of tax owed.

3.2.3 The obligation to calculate and pay taxes owed in a timely manner

The next taxpayer’s obligation is to calculate and pay tax owed in a timely manner. This obligation has to do with the tax collection system, one of the tax collection systems implemented in Indonesia is the holding system applied to Income Tax Article 4 paragraph (2), Income Tax Article 21, Income Tax Article 22, Income Tax Article 23, Income Tax Article 24, and Income Tax Article 26. As a taxpayer of Income Tax Article 23, income tax collection for Eka Lesmana, Soim Ramadhan and Timon Adiyoso as free workers is carried out with a holding system, so Eka Lesmana, Soim Ramadhan and Timon Adiyoso are not required to play an active role in calculating taxes and depositing tax on income earned. The active role was taken over by tax cutters and employers who paid salaries to Eka Lesmana, Soim Ramadhan and Timon Adiyoso namely Google Asia Pacific Pte Ltd.

Google Asia Pacific Pte Ltd as the employer and who pays salary to Eka Lesmana, Soim Ramadhan and Timon Adiyoso can be categorized as a permanent establishment because it meets the criteria in Article 4 of the Minister of Finance Regulation Noumber 35/PMK.03/2019 concerning Determination of Business Forms Permanent [32]. In general,
the Article stipulates that a permanent establishment is a form of business used by foreign
individuals or foreign entities that have a place of business to conduct business in Indonesia.
In fact, Google Asia Pacific Pte Ltd is a foreign entity domiciled in Singapore that has
been carrying out business activities in Indonesia since 2012 through PT Google Indonesia
having its address at Sentral Senayan II, Jalan Asia Afrika, Jakarta. Therefore, it clearly shows
that Google Asia Pacific Pte Ltd has business activities in Indonesia and can be categorized as
a permanent establishment and has an obligation to withhold taxes on the income of Eka
Lesmana, Soim Ramadhan and Timon Adiyoso as Google AdSense ad publishers.
Eka Lesmana, Soim Ramadhan and Timon Adiyoso as recipients of net income after the
deduction can collect evidence of deductions provided by the cutter namely Google Asia
Pacific Pte Ltd. The cut evidence function can be used by Eka Lesmana and Soim Ramadhan
as Article 23 PPh taxpayers as proof that the person concerned has carried out tax obligations
with deduction by the cutter and when reporting the Annual Tax Return.

3.2.4 Obligation to Fill in and Submit SPT
The fourth obligation for taxpayers is to fill out and submit a Tax Return (SPT), the
obligation to fill out and submit a Tax Return (SPT) is regulated in Article 4 paragraph (1) of
the KUP Law.
Based on Article 3 paragraph (1) of the KUP Law, Eka Lesmana, Soim Ramadhan and
Timon Adiyoso as taxpayers are required to be active in filling SPT blanks correctly, clearly,
and completely. Complete, which means all information and data requested has been filled as
requested in the column provided and attaching required data and information.
If the taxpayer intentionally does not fill the tax return whose contents are incorrect or
incomplete so that it can cause state losses, the taxpayer concerned will be subject to
imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of
at least 2 (two) times the amount of tax payable that is not or not fully paid and at most 4
(four) times the amount of tax payable that is not or not fully paid.
Article 38 of the KUP Law also regulates sanctions for taxpayers for their negligence not
submitting tax returns or submitted tax returns, but the contents are incorrect or incomplete, or
attach information that is not true, the taxpayers must be fined at least 1 (one) times the
amount of tax payable that is not or not fully paid and at most 2 (two) times the amount of tax payable
that is not or less paid, or being imprisoned for a minimum of 3 (three) months or a
maximum of 1 (one) year.
In accordance with Article 10 paragraph (1) letter g PMK SPT. Eka Lesmana, Soim
Ramadhan and Timon Adiyoso have a deadline for reporting tax returns no later than 20
(twenty) days after the tax period ends. The Income Tax Return period Article 25 which is not
submitted within the time limit, then Article 7 paragraph (1) KUP provides administrative
sanctions to the taxpayer concerned in the form of a fine of Rp 1,000,000.00 (One Million
Rupiah).

3.2.5 Tax Administration Obligations of Taxpayer Article 21
As working as an HRD and Supervisor at PT Surya Teknik Anugrah, Timon Adiyoso has
been categorized as an employee so that his income as an employee may be subject to Article
21 Income Tax. Timon Adiyoso has worked as HRD and Supervisor at PT Surya Teknik
Anugrah Site since 2013 and received a salary of Rp.121 million per year [26]. Judging from
the amount of one year income obtained by Timon Adiyoso has exceeded PTKP so according
to Law Number 36 of 2008 concerning Income Taxes, the income earned by Timon Adiyoso
as HRD at PT Surya Teknik Anugrah Site can be subject to Income Tax article 21.
According to Law number 16 of 2009 (UU KUP) Tax administration obligations that Timon Adiyoso has to do first are to register themselves to obtain a TIN. NPWP is useful as an identification of taxpayers in carrying out taxation rights and obligations as well as to maintain order in tax payments and in the supervision of tax administration [33]. From the results of the author’s interview, Timon Adiyoso explained that he already has a TIN [26].

The second Timon Adiyoso tax administration obligation is to report the tax return. The obligation to fill out and submit a Tax Return (SPT) is regulated in Article 4 paragraph (1) of the KUP Law. The SPT serves as a means to account for the fulfillment of tax obligations within a tax period or tax year. From the results of the author’s interview, Timon Adiyoso explained that he had reported the SPT [34].

Both obligations must be carried out by Timon Adiyoso as the PPh 21 taxpayer, while the obligation to collect, calculate and deposit PPh 21 has been carried out by the revenue provider, PT Surya Teknik Anugrah Site. PT Surya Teknik Anugrah Site as the income giver must also issue proof of withholding Article 21 Income Tax to Timon Adiyoso as the party whose income is collected with Article 21 Income. The withholding evidence will later be attached to Timon Adiyoso at the time of Annual SPT reporting as proof that the person concerned has carried out tax obligations with cut by the cutter [34].

3.3 Earnings as a publisher of Google AdSense ads as an income tax object

Law Number 36 of 2008 concerning Income Taxes adheres to the principle of taxation of income in the broadest sense, namely that taxes are imposed on any additional economic capability that is received or obtained by the Taxpayer from whatever origin it can be used for consumption or to add to the wealth of the Taxpayer [35]. Earnings Eka Lesmana and Soim Ramadhan as Google AdSense ad publishers are subjected to income tax objects because Eka Lesmana and Soim Ramadhan use their income as Google AdSense ad publishers for consumption and adding wealth.

As explained earlier, the income of Eka Lesmana, Timon Adiyoso, and Soim Ramadhan from displaying AdSense ads on the website of the three of them was identified as a reward in connection with the provision of place and/or time in mass media, outdoor media or other media for the delivery of information, and/or advertising services as stipulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number 141/PMK.03/2015 concerning Other Types of Services as referred to in Article 23 Paragraph (1) Letter C Number 2 of Law Number 36 of 2008 concerning Income Tax [36]. So based on these conditions, Eka Lesmana, Timon Adiyoso and Soim Ramadh an’s income as Google AdSense ad publishers are subject to an income tax of 2% of the gross amount by the slicer, Google Asia Pacific as the income provider.

According to article 23 paragraph (1) of Law Number 36 of 2008 concerning Income Taxes, Google Asia Pacific Pte Ltd as a party with status as a permanent income provider is required to deduct taxes on AdSense income obtained by Eka Lesmana, Timon Adiyoso, and Soim Ramadhan. However, the results of interviews with the three speakers obtained the fact that the AdSense earnings that Eka Lesmana, Timon Adiyoso, and Soim Ramadhan as Google AdSense ad publishers have not been deducted by Google Asia Pacific Pte Ltd’s income tax. This is known from the absence of proof of deductions or proof of tax payments attached to the Google AdSense payment dashboard or on the invoice when withdrawing the income in Western Union or at the Bank, one feature in an AdSense account that displays payments received by Google AdSense Ad Publishers in one month.
Based on the information obtained by the author through an interview with Jeanny Haliman as a representative of the Google Asia Pacific Pte Ltd in the Google For Publishers Semarang event explained that Google does not cut income tax on its ad publishers. Jeanny added, Google Asia Pacific Pte Ltd as a company that houses Google AdSense ad publishers in the Asian region has difficulty implementing tax collection on the AdSense revenue earned by advertisers in the Asian region because the tax regulations of each country in Asia are different and often keep changing. Thus, it would be wise to hand over the income tax affairs of Google AdSense ad publishers to each ad publisher in accordance with the tax regulations of the place where the advertisers in question live [37].

According to the provisions in article 13 paragraph (3) letter b of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP), if the results of the inspection by the DGT to Google Asia Pacific Pte Ltd are found to have not carried out tax collection, deposit and reporting on the income of Google AdSense ad publishers resulting in the tax payable not being paid, the DGT will issue an Underpayment Tax Assessment Letter and impose administrative sanctions in the form of a proportional increase in the amount of tax that must be added to the underpaid tax amount of 100% [38].

4 Conclusion

The Google AdSense publisher, including the subject of income tax, is subjected to income tax because the Google AdSense publisher is a domestic personal tax subject who earns income from Google Asia Pacific Pte. Ltd.

The Google AdSense publisher is also categorized as rewards relating to services used as additional economic capabilities or increase wealth and be consumed by Google AdSense ad publishers (publishers).

The income of the Google AdSense advertiser (publisher) is identified as a reward in connection with services providing a place and/or time in the mass media, outdoor media or other media for the delivery of information, and/or advertising services as governed by Regulation of the Minister of Finance of the Republic of Indonesia Number 141/PMK.03/2015 concerning Other Types of Services as referred to in Article 23 Paragraph (1) Letter C Number 2 of Law Number 36 of 2008 concerning Income Taxes so that Google AdSense advertiser (publisher) income is subject to Article 23 Income Tax.

Tax obligations of individual taxpayers who work as Google AdSense publishers refer to the provisions of Law Number 16 of 2009 (UU KUP), regulating the administrative obligations of Google AdSense publisher advertisers, specifically written on Article 2 paragraph (1) Law Number 16 of 2009 (KUP Law) which states that Google AdSense advertisers have the obligation to register themselves to obtain a Taxpayer Identification Number (NPWP), the next obligation is to hold records (Article 28 paragraph (1) and (2) Law Number 16 of 2009 (KUP Law), hereinafter Article 4 paragraph (1) of Law Number 16 of 2009 (KUP Law) also mentions the obligation of a Google AdSense ad publisher to fill out and submit Annual Tax Returns, and for the cutter, Google Asia Pacific Pte. Ltd is required to deduct, calculate the filling and submit a periodic tax return for withholding tax.

However, the fact is that Google Asia Pacific Pte. Ltd. as a cutting party with the status of BUT according to the Minister of Finance Regulation No. 35/PMK.03/2019 concerning Determination of Permanent Establishment does not cut the income of Google AdSense advertisers because it has difficulty adjusting tax regulations in each country and hand over
Google AdSense income tax affairs to each ad publisher in accordance with the tax regulations of the place where the advertisers in question live. So that the Google AdSense advertiser (publisher) does the calculation, deposit/payment of income tax Article 23, and reporting tax returns independently.

The suggestions that can be submitted in this article are to remind Google Asia Pacific Ltd as a taxpayer of Permanent Establishment (BUT) to cut income and publish proof of deduction to Google AdSense advertisers in Indonesia so that publishers of Google advertisers AdSense in Indonesia makes it easy to carry out its tax obligations.

The Directorate General of Taxes through the local tax office can disseminate to Google AdSense advertisers about tax obligations and tax law enforcement to Google AdSense advertisers who do not implement and comply with their tax obligations. They also needs to promote strict sanctions such as administrative sanctions and criminal sanctions that have been regulated in Law Number 36 of 2008 (PPh Law) and Law Number 16 of 2009 (KUP Law) to Google AdSense ad publishers who do not implement and comply with tax obligations.
References


Komputindo, 2018.


[25] Interview with Eka Lesmana, Google AdSense Indonesia publisher who lives in Karanganyar on May 4, 2019, at 8:00 AM.

[26] Interview with Timon Adiyoso, a Google AdSense Indonesia publisher living in Samarinda on May 3, 2019, at 17:45 PM.

[27] Interview with Soim Ramadhan, Google AdSense Indonesia publisher who lives in Kartasura on 5 March 2019, at 13:00 PM.

[28] Regulation of the Minister of Finance of the Republic of Indonesia number 210/PMK.010/2018 concerning the Tax Treatment of Trade Transactions through the Electronic System (E-Commerce).


[32] Regulation of the Minister of Finance Number 35/PMK.03/2019 concerning Determination of Permanent Establishment.

[33] Interview with Surakarta Pratama Tax Office Public Relations on June 10, 2019, at 09:00.

[34] “Interview with Surakarta Pratama Tax Office Public Relations on June 10, 2019, at 09:00.”


[36] Regulation of the Minister of Finance of the Republic of Indonesia Number 141/PMK.03/2015 concerning Other Types of Services as referred to in Article 23 Paragraph (1) Letter C Number 2 of Law Number 36 of 2008 concerning Income Taxes.
[37] Interview with Jeanny Haliman (South East Asia Web Lead of Google’s Online Partnership Group) on July 17, 2019, at 09:00 AM.

Legal Protection of Special Facilities for Woman Labors in Socio-Legal Perspectives

M. Sayyid Abyan¹*, Dyah Wijaningsih², Budiyanto³
{sayyid1297@gmail.com¹} {dyah_wijaningsih@live.undip.ac.id²} {budiyanto@live.undip.ac.id³}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹

Abstract. Nowadays, the phenomenon of women participating in improving family welfare by working is considered a common thing. However, women’s labor still tend to be in the most difficult position due to Patriarchal culture that still exists in Indonesia. The Law of The Republic of Indonesia Number 13 of 2003 on Employment already regulates the fulfillment of women’s labor rights. One of the points is the special facility rights along with the sanctions. The number of worker’s organizations that fully accommodate the special rights are 152 out of 3041. This research used the Socio-Legal Research method where it combines two types of data, primary data and the secondary data. This research focused to look the effectivity of the law enforcement in the community with descriptive analytics research specification. In this research, it was found that the company is not optimally provides the special facility rights of the woman labor at Alfamart Kampung Rambutan. There are many things that are not accordance with the law that should have been provided to the woman labor in terms of surveillance, fulfillment of the rights, and legal protection.

Keywords: Implementation, Special Facility Rights, Woman Labor.

1 Introduction

Nowadays, the phenomenon of women participating in improving family welfare by working is considered normal, [1] However, women’s labors still tend to be in the most difficult position due to Patriarchal culture. [2] Even though various gender equality issues and movements, equal rights and freedom are getting better throughout the world, this does not undermine stereotypical thinking that considers men to be superior to women in many ways. At work, this has an impact on the occurrence of domination and discrimination by male workers which are prioritized in getting jobs and are chosen to occupy strategic positions compared to women. [1] The domination and discrimination make women’s position more difficult because of the increasingly closed possibility of women to work, get a decent life and develop themselves, especially in the career world.

This also has implications for the fulfillment of special rights for female workers even if it has been clearly stipulated in the Law and other regulations. Even with sanctions, there are still many companies that pretend to be unable or unwilling to fulfill these rights. [3] Based on data from the Ministry of Health, there are 3041 companies in Indonesia, of which only 152 companies fully accommodate the full privileged rights of women workers. Even though the number of companies aware of the rights, these facilities continues to increase from previous years. However, this does not mean that 2,889 companies do not fulfill the full rights of
women workers, but the rights are not fully granted by these companies,[4] still accommodating some is considered contrary to Article 76 of Law Number 13 of 2003 concerning manpower which also violates the basic rights contained in the 1945 Constitution of the Republic of Indonesia.

Alfamart which is a well-known minimarket in Indonesia. Alfamart in running shop productivity uses a shift system where there is a day shift and there is a night shift. Because they use night shifts and employ women, Alfamart requires to accommodate the privilege of special facilities for female workers. However, in fact, (Das Sein) many things are not in accordance with what is aspired by the Law (Das Solen) both in terms of supervision, fulfillment and even legal protection related to the rights of special facilities for female workers who make arrangements about it seem not yet optimal implementation.

Based on the description above, the problem formulation that can be compiled consists of:
1. What is the arrangement of special facility rights according to Law number 13 of 2003?
2. How is the implementation of the legal protection arrangements for special facilities for female workers at Alfamart Kampung Rambutan?

2 Method

The approach used is Socio-Legal research which is a combination of dogmatic legal research methods and empirical legal research methods. In the legal research method approach Socio-Legal research, there are 2 (two) aspects of research.[5] First, the legal research aspect is analyzing the problem from the point of view/according to the provisions of the law/legislation seen as (das sollen). In discussing issues in the legal protection of the special facilities rights of women workers, it uses legal materials both primary legal materials such as the 1945 Constitution of the Republic of Indonesia, Law No. 13 of 2003 concerning Manpower, [6] and so on, as well as secondary legal materials obtained from literature studies such as books, journals, and other literature relating to the legal protection of the special facilities for women workers. Furthermore, by using a socio research approach that looks at “the reality that occurs in the community” (das sein), because in research on the legal protection of the special facilities for women laborers social theories and empirical methods that use primary data such as interviews are used. obtained from the field.[7]

The research specifications used in this research are Analytical Descriptive. it is a problem solving process which is investigated through data obtained and arranged systematically to describe the paradox in the evidence found in the field and then analyzed based on the concepts and theories proposed. This process is carried out to strengthen the analysis of the evidence found in the field so that inductive conclusions can be considered valid.[5]

3 Data Collection

The data used in this study consisted of primary data and secondary data. Primary Data is data obtained from the field such as interviews. Secondary data is data obtained through literature study.

Legal materials taken by researchers consisted of primary legal materials:
1. The 1945 Constitution of the Republic of Indonesia
2. Law Number 13 of 2003 concerning Manpower.
3. Law Number 39 of 1999 concerning Human Rights
4. Law Number 36 of 2009 concerning Health

Secondary legal materials consisting of:
1. Book
2. Journal
4. Papers

Tertiary Legal Materials consist of:
1. Large Indonesian Dictionary
2. Popular Scientific Dictionary
3. Legal Dictionary
4. Legal Encyclopedia
5. Internet

4 Results and Discussion

4.1 The form of legal protection for the special rights of women workers in Law number 13 of 2003 concerning manpower

All workers have the right to get the same treatments but every woman has special rights. It is related to human rights that must be recognized and protected by all people as well as the law. The granting of special rights for women is because women are included in the category of vulnerable groups so that they deserve special treatments in the regulation on guaranteeing the protection of human rights. Generally, the granting of women’s rights is the same as granting other rights as mentioned in the articles of the Law on Human Rights but for the reasons stated above, it is deemed necessary to reaffirm. The principles that underlie the granting of women’s rights include the right to a gender perspective and the principle of anti-discrimination. This means that every woman has the same rights as men in all fields of education, politics, law, citizenship, employment including rights in marriage and their obligations.

When talking about women’s rights in the field of labor, the special rights mentioned above must be given to women workers not only when women work but it also includes spaces before women get a job, when doing work, the phase after work or the phase is not
working again. In the phase before having a job every woman has rights. Among these rights are the right to be given the same opportunities as men to get jobs that are within their means. This right requires companies to accept prospective workers by actually selecting the job applicants fairly without giving more opportunities to one specific gender.

During the work time, a woman worker has rights that must be fulfilled including the right to receive wages in accordance with her work, the right to get safe and healthy workplace conditions, the right to have the opportunity to be able to increase her work higher, and also includes the right to get facilities and training to improve the quality of their work.

After a job or phase where a female worker quits her job and does not work anymore, there are times when women decide to quit and leave their work for certain reasons. When that happens, a woman has the right to receive severance pay fairly in accordance with the performance and quality of the work she has done. The granting of these rights is because both in Indonesia and in other countries, the presence of women workers is felt to always get unfair treatment so that it requires legal protection and affirmation of Human Rights especially Human Rights as a woman. Human rights today are considered a modern political ethic with the core idea that there are moral demands regarding how humans are required to treat humans, so that this is because it is very strong to protect people and groups who are weak against their powerful authority because of their position, age, status and others.

The discussion on the protection of the special facilities for women workers is within the right scope with the aim of protecting the security and safety of women workers. The rights that are required to receive legal protection include:

1. Menstrual Leave Rights. Menstrual leave is regulated in Law No. 13 of 2003 article 81. Female workers who are menstruating are permitted not to work on the first and second day. This leave is granted only if it is attached with a letter of advice from a doctor.

2. Pregnant Leave Rights. For pregnant women workers, 1.5 months length is a given time to leave before giving birth and 1.5 months after. This is regulated in Law no. 13 of 2003 article 82. For filing this leave, female workers must notify the management of the company at least 1.5 months before the estimated birth. Similarly, after the birth of a child, it should be reported to the company no later than 7 days by attaching proof of birth or birth certificate.

3. The Right to Social Security. Law No. 3 of 1992 concerning Workers' Social Security and PP no. 14 of 1993 concerning the Implementation of the Workers' Social Security Program regulates the obligations of companies that have more than ten workers or pay at least Rp. 1 million to include all of its workforce in the BPJS program.

4. The Right to Breastfeed. In article 83 of Law no. 13 of 2003, it is stated that female workers who are still breastfeeding, are welcome to breastfeed during working hours. Article 10 ILO convention no. 183 of 2000 regulates the time duration and reduction of working hours given to nursing mothers, at least one or more breaks during working hours. In this regard, it is recommended that companies have their own appropriate breastfeeding space.

5. Miscarriage Rights. For women workers who have miscarriages, they also get the same rights as maternity leave for 1.5 months or in accordance with doctor's advice. To prove this, women workers attach a doctor or midwife certificate.

6. Prohibited Rights Affected from layoffs. Minister of Manpower Regulation no. Permen 03/Men/1989 regulates the prohibition of layoffs on female workers by reason of marriage, pregnancy and childbirth. This is based on the protection that these three things are his nature, dignity and dignity as a woman.
7. Rights are given Special Facilities. Not that female workers are privileged. But more to the protection of security and health. Regulation of Law no. 13 of 2003 article 76 states that female workers who work between 23:00 o'clock. 07.00 has the right to get nutritious food and drinks as well as maintained its decency and safety while at work. Regarding security, employers are required to provide pick-up and drop-off for female workers between 11:00 p.m. 05:00.

Of the seven rights above, the sad condition in Indonesia at present is the implementation of legal protection for special facilities for female workers, which based on data from the Ministry of Health noted, in Indonesia there were 3041 companies, but only 152 companies accommodated the full provision of special facilities. Even though the number of companies that are aware of the rights of these facilities continues to increase from previous years, the figure is only 5% of all companies in Indonesia, although that does not mean that 2,889 companies do not fulfill the full rights of women workers but the rights contained Law No. 13/2003 is only partially accommodated or replaced by compensation, even though this is not a justification, it still violates the provisions in Law No. 13/2003 concerning Labor and violates the provisions of the 1945 Constitution of the Republic of Indonesia.

Legal protection for the rights to special facilities is regulated in Article 76 paragraph (4) which states that female workers who work between 23:00 to 07.00 are entitled to nutritious food and beverage facilities and safeguarding decency and safety while at work. Related to security, the employers are also obliged to provide shuttle transportation for female workers between 23:00 to 5:00.

The provision of special facilities to female workers does not mean that women workers are more “special” than male workers but rather provides more protection to create security, comfort, and health for women workers in the workplace. It is clear that women is naturally different then men.

State Gazette of the Republic of Indonesia Year 2003 Number 39 Supplement to the State Gazette of the Republic of Indonesia Year 2003 Number 4279, hereinafter briefly Law Number 13 of 2003 concerning manpower provides women workers with the right to obtain special facilities listed in Article 76 Paragraph (1), (2), (3 ), and (4) Law Number 13 of 2003 with the aim of providing such special facilities can protect the physical, psychological, and reproductive of female workers, the rights of women workers, namely:[8]

1. Female workers/laborers under the age of 18 (eighteen) years are prohibited from being employed between 23:00 and 07:00.
2. Employers are prohibited from employing pregnant women workers/laborers who, according to doctor's information, are dangerous to the safety of the womb and their safety when working between 23:00 and 07:00.
3. Employers who employ female workers/laborers between 23:00 and 07:00 are required to:
   a. Providing nutritious food and drinks.
   b. Maintain decency and security while at work.
4. Employers are required to provide shuttle transportation for female workers/laborers who leave and return from work between 23:00 and 05:00.

The regulations on the pickup facility were strengthened by a ministerial decree in the Minister of Manpower and Transmigration Decree of the Republic of Indonesia Number Kep-224/Men/2003 of 2003 concerning Obligations of Employers Employing Women Workers/Workers Between 23:00 to 07.00 (“Kepmenakertrans 224/2003 ”).
As an extension of Article 76 paragraph (4) of the Manpower Act, Kepmenakertrans 224/2003 also confirms that employers are required to provide shuttle transportation for female workers/laborers who leave and return to work between 11:00 and 5:00 ie in Article 2 paragraph (2) which reads:

(2) “Employers are required to provide shuttle transportation for female workers/laborers who leave and return to work between 11:00 and 5:00.”

In the Minister of Manpower and Transmigration 224/2003 also stipulated the technical aspects of shuttle transportation for women workers/laborers who leave and return from work between 23:00 and 05:00 with the technicalities:

a. Article 6 paragraph (1) Kepmenakertrans 224/2003:
   “Employers are required to provide pickup starting from the pick-up place to work and vice versa.”

b. Article 6 paragraph (2) Kepmenakertrans 224/2003:
   “Pick-up is done from the pick-up place to work and vice versa between 23:00 to 05:00.”

c. Article 7 paragraph (1) of the Minister of Manpower and Transmigration 224/2003:
   “Employers must establish pick-up and delivery locations in locations that are easily accessible and safe for women workers/laborers.”

d. Article 7 paragraph (2) Kepmenakertrans 224/2003:
   “The shuttle must be in a proper condition and must be registered with the company.”

According to Article 76 paragraph (4) of the Manpower Law and Kepmentrans 224/2003, it is clearly stipulated that employers must provide shuttle transportation for women workers/laborers who leave and return to work between 23:00 to 05:00. This is increasingly needed because of the rise of crime at night, this greatly affects the mentality of women workers and raises concerns when working at night especially the author's research site is a minimarket that operates for 24 hours making the place vulnerable to being the target of criminal acts such as theft, rape, even robbery and other criminal acts.

Related to the provision of feeding for female workers who work between 23:00 and 07:00. All companies that employ female workers during overtime have an obligation to provide food and drink that is at least 1,400 calories if the woman's workforce has worked overtime for 3 (three) hours or more. Feeding for female workers who work overtime is mandatory and not allowed to be replaced with any compensation as stipulated in Article 7 of the Ministry of Manpower and Transmigration Decree No. KEP-102/MEN/VI/2004 of 2004 concerning Overtime Working Hours and Overtime Wages About the Obligations of Employers Who Employ Female Workers/Workers Between 23:00 to 07:00 which is an extension of Law Number 13 of 2003 concerning Manpower which further regulates the provision of food for female workers who work overtime between 23:00 to 07:00 which reads:[9]

Article 7 reads:
1) Companies that employ workers/laborers during overtime work are required to:
   a) pay overtime wages;
   b) provide opportunities for adequate rest;
c) provide food and drinks of at least 1,400 calories if overtime is done for 3 (three) hours or more.

2) Provision of food and drink as referred to in paragraph (1) letter c may not be replaced with money.

Granting the right of transportation and providing food and drinks for female workers who work between 23:00 and 07:00 as stipulated in Law No. 13 of 2003 is a special facility which is a non-wage component so that these rights cannot be replaced by compensation. This is regulated in a Circular of the Minister of Manpower of the Republic of Indonesia Number SE-07/Men/1990 of 1990 concerning the Grouping of Wage Components and Non-Wage Income, which states that:[10]

“Facilities are pleasures in tangible/in-kind form provided by the company because of special matters or to improve workers' welfare, such as vehicle facilities (shuttle workers or others); free feeding; place of worship; babysitting; cooperative; canteen and others.”

Security and decency guarantees for female workers are also facilities that must be fulfilled by companies for female workers as regulated in Article 76 Paragraph (3) letter (b) of Law Number. 13 of 2003 concerning manpower which reads: “Employers who employ female workers/laborers between 23:00 and 07:00 are required to maintain decency and security while at work”. Because female workers are often targeted by sexual harassment in their workplaces both by coworkers and by employers.

This disorder can take the form of comments or verbal utterances, actions or physical contact that has sexual connotations. Although often by the person who is the target of the action, a disturbance does not seem to be directly endangering, but with that action which has an element of power and dominance, the person always becomes aware of his womanhood and virginty against the disorders.

The most extreme form of sexual harassment is rape, which is often very veiled, in the sense that it is often seen as an individual event and does not involve violations of human rights. Further provisions related to this matter are regulated in Article 5 of the Minister of Manpower and Transmigration 224/2003 which in guaranteeing the security and decency of women workers the company must provide:

a. provide security officers at work;

b. provide a proper bathroom/toilet with adequate lighting and is separate between female and male workers/laborers.

If the company does not accommodate the privileges of special pickup, provision of food and drink, as well as guarantees of security and decency, it will be fined according to article 76 paragraph (1), (2), (3), and (4) Law Number 13 of 2003 concerning Labor and through article 187 regulates sanctions which state:

(1) Whosoever violates the provisions referred to in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 Paragraph (2), Article 79 Paragraph (1), and Paragraph (2), Article 85 Paragraph (3), and Article 144 are liable to a maximum sentence of imprisonment of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 100,000,000 (one hundred million rupiah).
The criminal act referred to in paragraph (1) constitutes a criminal offense.

Legal protection The right to special facilities furthermore is the right of babysitting and breastfeeding for female workers not explicitly regulated in Law Number 13 of 2003 concerning manpower, but in principle, the state provides legal protection for workers who are breastfeeding their children by pouring these rules into Article 83 of Law Number 13 of 2003 concerning Manpower reads:

“Female workers/workers whose children are still breastfeeding should be given the appropriate opportunity to breastfeed their children if it must be done during work time.”

The rights for women and children have been regulated internationally under International Convention for Labor Organization No. 183 of 2000.[11] The article which states the special treatments for women at work is as follows:

Article 3 states:
“Each member, after consultation with representative employers 'and workers' organizations, takes appropriate steps to ensure that pregnant or breastfeeding women are not obliged to carry out work that has been determined by the competent authority to be detrimental to the health of the mother or child, or if the assessment has determined significant risk to the health of the mother or child.”

Article 10 reads:
1) A woman must be given the right to one or more daily breaks or a reduction in daily work hours for breastfeeding her child.
2) Rest periods for breastfeeding or a reduction in daily work hours are allowed; the amount, duration of nursing breaks and procedures for reducing daily work hours must be determined by national law and practice. Rest or reduction of hours each working day will be counted as work time and paid accordingly.

Arrangements for special facilities for breastfeeding rooms for female workers are regulated in more depth in the Republic of Indonesia State Gazette of 2009 Number 144 concerning Health, hereinafter abbreviated to Law Number 36 of 2009 concerning Health Article 128 paragraph (2) which contains:[12]
1) Every baby has the right to get exclusive breast milk from birth for 6 (six) months, except for medical indications.
2) During breastfeeding, the family, the Government, local government and the community must fully support the baby's mother by providing special time and facilities.
3) Provision of special facilities as referred to in paragraph (2) shall be held in the workplace and public facilities.

This article regulates the special rights for women workers during breastfeeding, and wherein, the family, government, regional government and the community must fully support the mother by providing special time and facilities. Then, paragraph (3) mentions the provision of special facilities as referred to in paragraph (2) is held in the workplace and public facilities. If there is a party that violates Article 128 paragraph (2) of Law Number 36
Year 2009 concerning Health, it will be subject to sanctions based on Article 200 which contains:

“Anyone who intentionally obstructs the exclusive breastfeeding program as referred to in Article 128 paragraph (2) shall be sentenced to a maximum of 1 (one) year imprisonment and a maximum fine of IDR. 100,000,000.00 (one hundred million rupiah).”

4.2 Implement legal protection for special facility rights at Alfamart KP Rambutan

Law Number 13 of 2003 concerning Manpower which is interrupted by one of the law enforcers from problems related to the protection of workers and employers as well as the protection of the rights and obligations of each party. Labor protection in Indonesia is regulated in Law Number 13 of 2003 concerning Manpower starting from Article 67 to Article 101 which covers the protection of workers with disabilities, child labor, female labor, working time, worker safety and health, wages and welfare the worker. Worker protection aims to guarantee the basic rights of workers, opportunities, and treatment without discrimination. The essence of the formation of Law No. 13 on Manpower is none other than realizing the welfare of workers who are expected to be able to provide progress in the Indonesian business world, but the writer here finds the inability of Law No. 13 of 2003 concerning manpower to work effectively in its function as protective rights for special facilities for female workers.

In reality, there are many complaints from female workers regarding the regulation being not implemented optimally, such as complaints from the female workers that are not given the opportunity to receive additional education at the expense of the company. The female worker is considered single so that she does not get family benefits despite the fact that she is married and has children, and there are no facilities that can support the comfort and safety of female workers even though special facilities are non-wage components so that fulfillment is mandatory and those rights are cannot be replaced with compensation.

To find out about the special facilities for picking up female workers who work at night PT. Alfamart, the writer conducted an interview with one of the parties from PT. Alfamart namely Policy Holders namely manager of PT. Alfamart, as well as several female workers who work at night who work at Alfamart outlets around Kampung Rambutan, East Jakarta.

Based on observations on Alfamart working hours starting from 07.00 to 07.00 (nonstop), which are divided into 3 (three) Shift working hours, namely: (i) Shift 1 (first) from 07.00 to 16.00, (ii) Shift 2 (two) from 14.00 to 23.00, and (iii) Shift 3 (three) from 22.00 to 07.00.

Considering the 24-hour work period will certainly affect the safety and health of women workers, Alfamart's employers must provide protection related to legal provisions and special facilities for female workers because the company employs female workers at night. But in reality, the legal provisions against women workers are not fully implemented.

Legal provisions for women workers at night based on law number 13 of 2003 concerning employment in Article 76 paragraph (1) stipulates that:

“Female workers/workers aged less than 18 (eighteen) years are prohibited from being employed between 23:00 and 07:00.”

Based on these provisions, Alfamart is not allowed to employ workers under the age of 18 years. In an interview with Mr X as Alfamart Manager he said “the absolute requirement to be
an employee of Alfamart is at least a high school graduate. Not employing workers under the age of 18 (eighteen) in Alfamart, this already applies throughout Indonesia “.

According to the interview to Mr. X was also found that pregnant female workers were allowed to take leave on condition that they report to their superiors accompanied by a doctor's statement. However, after being healthy, the worker must change his working hours as long as he is not working due to illness/pregnancy so that it is also in accordance with article 76 paragraph (2) of Law Number 13 of 2003 which reads:

“Employers are prohibited from employing pregnant women workers/laborers who, according to the doctor's statement, are dangerous to the health and safety of their womb and themselves when working between 23:00 and 07:00.”

Seen above Alfamart company has fulfilled some of the rights of women workers, but the problem is the granting of special facilities rights in article 76 paragraph (3) which reads:

“Employers who employ female workers or laborers between 11:00 and 7:00 are required to:
(a) Providing nutritious food and drinks.”

The fact that happened in Alfamart, as the results of an interview with Mr. X found that during this time female workers who worked overtime were never given food or drink while we worked between 22:00 to 07:00. Even women workers were not given any compensation other than overtime wages. Then based on the results of an interview from Silvia who is the cashier Alfamart Silvia said that she was never given food when working late at night. If workers wanted to eat, then they would buy their own. Based on this, it indicates that Alfamart does not fulfill the right to health insurance for female workers and therefore not following Law No. 13 of 2003 concerning Manpower Article 76 Paragraph (3) Giving an appropriate foods and drinks at night important for women workers because night is a time to rest. Thus the Alfamart company should provide food and drinks to women workers at night as health insurance for their work, this is to support the improvement of the company's operations and the safety of its workers.

This provision has not been implemented by the company because it has not been regulated in the regulation book in Alfamart company and work agreements related to providing nutritious food and drinks to workers while working in the shop. So, it could be said that Alfamart only paid more attention to the safety and security problems of workers while at work without paying more attention to the physical, psychological and reproductive health of their female workers.

Related to the regulation regarding the company's obligation to provide shuttle transportation for women workers/laborers who leave and return to work between 23:00 and 05.00 as referred to in Article 76 paragraph (4) which reads:

“Employers must provide shuttle transportation for women workers/laborers who leave and return from work between 23:00 and 05.00.”

The writer once again found a mismatch between the aspirations (Das Sein) and what actually happened (Das Solen) where based on Mr. X's interview he said that, “It does not accommodate the pick-up of female workers who work between 23:00 and 07:00.”

Silvia's interview which said that:
“He was never escorted or picked up by Alfamart and was indeed not provided so going home on his own motorbike usually somewhat increases his sense of security going and going home to work by being picked up by friends who work on the same work shift.”

Regarding the safety and safety of workers, Mr. X said that in supporting the safety of women workers who had to leave and go home at night Alfamart placed workers in a shop close to the domicile of the worker, however, if you see the provisions in Law No.13 of 2003 there is no one even the articles that justify what Alfamart did.

Thus, it can be seen that Alfamart has not accommodated the rights that should be given to female workers, this is because Alfamart considers that the company is only responsible to workers while in the workplace itself, while outside the workplace is no longer the responsibility of the company but the responsibilities of each worker. So in this case it cannot be denied that when workers leave and return from work, their safety is not guaranteed. This is because it is not borne by the company that should be obliged to be given to women who work at night for their safety while traveling to and from work with the hope of surviving to their destination.

Related to maintaining decency and safety while at work. The legal provisions for female workers in terms of safeguarding decency and security while at work, based on the results of an interview with Silvia that already feels safe when working overtime because they feel cared for by their friends and there is CCTV which indeed adds a sense of security when working. Then Mr. X added:

“Workers at Alfamart both female and male workers, and during the day or night will be protected by Alfamart company. Because of this the workers have become a responsibility for the company to provide guarantees of safety and security as long as they work in Alfamart stores by hiring security from nearby organizations or providing people to arrange parking while maintaining security and also the store is equipped with CCTV. In addition, for workers who are still working hours and have an accident will be borne by the company by providing insurance and BPJS to workers.”

However, this has not been said to have fulfilled the legal provisions related to the safeguarding of decency and security for workers while at work. Because in direct observation by the author, it was found that the bathrooms available at Alfamart were not separated between men and women and reinforced by what was said by Mr. X that, “The booth provides a bathroom but does not seem to separate bathrooms for men and women. “This sounds trivial but this turns out to be important in order to maintain the decency of female workers because it clearly protects the privacy and security of female workers from sexual harassment of the opposite sex.

Related to fulfilling the right to breastfeeding facilities, from the direct observation of the author and interviews with several female Alfamart workers, it was found that there is no special room for nursing mothers provided as the author's vision of the room in Alfamart is only 3 parts namely warehouse, bathroom, and shop. In the interview, Mr. X answered, “no special room for breastfeeding is provided, usually there is only a rest room that is shared,” this is not in accordance with what is regulated in Article 83 of Law Number 13 of 2003 regarding Manpower and Law Number 36 Year 2009 Concerning Health Article 128 paragraph (2) which reads:
Article 83 of Law No. 13 of 2003 reads:
“Female workers/ workers whose children are still breastfeeding should be given the
appropriate opportunity to breastfeed their children if it must be done during work time.”

Article 128 paragraph (2) of Law Number 36 Year 2009 reads:
1) Every baby has the right to get exclusive breast milk from birth for 6 (six) months,
   except for medical indications.
2) During breastfeeding, the family, the Government, local government and the
   community must fully support the baby's mother by providing special time and
   facilities.
3) Provision of special facilities as referred to in paragraph (2) shall be held in the
   workplace and public facilities.

Which automatically also violates what is in the article related to breastfeeding workers' rights,
name article 3 and article 10 of the International Labor Organization (ILO) Convention No. 183 of 2000 concerning Protection of Maternity:

Article 3 reads:
“Each member, after consultation with representative employers 'and workers'
organizations, takes appropriate steps to ensure that pregnant or breastfeeding women are
not obliged to carry out work that has been determined by the competent authority to be
detrimental to the health of the mother or child, or if the assessment has determined
significant risk to the health of the mother or child.”

Article 10 reads:
1) A woman must be entitled to one or more daily breaks or a reduction in daily work
   hours for breastfeeding her child.
2) Rest periods for breastfeeding or a reduction in daily work hours are allowed; the
   amount, duration of nursing breaks and procedures for reducing daily work hours
   must be determined by national law and practice. Rest or reduction of hours each
   working day will be counted as work time and paid accordingly.

This is considered important because it provides a guarantee of the safety and comfort of
women workers and infants who still need breast milk if this is not fulfilled, immoral
treatment can occur to nursing mothers who will later affect the performance of these female
workers.

From the discussion above, data have been found that show that the work of immoral care
and security in the workplace for female workers by Alfamart companies has not been
optimal, bearing in mind this is important with the intention that workers feel comfortable in
carrying out their respective duties.

Based on the theory of law enforcement in the Chambliss and Seidman communities, it is
argued that the effectiveness of a law is seen from the regulatory body, the law enforcement
agency, and the role holders, related to the implementation of special facility rights protection
in Law Number. 13 of 2003 is arguably not running optimally.

In assessing the effectiveness of the application of law, especially laws and regulations,
there are various ways in which one of the ways is by discussing the law in its sense as a tool
to change society or Social-Engineering (social engineering). it is in accordance with the ideas
to be realized by the law itself. In an effort to ensure the realization of the legal function as a better engineered society, not only law is needed and implemented, but also guaranteeing the realization of these legal norms into legal practice, or in other words, guaranteeing law enforcement (law enforcement) is good. In terms of law as a tool to change society, positioning humans as a very important factor in the study of the law. So in this case it is appropriate when implementing the theory of the influence of social forces in the operation of law in society by Chambliss and Seidman, the theory places 3 (three) components as the main supporters of the operation of law in society, which includes:

1. Regulatory Institutions
2. Regulatory Application Institutions
3. Role Holder

Of the three basic components Chambliss and Seidman propose the following argument:

1. Every legal regulation tells how a Role Occupant is expected to act
2. How a person in charge will respond to the rule of law which is a function of the rules directed at him, sanctions, the activities of the institution and the whole complex of social, political, and other forces.
3. How the implementing institutions act in response to the rule of law, the function of the rule of law aimed at them, their sanctions, the whole complex of social, political and other forces concerning themselves and feedback from the stakeholders.
4. How legislators will act is a function of the rules governing their behavior, sanctions, the whole complex of social, political, ideological, and other forces concerning themselves and the feedback that comes from the holders of bureaucratic participation.[13]

If viewed from the theory above, the effectiveness of the legal protection of the special facilities for women workers which is regulated in Law Number 13 of 2003 concerning Manpower is considered not optimal because Law Number 13 of 2003 concerning Labor only fulfills 1 (one) element, namely the manufacturing body legal regulations. The legal protection provisions for special facilities for women workers in Law Number 13 of 2003 concerning Manpower have regulated what must be done by the role holders as well as implementing institutions for regulations in the Act accompanied by implementing regulations and others. But this is still lacking, this is due to the two other elements making the arrangement not considered optimal in its application. What makes this arrangement not optimal is the elements of the implementing agency and its role holders who are not doing what should be done as Law Number 13 of 2003 concerning Labor.

However, if we associate with law-making institutions the legal substance requirements can already convey how the role holders should provide legal protection for special facility rights clearly stipulated in Law 13 of 2003 concerning manpower where facilities for female workers who work late night in the form of pickup, provision of food, as well as guarantees of guarding decency and security for women workers who work at night have been regulated in article 76 of Law Number. 13 of 2003 concerning employment. Then related to the fulfillment of special facilities for breastfeeding room has been regulated in Article 83 of Law Number 13 of 2003 concerning Labor and Law Number 36 of 2009 concerning Health Article 128 paragraph (2). And also Law Number 13 of 2003 concerning manpower and implementing regulations has accommodated what must be done by law enforcement agencies in carrying out supervision related to fulfilling the rights of the special facility. However, what has been regulated in Law Number 13 of 2003 concerning Manpower is not heeded by the role holders
and existing legal implementation institutions so that it makes Law Number. 13 of 2003 in the regulation concerning the protection of the rights to special facilities for female workers is considered less effective.

Conclusion

Based on the description above, it can be concluded that there are two forms of protection of special facility rights for women workers according to the Law Number 13 of 2003 concerning Labor. First, the right to get special facilities for female workers who work late at night, such as pickup and feeding facilities. Secondly, security and decency guarantees as stated in Article 76 Paragraph (3) of Law Number 13 of 2003. The second special facility right is a nursing room facility has been regulated in article 83 of Law Number 13 of 2003 concerning Labor. The implementation of legal protection for the special facilities for women workers at Alfamart Kampung Rambutan has not run optimally due to the lack of perceived role of the supervisory and cultural hierarchy to put men is superior than women.
References


The Role of Sharia National Financial Committee in the Development of Sharia Banking Law in Indonesia

M. Chairul Ismail¹ Ro’fah Setyowati¹*, Muhyidin¹
¹{chairulismael@gmail.com¹, rofah@live.undip.ac.id², muhyidin@live.undip.ac.id³}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. The National Sharia Finance Committee is an embodiment of one of the recommendations listed in the Indonesian Sharia Finance Architecture Masterplan. The purpose of this study is to determine how the role of the National Committee of Islamic Finance in the development of Islamic banking law in Indonesia. This study uses a juridical-normative approach, with descriptive research specifications. The method of data collection is carried out by examining secondary data obtained through library studies. Based on the results of the study, it was concluded that the National Sharia Finance Committee acts as an independent supervisory body that monitors the implementation of the Road Map for the development of Islamic banking and ensures that all stakeholders meet the requirements of the master plan.

Keywords: Masterplan, Sharia Banking, National Sharia Finance Committee, Role

1 Introduction

1.1 Background

In this modern era, the existence of banking financial institutions is very much needed in the economic world. Its function as a fund collector is very instrumental in supporting the economic growth of a nation. [1] The fund is then distributed to those in needs. [2] However, the conventional banking system, which is an implementation of the capitalist system that has been applied for a long time causes an economic inequality happening today. It is an evidence of failure in creating justice and economic equality. [3] Therefore, it is necessary to develop an alternative system that emphasizes sharing mechanism as a tool to drive the economy, namely the sharia system. [1]

The Islamic banking system is different from the conventional banking system, because the Islamic financial and banking system is a subsystem of an Islamic economic system whose scope is wider. Islamic economic law, methodologically, is a product of human thought (the concept of insaniyah), but in a substantial spirit is a divine because it was introduced from the concept of the concept of the Koran, which is nothing but the revelation of God. [4] In carrying out its business, Islamic banking is demanded not only to focus on commercial goals that are reflected in the achievement of profits, but also its role in providing broad welfare for Muslim and non-Muslim community. This causes a very perfect relationship between Islamic economics and Islam.

The passing of Law Number 21 of 2008 concerning Sharia Banking is a breath of fresh air for the Islamic banking industry. [5] With this ratification, the sharia banking industry in
Indonesia is expected to develop more rapidly and provide greater benefits. Legal certainty and security guarantees will also be more evident for investors and Islamic banking businesses. After the promulgation of the Act the development of Islamic banking is increasingly rapid, the growth of total assets of Islamic banking on average per year is above 33% in the last five years. Until October 2010, the total assets of sharia banking reached 86 trillion rupiah. [4] It is known that in 2010, the number of Sharia Commercial Banks (BUS) experienced an increase. The increase in the number of BUS is due to the number of Sharia Business Units (UUS) owned by Conventional Commercial Banks (BUK) that have conducted spin-offs to form new BUSs. [6] In addition to seeing the potential of the sharia banking market which is still very large, what makes the UUS trend to Spin-offs and form a new BUS is also accompanied by the basis of wanting to advance sharia banking more efficiently, flexibly and independently in determining their own management policies. [7] The number of BUS is expected to accelerate the development of the Islamic banking industry in Indonesia, because BUS management is more focused when compared to UUS. [8]

Until 2010, according to Ro'fah Setyowati, the sharia banking sector is the most prominent Islamic financial institution compared to other institutions when viewed from various aspects. [9] However, until this time, it is not yet able to reach the majority of Indonesian people due to the lack of Islamic banking assets. Until August 2019, there were 14 Sharia Commercial Banks in Indonesia, 320.882 billion Rupiah total assets, 1,896 offices (478 branch offices, 1,223 sub-branch offices, 197 cash offices), 2,779 ATMs, and 49,873 people. The total assets of Sharia Business Units in Indonesia are 162,218 billion Rupiah, the number of conventional commercial banks that have UUS 20, the number of UUS 375 offices, 158 branch offices, 157 sub-branch offices, 60 cash offices, ATM 166, total workforce of 5,055 people. While the Sharia People’s Financing Bank in Indonesia there are 165, the number of offices is 536 units, the number of workers is 5,291 people (in July 2019). [10]

When compared to Malaysia, Indonesia market share is less. That happens because government intervention takes large portion in developing it. In addition, it also first started developing Islamic banking. According to M. Shabri Abd Majid, the difference is in the political support (political will) between Malaysia and Indonesia to develop the sharia banking, and therefore is influenced the growth of the sharia banking industry in both countries. [11] Strong political support in Malaysia has encouraged the rapid development of this institution, for example with careful preparation in giving birth to Islamic banks both in terms of regulation and management. [10] It is known that in terms of the number of Islamic banks operating in Indonesia have more numbers, but its role is not as maximal as in Malaysia. That is because in terms of the size of capital owned by Islamic banks in Indonesia has a relatively small size. Therefore, the government plans to consolidate state-owned Islamic banks to be able to have large capacity for Islamic banks so that they can be more competitive in the global Islamic banking industry. The plan for consolidation is based on capital problems owned by Islamic banks in Indonesia, which are still not large enough to compete at the global level. Not only Indonesia, problems related to Islamic banking capital are also experienced by other countries such as Bahrain. [12] The same step is taken to urge banks to consolidate and form larger and stronger institutions in Bahrain. In recent years, the Bahrain banking sector has carried out several mergers so that it has positively changed the financial structure of Islamic banking in the country. Malaysia, which already has a large capacity Islamic bank, also does this. [13]

Consolidation planned by the government to form a large Islamic bank owned by SOEs has not yet been carried out. This is due to the absence of an appropriate consolidation mechanism scheme to consolidate BUMN-owned BUS, and the absence of alignment of
policies determined by each BUS. Therefore, through Government Regulation No. 91 of 2016, the National Sharia Finance Commission (KNKS) was formed, one of which aims to make Indonesia the center of Islamic finance in the regional and international regions. This committee will be a solution related to the problem of lack of national vision, coordination and leadership in the development of national Islamic finance.

Based on the explanation above, it is important to know how the role of the National Committee of Islamic Finance in the development of Islamic banking law in Indonesia. Therefore, the authors conducted a study with the title, “The Role of Sharia National Financial Committee in the Development of Sharia Banking Law in Indonesia.”

1.2 Formulation of the problem

What is the role of the National Sharia Finance Committee in the development of sharia banking law in Indonesia?

1.3 Research purposes

To know the role of the National Sharia Finance Committee in the development of sharia banking law in Indonesia.

2 Method

The research method can be interpreted as a science to express and explain natural phenomena or social phenomena in human life in a systematic, orderly and scientifically responsible way. According to Soerjono Soekanto research is a tool used by humans to strengthen, foster and develop knowledge. Research generally aims to find, develop or test the truth of a knowledge. Finding means trying to get something to fill in the blanks or shortcomings. Developing means expanding and digging deeper into something that already exists. Testing the truth is done if what is already there is still in doubt.

The research approach is the method or method used to conduct research. The research method used by the author in conducting research is empirical juridical legal research. An empirical juridical approach is legal research on the enforcement or implementation of normative legal provisions in action on any particular legal event that occurs in society. In other words, a research conducted on the actual situation or real situation that occurs in the community with the intention to find out and find the facts and data needed. After the data needed is collected, then it leads to the identification of problems that ultimately lead to problem solving. In this study, the facts were obtained through interviews from Widiyono as an Analyst in the Financial Services Authority and Documentation Sub Division of the Regional Office 3 of Central Java and Yogyakarta Special Region.

In writing this law, qualitative legal research is used. The qualitative legal research method is a research that uses descriptive analytical data, which is what respondents will say in writing or verbally. After that, the real behavior studied will be studied as an integral part. Data obtained through field research and library research are collected and analyzed systematically to achieve clarity of the problem to be discussed. So, from the clarity of the
problem discussed above, a conclusion can be drawn which is the answer to the problem of this research.

3 Results and Discussion

3.1 Development of Islamic Banking in Indonesia

Islamic banking as an important element in banking law in Indonesia and is one of the financial institutions that conducts business based on sharia principles. Islamic banking as a banking system that is relatively new when compared to the existence of conventional banking that has been established. It consists of Islamic commercial banks, Islamic business units, and Islamic people’s credit banks. According to Rachmadi Usman, one aspect that distinguishes between Islamic banking and conventional banking is in its supervision, where there are more supervisory institutions in Islamic banking than conventional banking. [20]

The following are the institutions/institutions that play a role in the development of Islamic banking in Indonesia: 1) The Financial Services Authority which has the domain of regulators and supervisors; 2) Bank Indonesia in the realm of monetary policy, prudential macro supervision, payment systems for the banking sector; 3) the Deposit Insurance Agency in the area of savings insurance; 4) National Sharia Council - Indonesian Ulema Council in the realm of fatwas, sharia guidelines, sharia opinions; 5) The Ministry of Finance has the domain of sukuk and state bonds issuance; 6) The Ministry of Cooperatives and Small and Medium Enterprises has the realm of regulators and supervision of Islamic cooperatives; 7) Ministry of Religion in the realm of Hajj fund management, zakat regulator and waqf regulator; 8) Sharia Supervisory Board as sharia advisors; 9) The Indonesian Institute of Accountants has the domain of accounting standards for Islamic financial instruments, and; 10) National Sharia Arbitration Board which is a special court for sharia arbitration for financial matters. [12]

Various strategies have been designed by the Indonesian government in accelerating the growth of the sharia financial industry in the country so that it has a great impact on national development. These strategies hopefully will be a blueprint for the development of sharia banking of Bank Indonesia and also the Roadmap for the development of sharia banking in Indonesia which has been made by the Financial Services Authority. In terms of strategies for developing sharia banking and its products, Indonesia has chosen a gradual and sustainable approach that complies with sharia principles and does not adopt controversial contracts. [21]

A gradual and continuous approach enables development according to the circumstances and readiness of the perpetrators without being forced and forms a robust and not fragile system. [21] Sharia banking in general is growing did not meet the expected target yet due to the lack of a shared national vision, lack of coordination between regulators and other institutions, and the lack of national leadership to unite the strategic steps of each stakeholder. [12]

From the above analysis, we can draw the conclusion that in the development of Islamic banking there are several institutions involved in the development of Islamic banking in Indonesia, but the absence of good cooperation causes the growth of Islamic banking to be not optimal.

3.2 The Role of the National Sharia Finance Committee in the Development of Sharia Banking Law in Indonesia
From the discussion, it was found that there was a reason for not achieving the targets of the development of sharia banking. In this analysis, it would analyze the role of the National Sharia Finance Committee in the development of sharia banking law in Indonesia.

As a manifestation of the government’s commitment to developing Islamic finance with the enactment of Presidential Regulation Number 91 of 2016 concerning the National Sharia Finance Committee. [22] The establishment of the National Sharia Finance Committee is expected to awaken the potential of the sharia economy in Indonesia and make Indonesia the leading center of sharia economics and finance in the world. According to the definitions in the general provisions of Article 1 paragraph (1) of Presidential Regulation Number 91 of 2016 concerning the National Sharia Finance Committee, the National Sharia Finance Committee is a forum for coordination, synchronization and synergy in the direction of national development policies and strategic programs in the sharia financial sector. Furthermore, this institution has the task of accelerating, expanding, and advancing the development of Islamic finance in order to support national economic development in accordance with what is contained in Article 3 of Presidential Regulation Number 91 of 2016 concerning the National Sharia Finance Committee.

Before the existence of the National Sharia Finance Committee, the stakeholders in the sharia banking industry in the country seemed to work alone in carrying out their duties so that the results were less effective. There was no shared vision in developing national sharia banking. It is hoped that after the establishment of the National Sharia Finance Committee all stakeholders in the national sharia banking industry can establish very good cooperation so that the acceleration of the development of the national sharia banking can run in accordance with the targets set so that the large contribution to national development will increase rapidly. In accordance with the slogan owned by the National Sharia Finance Committee, this committee has the role of uniting the steps of the stakeholders in the Islamic banking industry.

[23] The unification of steps undertaken by the National Sharia Finance Committee is likened to the leader of a group of rowing athletes, the cohesiveness of each rowing by the rowers can make the rowing more effective and efficient when compared to each rower rowing - alone without the presence of someone giving the command to guide the compactness team.

In carrying out this role the National Sharia Finance Committee has been explained in Article 4 letter (a) through letter (d) of Presidential Regulation Number 91 of 2016 that this Committee carries out functions which include: (a) providing recommendations on policy directions and national development strategic programs in the Islamic financial sector; (b) organizing the preparation and implementation of planned strategic policy directions and programs in the Islamic financial sector; (c) formulating and giving recommendations for solving problems in the Islamic financial sector; (d) monitoring and evaluation of the implementation of strategic policies and programs in the Islamic financial sector. In carrying out this function the Steering Board is assisted by Executive Management, as explained in Article 11 of Presidential Regulation No. 91 of 2016 that Executive Management is tasked with implementing the direction of national strategic policies and programs as well as sharia financial activities formulated by the Steering Board.

In carrying out its duties the Executive Management is led by the Executive Director, as stipulated in Article 5 of the Minister of National Development Planning Regulation/Head of the National Development Planning Agency of the Republic of Indonesia Number 13 of 2017 concerning the Organizational Structure and Working Procedures of the Executive Management of the National Sharia Finance Committee, it has been explained that the Executive Director has some roles including:
a. Organizing the preparation, formulation, and recommendations on policy directions and national development strategic programs in the Islamic financial sector;
b. Organizing the preparation and implementation of national development strategic program plans in the Islamic financial sector and the Master Plan of Action;
c. Organizing the management and processing of data and information regarding the development of national development in the Islamic financial sector;
d. Organizing the preparation of a business process map that illustrates the effective and efficient institutional working relations of the Sharia National Committee between ministries/agencies, authorities, and other stakeholders;
e. Organizing the relationship for national development with the central government, regional governments, authorities, development partners, and private parties in the country and abroad;
f. Organizing domestic and foreign investment raising for national development in the Islamic financial sector;
g. Monitoring and evaluating of the formulation and implementation of policies and national development strategic programs in the Islamic financial sector;
h. Organizing socialization, advocacy, promotion and education on Islamic economic and financial activities;
i. Organizing the implementation of the secretarial function of the National Committee of Islamic Finance;
j. Performing other tasks and functions given by the Steering Committee of the National Sharia Finance Committee; and
k. Preparation of reports on the implementation of duties to the Steering Committee of the Sharia National Committee through the Minister who organizes government affairs in the field of national development planning as the Secretary of the Steering Board of the Sharia National Committee every 6 (six) months or at any time if necessary.

In order to get the duties and functions done on the Executive Director level, it has been mandated to form an ad hoc task force and is determined by the Minister of National Development Planning as Secretary of the Steering Committee of the National Sharia Finance Committee. This has been explained in Article 6 of the Regulation of the Minister of National Development Planning/Head of the National Development Agency No. 13 of 2017 concerning the Organizational Structure and Work Procedures of the Executive Management of the National Sharia Finance Committee. The Work Unit/task force formed consists of:

a. Directorate of Legal Affairs and Sharia Financial Management Standards;
b. Directorate of Product Innovation, Market Deepening and Sharia Financial System Infrastructure Development;
d. Directorate of Sharia Finance Education and Research, and;
e. Directorate of Promotion and External Relations.

It can be seen that the directorate in the field of law and sharia financial management standards is a directing authority possessed by the Financial Services Authority and the National Sharia Council - Indonesian Ulema Council. National Sharia Council - Indonesian Ulema Council is the highest independent institution in terms of sharia governance. In the Islamic banking sector which has the authority to issue regulations is the Financial Services Authority. One of the recommendations in the legal sector is to improve the regulatory
Although the number of regulations that have been made has been able to help create legal certainty in the Islamic banking sector, but it also causes confusion for market participants and consumers because of many regulations and overlapping.

According to Adiwarman, most of the Bank Indonesia Regulations and Financial Services Authority Regulations need to be consolidated, for example, the codification of the sharia banking rule book is made online, so that the rules regarding sharia banking can be better understood so that it will help the interested parties. With the existence of the National Sharia Finance Committee can assist the Financial Services Authority in making the regulations needed in strengthening Islamic banking regulations. According to Widiyono, the increase in tasks at the Financial Services Authority did not significantly influence the timeliness in completing the work program that has been set. If there is an additional work to complete the program, it will not delay the current jobs that much. Widiyono further stated that the recommendation of the National Sharia Finance Committee which led to an increase in work programs would not interfere with the performance of the Financial Services Authority. That is because the Financial Services Authority has a separate Pokja team to handle it. Until now there has been no work program given from the recommendations of the National Islamic Finance Committee to the Financial Services Authority. In carrying out the task of formulating the direction of national strategic policies and programs as well as activities in the sharia financial sector in the field of law and sharia management standards, the directorate of law and sharia management standards is led by the director of the field.

4 Conclusion

The National Sharia Finance Committee in developing sharia banking law in Indonesia has the role of becoming an independent supervisory body that monitors the application of the Road Map for the development of sharia banking and ensures that all stakeholders meet the requirements of the master plan.
References


[22] Presidential Regulation Number 91 of 2016 concerning National Sharia Finance Committee.


[25] Interview with Widiyono, Sub Division of Information and Documentation, Financial Services Authority Regional Office 3 Central Java and Yogyakarta Special Region, 19 June 2019, in Semarang.
E-Catch-Fisheries Logbook Application Based on Regulation of the Minister of Marine and Fisheries of the Republic of Indonesia

Nur Afin Trionawan1*, Amalia Diamantina2, Sekar Anggun Gading Pinilih3
{nurafintrionawan@gmail.com1, amalia_diamantina@undip.ac.id2 sekar_anggun@live.undip.ac.id3}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. Fisheries management using Log Book is deemed effective application called E-Log Book Fishing. With E Log Book, fishing activities are not bothered by filling in the data before the fish catch report, also the government will get easier to collect data on fish products because it is already online. The method used is this study is normative juridical with descriptive analysis as a specification. The data are sourced from the secondary data using primary, secondary, and tertiary legal materials. The method of collecting data consists of literature and interviews as supporting data. Research results show the application of E-Log Book Application of Fishing at the Ocean Fishery Port of Nizam Zachman North Jakarta requires a high level of involvement in the application of logbooks. The fishing vessels with 30 GT going through Indonesia is required to have VMS transmitters to transmit position data sent every 1 (one) hour continuously, provide socialization and train the use of E-Logbook for intensive fisheries with ease, and grant tolerance that is approved for the implementation of E-Logbook. However, the using of application still faces some problems such as the lack of socialization regarding e-logbook applications, system error, weak monitoring of fishing operations at sea, and protection of Syahbandar (PPSNZJ).

Keywords: E-Log Book, fisheries, port and fishing.

1 Introduction

1.1 Background

The Republic of Indonesia is a country that has a diverse natural resources from agriculture, plantations, and fisheries. Indonesia is an archipelagic country which consists of many islands where the sea, air and land are united which is geographically apparent that Indonesia has a wider water compared to the mainland. [1]

As an archipelagic country, Indonesia has potential for fish resources. The potential of this fishery can be relied on to meet domestic consumption and foreign exchange earners. For this reason, it is necessary to manage fisheries appropriately so that fish resources can be utilized sustainably. The huge potential of fisheries can provide maximum benefits if managed properly and responsibly. It has also been mandated in Law of the Republic of Indonesia Number 45 of 2009 article 6 paragraph 1 which emphasizes that fisheries management is...
aimed at achieving optimal and sustainable benefits, and ensuring the preservation of fish resources [2], [3]

Illegal fishing or so-called illegal fishing (Illegal Fishing) is very detrimental to the country and traditional fishermen. Illegal fishing done by both illegal Indonesian fishermen and unregistered foreign fishermen has caused no fishing activities to be detected, making it difficult to control the availability of fish resources. In addition, other people who become consumers are also disadvantaged because they cannot enjoy sea products in their own country. At a macro level, the stolen Indonesian fish are then processed with qualified equipment, thereby increasing the selling price abroad. [4]

Fish resources that live in territorial waters in Indonesia are considered to have the highest level of biodiversity (bio-diversity). These resources cover at least 37% of the world's fish species. There are several types of fish with high economic value including tuna, skipjack, shrimp, tuna, mackerel, snapper, squid, reef fish (grouper, baronang, barong shrimp/lobster), ornamental fish and drought including grass the sea. However, there are various gaps that still color fisheries development in Indonesia both nationally and locally administratively managing. [5] Various infrastructures built by the government, such as the construction of fishing ports and fish landing places which are scattered in various regions have not yet produced satisfactory results as expected., Various regulatory models and policies have not been able to fix the underlying problems that exist. [5]

The problem of illegal fishing (fishing theft) and weak law enforcement have in fact eliminated the potential for Indonesian fishery exports of 4 billion US dollars. In addition to harming the country, illegal fishing also harms traditional fishermen because they use trawling fishing gear that causes damage to the marine environment. Illegal fishing can also weaken the management of fisheries resources in Indonesian waters and cause fisheries resources in several Fisheries Management Areas (WPP) of Indonesia to experience overfishing. [6] Overfishing is a term or status given to an area of water whose fish resources have experienced overfishing. Over-fishing is meant if the rate of fishing carried out has exceeded the ability of these fish resources to recover. [7]

1.2 Formulation of the problem

1. How is the application of E-Fishing Logbook at the Port of Ocean Fisheries Nizam Zachman North Jakarta?
2. What are the obstacles encountered in implementing the Fishing E-Log Book application and how to overcome them?

1.3 Research Purposes

The expected objectives of this study are as follows:
1. To find out the application of the E-Log Book of Fishing in the Port of Ocean Fisheries Nizam Zachman North Jakarta.
2. To find out the obstacles faced in the application of E-Log Book Catching Fish and How to Overcome It.
2 Method

This research is qualitative because this research focuses more or relies on the depth of the data not the amount of data obtained. Viewed from a scientific perspective, this research is legal research.

A juridical-normative approach is a method of approach that emphasizes understanding in obtaining answers by basing on legal principles and principles obtained from regulations and trying to synchronize the legal provisions that apply to legal protection against norms or regulations other law with relation to the application of the legal regulations in practice in the field. [8]

The specifications of this study use descriptive analytical research specifications. Descriptive analytical research that describes the applicable laws and regulations associated with legal theories and the practice of implementing positive law relating to the problem. [9]

Data analysis is very important in a study because its roles are to provide answers to the problems. Before data analysis is performed, data collection is first held. The method used in analyzing and processing the collected data is qualitative analysis, namely by explaining and presenting data in a structured form then drawn conclusions descriptively. [9]

3 Results

3.1 History of Manually Fishing Log Book

The Fishing Log Book is a daily report written by the boat captain regarding fishing activities. Log Book Fishing is needed in the collection of data on fish catches, namely recording the type of fish caught, the amount of fish caught, the position/location of fish catches and the time of catching fish. [10]

Realizing the importance of using log books, the Directorate of the Ministry of Maritime Affairs and Fisheries (KKP) tried to improve the recording system that had been implemented by adding some features more details. Fisheries data collection strategy should be confirmed as a program that is routine in nature and in the long term (long-term observation) one of which is the use of Log Book. The important objectives of the Log Book are as follows: [11]

1. Log Book as Landing Declaration of the ship's captain, or a statement regarding the fish brought to the fishing port.
2. Fishery Log Book supports data collection on fisheries (fishing area, fish species, and volume).
3. Fishery Log Book records data on fishing permit (fishing gear) of vessel registration data (LxBxD; Power), the port of the ship's base.
4. Supports the evaluation and analysis of SDI management (fishing capacity, efficient fishing, catch season in relation to open and close sessions, and conservation).

3.2 Application of E Log Book of Fishing at the Ocean Port of Fisheries Nizam Zachman Jakarta

Electronic Logbook is a tracking system (tracking system) that only provides information about ships carrying transmitter equipment. Unlicensed vessels and other vessels not equipped
with suitable transmitters cannot be monitored by e-logbooks. Satellite-based e-logbook technology includes three important components which are subsystems, namely: [10]

1. A transmitter or transceiver mounted on a fishing vessel to indicate the position of the ship.
2. Transmission medium/communication system, which is a satellite system worked as a vehicle to transmit ship position information from fishing vessels to the Fisheries Monitoring Center.
3. Fisheries Monitoring Center (FMC) to receive, store, display and distribute data. Data in FMC can be further analyzed for specific purposes. The mechanism of action of an e-logbook is generally preceded by a transmitter that sends ship position data through a satellite system that circulates in its orbit above the earth. The satellite will receive a message from the ship and send it to the satellite data processing center, and then the data of the position of the processed ship is delivered to FMC continuously.

Fishing e-logbook application is a technology created to replace paper-based logbooks (manual logbooks) due to less efficiency. In addition, it has various kinds of obstacles such as a lot of data that must be written, illegible writing, easily damaged paper and determining inaccurate fishing locations. [12]

3.2.1 Following is the E-Logbook Implementation Strategy. [12]

1. Implementation at the fishing port with a high level of compliance with the implementation of the logbook is based on several criteria, namely:
   a. Timeliness of delivery of logbook data on catches with fishing gear
   b. Suitability of the catch fish with the fishing area
   c. Suitability of trip length with number of settings
   d. The fishing position is conveyed at the logbook officer entry at the port
   e. Fostering the fishing port for fisheries businesses related to the implementation of the fishing logbook
2. Application on ships that have used VMS transmitters. Fishing vessels above 30 GT that operate in Indonesian waters or on the high seas must install a VMS transmitter online by sending vessel position data every 1 (one) hour continuously.
3. Intensive socialization and training on the use of E-Logbook to fishermen with simple/easy to understand language.
4. Imposing strict sanctions for violations in the implementation of E-Logbook. E-Logbook fishing is a document that is required to obtain a Certificate of Fishing (SHTI), which is an important document for exporting tuna, as well as the issuance of proof of fishing vessel arrival reports by the fishing port. The sanctions for vessels that do not report E-Logbooks in the form of non-issuance of Sailing Permit (SPB), freezing of Fishing License (SIPI), It will work again after the revocation of SIPI, that and the application of electronic log books can work again., it is necessary to impose strict and consistent sanctions for violations of their implementation. In addition to sanctions, it is also necessary to reward ships with compliance with high electronic logbook compliance. The award can be in the form of ease in the licensing process, ease in obtaining fuel subsidies, and ease in obtaining assistance from the government.
5. Cooperating with third parties. To ease the burden on fishermen in the cost of hardware procurement and the cost of e-log book pulses, the Ministry of Maritime Affairs and Fisheries can collaborate with third parties or the private sector in the
field of communication for the supply of hardware, SIM card issuance and special pulses for e-log books.

3.3 Obstacles to PPS Nizam Zachman in Efforts to Implement E-Logbook Application for Fishing

The Fishery Port is an extension of the Directorate General of Capture Fisheries, the Ministry of Maritime Affairs and Fisheries in the area. To support the vision of the Directorate General of Capture Fisheries of the Ministry of Maritime Affairs and Fisheries, PPS Nizam Zachman Jakarta based on Port Head Decree Number KPTS.08/PPSNZJ.A/HM.160/1/2015 establishes the vision of PPS Nizam Zachman Jakarta, [13] namely “Realizing an Independent, Advanced, Strong and Strong and National Interest Based Indonesian Maritime Sector.” In the future, it is intended that Indonesia can rely on its own capabilities and strengths in managing marine and fisheries resources so that they can compete equally with other fishermen from other nations. Forward is intended to manage marine and fishery resources with the strength of competent human resources and innovative and value-added science and technology, to achieve high and equitable public welfare.[14]

The fishing port is a working environment so in its management the Jakarta Nizam Zachman Ocean Fishery Port (PPSNZJ) is managed by the Technical Implementation Unit (UPT), the Indonesian Fisheries General Corporation (Perum Perindo) and other relevant agencies. These agencies cooperate with each other in carrying out port operational activities, functioning, developing, maintaining or maintaining, as well as maintaining the cleanliness of all existing facilities at the Fishery Port, both basic facilities, supporting facilities and their supporters.

The Fishing E-Logbook application implemented at PPS Nizam Zachman encountered several obstacles in its application.

3.3.1 Lack of Socialization of Fishing E-Logbook Application

The application of the E-Logbook application which was started to launch from November 2018 requires a gradual socialization, while the socialization conducted by the Ministry of Maritime Affairs and Fisheries was only held once in November 2018 when the E-Logbook Application was first implemented at the Nizam Zachman PPS. In reality on the ground, there are still many fishermen who are confused and wrong in running the E-logbook application. These errors include filling in the catch data as it is, not routinely in reporting daily catches, to charging carried out on land.

3.3.2 There Are Still System Errors In The Fishing E-Logbook Application

The Fishing E-Logbook application developed by the Center for Research and Engineering of Marine and Fisheries Technology (P3TKP) - KKP to facilitate fishermen in filling the Log Book and supporting government data in fisheries management is not yet perfect. In the operation of the Fishing E-Logbook application, there are still some system errors found. One user of the Fishing E-Logbook Application is having trouble for not being able to run; and instead it got freezed.
3.3.3 Weak Monitoring of Fishing Operations in Waters

Supervision of fishing operations needs to be increased in terms of number, so that it will be able to meet the interests of the management of fish resources in PPS Nizam Zachman. Facilities and infrastructure of collecting fisheries statistics and fishing Log Book must be able to meet the data needs of management of fish resources. Training and technical guidance must be routinely carried out and increase the number of data enumerators and fishing log book officers.

The Ministry of Maritime Affairs and Fisheries has begun implementing an electronic Log Book system in November 2018 to record fish catches. This application was initially applied at the Nizam Zachman PPS and several areas that have fishing ports to facilitate the collection of fishery products and support fisheries supervision in Indonesia.

Fisheries supervisors must make improvements in the collection of fish catches by educating fishermen on how to use and activate the E-Logbook.

3.4 Manual Log book Obstacles

The reality in the field, the use of E-Log book is still experiencing problems, so it must use a manual Log Book that has many obstacles. These constraints include the amount of data that must be filled in and the writing is not easy to read. Other cases, paper that is easily wet and torn and the problem of secrecy of the location of the arrest caused the log book was not permitted correctly. In addition, the application of log books still does not provide direct benefits to fishermen, so they do not feel they have an obligation to fill in the results of their capture on the log book forms that have been determined.

The low level of implementation of the log book is apparently due to the absence of intensive socialization and strict sanctions in implementing the ministerial regulation. To overcome the obstacles in manually filling in the fishing log book, an electronic-based fishing book has been developed or known as an electronic log book. With the use of electronic log books, fisheries data and information will be obtained more accurately related to fishing activities, so that they can support optimal and sustainable fish resource management policies and ensure the sustainability of fish resources.

4 Discussion

To overcome the obstacles in manually filling in the fishing log book, an electronic-based fishing book has been developed, and launched to the public. With the use of electronic log books, fisheries data and information will be obtained more accurately related to fishing activities, so that they can support optimal and sustainable fish resource management policies and ensure the sustainability of fish resources. The purpose of this research is to study the application of e-log books in Indonesia which outlines the technical aspects of e-log book technology, to compare the application of e-log books with the ones in other countries, and to see the implementation strategies for sustainable management of fish resources. For the initial stage of implementing an e-log book, it can be done at a fishing port with a high level of compliance with the implementation of a fishing log book. The high level of compliance with the implementation of the log book is based on several criteria. These criteria include: 1) the timeliness of fishing log data entry; 2) the suitability of the catch fish with the fishing gear; 3) the suitability of the catch fish with the fishing area; 4) the compatibility of trip length with...
number of settings; 5) the arrest position; 6) the completeness of the fishing log data submitted by the log book officer at the port, and; 7) fostering fishing port for fisheries business actors related to the implementation of fishing log book (PPN Pemangkat, 2013). Based on these criteria, there are ports with high levels of compliance with the implementation of log books in 2012, namely: PPS Nizam Zachman, PPN Ternate, PPN Pemangkat, and PPP Kwandang (PPS Nizam Zachman, 2013).

Application of e-logbook will be applied first on fishing vessels that already use VMS transmitters. The initial stage of implementing an e-log book can also be carried out on ships that have used a VMS (Vessel Monitoring System) transmitter. The operationalization and operation of VMS for fishing vessels is currently regulated by the Minister of Maritime Affairs and Fisheries Regulation Number 10/PERMEN-KP/2013 concerning Fisheries Vessel Monitoring System. This regulation requires fishing vessels over 30 GT operating in Indonesian waters or on the high seas must install an online VMS transmitter with continuous ship position data every 1 (one) hour.

Intensive socialization and training in using electronic log books to fishermen. When the electronic log book is implemented, it is necessary to conduct intensive socialization and training directly to the skipper with simple/easy to understand language. This socialization and training is also given to port officers, so that they can provide training directly to fishermen/skippers. This socialization can also be done by involving local community leaders.

Imposing strict sanctions for violations in the implementation of electronic log books. The fishing log book is a document that is required to obtain a Certificate of Catching Fish (SHTI) which is an important document for exporting tuna, as well as for the issuance of a proof of fishing vessel arrival report by the fishery syahbandar,[16] a fishing log book is a document required for the issuance of a Sailing Approval Letter (SPB). In the regulation, sanctions are regulated for vessels that do not report log books. The sanctions are in the form of non-issuance of Sailing Permit (SPB), freezing of Fishing License (SIPI), until the revocation of SIPI. So that the application of electronic log books can work well, it is necessary to impose strict and consistent sanctions for violations of their implementation. In addition to sanctions, it is also necessary to reward ships with compliance with high electronic log book implementation. The award can be in the form of ease in the licensing process, ease in obtaining fuel subsidies, and ease in obtaining assistance from the government.

Cooperating with third parties is highly needed. To ease the burden on fishermen in the cost of hardware procurement and the cost of e-log book pulses, the Ministry of Maritime Affairs and Fisheries can collaborate with third parties or the private sector in the field of communication for the supply of hardware, SIM card issuance and special pulses for e-log books.

5 Closing

5.1 Conclusion

The use of e-log book technology is the right choice nowadays to accelerate and improve the accuracy of fishing data. The accuracy of fishing data is very much needed to support the management of fish resources. For this reason, one way to obtain fishing data is by using a fishing log book. The data obtained can be used to limit fishing areas in case of overfishing, to
gather information about fish catches, to prevent illegal fishing are the basis for government decisions.

1. The application of e-log books in Indonesia can be done by looking at the comparison of the implementation of e-log books fishing month to month to see the improvement. Based on the research the author did at PPS Nizam Zachman, the application of the E-LogBook Fishing Application showed an increase in the activation of the E-Logbook and an increase in reporting using the E-Logbook application. The data shows the level of compliance and application of the E-Logbook application is very good. Technologically, the e-log book developed is ready to be used in the field of fish resource management in terms of hardware, software, data communication (satellite and GSM/GPRS), and system integrators.

2. E-Fishing logbook application that is implemented at PPS Nizam Zachman has several problem, such as:
   a. The Lack of socialization regarding fishing e-logbook applications
   b. The system of apps still found errors while running it
   c. Weak supervising and;

3. Lack of quality HR in running the E-Logbook Fishing application.

4. From the regulatory base, a legal regulation needs to be made as a basis for the implementation of e-log books in Indonesia.

5.2 Suggestion

Based on the description that has been explained in the discussion in the previous chapter, it can be concluded that the use of the e-log book requires the application strategy. The strategies suggested by NPS Nacham Zachman PPS are as follows:

1. Intensive socialization and training to use electronic log books to fishermen is highly needed.

2. In response to the problems on the apps, there must be an improvement to perform better

3. To apply in imposing strict, fair and equitable sanctions for violations in the implementation of electronic log books; and

4. To involve third parties such as private companies in the field of communication technology.
References


Responsibilities for Platform Providers on Alcohol Beverage Sales through E-Commerce

Rilla Raisha1*, Hendro Saptono2, Siti Mahmudah3
{rillaraisha@gmail.com*|hedro.saptono@live.undip.ac.id2|sitimahmudah@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751,2,3

Abstract. Trade through the electronic system is now becoming an increasingly popular in society. Aside from these conveniences, the platform can be used in an inappropriate way for uploader by entering data and/or information that violates the law, both for-profit or other purposes (prohibited acts). Misuse the platform can be detrimental not only to the viewers but also to the platform provider, and that action can be perceived as being involved in unlawful acts. This research aims to understand the oversight mechanism carried out by the platform provider and to understand the responsibilities that must be undertaken by the platform provider for selling an alcohol through e-commerce in Indonesia. The method used in this research is normative juridical. The data in this study are secondary data obtained from primary, secondary and tertiary legal materials. Furthermore, these data are analyzed using qualitative data analysis methods. The results showed that the unavailability of a plot or SOP for handling complaints led the platform provider for not having an obligation to take the abusive users for further follow up.

Keywords: Circular Letter of the Minister of Communication and Information of the Republic Of Indonesia Number 5 of 2016, E-Commerce, Alcoholic Beverages

1 Introduction

Civilization today is characterized by the phenomenon of advances in information technology and globalization that takes place in almost all fields of life. Globalization basically started from the beginning of the 20th century, the time of the transportation and electronics revolution that spread and accelerated between nations, adding in increasing and speed of traffic of goods and services.

Information technology and electronic media are valued as a pioneer symbol, which will integrate all systems, whether in social, cultural, economic and financial aspects. From small local and national systems, the process of globalization in recent years is moving fast, even too fast, towards a global system. The world will become a “global village” that is united, mutual and open, and interdependent.

The merger of computers with telecommunications created a phenomenon that changed the configuration of conventional communication models, by creating something into reality in the third dimension. If the first dimension is hard reality in empirical life (hard reality), the second dimension is reality in symbolic life and formed values (soft reality), then the third dimension is known as virtual reality (virtual reality) which gave birth to another format of society. The trading system that utilizes internet facilities (interconnection networking), hereinafter referred to as e-commerce, has changed the face of the business world in
Indonesia. Besides being caused by the development of information technology, e-commerce was born due to the demands of the community for fast, easy and practical services. Through the internet, the public has more room to choose products (goods and services) that will be used, of course, with the desired quality and quantity.

The development of a platform based on user generated content (UGC) platforms such as a marketplace is now very rapid in Indonesia. User generated content based platform is a trading platform where people can submit themselves as members and have accounts on the platform, and can enter data and/or information into the platform. Furthermore, platform providers provide information on sellers, goods, and/or services sold online to platform users.

However, this development also did not escape from various problems. For example, a user generated content based platform operating license is revoked because the actions of users or platform members uploading content that violates statutory provisions. Abuse by the users using the platform can be detrimental to the platform provider, because the platform provider can be perceived as being involved in unlawful acts. This perception is certainly a scourge for the sustainability of the platform provider business.

Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 Of 2016 Regarding Limitation and Responsibility of Platform Providers and Merchants for Electronic Commerce (Electronic Commerce) in the form of User Generated Content,[1] created to provide the guidance to platform providers and merchants in terms of limitations and responsibilities in conducting electronic transactions.

Based on the background description above, it is necessary to formulate what is the problem. The formulation of the issues to be discussed in writing this law is:

1. What is the monitoring mechanism carried out by the platform provider on the sale of liquor through e-commerce?
2. What are the responsibilities of the platform provider on the sale of liquor through e-commerce?

The objectives to be achieved with this research are as follows:

1. To find out the monitoring mechanism carried out by the platform provider on the sale of liquor through e-commerce in Indonesia;
2. To understand the responsibilities that must be carried out by platform providers towards the sale of liquor through e-commerce in Indonesia.

2 Method

The method of approach used by the author in writing this law is juridical normative. A normative juridical approach is a study in the field of law that is carried out by examining library material, which is secondary data and is therefore referred to library law research.[2] This type of legal research can also be referred to as a type of juridical-normative research, which is a legal research method by examining literature or secondary data.[3]

The specifications used in the study are analytical descriptive. Descriptive analytical research is conducted descriptively, limited to attempts to express a problem and circumstances as they are. Analytical descriptive is a method used to describe an ongoing condition or condition whose purpose is to provide data about the object of research, so that it can explore things that are ideal, then analyzed based on legal theory or legislation in force.[4] This method illustrates the applicable regulations and is then associated with legal theory and
implementation practices related to the responsibility of agents for data of customers using financial services without offices.

This research is expected to be a descriptive analytical study with the data obtained are as follows:
1. Primary data is data obtained directly from the field results, such as data obtained from interviews conducted by the author related to the object of the problem raised in this paper. The technique used in qualitative research is in-depth interviews. In writing this law the interview was conducted to the Ministry of Communication and Information and one of e-commerce.
2. Secondary data are data obtained from library materials, obtained from data sources relating to e-commerce and alcoholic beverages.

3 Results and Discussion

3.1 Supervision Mechanisms by Platform Providers on Sales of Liquor through E-Commerce

Trading conducted through electronic systems is now becoming an increasingly popular way of trading in society. This is driven by the widespread use of computers and smartphones in people connected to the internet and increasingly sophisticated and spread electronic network system services that can be accessed by the public as well as through trading platforms through electronic systems.

A trading platform through an electronic system in the form of user generated content (UGC) is a trading platform where people can apply for membership or have an account on the platform and enter data and/or information into the platform. The platform provides information on sellers, goods, and/or services sold online so as to create convenience for the public in conducting trade transactions through an electronic system that can ultimately improve the economy of the community.

In addition to these conveniences, the platform is also vulnerable to abuse by account holders and/or uploaders who deliberately enter data and/or information that may violate the law, both for profit or other purposes (prohibited acts). Abuse by the account owner and/or uploader can be detrimental to the platform provider, which can be perceived as being involved in unlawful acts. This perception will become a scourge for platform providers if placement is not placed in the right position, so that it can affect the continuity of the service business.

On that basis, the government through the Ministry of Communication and Information issued a Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limits and Responsibilities of Platform Providers and Merchants (Merchant) Trading through Electronic Systems (Electronic Commerce) in the form of User Generated Content. The purpose of this policy is to provide guidelines for platform providers and electronic system providers and merchants in terms of their limitations and responsibilities in electronic transactions in the form of electronic-based trading in the form of user generated content.

Circular Letter Number 5 of 2016 indeed does not mention and explain directly related to the monitoring mechanism that must be carried out by the platform provider. Nevertheless, all forms of platform provider obligations have been mentioned and explained in a limitative
manner in Circular Letter Number 5 of 2016. As for those matters explained in Section (C) Number (1) Letter (a), (b), (c), (d), (e) and (f).

3.2 Responsibilities to Be Done by Platform Providers on the Sale of Liquor through E-Commerce

The responsibility by definition is human awareness of behavior or actions that are intentional or unintentional. Responsibility also means acting as an expression of awareness of the obligation. In law, every demand for accountability must have a basis, namely what causes a person to have a responsibility. Generally, legal responsibility is defined as an obligation to do something or behave in a certain way not to deviate from existing regulations. In civil law, the basis of liability is the mistakes and risks involved in each legal event. Theoretically the liability is related to the legal relationship that arises between the party demanding responsibility with the party claimed to be responsible.

In general, the principles of responsibility in law can be distinguished as follows:

3.2.1 The Principle of Responsibility Based on the Elements of Error

The principle of responsibility based on the element of error (fault liability or liability based on fault) is a fairly general principle applicable in civil law. In the Civil Code, especially Article 1365, 1366 and 1367, this principle is firmly held. This principle states that a person can only be held liable if there is an element of wrongdoing, Article 1365 of the Civil Code which is commonly known as an article about acts against the law, requires the fulfillment of four basic elements, namely:

a. Actions;
b. Element of error;
c. The loss suffered
d. Causal relationship between error and loss.

What is meant by mistake is an element that is contrary to law. Understanding the law is propriety and decency in society.

3.2.2 Principles of Presumption for Always Responsible

This principle states that the defendant always have responsibility (presumption of liability principle), until it can be proved that being innocent. In the permit principle, the burden of proof is on the defendant. In this case the burden of proof is reversed (omkering van bewijslast). This certainly contradicts the presumption of innocence. However, if applied in the case of consumers, it would seem that this principle is quite relevant. If this theory is used, the one who is obliged to prove the error lies with the business party sued. The Defendant must present evidence that he is innocent. Of course consumers cannot arbitrarily file a lawsuit. The position of the consumer as the plaintiff is always open to being sued back by the business actor, if he fails to show the defendant's mistake.

3.2.3 Principles of Presumption for Not Always Responsible

This principle is the opposite to the second principle, in which the principle of presumption is not always responsible only known in the very limited scope of consumer transactions. An example of the application of this principle is the transportation law. Loss or damage to cabin baggage or hand luggage, which is usually carried and monitored by passengers (consumers), is the responsibility of the passenger. In this case the carrier (business
actor) cannot be held responsible. The party charged with proving the error lies with the consumer.

### 3.2.4 The Principle of Absolute Responsibility

The principle of absolute liability is often identified with the principle of absolute liability. Nevertheless there are also experts who distinguish the two terms above. There is an opinion that states strict liability is a principle of responsibility that establishes error not as a determining factor. However, there are exceptions that make it possible to be released from responsibility, for example in a state of force majeure. Instead, absolute liability is the principle of responsibility without error and there are no exceptions.

### 3.2.5 Principle of Responsibility with Limitation

This limitation of liability principle can be seen in details in the exoneration clause in a standard agreement made by a business actor.

The law is a means to regulate social life, but the interesting thing is that the law lags behind the object that governs. Thus, there are always signs between law and social behavior that striking distance of difference. If this happens. There will be tension that should be adjusted immediately so that it does not create ongoing tension, even the efforts in this direction are always late. It should be that time that social change can be demonstrated by the laws that govern it, because a change in law will only occur if the two elements meet at the point of contact.

At the beginning the formation of the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 had the intention to provide guidelines for platform providers and merchants in terms of their limitations and responsibilities in trading through the electronic transaction system in the form of UGC. This was done because the platform providers were considered very vulnerable.

The formation of the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 is inseparable from the reality that there have been many cases that have harmed the platform providers in e-commerce.

The most important point in the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 lies in Part (C) Number (2) Letter (a) and (b) that the platform provider responsibilities include:

- Responsible for managing electronic systems and managing content on the Platform reliably, safely and responsibly;
- The provisions of letter (a) above do not apply in the event of an error and/or omission on the part of the merchant or Platform user is proven.

However, with the status of the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 Of 2016 only as part of policy regulations where the circular letter is only an order or explanation that has no legal force, then there is no legal sanctions for non-compliance and tensions between economic actors in making transactions, especially platform providers, will continue because of inadequate legal instruments. In addition, in accordance with the rules contained in Article 6 Paragraph (2) of Law Number 8 of 1999,[5] business actors choose the right to obtain legal protection from the actions of consumers who are not in good faith.

The author urges that the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 Of 2016 does not meet or even cannot be used as a guarantee of legal certainty that ideally should be owned by every individual or legal entity.
including platform providers because basically, a minister's circular does not have legal force that binds both outside and inside. So Article 6 Paragraph (2) of Law Number 8 of 1999 has not been implemented properly because the platform provider is required to remain legally responsible for all forms of wrongdoing and/or negligence committed by platform users without exception.

4 Conclusion

Based on the research that has been described, it can be concluded as follows:
1. Regarding the complaint mechanism by Shopee and Blibli, the author did not find any flow or Standard Operational Procedure (SOP) for handling complaints, nor found a time limit for Shopee and Blibli in following up on the complaint.
2. In the practice of state administration, the case of the Minister's Circular is not recognized hierarchically in the laws and regulations of the Republic of Indonesia. Even the legal validity of the circular is not regulated in any statutory regulation, however, it becomes a emissary from the government to issue whatever it is considered good as long as it does not conflict with any law. In addition, the substance contained in the Circular of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 is very relevant with the phenomena happening in the society related to the form of protection that must be carried out by platform providers. Part (C) Number (2) Letter (b) which confirms that the platform provider has no obligation to account for errors and/or negligence committed by its users.
References


Criminal Liability for the disseminator of *Eigenrichting* through Social Media: Law Number 11 of 2008 Concerning Electronic Information and Transactions

RM. Egidius Yuristha\(^1\), Eko Soponyono\(^1\), Umi Rozah\(^1\)
\{egidusyuristha@ymail.com\(^1\), eko_soponyono@live.undip.ac.id\(^2\), umi_rozah@live.undip.ac.id\(^3\)

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275\(^1\)

**Abstract.** Following the development of the needs of the people, information technology plays an important role now and then. Information technology brings great benefits and interests to all countries around the world. The current technological developments is very impactful not only to the improvement of human welfare, progress, and civilization, but also as an effective tool against the law. One of acts against law is to spread *Eigenrichting* through social media. The issues of this Legal Journal is to, first, find out about the provisions regarding the distribution of *Eigenrichting* through social media based on the prevailing laws and regulations in Indonesia. Second, to describe and analyze accountability related to the distribution of *Eigenrichting* through social media, based on judges’ consideration in Court Decision Number 217/Pid.Sus/2018/PN.Tng.

**Keywords:** Spreading *Eigenrichting* through Social Media, *Eigenrichting*, Criminal Responsibility

1 **Introduction**

Development in the field of information technology (with all its supporting aspects) is expected to have a positive impact on human life, which will ultimately lead to the creation of an increase in human well-being. [1] According to former Minister of Communication and Information Syamsul Muarif, technology has changed the pattern of human life in various fields, so that it has directly influenced the emergence of new legal actions in society. The forms of legal actions need to be adjusted by harmonizing several existing laws, replacing when they are no longer suitable, and forming new legal provisions. [2] Aside from having a positive impact, the internet also has a negative impact that clashes with the moral values that exist in Indonesia which, according to Didik J. Rachbini, causes the process of developing information technology to not yet reach a level of establishment. [3] Through the internet media several types of criminal offenses are increasingly easy to do such as, criminal acts of defamation, pornography, gambling, account break-ins, cyber network destruction (hacking), attacks through viruses (virus attacks) and so on.

In this legal paper, the writer will narrow down the discussion of some of the negative impacts of the internet through social media into a discussion of the spread of *Eigenrichting* records through social media by discussing the vigilante case that occurred in Cikupa, Tangerang in 2017 which was viral and became the subject of discussion among Indonesian people. In short, the case started with a couple living in a boarding house, and was suspected
by the citizens of committing immoral acts. Without any prior checking, residents conduct eigenrichting (vigilante) against the two lovers by carrying out mistreatment and coercion. Even the two lovers are paraded (exhibited) and exposed by residents including the local authority heads who participate in forcing the lovers to claimed that they had committed immoral acts in their contract. The incident was distributed by someone named Gusti Singgih Danuarta through Facebook. His action is then became a proof through a trial with Case Number 217/Pid.Sus/2018/PN.Tng, [4] and have been sentenced by a court which has the legal force of imprisonment for 10 months imprisonment for 10 months because it has been legally and convincingly proven to violate the provisions of Article 45 paragraph (1) jo. Article 27 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions. [5] Regulations regarding the dissemination of Electronic Information and/or Electronic Documents which have contents that violate decency are governed by Indonesian law, in Article 27 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions. The ITE Law has anticipated in such a way the adverse effects of the utilization of ITE technology advances. The ITE Law has determined which actions are included in criminal offenses in the field of ITE (cybercrime) and has determined the nature of evil and assaults on various legal interests in the form of specific criminal acts. [6]

In analyzing a court, decision above the author will discuss criminal liability for a criminal act. Criminal responsibility (criminal responsibility) is a mechanism to determine whether a defendant or suspect is responsible for a criminal act that occurs or not, which in this case is a decision with Case Number 217/Pid.Sus/2018/PN.Tng on behalf of the convict Gusti Singgih Danuarta.

Based on the background stated above, the following problems can be formulated:

1. How are the Criminal Provisions for the Perpetrators of Eigenrichting Spreading through Social Media Based on the Legislation in force in Indonesia?
2. What is the Responsibility of Perpetrators of Eigenrichting Distribution through Social Media Based on Judges’ Considerations in Court Decision Number 217/Pid.Sus/2018/PN.Tng?

2 Method

Research is a basic tool in the development of science and technology. That is because the research aims to reveal the truth systematically, methodologically, and consistently. Methodological means something by a method or a certain, systematic is based on a system, whereas consistent means the absence of things that conflict with a particular framework. In the research process, analysis and construction of the data that has been collected and processed is carried out. [7]

The method of approach used in this legal research is normative juridical (legal research) which is a legal research conducted by examining library materials. [7] A juridical approach is an approach that refers to the applicable laws and regulations. [8] Normative Legal Research however, is a legal research method conducted by examining mere library materials or secondary data. [7] Regarding the term normative legal research, there is no uniformity among legal experts. Some of them mentioned in terms of normative legal research methods or library legal research methods; [7] doctrinal legal research methods; [9] normative legal research methods, [10] and; normative legal research methods or doctrinal legal research methods. [8] The normative method, is a method carried out by examining library materials or secondary
data on the principles of law and case studies which in other words are often referred to as library law research. [8]

The choice of this method by the researcher is due to legal research is a process to find the rule of law, legal principles in order to answer the legal problems encountered. Therefore, the choice of method used in this study is normative legal research relating to the principles and rules of law that apply regarding criminal liability for the crime of spreading eigenrichting through social media and can solve problems objectively based on material related library materials. This research is intended to conduct a theoretical-normative study of the principles and norms/regulations regarding the specification of acts and the imposition of responsibility for the crime of spreading eigenrichting through social media as regulated in Law No. 11/2008 jo. Law Number 19 of 2016 Regarding Information and Electronic Transactions then links the discussion to Court Decision Number 217/Pid.Sus/2018/PN.Tng, so that a conclusion is found.

3 Results and Discussion

3.1 Criminal Provisions for the Perpetrators of Eigenrichting Spreading through Social Media Based on Legislation in force in Indonesia

Although the crime of spreading eigenrichting through social media has not been explicitly regulated in the Act, the practice of the provisions according to positive Indonesian law regarding the crime of spreading eigenrichting through social media are regulated in: [11]

Article 27 paragraph (1) jo. Article 45 paragraph (1) of Law Number 11 of 2008 Concerning Information and Electronic Transactions jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions; or

Article 27 paragraph (3) jo. Article 45 paragraph (3) of Law Number 11 of 2008 Concerning Information and Electronic Transactions jo. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

3.1.1 Criminal Formulation Distributing Electronic Information that Has Content that Violates Decency (Article 27 Paragraph (1) in conjunction with 45 Paragraph (1) of Law Number 11 of 2008 Regarding Electronic Information and Transactions)

Viewed from the technical/formulation point of view, the criminal act is a criminal offense in the Information and Electronic Transaction field because the object of the act is Electronic Information and/or Electronic Data. Meanwhile, viewed from the point of view of the nature of the prohibition (against the law), it can be grouped into criminal acts of decency. The main criminal offense is decency, while the means are by utilizing Information and Electronic technology. For this reason, the criminal acts of Article 27 Paragraph (1) jo. 45 Paragraph (1) may be referred to as lex specialis from the forms of criminal acts of decency in Chapter XIV Book II of the Criminal Code. The formulation of a criminal offense in Article 27 Paragraph (1) if specified consists of the following elements:

- **Subjective Elements:**
  1. Error: on purpose

- **Objective Elements:**
2. Against the Law: without rights

3. Actions:
   - Distribute; and/or
   - Casting: and/or
   - Making it accessible;

4. Object:
   - Electronic Information; and/or Electronic Documents that have content that violates decency.

1. Error Element

   Deliberately there is no doubt that “on purpose” is part of the element of error, especially in the crime of dolus (dolus delict). In every criminal act of dolus, there is always an element of intent, although that element is often not explicitly mentioned in the formulation. According to Jan Remmelink, there are ways to do things, [12] because of the nature of the verb (active action) used in the formulation. It has been illustrated that to realize the action, it is always driven by a will. Unlike the case in the culpa crime, the element of kulpa always must be stated explicitly in the formulation. As is known by the Dutch WvS system, that all criminal offenses that do not include the element intentionally or kulpa, the criminal act is still required to have an intentional element, meaning that it is a dolus crime. [13] To prove the element of intent stated in the formulation of a crime in Article 27 Paragraph (1) jo. 45 Paragraph (1) of the Information and Electronic Transaction Law, there are a number of things that need attention: [6]
   a. Information in Memorie van Toelichting
   b. The state of the soul of the maker when performing an action
   c. All circumstances are objective when an action is carried out

2. Unlawful Element: Without Rights

   Objectively, the element lies in the contents of Electronic Information in the “state and nature” of the object. The maker has no right to carry out the act of transmitting, distributing and making accessible Electronic Information/Electronic Documents is located/because the contents of the information violate decency. it is either not attached to the state and position of the maker in relation to the use of electronic means or because the “email address” or “social media account” used to send Electronic Information does not belong to him. Opinion that states the nature of the law lies in the position of the maker is not right. [14] From a subjective point of view, the relationship of the “without rights” element is closer to the elements “on purpose”. As explained previously, that elements are deliberately placed before the element “intentionally” in the structure of the formulation of criminal acts. based on the information of MvT, there is no doubt that intentionally addressed or included elements without rights. The maker knows that he has no right (prohibited, disgraceful) to transmit, distribute, make accessible Electronic Information and/or Documents which he knows violate decency. This means that when eigenricthing is spread through social media, if it contains acts that violate decency, then to protect the values of decency in society the act is subject to the provisions of Article 27 Paragraph (1) jo. 45 Paragraph (1) of the Information and Electronic Transaction Law, with the aim of upholding the values of decency living in the community.

3. Elements of Deed: Distributing, Transmitting, Making Accessibility

   Distributing comes from the word “distribution” which means “distribution (distribution, delivery) to several people or to several places.” [15] When connected with the object
element, then the act of distributing is channeling or sharing or sending Electronic Information whose contents violate decency. While the root word “transmits” is “transmission” which means sending, transmitting, spreading messages and so on from one person to another. Transmitting means “sending or forwarding messages from one person to another”. [15] If examined from the above understanding, the act of “distributing” and “transmitting” has a difference. Distributing is the act of spreading something from someone to many people. This means that the target to be addressed is to many people. While “transmitting” is the act of spreading something from one person to another, meaning that the target/goal is only individuals not to many people. In fact, the act of transmitting and distributing has the same nature. The point is, with both actions, some information is channeled to the destination - the recipient of the information. Therefore, to measure that both of these actions have been realized perfectly, is from the point of distribution of the intended information.

In contrast to the act of distributing and transmitting which is formulated in a more concrete form, the third act of “making it accessible” is abstractly formulated. Because of this nature, the meaning of distributing and transmitting is actually included in the act. All actions, whatever their form if they cause the distribution of Electronic Information/Electronic Documents to the recipient of information using computer equipment, those actions include actions that make them accessible. [6]

When viewed from the act of spreading eigenrichting through social media, it can be explained that this element is fulfilled if the creator after entering into social media then he shares (distributes) the recording/video of an eigenrichting crime that occurs in a place and the creator aims to Eigenrichting events can be seen by the general public or other users on social media such as Facebook, Twitter, Instagram, Email, and others.

4. Object Element: Electronic Information and/or Electronic Documents that Have Content that Violates Decency

The final element contained in the formulation of a criminal offense article 27 Paragraph (1) no. 45 Paragraph (1) of the Information and Electronic Transaction Law in the context of imposing this provision on the perpetrators of the distribution of eigenrichting on social media is “Electronic Information and/or Electronic Documents that Have Content that Violates Decency.” As known that in the spread of eigenrichting through social media, objects that are disseminated are acts that usually occur in eigenrichting such as unpleasant acts, threats, persecution, decency, kidnapping, and even in some cases sexual violence. Actions like that are considered to have violated decency in society, meaning that by doing so it has damaged the norm of decency that has been maintained in the midst of the community so that people feel uneasy and disadvantaged. Furthermore, in this discussion, the author will explain the elements of the object, namely “Electronic Information and/or Electronic Documents that Have Content that Violates Decency.” Please note the meaning of decency in the Information and Electronic Transaction Law is not clearly explained.

Furthermore, regarding the definition and limits of decency the author will explain based on expert opinion. The Electronic Information and Transaction Law does not provide a definition of “decency” to cause multiple interpretations and meaning bias. Bias meaning meant is the meaning of decency whether civilization or politeness as the meaning of the term morality in general or the meaning of morality is pornography which is identified with fornication and eroticism. [16] Whereas “Decency” according to the Big Indonesian Dictionary made by the Language Center of the Ministry of National Education comes from the root of the word “moral” which means “good language; civilized; polite “other than that also interpreted as” good customs; politeness; courtesy; civilization; decency.” [15]
While “pornography” according to the Big Indonesian Dictionary means “erotic depictions of behavior with paintings or writings to arouse lust” or in other meaning “reading material deliberately and solely designed to arouse lust in sex”. [15] Thus, the meaning of decency and pornography is different. [16] Problems can arise from the element “which has a charge violating decency.” It is not easy to set boundaries of understanding violating decency, especially the term “decency” in criminal acts of decency, because its understanding and scope is very broad and can vary according to the views and values prevailing in society. [17] In the Information and Electronic Transaction Law there is no information or instructions regarding this element. For this reason, normatively, we must look at the main source of criminal law, namely the Criminal Code, specifically regarding the phrase “decency”. Regarding the forms of criminal acts of decency, as crimes are placed in Articles 281 to 303 bis Chapter XIV Book II. [6] While in the form of violations are placed in Article 532 to 544 Chapter VI Book III. So many types of crimes and violations of decency. In practice it can be a serious problem, because First, in these articles there is no information whatsoever about the meaning of decency (zeden). Second, there are so many criminal acts of decency both types of crimes and violations. [6] Because of the two conditions above, according to Adami Chazawi,[6] then in terms of looking for the element “which has a charge violating decency” can lead to three opinions. Very wide, wide, and narrow. These opinions include:[6]

1. Opinions are very broad. Judgments are based on the real state of being in society. Whether the form of an act has caused public unrest, as an indicator of the value of decency that has been violated. No need to adjust it (juncto) with the types of criminal acts of decency in the Criminal Code. This opinion is very broad.

2. Broad opinion. The assessment is based on the actual form of the act which must be adjusted to the act in the type and forms of the criminal act of decency, both in the form of crime in Chapter XIV Book II and violations in Chapter VI of Book III of the Criminal Code.

3. Opinion is narrow, it is enough to see Article 281 of the Criminal Code only.

3.1.2 Criminal Formulation Distributing Electronic Information that Has Contamination and/or Pollution Content (Article 27 Paragraph (3) in conjunction with 45 Paragraph (3) of Law Number 11 of 2008 Regarding Electronic Information and Transactions)

The element “which has a charge of insulting and/or defamation”, the phrase “insulting and/or defamation” which is not the slightest explanation in the ITE Law, proves that the crime of ITE Article 27 paragraph (3) is a special part (lex specialis) of beleeding Chapter XVI Book II of the Criminal Code. It is not possible for a judge to apply the ITE criminal act without considering the insulting law provisions in Chapter XVI Book II of the Criminal Code. [14]

The concept of contempt law consisting of 6 (six) kinds of criminal acts is fixed and cannot be denied anymore. One part of insults (beleeding) is pollution (smaad). It is as if the ITE Law distinguishes between pollution and insults, putting pollution in line with insults. As if, insults are a/one type of crime. It is as if defamation stands alone, free from insults. The phrases “and/or” of conjunctions “and” mean, that insults (as a type of crime) can occur simultaneously (cumulative) with defamation. However, it is not possible, because insults are not a type of crime. But rather a qualification of a group of criminal acts that contain the same nature (not the same elements). This means that it is only possible for one or several of these types of insults. Because of the inclusion of “insult” qualifications in the formulation, it implies that all types of insults in Chapter XVI Book II can occur
simultaneously in one case with pollution. Because insults do consist of 6 kinds. Though events like that are not pollution.

In addition, including the phrase “good name” after the word pollution, also creates problems. The concept of contempt law, especially regarding pollution, the object of criminal acts is “honor” (eer) and “good name” (goede naam). The conception of contempt law clearly distinguishes between honor and reputation. Has a different meaning, because it is distinguished. Although separated by the word “or” (“of” between the words “honor” and “good name” in Article 310 Paragraph (1) of the Criminal Code, the two words have the same nature. The same characteristic is that, as a result of the attack on the good name or honor (the two objects) it causes a feeling of decline or fall or pollution of one’s dignity or dignity. He felt humiliated and ashamed, accompanied by anger, resentment, hurt, displeased - a feeling that torments people’s hearts. The difference, “honor” is a sense of self-worth or dignity - the dignity of a person who is based on the values (courtesy) of politeness in the life of the community. For example, because someone is big/fat and his movements and thinking are slow, then someone is called “buffalo”. According to courtesy manners are not good deeds. The act of humiliating others. According to the conception of the law of contempt, this act falls under mild humiliation (Article 315). While “good name” is a sense of self-esteem or dignity - based on a good view or assessment of the community regarding the condition and personal characteristics of a person in the association of life in society. According to Satochid Kartanegara, a good name is an honor given to someone in relation to his position in society.

Based on the explanation above, according to Adami Chazawi, in terms of applying the phrase “contempt and/or defamation” of Article 27 Paragraph (3) of the ITE Law in a case, it can lead to two interpretations, narrow and broad.

1. Narrow interpretation.
   Whereas Article 27 Paragraph (3) of the ITE Law only applies to defamation.

2. Broad interpretation

Regarding the term “contempt” must be interpreted as an insult in the meaning of the genus, for any act that attacks the honor and good name of the person. Acts that contain the nature of humiliation in the sense of the genus, are found in all forms of humiliation in Chapter XVI Book II of the Criminal Code. By reason, that according to the WvS conception the term insult (beleediging) is the name (qualification) of groups of types of criminal acts based on the protection of the same legal interests. A legal interest regarding the upholding of the dignity of honor and the dignity of the good name of an individual. Aiming to achieve and maintain the peace and inner peace of people in the interaction of fellow members of society from the actions of others that create feelings of shame, discomfort, offense, polluted, humiliated, all of which give birth to feelings of displeasure, hatred, dissatisfaction, anger, a suffering that torments people’s hearts.

This broad interpretation is also in accordance with the wishes of the Dutch WvS formers as reflected in the Memorie van Toelichting (MvT) in relation to the insults (beleediging) of the Article to the President or Vice President (no longer valid based on the decision of the Constitutional Court; 1 December 6, 2006 No. : 013 -022/PUU-IV/13-022/PUU-IV/2006). In this case MvT gives instructions that the word insult (beleediging) should be interpreted the same as the meaning (forms) of insult (beleediging) in Chapter XVI of the second book of the Criminal Code. Based on logical interpretation (logicalche interpretatie), presumably the soul of this MyT statement can be used to give meaning/insult (or insulting) elements/phrases in the formulation of specific insulting criminal acts in many articles in the Criminal Code.
whose object is the honor and personal good name of the person (such as Article 142, 143) and those outside the Criminal Code (as in the ITE Law and the Broadcasting Law).

Based on this interpretation method, Article 27 Paragraph (3) jo. 45 Paragraph (1) of the ITE Law can be applied to all cases of insults in accordance with the types of insults in Chapter XVI Book II of the Criminal Code, namely: [6]

1. Pollution (Article 310);
2. Defamation (Article 311);
3. Minor insults (Article 315);
4. Defamation complaints (Article 317);
5. Lead to false allegations (Article 318);
6. Pollution of people who have died (Articles 320 and 321).

Seeing from the two interpretations above, it is the broad interpretation that is considered appropriate to interpret the word insult and defamation. In order to impose the provisions of Article 27 Paragraph (3) on acts of spreading *eigenrichting* through social media, interpretation is needed not only of defamation, but also other offensive offenses which may also be contained in Information and/or Electronic Documents distributed by the author on social media. As the author has explained above, insult is not a crime, but a qualification of several criminal acts that have an object that is the same, namely the attacking of one’s dignity or reputation. An Electronic Information and/or Document that is distributed through the media about an *eigenrichting* event in practice cannot only contain the contents of defamation. But also in an act of spreading *eigenrichting* on social media it is also possible to contain defamation (Article 311), mild insults (Article 315), lead to false allegations (Article 318). Therefore, a broad interpretation method is needed to understand the meaning of the phrase “contempt” or “good name” in order to impose the provisions of Article 27 Paragraph (3) of the ITE Law on acts of spreading *eigenrichting* through social media.

From each element contained in Article 27 Paragraph (3) jo. 45 Paragraph (3) This ITE Law has been proven that every element has been fulfilled if it is associated with the act of spreading *eigenrichting* through social media. Law enforcers in handling a case of the spread of *eigenrichting* through social media that occur in the community should have other options besides Article 27 Paragraph (1) of the ITE Law concerning the dissemination of decency content and may apply the provisions of Article 27 Paragraph (3) to these acts. This is because in the ITE Law it does not explicitly mention criminal provisions or material actions in the distribution of *eigenrichting* through social media. However, if we see from the object to be protected from these articles, namely the upholding of decency and the maintenance of a good name/honor, then we can understand that an act of spreading *eigenrichting* events on social media in the form of video or picture recording is sure to damage the order of norms morality in the community. In addition, this act has also attacked the honor/good name of someone who must be guarded regardless of the person’s background, because basically everyone has self-respect in the field of honor and good name, regardless of how bad a person’s temperament or the lowest social position (including one’s economic position, it is certain that the person still feels a sense of dignity/dignity regarding respect and good name. [6]

3.2 Criminal Liability of Perpetrators of *Eigenrichting* Spreading Through Social Media Based on Judge’s Consideration in Court Decision Number 217/Pid.Sus/2018/PN.Tng
As the author explained above, to determine whether a person should be criminally responsible for his actions, according to Sudarto there are at least 3 elements that must be met, including: the ability to be responsible, the inner connection between the creator and his actions whether in the form of deliberate or negligence, and no excuse forgiveness. For this reason, the author will describe one by one the three elements of criminal liability above by referring to Sudarto’s opinion of the judges’ consideration in Court Decision Number 217/Pid.Sus/2018/PN.Tng.

3.2.1 Responsible Ability

According to Sudarto, the Criminal Code does not contain when someone is capable of being responsible. [22] However, the Criminal Code contains provisions that point in that direction, is in Book I Chapter II Article 44 which reads: “Whoever commits an act that cannot be accounted for him, because his soul is disabled in the growth or disturbed his soul due to illness, not convicted”. There is contained a reason contained in the maker, which is the reason so that the deeds committed cannot be insured to him. The reason in the form of the personal condition of the creator who is biological, is “his soul is defective in growth or disturbed due to disease”. In that situation the maker does not have freedom of will and cannot determine his will towards his actions. So this situation can be a reason for the creator not to be responsible for his actions.

According to Roni Wiyanto, Article 44 Paragraph (1) of the Indonesian Criminal Code in essence shows the conditions when a person is deemed not to have the ability to be responsible, which must meet the following conditions: [23]

1. The soul is flawed in growth. In this case what is meant is imperfect reason (thought) so that the nature and actions are childish, such as: idiot, blind, deaf, imbecil (dumb), or mute from birth. People who are classified as this kind are called abnormal.
2. The soul is disturbed due to illness. In this case what is meant is people who experience psychiatric illnesses, such as: psychosis, neurological disease (epilepsy), hysterics, and other mental illnesses. Mental disorders in this group are called pathological diseases.

If related to the judge’s consideration or the facts of the trial in Decision Number 217/Pid.Sus/2018/PN.Tng, Convicted Gusti Singgih Danuarta is a person who is capable of being responsible for his actions in spreading eigenrichting through Facebook social media. In the facts of the trial there were no indications or signs that Gusti Singgih Danuarta experienced a “soul with disabilities in growth” or “his soul was disrupted by illness” as explained by Sudarto and Roni Wiyanto. The reason is that it is not possible for someone who has a disability or a disturbed soul to do the act of accessing social media in this case Facebook then sees the video and downloads it using UC Browser and re-uploads the video by adding a description to the video “Mangkanya Kalo Ngewe Modal”, “Lok Tangerang Tigaraksa Kaloga Salah.” This means that here there is a series of actions in using Electronics that can only be understood by normal people. The convict Gusti Singgih Danurta had full awareness and realized his actions with a normal state of mind and with this awareness he wanted to spread eigenrichting records of a couple who were accused of being perverted and made many people on social media see it.

Therefore, in its consideration, the judge determines:

“Considering whereas the Defendant, Gusti Singgih Danuarta bin (deceased) Sunaryo, at the hearing has provided information which in essence is as follows:
That the Defendant is physically and mentally healthy and the Defendant has provided information in the Police Investigator and confirmed all of the Defendant’s statements to the Investigation Agency.”

3.2.2 The Inner Relationship Between the Creator and His Acts (Deliberate or Negligence)

The actions of the convicted Gusti Singgih Danuarta were not negligence or culpa. First, it should be noted that in the claim, the article used is an article which contains intentional elements, namely the element “intentionally”; here it is clear that what the convict did was not an negligence or culpa. Because in the formulation of offense negligence is always mentioned with the term “because of his negligence” in the element of offense. For example, Article 188 of the Indonesian Criminal Code “because of negligence has caused eruption, fire, etc..” Article 359 “because negligence has caused the death of a person”, Article 360 “because negligence causes a person to be seriously injured”, etc. Second, to find out someone is neglecting the experts think at least there are elements that must be fulfilled in his actions. Here the author uses Simons’ opinion, that is, to prove someone’s negligence there are two elements, among others: (1) the absence of caution, (2) the expected consequences. Based on the facts of the trial that the author has explained before, the convict Gusti Singgih Danuarta did not fulfill the two elements of negligence. Because what convicted Gusti Singgih Danuarta is doing here is not something done in the absence of caution. It is very clear that the convicted Gusti Singgih Danuarta based on the evidence and legal facts of the trial carried out the act of spreading eigenrichting on social media Facebook against a pair of lovers accused of indecent acts with the intent and purpose that to be accessible and known to many people, where the content distributed violates decency. in the community. This means that with full awareness of the convict Gusti Singgih Danuarta realizing that he can determine his actions.

Furthermore, from the three features of intentionality according to Sudarto, the actions of the convicted Gusti Singgih Danuarta based on the judge’s decision in the court’s decision were intentional as intentions (opzet als oogmerk). A person can be said to be opzet als oogmerk if he intentionally performs an action with the intent and purpose to cause a result of his actions. Here it gives an understanding that if he does not want a result if a certain action is carried out, then he will not do the action. Thus, deliberate as an intention can be reviewed from two things, as follows: [23]

1) Formal Criminal Acts, i.e. if a person intentionally commits an act, and the act that is carried out is indeed the will of that person.
2) Material Crimes, i.e. if a person intentionally commits an act to cause a result of his actions. The resulting effect is the goal to be achieved by the perpetrator by carrying out an act.

Here, the convicted Gusti Singgih Danuarta’s coverage covers both types of criminal acts. First, the convicted Gusti Singgih Danuarta had the intention, namely by deliberately downloading using the UC Browser video/recording eigenrichting of a couple for allegedly committing a pervert, to then disseminate information or electronic documents in the form of 2 videos by re-uploading the 2 videos through his personal account called “Gusti Singgih Danuarta” on Facebook using his cellphone. This means that the convicted Gusti Singgih Danuarta has committed an act which is a formal criminal offense. Second, the convict Gusti Singgih Danuarta has a purpose or purpose. For their acts of distribution by re-uploading electronic information or electronic documents containing the recordings of a pair of lovers paraded, tortured, and stripped by a group of people, here the purpose and purpose of the
Convicted Gusti Singgih Danuarta is so that the video/recording can be accessed and known by many people. This was proven in distributing the recording Through Social Media Facebook. Convicted Gusti Singgih Danuarta Also Added The Video With The Title “Mangkanya Kalo Ngewe Modal”, “Lok Tangerang Tigaraksa Kaloga Salah.” This means that the convicted Gusti Singgih Danuarta has the intention that many people can access and view the videos he uploaded/share on his Facebook account.

3.2.3 There is no Reason to Forgive

Article 44 of the Criminal Code contains a provision that cannot be convicted of someone who commits an act that cannot be accounted for because his mind/soul is imperfect or disturbed due to illness. [22] As you know, M.v.T states that it cannot be accounted for because of the cause that lies within the maker. The convict Gusti Singgih Danuarta is a person with a normal mental state. Because based on legal facts during the trial court did not find a mental defect or lack in the soul growth of Gusti Singgih Danuarta. In the judge’s judgment it was stated “that the Defendant Gusti Singgih Danuarta at the hearing had provided information in principle that the Defendant was physically and mentally healthy and the Defendant had provided information at the Police Investigator and confirmed all of the Defendant’s statements to the Investigation Investigation Report”. This means that the provisions of Article 44 of the Criminal Code do not apply to convict Gusti Singgih Danuarta.

Furthermore, in forgiving reasons, it is also regulated in Article 51 Paragraph (2), which is to carry out illegal orders. An illegitimate office order abolishes a person can be criminalized. This person’s actions remain unlawful, but the author is not convicted, if he meets the following conditions:[22]

1. If he thinks in good faith (honest heart) that the command is valid.
2. The order is located within the authority of the person being governed.

When talking about job orders, the offender must be someone who has a certain job or profession in which there is separation and classification of positions. Based on the identity contained in the decision Gusti Singgih Danuarta is a person who works as a private employee. This means that Gusti Singgih Danuarta is someone who has a job and allows for the classification of certain positions within his work environment. However, even though his work allows for a certain position, it seems impossible if in his work environment he gets a position order to distribute on social media Facebook 2 video/eigenrichting record of a pair of lovers who are paraded, stripped, and beaten with the aim of the recording can be accessed and seen a lot Facebook user people. Likewise, in the legal facts of the trial it was not found that the Defendant’s actions were illegal orders, but the Defendant’s actions were purely intentional Gusti Singgih Danuarta with the intent and purpose in accordance with his conviction and consciousness.

The next reason for forgiveness is the forced defense which exceeds the limit (Nodweer Excess) in Article 49 Paragraph (2) of the Criminal Code. For the existence of this emergency defense, limit capability there must be the following conditions: [22]

1. exceeding the required defenses
2. the defense is carried out as a direct result of a great soul shake
3. The great mental shock is caused by an attack, in other words, between the mental shock and the attack there must be a causal relationship.

Then by looking at the facts of the trial in the decision there is not a single condition that fulfills the actions of the convicted Gusti Singgih Danuarta as a forced defense that exceeds
the limit, because Gusti Singgih Danuarta committed his actions intentionally and not in an attempt to defend the attack that happened to him so it is not there may be a great mental shock in Gusti Singgih Danuarta. This also applies to reasons for forgiving overmacht or forced power contained in Article 48 of the Criminal Code. This provision states that a person who commits an act that is forced by force is not convicted. [22] According to M.v.T. force is described as “every force, every unbearable force or pressure.” Whereas according to the facts of the trial law there is not a single coercion/pressure/force that forced Gusti Singgih Danuarta to carry out the act of spreading eigenrichting through social media which contained eigenrichting acts on a pair of lovers accused of lewd acts, then paraded, tortured, and stripped naked around the village. However, with his own awareness Gusti Singgih Danuarta carried out his actions and with the intent/purpose that the recording/video can be seen by many people.

Judging from the author’s explanation above, Gusti Singgih Danuarta is not someone who should be given a reason to forgive himself so that he cannot be accounted for. Therefore, looking at the judge’s judgment in Court Decision Number 217/Pid.Sus/2018/PN.Tng, the court did not find any excuse or justification reasons, or other criminal eradication reasons as specified in the applicable laws and regulations. The following considerations:

“Considering, that during the trial proceedings, the Court did not find any reasons that were used as excuses for forgiveness, justification and other reasons for criminal offenses as determined in applicable laws and regulations.”

It is described by the author of each criminal liability requirement according to Sudarto, with regard to the consideration of judges in Court Decision Number 217/Pid.Sus/2018/PN.Tng. From the description of the criminal liability, the convicted Gusti Singgih Danuarta fulfills all elements of criminal liability. So Gusti Singgih Danuarta cannot be said to be someone who cannot be accounted for, but he must be held accountable for his actions in spreading videos/eigenrichting recordings of a pair of lovers through the social media of Facebook which is known in the video that there are violent content, nudity, narratives that violate decency with the intent/purpose so that many people can be accessed and seen for their actions. The convicted Gusti Singgih Danuarta was sentenced to a 10-month prison sentence and a fine of Rp 10,000,000.00 (ten million rupiahs) in one month’s jail.

4 Conclusion

Based on the description that has been described in the discussion above, a conclusion can be drawn as follows:

1. The Information and Electronic Transaction Law does not explicitly regulate the act of spreading eigenrichting through social media, and instead, it enforcers to have the option to impose such acts based on the provisions of Article 27 Paragraph (1) jo. 45 Paragraph (1) or Article 27 Paragraph (3) jo. 45 Paragraph (3). This means that even it is not explicitly regulated in the Electronic Information and Transaction Law regarding the spread of eigenrichting through social media, there is something that the Lawmakers want to protect by upholding the values of decency in society and preserving one’s honor or good name.
2. To be able to determine someone is capable of being accounted for a criminal act, there is a mechanism called criminal liability. Based on the judge’s decision Number 217/Pid.Sus/2018/PN.Tng, the judge has assessed that the eigenrichting spreader through social media of Gusti Singgih Danuarta is considering the elements of accountability as stated by Soedarto. As a result, the conviction of Gusti Singgih Danuarta was sentenced to a 10-month prison sentence and a fined with Rp 10,000,000.00 (ten million rupiahs) for one month’s prison sentence.
References


[18] A. Chazawi, Hukum Pidana Positif Penghinaan (Tindak Pidana Menyerang


The Role of Semarang City Wage Board in Protecting the Workers/ Laborers

Triani Fatika Hasri1*, Sonhaji2, Suhartoyo3
[fathikahasry5@gmail.com1, sonhajimuh19@gmail.com2, suhartoyo@live.undip.ac.id3]

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2, 3

Abstract. Humans always try to meet all their needs, both for their own needs and their family. Every person has their own different needs. It depends on the ability or the purchasing power of each individual. Purchasing power depends on earnings (wages) obtained after working for period of times. To provide protection on wages, the government established the Wage Council, (National, Provincial and District/Municipal) which is a non-structural tripartite institution. By the establishment of the Minimum Wages Council Wage, it is expected that wages received by workers/labors, can be a sufficient source of income to meet the needs of workers/labors and their families in a good way. Psychologically, wages can create satisfaction for workers/labors.

Keywords: Wage Council, labor/wage protection, Semarang City

1 Introduction

Labor issues in Indonesia are very complex national problems. The main problem in employment is the issue of employment. So far, the government views labor issues only on the labor force that is increasingly booming, and matters relating to protection, as well as improvement of workers’ welfare are neglected, including wage problems faced by workers/labors which are deemed unable to be handled and resolved. A dualistic labor market situation with excess supply of labor, and an imbalance in the growth of the available workforce. On the other hand, the low quality of the workforce causes wages to become an unresolved issue, and has always been the main discussion in the field of employment.

Workers/labors who feel less satisfied with wages provided by employers where they work will lead to a complex problem when they think it is not accordance with the level of jobs they spent for. The level of needs that are increasing and expensive, must be met with low wages, so there is no balance between the two. For workers/labors, wages are the spear of war to support their families. On the other hand, for entrepreneurs wages are factors of production which are expenses that must be paid by the production process, so that it will determine the articles of association whether or not the profits are obtained.

Wages are an income in return from the employer to the work recipient for a job for services that have been or will be done. Wages serve as guarantees of a viable survival for humanity and production, expressed or valued in the form of money determined according to an agreement, the laws, and regulations. Thus, wages are the rights of workers or laborers who are accepted and expressed as compensation from employers or employers to workers or laborers who are determined and paid according to an employment agreement, agreement, or regulation. [1]
Wage or payment of wages is one problem that has never been debated, both by workers/employers and employers/employees, and by the government. Likewise by many organizations, whatever the form of organization, whether private or government. It is as if remuneration is an inexhaustible job for each stakeholder, because each has an interest in accordance with their respective positions. The low wages will always lead to the conflict between management and the party employed. This is proven by the number of demonstrations or demonstrations in various regions in Indonesia. Worthiness of wages that are not in line with expectations, not balanced with what they do.

Wages are one of the most sensitive aspects of work relations. Various parties concerned see wages from different sides. Workers/laborers see wages as a source of income to meet the living needs of workers/laborers and their families. Psychologically wages can also create satisfaction for workers/laborers. On the other hand, employers see wages as one of the costs of production. The government sees wages, on the one hand as being able to guarantee the fulfillment of decent needs for workers and their families, given the productivity of workers/laborers, and increasing the purchasing power of the people. [2]

Minimum wages are set in order to maintain harmonious industrial relations between employers and workers/laborers with support from the government. Minimum wages are aimed at improving the welfare of workers/laborers and also ensuring the sustainability of the business world. The importance of the participation of both employers and workers/laborers in planning minimum wages is to reach an agreement on consensus on the fair amount of wages for both parties. Planning carried out if it involves the community or stakeholders directly will be able to avoid potential conflicts in the implementation of development, especially regional economic development. The wage policy is mandated by Law No. 13 of 2003 concerning Manpower wherein in its implementation the regional government together with the stakeholders involved try to set the minimum wage level. [3] With the involvement of all related parties, wage issues can be addressed and resolved amicably and deliberately by way of resolution. Fair minimum wages will bring investment into the regions which will support the implementation of development in the regions. From the incoming investment, new jobs will be opened that can absorb labor so that it will be in line with the national development goal of achieving people’s welfare.

“Basically, the right of workers/laborers to wages arises when there is an employment relationship between workers/laborers and employers and ends when the employment relationship is terminated. Thus, workers who are subject to suspension by employers are still entitled to receive wages because they have not yet received a decision from an industrial relations dispute resolution agency with permanent legal force. In addition, to the above provisions, Article 93 paragraph (1) juncto paragraph (2) letter f of the Manpower Act also regulates that in essence employers are still obliged to pay the wages of workers/laborers who are willing to do the work promised but the employer does not employ them, either because of an error themselves or obstacles that entrepreneurs should be able to avoid.” [4]

The purpose of the government to regulate wages and wages for workers/laborers is to protect workers/laborers from employer/employer abuse in providing wages. Every worker/laborer has the right to earn income that meets a decent living for humanity. The worker/laborer receives wages from the employer and is protected by law. The role of the government in this case is to set a wage policy that protects workers/laborers so that they can meet the living needs of workers/laborers and their families.
The stipulation of wages in every province in Indonesia always causes problems. Viewed from the employers, it considers the stipulated wages burdensome to the business world, and on the labor side, the government is still not in favor of the interests of the workers. One of the government’s responsibilities to the community is to determine and set minimum wages for workers. The basis used is Law No. 13 of 2003 concerning Employment. The minimum wage is a net social safety net that is recognized as a high cost borne by employers. It is certain and proven that employers or companies look for opportunities so that the wages paid do not cause production activities to be disrupted and cause other losses.

Wages are defined as provisions issued by the government regarding the obligation of companies to pay wages at least equal to the needs of decent living (KHL) to the lowest level of workers. In other words, that the minimum wage can be said to be one of the government’s policy instruments to protect the lowest-tier workers in every company so that they get the lowest wages according to the value or price of a decent living necessity.

The phenomenon that occurs in society is the frequent demonstrations demanding wage increases on labor day commemoration. On the other hand, employers who feel that the demands of workers or the minimum wage set are heavy to be implemented. The consequence is bringing investment owned out of one area. The debate about the district minimum wage (UMK) often results in demonstrations conducted by workers. Repeated demonstrations on the same issue clearly show the issue of wages. Three parties involved in this problem, namely the government, employers, workers, and the government sees with the lens of competitiveness to attract investment.

The state of Indonesia, precisely in Central Java, has 33.774.141 people, including 16.435.142 people working and 863.783 people who are unemployed. Seen from these figures prove that there are still many residents in Central Java who are still unemployed, and this problem is still unresolved due to an imbalance between the field of workers and the population in Central Java which is classified as dense. However, it cannot be denied that workers have a high and comparable quality of education because there are also many workers who have only minimal education, for example, Elementary School (SD) graduates, first or secondary level graduates.

This situation raises the tendency of employers to act arbitrarily to their workers. Labor is seen as an object. Workers are considered as external factors that have the same status as supplier customers or buyer customers who function to support the continuity of the company and not internal factors as an inseparable part or as a constitutive element that makes the company. Employers can freely pressure their workers to work optimally, sometimes exceeding their workabilities. For example, employers can set a maximum wage as much as the provincial minimum wage, regardless of the work period of the worker. The minimum wage concept that has been applied so far has not succeeded in creating industrial relations as expected.

Existing wage dilemmas, both from sociological and juridical aspects, should not be allowed to continue. Therefore, a solution needs to be discovered so that the interests of workers with employers in conflicting wages can be minimized. If the wage dilemma is allowed to continue it will result in non-conducive industrial relations in Indonesia, and not achieving the goals of employment development and national development goals.
Three mechanisms in setting minimum wages are collective bargaining, consultation, and government legislated Collective bargaining. Wages are determined based on the existence of a collective offer made between employers and workers/laborers directly. The government only determines the outcome of the agreement. Consultation approach in which the government only positions itself as a legislator or guarantor in existing laws and laws. Another option is government legislated where the government sets the minimum wage level directly without paying attention or listening to proposals from employers or workers/laborers.

Before setting a minimum wage policy, the government makes a wage plan that is able to produce a fair wage for stakeholders in it. Planning according to Friedman is an attempt to bridge scientific knowledge with techniques (scientific and technical knowledge) to actions in the public domain. Planning that pays attention to community participation and the business world is the basic principles of good governance. The government is required to be able to interact and coordinate in a healthy and harmonious manner with the power of the community (civil society) and the private sector as a consequence of exercising political, economic and administrative authority to regulate development matters. On the other hand, full participation involving regional development actors starting from the planning, implementation and monitoring and evaluation stages of development is the driving force for realizing an integrated regional development management system towards increasing community welfare and welfare. Good planning must be able to reflect the basic principles of good governance.

In this regard, in order to create a more realistic minimum wage setting, the determination of the minimum wage is carried out by considering the improvement of the welfare of workers without ignoring the productivity and progress of the company and the development of the regional economy in general. To improve the welfare of workers/laborers in Indonesia it is necessary to increase wages for employees as a whole in order to avoid social inequalities between people. If someone’s needs are met properly, the economy in the community is developing well.

The minimum wage policy implemented is general and applicable in an area without distinguishing the ability of the sectoral company. In practice, the provision of city minimum wages has not been able to accommodate companies in sectors that are able to pay higher wages, so as to slow the increase in welfare.

The wage council is a manifestation of the interests of the nation and the provinces to encourage agreements in determining the direction of (one of the factors) economic growth. The only function that appears from the wage council is to give advice and considerations specifically for wages for workers/laborers.

Several articles which regulate minimum wages, are affirmed in Article 97 of Law Number 13 of 2003 concerning Manpower emphasizing that the provisions regarding decent income, wage policy, decent living necessities, are regulated by government regulations. In addition to wage regulations regulated in the form of laws, the government also makes implementing regulations, both in the form of Government Regulations, Ministerial Decrees, and in the form of relevant Ministerial Regulations. The government regulation issued is Government Regulation Number 78 of 2015 concerning wages, but many parties consider the regulation not in line with the mandate of Law Number 13 of 203 Regarding Employment. With the existence of Government Regulation Number 78 of 2015, the basic rights of workers/laborers are reduced and are in conflict with decent wages, living costs and social security.

The city of Semarang is the capital of Central Java Province located in Indonesia. The Semarang City’s economy according to BPS 2012 data is dominated by the industrial sector
and the trade. The Gross Regional Domestic Product (GRDP) of 2012 so that the city of Semarang is dubbed as an Industrial City that has a lot of labor. The city of Semarang has a tripartite cooperation institution so that it can be said that the Semarang City Wage Board is a derivative of the tripartite cooperation institution, where one of the duties and functions of the wage council provides advice and consideration in setting minimum wages in the City of Semarang.

Based on the description above, the identification and formulation of the main issues is as follows:

1. What is the government’s authority in terms of setting minimum wages for workers/laborers?
2. What is the position and role of the wage council in setting minimum wages as legal protection for workers/laborers in Semarang city?

2 Method

This research uses an empirical juridical approach. The method of analyzing the results of this study uses descriptive analytics. Scientific activities include activities: verification, comparison with various sources and research informants related to the research topic.

3 Results and Discussion

3.1 Overview of Wage Councils

Wage Council is a non-structural institution that is tripartite in nature, whose membership consists of elements of government, organizations, employers and trade unions and experts (academics). In order to support the Governor’s policy, especially in terms of Wages. Each region has its own structure and organization for the Wage Council, including in the City of Semarang. The Semarang City Wage Board was formed by the Decree of the Mayor of Semarang Number 561.1/98 of 2018 concerning the Establishment of the Semarang City Wage Board in 2018-2021. The purpose of establishing the Semarang City Wage Council is to help, monitor, and participate in recommending the Semarang City minimum wage amount to be submitted to the Mayor, and eventually will be determined by the Governor.

In addition to those stipulated in Presidential Decree No. 107/2004, the Regency/City Wage Board can form a task force in the commission and further regulate its work procedures. Candidates for wage council members from trade union or trade union elements who meet the tripartite representation requirements. Unions/laborers that have been registered in accordance with applicable laws and regulations, can nominate their representatives to sit in institutional industrial tripartite relations after having at least 10 (ten) work units or at least 2,500 members at the Regency/City level.

According to article 98 of Law Number 13 of 2003 concerning Manpower, the membership of the National level wage council is appointed and terminated by the President, while the Provincial level membership is appointed and terminated by the Governor, and the Regency/City level membership is appointed and terminated by the Regent/Mayor.
Wage or payment of wages is one problem that always has been debated, both by workers/employers and employers/employers and by the government. Likewise by many organizations, whatever the form of organization, be it private or government. It is an endless work for every stakeholder, because each has an interest in accordance with their respective positions. Low wages or wages also always lead to conflict between management and the people employed. This is evidenced by the many demonstrations/demonstrations in various regions in Indonesia. Worthiness of wages that are not in line with expectations, not balanced with what they do.

Of the different interests regarding wages, strict understanding, systems and arrangements are needed. To obtain the same unity of understanding and interpretation, especially for workers/laborers and employers. In accordance with the mandate of the 1945 Constitution Article 27 Paragraph (2) “Every citizen has the right to work and a decent living for humanity” for that wages paid to workers/laborers, they must be able to fulfill a decent life. So that the income of workers/laborers can be met physical, non-physical and social needs which include food, drinks, clothing, housing, education, health, old age insurance, and recreation funds. In addition, the objective of wage policy is expected to be able to encourage economic growth and expansion of employment opportunities, as well as improve the welfare of workers/laborers and their families.

The government has authority for remuneration in Indonesia, especially in protecting workers/laborers from receiving low wages. In terms of making regulations in the area of wages in order to guarantee the necessities of a decent life for workers/laborers throughout Indonesia and their families. In an effort to provide protection to lower-level workers, so that their wages do not decline, the government intervenes in wage issues through setting minimum wages. The role of the government is also inseparable from the Wage Council because it includes, in an effort to recommend minimum wage rates, in practice there has never been a deal because each has its own proposed number, especially from the workers/laborers, so in order to protect workers/laborers it is of course The Wage Board proposes the highest number to the Mayor. Because for the employers, they have referred to the formula Government Regulation No. 78 of 2015 concerning Wages. [13]

Government policies in the area of wages are motivated by problems due to conflicts of interest between employers and workers/laborers which include low wages for workers/lower laborers, lowest and highest wage gaps, varying wage components, and unclear relationship between wages and productivity. The low wage for low-level workers is felt by workers, but it is very difficult to be detected by labor inspectors in the context of setting minimum wages. For formal workers, it may be easier to trace, however, for informal workers, it will be very difficult to be tracked unless there are reports coming from the community and workers or workers. [14] Although wage violations are often carried out by employers, Disnaker as an institution responsible for conducting surveillance and investigations does not take “judicial” actions such as investigations, investigations, and investigations. The reason for supervisors and investigators do not rely on the Disnaker is institutionally not supported by sufficient and capable human data sources, a broad scope of scope of duties plus inadequate legal instruments, and intervention of regional heads with political nuances and conspiracy of supervisors/investigators with employers. [15]

According to Jhon Rawis, the minimum wage stipulation from the government is compulsory, so employers will not give workers wages lower than the prevailing minimum wage. Unless, they get permission from the government in accordance with the principle of
justice. [12] From this opinion, it implies the hope of support from all parties (workers/laborers and employers) so that the minimum wage provisions can be implemented as well as possible.

3.3 Position and Participation of Wage Councils in Setting Minimum Wages

In determining wages, the Regency/City Wage Council has special authority. Referring to Permenkertans Number 12 of 2012 concerning Components and Implementation of the Achievement of the Need for a Decent Life that lists things that can be done by the Wage Board. The City Wage Council can be included as a policy network at the local or regional level. As a local institution where members joined in it are local community groups, the function of local institutions according to Mubyarto revealed by Muwardi, namely: [16]

1. Being a place of communication between the government, the community, and also between community groups.
2. Being a forum for participation in supporting government programs.
3. Being a means to improve community skills, can be in the form of abilities and knowledge.
4. Being a means to change people’s thinking patterns.
5. Being a means to improve community welfare.

Additionally, Mawardi quoted Cheema’s opinion, the roles of a local institution or institution include:

1. Introducing participation,
2. Arranging and determining local goals
3. Simplifying service provisions.
4. Mobilizing local resources.
5. Developing communication.
6. Supporting program various local needs and guidance.

The activity of setting minimum wages in the City of Semarang is determined by the Governor but based on a proposal given by the Semarang City wage council. [17]

The role is more likely or closer to the contribution or share associated with the duties and functions of a human being. The purpose of the role is to be able to carry out the tasks and functions attached to individuals or groups. To be able to achieve the role as desired, there is an effort to realize that role which is carried out clearly in the community in the form of direct participation in an activity. Law Number 13 of 2003 concerning Manpower states that tripartite cooperation institutions are a forum for communication, consultation and deliberation on labor issues. Tripartite cooperation institutions provide considerations, suggestions and opinions to the government in formulating policies and solving labor problems. The Regency/City Wage Board is a part of a tripartite cooperation institution that discusses the determination of the amount of wages that will be a reference for the Semarang City minimum wage which is later recommended to the Regent or Mayor to be submitted and determined by the Governor.

In setting the Semarang City Minimum Wage, the wage council is obliged to summon the parties involved such as the labor union. Trade unions in the city of Semarang to represent the interests of workers in institutions or tripartite institutions such as the city wage council, if the union is registered with the Department of Labor. The fact is not so that among groups of workers in the city of Semarang can not unite their aspirations in the process of bargaining with employers. Each element has its own opinion, but in the end must reach an agreement,
namely from the Wage Council. The agreement from the Wage Board proposes 1 (one) number for recommendations so that in order to protect the workers/laborers the wage council provides the best recommendations in accordance with applicable regulations. The entrepreneur is represented by the Indonesian Employers’ Association (APINDO). This condition is beneficial for entrepreneurs because it will be good if only one voice is raised so that it does not result in a prolonged debate.

In implementing the City Minimum Wage determination, it is intended as a safety net between workers and employers. However, in practice, the implementation of MSEs that are normative in nature is often violated by employers in a variety of ways. There are still many employers who provide wages of only up to 75% of the amount of the minimum wage set by the government. In connection with this, the supervisory function carried out by the local government concerns the wage council agency which is secretariat in the labor service becomes very important. The facts show that often large and financially strong companies make MSEs the standard wage in the company and there is usually an additional salary if the employees in the company are classified as senior. The reality that occurs in the field, many companies consider that MSEs are only as basic wages and already feel safe for workers/laborers who have 0-1 years of service, but there are still many companies that are still complaining with the specified amount of workers/workers who have 0-1 years of service, so it is very important to have a structure and wage scale. It is different with small companies or Micro Small and Medium Enterprises (MSMEs) who pay their employees below the UMK standard, this is a problem for small entrepreneurs who have little capital and financial instability.

Wage increases in companies tend to await the increase in MSEs set by the government, as a result workers/laborers’ wages tend to be relatively fixed and less to live because prices of basic commodities continue to rise. Although large companies usually set their standard salaries above the MSE, the increase is due to demands and encouragement from workers to increase wages together with minimum wage increases. If there is something mentioned above, the workers/laborers usually protest the government as a neutral party. This is very contrary to the principle of employers who expect to spend a little money with maximum results, another case with workers/laborers who want wages to continue to rise and never enough for their daily needs. It is here that the Semarang City Wage Council acts as an intermediary or cushion to resolve conflicts between employers and workers/laborers that are never finished.

Payaman Simanjuntak stated that the minimum wage can be seen from two sides: First, as a protection for workers so that the value of wages received does not decline. The workers need a certain level of income to meet their needs and their families. Second, as a means of protection for employers in the sense that companies can succeed if supported by productive workers, one of the factors that influence worker productivity is the guarantee of meeting workers’ needs.

The Minimum Wage Determination in Semarang City has not 100% (one hundred percent) taken into account the matters mentioned above, usually the minimum wage determination made by the Semarang City Wage Board is only based on the Decent Living Needs (KHL). Based on Government Regulation Number 78 of 2015 Article 43 paragraph (1), the determination of the minimum wage as referred to in article 41 is carried out every year based on the necessities of a decent living by paying attention to productivity and economic growth. Paragraph (2) The need for a decent life as referred to in paragraph (1) is a standard requirement for a single worker/laborer to be able to live physically fit for the needs of 1 (one) month. Paragraph (3) The necessities of a decent life as referred to in paragraph (2) consist of
several components. Paragraph (4) components as referred to in paragraph (3) consist of several types of living needs. Paragraph (5) components as referred to in paragraph (3) and types of living needs as referred to in paragraph (4) are reviewed within 5 (five) years. Paragraph (6) A review of the components and types of needs referred to in paragraph (5) is carried out by the Minister with consideration of the results of the study conducted by the National Wage Council. Paragraph (7) The study conducted by the National Wage Council as referred to in paragraph (6) uses data and information sourced from the authorized agency in the field of statistics. Paragraph (8) the results of a review of the components and types of necessities of life as referred to in paragraph (6) form the basis for the calculation of the minimum wage, taking into account the productivity and economic growth.

There are strict sanctions for employers who pay workers’ wages less than the minimum wage that has been mutually agreed upon. In accordance with Law No. 13 of 2003 concerning Labor Article 90 paragraph 1, employers who pay their workers less than the minimum wage in the city where the company itself is, are liable to a maximum sentence of 4 (four) years in prison and a maximum fine of 400 (four hundred) million rupiah.

If the Semarang City Minimum Wage (UMK) is not agreed upon by employers and workers, the wage council is authorized to vote on the results of the wage council survey so as to minimize the debate between the employer and his workers. The voting process is carried out by inviting business representatives (APINDO), trade unions and wage councils plus experts. By generating a city minimum wage that is not far from the results of a survey conducted by the Semarang City Wage Board.

4 Conclusion

Wage protection through the Government’s policy on Minimum Wages is still needed as a safety net for worker/labor protection. It is an anticipatory step, and therefore, the wages must be paid in accordance with the applied Minimum Wage standard. The role of the government in wages management is considered to be in maximal capacity with their regulations governing wages and strict sanctions in protecting workers/laborers.

Semarang City Wage Council has been able to accommodate all proposals from the elements incorporated in it, and has been able to capture information and become one discussion table between the government, employers and workers/laborers through each representative appointed to reach an agreement. The wage has also been able to mobilize human resources, funds and thoughts to achieve common goals, namely fair wages in order to realize harmonious industrial relations. The Semarang City Wages Board has been able to play a good role in formulating and providing alternative recommendations to the Mayor based on the discussion made with the related parties.

The Semarang City Wage Board does not have the authority to set the Minimum Wage amount, instead, to propose the wage numbers to the mayor and the governor. In principle, the determination of the Minimum Wage is the authority of the Governor on the basis of proposals from the Provincial Wage Board and/or Regent/Mayor.

References


[13] Interview with H. Sonhaji, SH., MH., Semarang City Wage Board Deputy Chairman on October 11, 2018 at the Semarang Manpower and Transmigration Office.


[17] Interview with Sri Rejeki, SP., Semarang City Wage Board Member on September 17 at the Semarang Manpower and Transmigration Office.

[18] Interview with Dra. Ernie Triesniawaty, MH., Semarang City Wage Board Member on September 18, 2018 at the Semarang Manpower and Transmigration Office.
Quality Examination of Fisheries as an Implementation of Fisheries Products

Vindy Sulistyow Wardhani1*, Amiek Soemarmi2, Sekar Anggun Gading Pinilih3
{vindy.sulistyowardhani@gmail.com1*, amiek_soemarmi@live.undip.ac.id2, sekar_anggun@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2, 3

Abstract. This study aims to analyze and describe the efforts from the Department of Fisheries in conducting quality inspection of fishery products in Pacitan Regency in order to find the obstacles in maintaining fishery product quality and overcome them. The research method used is qualitative method with a normative juridical approach. Meanwhile, the research is presented in a descriptive-analytical form. The results showed that the efforts were a control of fishery products which included an inspection of the quality of fishery products that met the eligibility requirements of fish processing, quality assurance systems, and safety of fishery products. The Constraints faced include: origin of the product that is not accompanied by complete data, lack of awareness of maintaining the quality of fishery products, traditional fish processing and marketing business actors, and lack of adequate UPP PMP2KP personnel. Some efforts to overcome these obstacles are to increase the role and tasks of the Fisheries Service, quantity and quality of personnel, facilities, and infrastructure. From the findings, the Pacitan Regency Government is expected to make a Regent Regulation related to the implementation of fishery product quality assurance and carry out socialization to the private sector and the community.

Keywords: Quality Assurance; Implementation; Fisheries Products

1 Introduction

The conception of an archipelagic state of Indonesia shows that the territorial waters of Indonesia are wider than the land area. [1] The Indonesian Ocean is geographically located in the Equatorial region and has a tropical climate to have a consequences for the wealth of species and fisheries resources. [2]

Fisheries resources is one of the fields that has a bright future because of its high potential with abundant fish resources. However, its management and utilization are not optimal so that all fishery activities in Indonesia are regulated by Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, [3] the aim is to regulate and protect fishery activities from pre-production until the results are ready and safe for consumption by the community.

Pacitan Regency is one area with high potential and capture fisheries production. According to Pacitan beach fisheries data in 2014, fish were dominated by tuna species, namely baby tuna at 1,007,949 kg and big aye tuna at 4,530 kg. This shows that it is quite promising for fisheries production business. This potential can be developed to support economic growth and improve the welfare of people who make a living in the field of
fisheries. [4] The amount of capture fisheries production in Pacitan Regency one of which also raises problems, among others, related to the quality and safety of fishery products.

The processing of fish and fishery products must meet the requirements of the feasibility of fish processing, quality assurance systems, and safety of fishery products that is regulated by; 1) Government Regulation Number 57 of 2015 concerning Quality Assurance and Safety Products for Fisheries Products, and; 2) Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fisheries. For this reason, a quality check is conducted for all fishery products, both fresh fish and processed fish in order to obtain quality fisheries that are safe for human health. In the field of fisheries to ensure the quality and safety of fishery products, in fact Indonesia has required fisheries supply chains to implement a quality system through the Integrated Quality Management Program (PMMT) based on the HACCP concept. [5] Based on the background that has been described, the author was inspired to compile a scientific work (journal) with the title, “Quality Examination of Fisheries as an Implementation of Fisheries Results in Pacitan District.”

Issues that will be discussed in this paper are related to the efforts made by the Fisheries Service in conducting quality inspection of fishery products in Pacitan Regency and the obstacles faced by the Fisheries Service in maintaining fishery product quality standards in Pacitan Regency and how to overcome them.

2 Research Method

This study uses a qualitative method with a normative juridical approach. This research is presented in a descriptive-analytical form, namely describing and analyzing all findings in the form of documents and interviews, which are then arranged in the form of scientific papers (journals) to describe the problem with the title: Quality Inspection of Fishery Products as Implementation of Fisheries Product Supervision in Pacitan Regency.

3 Discussion

3.1 Efforts Made by the Fisheries Service in Examining the Quality of Fisheries Products in Pacitan Regency

The Government's involvement in fisheries management according to Nikijuluw, consists of three functions, namely: [6]

1. The allocation function, which is carried out through regulations to divide resources in accordance with the stated objectives;
2. The distribution function, which is carried out by the government in order to realize fairness in accordance with the sacrifices and costs borne by everyone, in addition to the government's partiality to those who are excluded or weaker;
3. The stabilization function, which is intended so that the activities of utilizing fish resources do not have the potential to cause instability that can damage and destroy the social and economic order of the community.

Fisheries management is governed by Law No. 45 of 2009, amended from Law Number 31 of 2004 concerning Fisheries, while the process must be based on the principles of benefits,
justice, togetherness, partnerships, independence, equity, integration, openness, efficiency, sustainability, and sustainable development.

The fisheries resources are quite numerous, both in terms of quality and diversity of forms to be utilized for the welfare of the community. Management of fish resources must be done well based on fairness and equity. [7]

Fisheries resource management is an integrated process starting from information gathering, analysis, planning, consultation, decision making, resource allocation and implementation, in order to ensure the continuity of productivity and the achievement of management objectives. [8]

The main objectives of fish resource management according to Widodo and Nurhakim are for the following: [9]

1. Maintaining the sustainability of production, especially through various regulations and enhancements;
2. Improving the economic and social welfare of fishermen; and
3. Meeting the needs of industries that utilize the production.

The policy plan that has been established and then implemented in the midst of the community has a purpose in the welfare of people's lives (expectation). Expectation is to formulate what is desired from the implementation of tasks, good fisheries can support all aspects of community life and the economy of the community can be improved, not only for the benefit of the current generation, but also for future generations. As for the measurements and standards of expectation, which is to provide socialization and coaching. [10]

The efforts made by the Fisheries Service in conducting quality inspection of fishery products in Pacitan Regency are as follows:

3.1.1 Implementation of Duties and Functions of the Pacitan Regency Fisheries Service

The Fisheries Service is an element of implementing Regional Autonomy. The Department of Fisheries has the task of carrying out the affairs of the Regional Government in the field of Fisheries and Maritime Affairs based on the principle of autonomy and the task of assistance as well as other tasks in accordance with the policies that have been determined based on applicable laws and regulations, [11] one of them is related to inspection of fishery quality results.

Pacitan Regency Fisheries Service in accordance with Article 3 of Pacitan District Regulation Number 71 of 2016 has the task of helping to carry out marine and fisheries affairs which include aquaculture, capture fisheries, fisheries product management and co-administration tasks given by the Regency. [12]

The role of the Pacitan Regency Fisheries Service as referred to in article 34 of Government Regulation Number 57 of 2015 concerning Fishery Product Quality and Safety Assurance System and Increasing the Value Added of Fishery Product Products states: [13]

Paragraph (1): The Minister, relevant ministers, governors, and regents/mayors in accordance with their authority provide guidance to business actors and the Fisheries community in implementing the Fishery Product Quality and Safety Guarantee System and increasing the Added Value of Fishery Product Products;
Paragraph (2): Guidance as referred to in paragraph (1) is carried out through outreach, counseling, coaching and enhancing community participation.
Implementation of the quality assurance and safety system for fisheries products can be
carried out by the Fisheries Department of Pacitan Regency to provide guidance and monitor
the fisheries businesses in Pacitan. With the cooperation and synergy between all stakeholders
in implementing a quality assurance and food safety system both in terms of guidance, control
and supervision, it is expected to minimize the use of hazardous chemicals such as formalin in
fisheries products on the market.

3.1.2 Fishery Product Quality Assurance in Pacitan Regency

The fishing industry has become one of the most processed commodities in Indonesia
with an extraordinary amount of fish abundant from Indonesia's marine resources, a challenge
for the government to help communities around the coast to increase productivity in terms of
marine product management, [14] especially related to quality assurance and safety of fishery
products.

The application of the quality assurance and safety system for fisheries products is a
single step and eventually becomes an integrated series, starting before the production or
stages of raw materials that are in accordance with the standards and their hygiene until the
output is a product certification that is safe for human consumption. The whole series involves
the role of various stakeholders, both the central government (BKIPM KKP RI and the
Directorate General of PSDKP) and the regional government in charge of marine and
fisheries.

The role of the Pacitan Regency Fisheries Office in accordance with its authority is to
provide guidance to business players and the fisheries community, in implementing a quality
assurance and fishery product safety system, as well as increasing the added value of fishery
products.

The implementation of a quality assurance and safety system for our fisheries products in
Pacitan Regency requires consistency and commitment in the application of fishery product
quality (LPPMHP) as well as existing quality development personnel. Cooperation and
synergy between all stakeholders in implementing a quality assurance and food safety system
in terms of guidance, control and supervision can minimize the use of hazardous chemicals
such as formalin in fisheries products on the market.

Every person and processing unit in Pacitan Regency is required to check the fishery
products before being consumed and/or traded to the community, both domestically and
abroad (exported). The inspection was carried out by the Technical Implementation Unit
(UPT) of the Quality Testing and Development of Maritime and Fisheries Products
(PMP2KP) Surabaya, which was formed based on the East Java Governor Regulation No. 115
of 2016 concerning the Organization and Work Procedures of the Technical Implementation
Unit of the Maritime Affairs and Fisheries Office of East Java Province. UPT Quality Testing
and Development of Marine and Fisheries Products (UPT PMP2KP) has the task of carrying
out some of the tasks of the Office in the technical areas of testing, quality assurance and
development of marine and fishery products.

This UPT PMP2KP under the Office of Maritime Affairs and Fisheries (DKP) is an
institution or institution that issues quality test certification and the development of processed
food products from seafood and fisheries. UPT Quality Testing and Development of Marine
and Fisheries Products (PMP2KP) Surabaya is a Product Certification Institute (LS Pro) for
Fisheries Products in the East Java Provincial Maritime and Fisheries Service Office which
has been accredited by the National Accreditation Committee (KAN) with LSPr-056-IDN date
May 24, 2017.
Quality inspection of the results of this inspection is carried out by sampling or sampling from the fishery products to be tested for quality. Sampling and sampling size for fishery products that will be used for consumption and/or foreign trade must be done at random. Testing or technical activities consisting of the determination, determination of one or more properties or characteristics of a product, material, equipment, organism, physical phenomenon, process or service, in accordance with established procedures.

Decree of the Head of the Fish Quarantine Agency, Quality Control and Safety of Fishery Products of the Ministry of Maritime Affairs and Fisheries Number KEP. 04/BKIPM/2011 concerning Delegation of Authority to the Inspection and Certification Body in the Issuance of Health Certificates, [15] Article 1 explains that a laboratory is a room or place used to carry out monitoring and/or testing of the quality of raw materials, semi-products and final products and substances hazards during the production process, whereas according to ISO/IEC Guide 2 1986 laboratories are agencies/institutions that carry out calibration and/or testing.

Every laboratory designated as a reference laboratory and/or testing laboratory must meet the requirements and be accredited as a testing laboratory by an internationally recognized accreditation body. Appendix II Decree of the Head of the Fish Quarantine Agency, Quality Control and Safety of Fishery Products Ministry of Maritime Affairs and Fisheries Number PER. 03/BKIPM/2011 concerning Technical Guidelines for the Implementation of Quality Assurance and Fisheries Product Safety Systems, explains that the requirements referred to are accredited based on ISO 17025 for test parameters that will be used as a reference and apply a quality management system as a laboratory for organizing comparative tests and/or proficiency tests. The quality of fishery products is the standard set of raw materials, supplementary materials, supporting materials, packaging compositions and others regarding the testing of each type of fishery product.

Based on the ability of the tests carried out by the laboratory, the laboratory can be grouped into three types, namely organoleptic laboratories that test physical properties (complete weight, central temperature, canned packaging, filth) and organoleptic or sensory samples, microbiology laboratories that test or identify microorganisms pathogens, their characteristics and characteristics, and chemical laboratories that test or analyze the content of chemicals in samples such as heavy metals, antibiotics, histamine, TVB-N, proximate, and others.

3.1.3 Implementation of Fishery Product Quality Assurance in Pacitan Regency

Implementation of quality control in general fish management based on good manufacturing practices (GMP), is carried out by; receipt of raw materials, sort I, washing with ice water, freezing, sort II, glassing, weighing, packaging and labeling as well as storage. [16]

Fishery products contain at least some quality aspects, namely; bio-techno-economic aspects (agriculture/fisheries), sanitation and hygiene aspects (health), commercial, industrial aspects, and legal aspects (legal). [17]

Indonesian aquaculture products face various challenges to improve competitiveness, both in product quality and efficiency in production. The biggest challenge for food products, including aquaculture products in Pacitan, the most important is food safety by prioritizing quality, both for export products and public consumption. Improving the quality of fishery products is more directed at providing food safety guarantees starting from raw materials to the end products that are free from contaminants according to market requirements. The Ministry of Maritime Affairs and Fisheries has formed a Competent Authority that has the authority to control the implementation of the Fishery Product Quality and Safety Guarantee
System with the Directorate General of Fisheries Product Processing and Marketing (P2HP), the Directorate General of Aquaculture and the Directorate General of Capture Fisheries as the agency responsible for controlling the implementation of the Quality Assurance System and Yield Security in the community.

Quality Assurance and Safety of Fisheries Products emphasizes prevention efforts that must be considered and carried out from pre-production to distribution to obtain quality fishery products that are safe for human health. Improving the quality of aquaculture products is more directed at providing food safety guarantees from raw materials to the end products of aquaculture that are free from contaminants according to market requirements. Activities of the Quality Assurance and Safety Product for Fisheries carried out by the Directorate General of Aquaculture include:

1. Certifying Good Fish Cultivation (CBIB) for fish cultivation business;
2. Certifying Good Fish Hatchery (CPIB) for fish hatchery business;
3. Registering Feed for fish feed both domestic and imported production;
4. Registering Fish Medicines for fish medicines both in domestic and imported production;
5. Monitoring residues at the level of fish farmers on the use of fish medicines, chemicals, biological materials and contaminants.

The Government of Pacitan Regency through the Fisheries Service in the implementation of a quality assurance and safety system for fishery products by controlling fishery products which includes quality inspection of fishery products that meet the eligibility requirements of fish processing, quality assurance systems, and safety of fishery products.

Head of Fisheries Product Management Division of Pacitan Regency Fisheries Office stated that the implementation of fishery product quality assurance is intended as an effort to optimize the utilization of fishery resources in handling fishery products to produce products that can be marketed both domestically and for export destinations, which in turn will maintain stability and increase production and marketing of fisheries products. [18] In addition, Dhian Kurnia Widyamayanti added that food security must be guaranteed along the production chain, and all parties involved in the supply of fishery products are responsible for aspects of food safety. [19]

Handling of fishery products according to Pacitan Regency, namely processing fish and fishery products must meet the requirements of the feasibility of fish processing, integrated quality assurance systems, and safety of fishery products. Pacitan Regency Government in an effort to maximize fishery yields and provide higher economic value, it is necessary to process fishery products to obtain quality products so as to facilitate marketing of fishery products.

In addition, in order to improve quality and maintain fishery products that are consumed and/or traded to the public, both domestic and foreign, still meet hygiene requirements, it is necessary to provide guidance and guidance to fisheries processing and marketing activities, namely the Regional Government must carry out guidance and guidance for micro and small scale fishery product processing and marketing activities in implementing a quality assurance and fishery product safety system, achievement of certificate of processing feasibility, and certificate of implementation of integrated quality management.

3.1.4 Supervision of the quality of fishery products

Quality in fishery products is defined as the size of a product that is determined using the human senses (organoleptic) as a gauge of the good/bad of a product and food safety guarantees (food safety). Human senses that are commonly used to determine the quality
measurement of a product are sight, smell, taste, touch and listener. The sight used can be used for parameters of uniformity, color, shape and dimensions of the product. [20]

Supervision is essentially intended to prevent mistakes and show the right way and remind purposes. Therefore, through the application of the principle of coordination, the nature of supervision can be optimal and is expected to be a solution in creating a balance, [21] namely the management of fishery products based on the principles of benefit, justice, togetherness, partnership, independence, equity, integration, openness, efficiency, sustainability, and sustainable development.

The Fisheries Service Office of Pacitan Regency together with the Fish Quarantine Center, Quality Control and Safety of Fisheries Products in Surabaya carry out quality control activities of domestic fishery products in traditional markets and TPI in Pacitan Regency. The purpose of this activity is to guarantee the quality and safety of domestic fishery products in the centers of healthy food providers, including in traditional markets, modern markets, fishing landing ports and fishery product collectors.

Dhian Kurnia Widjumayanti as the Head of Quality Development Section of the Pacitan Regency Fisheries Service stated that the target of controlling the quality of domestic fishery products for the Pacitan location is a traditional market and a fish landing port by forming an integrated team together with the Central for Fish Quarantine, Quality Control and Safety of Surabaya Fishery Products. [19]

The Pacitan Regency Fisheries Service together with an integrated team from the district department and related agencies conduct domestic quality control through sampling and laboratory testing and report the results to the center periodically. In addition to conducting quality control, the Fisheries Service Office of Pacitan Regency assesses the sanitation and hygiene of infrastructure at the point of supervision. As is known, the Ministry of Maritime Affairs and Fisheries as mandated in Presidential Instruction No. 1 of 2017 concerning the Healthy Living Community Movement is obliged to improve and expand the implementation of the movement to promote fish eating in the community and to oversee the quality and safety of fishery products.

Strategic steps taken to achieve these objectives include optimizing the availability of healthy and safe consumption of fish as healthy food, strengthening the quality assurance system and safety of fishery products, quality control in the market and healthy fish production centers and the provision of healthy fish-based culinary centers.

### 3.2 Constraints faced by the Fisheries Service in Maintaining Fisheries Product Quality Standards in Pacitan Regency and Efforts to Overcome It

General problems related to the implementation of supervision carried out by the government, namely:

1. The limited budget available to carry out supervision;
2. The unavailability of experts;
3. The lack of coordination between agencies;
4. The lack of community participation to carry out supervision; [22]
5. The unavailability of regulations regarding technical implementation.

Problems found in the implementation of activities in order to achieve targeted performance in the implementation of quality inspection of fishery products in Pacitan Regency, including:
1. The unavailable data to support the origin of the product
2. The lack of awareness of fishermen on the importance of maintaining the quality of fishery products.
3. The traditional processing way when in terms of managing businesses, both individuals, cooperatives and the private sector resulting in creating poor product quality, technical requirements, sanitation, and hygiene.
4. The lack of UPT Quality Testing and Marine and Fisheries Product Development (PMP2KP) which spreads throughout the territorial waters in East Java with adequate personnel.

The solutions offered are related to the resolution of the problem, of course, grounded in its constraints. [23] The efforts made in overcoming the obstacles faced by the Fisheries Department in maintaining fishery product quality standards in Pacitan Regency, namely:
1. Increasing the role and duties of the Fisheries Service to be more careful in identifying problems that occur in the field. In handling fish, after the process of catching or harvesting, it plays an important role to obtain maximum fish selling value. One factor that determines the sale value of fish and other fishery products is the level of freshness.
2. Increasing the quality and quantity of personnel, facilities and infrastructure of the UPT Quality Testing and Marine and Fisheries Product Development (PMP2KP). One day improvement of fishery product quality certification is related to in process inspection.
3. Improving the Management of UPT Quality Testing and Development of Marine and Fisheries Products (PMP2KP) providing services to service users, always prioritizing quality and ensuring that testing is carried out professionally.

Implementation of efforts to overcome obstacles faced by the Fisheries Department of Pacitan Regency, is expected to be able to achieve the objectives of fisheries resource management for the welfare of the fishermen, supply of food, industrial raw materials, foreign exchange earners and find out the optimum portion of utilization by the fishing fleet and determine the number of catches allowed is based on the maximum sustainable catch. [24]

4 Closing
4.1 Conclusion
1. The Fisheries Service's efforts in conducting quality inspection of fishery products in Pacitan Regency aim to obtain quality and safe fishery products from pre-production to distribution center. The process is carried out by controlling and inspecting fisheries products quality to meet the requirements of fish processing feasibility, quality assurance system, and fishery product safety.
2. The constraints faced by the Fisheries Service in maintaining fishery product quality standards in Pacitan Regency include; the origin of products that are not accompanied by complete data, lack of awareness of the fishermen on the importance of maintaining the quality of fishery products, traditional processing and marketing businesses of fishery products, lack of UPT Quality and Marine Product and Fisheries Product Development (PMP2KP). Meanwhile, the efforts to overcome those include:
improving the role and tasks of the Fisheries Service, increasing the quantity and quality of personnel, improving the facilities and infrastructure, and improving the management of the UPT Quality Testing and Development of Marine and Fisheries Products (PMP2KP).

4.2 Suggestion
1. For the Pacitan Regency Government: To make Regents Regulations related to the implementation of the Perda in regulating matters that do not cover yet by the previous Perda related to quality assurance of fishery products in Pacitan Regency;
2. For the Pacitan Regency Fisheries Office: To improve the coordination level with related parties in the preparation of programs and activities in the field of fisheries and maritime affairs. In addition, to further improve the implementation of quality inspection of fishery products;
3. For the fish processing industry in Pacitan Regency: To improve a good marketing strategy so that they can compete with other competitors. In addition, they need to always diversify products.
References


[18] *Interview with Suprapto, Head of Fisheries Product Management Division, Pacitan Regency Fisheries Office, 18 March 2019*.

[19] *Interview with Dhian Kurnia Widyamayanti, Head of the Quality Section of the Baina Office of Fisheries in Pacitan Regency, March 18, 2019*.


Violation of Good Corporate Governance (GCG)
Principles in the Delivery of 2018 Financial Statements

Martin Batara Tambunan1*, Budiharto2, Sartika Nanda Lestari3
{bataramartin@gmail.com1*, budiharto 2, sartikananda@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2, 3

Abstract. The application of the principle of Good Corporate Governance (GCG) is one of the important steps to increase and maximize company value, and encourage professional, transparent and efficient company management in order to continue to exist in global competition. However, along with its development, demands for GCG implementation for public companies namely the Capital Market sector is very important. The application of GCG principles in the Capital Market sector is closely related to the principle of disclosure. So, by applying the principles of GCG, it is expected to have a significant positive effect on the quality of financial statements submitted by the company. However, in the practice of PT Garuda Indonesia, there were violations in submitting its 2018 financial statements which led to the imposition of administrative sanctions by the Financial Services Authority, the Indonesia Stock Exchange and the Ministry of Finance.

Keywords: GCG Principles, Capital Markets, Disclosure Principles, Financial Statements.

1 Introduction

The implementation of Good Corporate Governance (GCG) is one of the important steps to increase and maximize company value, and encourage professional, transparent and efficient company management in order to continue to exist in global competition.[1] The legal basis for banks in implementing GCG for companies in Indonesia is Law Number 40 of 2007 concerning Limited Liability Companies (UUPT),[2] refers to Bank Indonesia Regulation No.8/4PBI/2006 concerning GCG Implementation for Commercial Banks and for State-Owned Enterprises (BUMN),[3] refers to SOE Ministerial Regulation No. PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance (GCG) in SOEs,[4] which was later refined in SOE Ministerial Regulation No. PER-09/MBU/2012.[5]

Normatively, GCG is the principles that underlie a company management process and mechanism based on laws and regulations and business ethics. As for the principles of GCG itself, namely transparency, accountability, responsibility, independence and fairness and equality are needed to achieve sustainability, business (sustainability) company with stakeholders (stakeholders).[6]

The application of GCG principles, along with its development is one of the pillars of the market economy. The demand for GCG implementation for public companies, namely in the Capital Market sector, is very important. The application of GCG principles in the Capital Market sector is closely related to the principle of disclosure as stipulated in Law Number 8 of
1995 concerning Capital Market (UUPM) which aims to protect the interests of public shareholders from any transactions that harm investment interests. There are two things that are emphasized in this concept. First, the importance of the right of shareholders to obtain the information correctly (accurately) and timely. Second, the company’s obligation to make disclosure (disclosure) accurately, timely, and transparently to all information on company performance, ownership and stakeholders.

Submission of an annual report is one form of GCG implementations in the Capital Market sector, especially towards the principle of openness. In article 4 POJK No.29/POJK.04/2016 concerning Annual Reports of Issuers or Public Companies. The company’s annual report consists of several contents, one of which is the audited annual financial report. So that the submission of accurate and transparent annual financial statements is a very important thing in protecting the legal rights of stakeholders.

However, in practice, there are still violations of the principles of GCG itself, especially in the submission of annual financial statements. One example in the 2018 financial statements of SOE companies, namely PT. Garuda Indonesia (Persero). This case also led to the imposition of administrative sanctions by the Financial Services Authority (OJK) and the Indonesia Stock Exchange (BEI) against PT. Garuda Indonesia (Persero) because it was considered to violate the provisions of existing accounting standards and as an issuer violated the provisions in Capital Market law.

Based on the description, the formulation of the problems that can be arranged are:
1. What are violations of the principles of Good Corporate Governance (GCG) in the delivery of the 2018 financial statements by PT. Garuda Indonesia (Persero) Tbk?
2. How is the mechanism for giving sanctions for violations of the principles of Good Corporate Governance (GCG) in the submission of the 2018 financial statements by PT. Garuda Indonesia (Persero) Tbk?

2 Method

2.1 Approach Method

The approach method used in this study is a normative juridical approach. The specifications used in this study are analytical descriptive. Analytical descriptive by giving an overview. So this research is expected to be able to analyze the violation of GCG principles by describing the principles of GCG itself.

3 Results

3.1 Case Position:

- April 1, 2019, as a public company, PT. Garuda Indonesia (Persero). Tbk reported the financial performance of the 2018 to the OJK. On its financial statements, the company managed to get a net profit of US $ 809 thousand, where in 2017 the company lost US $ 216.58 million.
• April 24, 2019, PT. Garuda Indonesia (Persero). Tbk held an Annual General Meeting of Shareholders (AGM), where one of the agenda was to approve the company’s consolidated financial statements for the 2018 fiscal year which had been audited by KAP Tanubrata Sutanto Fahmi Bambang & Partners (BDO) on February 28, 2019. In the meeting, two Commissioners of PT. Garuda Indonesia (Persero) Tbk, Chairal Tanjung and Dony Oskaria meant to submit it through an objection letter at the AGM. Chairal Tanjung asked that the objection to be read out at the AGM, but upon the decision of the chair of the meeting the request was not granted. The results of the meeting finally approved the financial statements of PT. Garuda Indonesia (Persero). Tbk 2018. As for the reasons for the objections of the two Commissioners to sign the financial statements, they were not included in the company’s annual report.

• April 25, 2019, the market responded to the chaotic financial statements of PT. Garuda Indonesia (Persero). Tbk, a day after the news of the rejection of financial statements by two Commissioners was circulating. BEI said it would call the management of PT. Garuda Indonesia (Persero). Tbk and public accounting firm (KAP) Tanubrata Sutanto Fahmi Bambang and Partners as auditors of the company’s financial statements related to the emergence of differences of opinion between the Commissioners and management of the financial statements for the 2018 fiscal year.

• April 26, 2019, Commission VI of the House of Representatives (DPR) said it would discuss the case in an internal meeting after the recess.

• 30 April 2019, IDX met the management of PT. Garuda Indonesia (Persero). Tbk and public accounting firm (KAP) Tanubrata Sutanto Fahmi Bambang & Partners. While, the Minister of Finance claimed to have asked the Secretary General of the Ministry of Finance Hadiyanto to study the chaos related to the SOE’s financial statements.

• May 2, 2019, OJK asked IDX to verify the truth or difference of opinion regarding revenue recognition in the financial statements of PT. Garuda Indonesia (Persero). Tbk in 2018.

• May 3, 2019, PT. Garuda Indonesia (Persero). Tbk finally issued an official statement after its financial statements were rejected by two of its Commissioners.

• May 8, 2019, chaotic financial statements of PT. Garuda Indonesia (Persero). The bank also dragged the name of the company PT. Mahata Aero Technology. By signing a partnership with PT. Garuda Indonesia (Persero). Tbk, PT. Mahata Aero Teknologi recorded a debt of USD239 million to PT. Garuda Indonesia (Persero). Tbk and by PT. Garuda Indonesia (Persero). Tbk was recorded in the Financial Statements as of December 31, 2018 in the income column.

• May 21, 2019, PT. Garuda Indonesia (Persero) Tbk was summoned by Commission VI of the House of Representatives of the Republic of Indonesia (DPR-RJ) for questioning.

• June 14, 2019, the Ministry of Finance (Ministry of Finance) has completed an examination of KAP Tanubrata Sutanto Fahmi Bambang & Partners and concluded that there are allegations of audits that are not in accordance with accounting standards.

• June 18, 2019, IDX is still waiting for the final decision from the FSA related to sanctions that will be given to PT. Garuda Indonesia (Persero). Tbk. The stock management at that time had coordinated intensively with the OJK.

• June 28, 2019, through a press release, the IDX, OJK and the Ministry of Finance dropped sanctions to PT. Garuda Indonesia (Persero). Tbk and KAP Tanubrata Sutanto Fahmi Bambang & Partners, auditors of the financial statements of PT Garuda Indonesia (Persero) Tbk and Subsidiaries for Fiscal Year 2018.
4 Discussion

4.1 Forms of Violations of Good Corporate Governance (GCG) Principles in the submission of the 2018 financial statements by PT. Garuda Indonesia (Persero). Tbk

4.1.1 Application of Good Corporate Governance (GCG) Principles for Companies PT. Garuda Indonesia (Persero). Tbk

PT. Garuda Indonesia (Persero). Tbk is a state-owned company and also an issuer that applies GCG principles. GCG implementation for PT. Garuda Indonesia (Persero). Tbk is a necessity as mandated in SOE Ministerial Regulation No. PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance (GCG) in SOEs which was later refined in SOE Ministerial Regulation No. PER-09/MBU2012 and Financial Services Authority Regulation (POJK) Number 21/POJK.04/2015 concerning Implementation of Guidelines for Public Company Governance. PT. Garuda Indonesia (Persero). Tbk has a full commitment to always apply the principles of Good Corporate Governance (GCG) in its business activities. This commitment is carried out by trying to continue to make improvements in the implementation of GCG, so that the Company will always be trusted by the stakeholders (stakeholders) to grow sustainably (sustainable growth) and gain profits (profit). Believes that the implementation of governance a good company will support the achievement of company goals and provide added value for shareholders.

4.1.2 Violation of Good Corporate Governance Principles (GCG)

Transparency

This principle recognizes that shareholders and other stakeholders have the right to obtain true, accurate, and transparent information regarding company material information or facts. In addition, the obligation to implement the principle of transparency for companies has been mandated in the Company Law, namely:

1. Obligations of the Board of Directors regarding the disclosure of company information in the form of annual reports and can be examined by shareholders and non-compliance will result in sanctions; (Article 66 paragraph (1) and (2), Article 67 paragraph (1), 69 paragraph (3), and 100 paragraph (1) letter b of Company Law);
2. Obligation for Directors to ask public accountants to audit financial statements for companies that meet certain criteria (Article Article 68 paragraph (1) of PT Law), and
3. The right of shareholders to obtain information relating to the company from the Directors and/or Board of Commissioners, as long as it is related to the agenda of the GMS and is in line with the interests of the company (Article 75 paragraph (2) of the PT Law).

In the case of its violations, it was proven that PT. Garuda Indonesia (Persero). Tbk has been negligent in ratifying the consolidated financial statements for the 2018 financial year which has been audited by KAP Tanubrata Sutanto Fahmi Bambang & Partners. This is related to the cooperation agreement between PT. Garuda Indonesia (Persero). Tbk with PT. Mahata Aero Technology regarding installation of connectivity and entertainment services. Furthermore, the author tries to explain it by outlining the consolidated financial statements for the 2018 of PT. Garuda Indonesia (Persero). Tbk, as follows:

- In the profit and loss column, it can be seen that in 2017, companies with the stock code “GIAA” suffered a loss of USD213,389,678, but then experienced a profit in 2018 amounting to USD5,018,308.
From the explanation of number 42, that is, on other parts of other revenues, it is known that the main contributor to other miscellaneous income came from compensation of the right to install in-flight connectivity and entertainment service equipment and content management.

In the other receivables column in the company’s financial statements, it can be seen that the assignment of rights recorded as USD239,940,000. In fact, amounted to USD233,134,000, - still in the form of receivables, not yet paid by PT. Mahata Aero Technology.

Provisions regarding leases are regulated in the Statement of Financial Accounting Standards (PSAK) 30. If a transaction between PT. Garuda Indonesia (Persero). Tbk with PT. Mahata Aero Teknologi is a rental transaction. In such case, according to PSAK 30 concerning rent, income recognized by PT. Garuda Indonesia (Persero). Tbk as the lessor is recorded using the straight-line method during the lease period, except if the use of the benefits on the assets decreases. But according to the explanation of number 42 in the financial statements, it was stated that PT. Mahata Aero Teknologi will bear the entire cost of providing, implementing, installing, operating, maintaining and dismantling and maintaining, including in the event of damage, replacing and/or repairing connectivity service equipment in flight and in-flight entertainment and content management. So according to the explanation of number 42 the provision, implementation, installation, operation, maintenance and dismantling is carried out by PT. Mahata Aero Technology.

In addition, in the determination related to the ratification of the company’s annual financial statements through the AGM, the chair of the meeting did not read the reasons for the objections submitted by the two Commissioners namely Chairal Tanjung and Dony Oskaria and also did not contain the reasons for not signing the company’s financial statements by the two Commissioners in the annual report. company-owned, so in the event that it is clear that the event has violated the principle of transparency (transparency) in GCG.

Responsibility
The principle of responsibility covers matters relating to the fulfillment of corporate social obligations as part of the community. The company in fulfilling its responsibilities to shareholders and other stakeholders must comply with applicable laws and regulations. In short, the company must uphold the rule of law.

In this case it is clear that as an issuer, PT. Garuda Indonesia (Persero). Tbk has violated the provisions of the applicable Capital Market law. This is proven by the sanctions issued by OJK to PT. Garuda Indonesia (Persero). Tbk through press release No. SP 25/DHMS/OJK/VI/2019 issued on 28 June 2019 are as follows:[11]

1) Violation of OJK Regulation Number 29/POJK.04/2016 concerning Annual Reports of Issuers or Public Companies. The reason: POJK already stated that if there are Directors/Commissioners not signing the financial statements, then it must be loaded in the annual report


4) Violation of Bapepam Regulation Number VIII.G.11 concerning Directors’ Responsibility for Financial Statements.

5) Violations of the provisions of Number III.1.2 IDX Regulation Number I-E concerning Obligation to Submit Information, which regulates Financial Statements, must be prepared and presented in accordance with Bapepam Regulation Number VIII.G.7 concerning Guidelines for Presentation of Financial Statements, and Guidelines for Presentation and Disclosure of Issuer’s Financial Statements.

In addition to these rules, PT. Garuda Indonesia has violated the provisions of the legislation in the Company Law, such as:

1) The Board of Directors’ obligations regarding the disclosure of company information in the form of annual reports and can be examined by shareholders and non-compliance will result in sanctions (Article 66 paragraphs (1) and (2), Article 67 paragraph (1), 69 paragraph (3), and 100 paragraph (1) letter b UUPT);

2) The right of shareholders to obtain information relating to the company from the Directors and/or Board of Commissioners, as long as it is related to the agenda of the GMS and is in line with the interests of the company (Article 75 paragraph (2) of the PT Law).

3) Fiduciary Duties for the Directors in carrying out the management of the company in good faith and full of responsibility with the consequences of personal liability for the company’s losses if negligent (Article 92 paragraph (1) and Article 97 paragraph (1) - (3) UUPT); and

4) Fiduciary Duties for the Board of Commissioners in supervising company management policies in good faith with the consequences of personal liability for company losses if negligent (Article 108 paragraphs (1) and 114 paragraphs (1) - (2) UUPT).

**Accountability**

The Accountability Principle states that a company’s management framework must ensure the company’s strategic guidelines, effective supervision of the management of the accountability board to the company and its shareholders. This principle has implications for the legal obligations of the Directors, which are required to establish a relationship based on trust with shareholders and the company. Directors must not have a personal interest in making decisions and acting actively, both and based on information obtained thoroughly.[12]

In this case, it can be seen that there were an ineffective internal controls in the management of the company both between the Directors and Commissioners and to the Audit Committee as an Additional Organ of the company. This is evidenced by the decision-making mechanism in ratifying the consolidated financial statements for the 2018 financial year which was then signed by the Directors having ignored the objections raised by the two Commissioners of PT. Garuda Indonesia (Persero) Tb, namely Chairal Tanjung and Dony Oskaria because they were deemed not in accordance with the existing accounting standards, because the chairman of the AGM refused to read out objections raised by the two Commissioners of the company, the company also did not include the reasons of the two Commissioners for not sign the company’s annual financial report in the company’s annual report.
In addition, there was a negligence of the company in the selection of external auditors to audit the annual financial statements of PT. Garuda Indonesia (Persero) Tbk and there was an inaccuracy of the company in accepting and ratifying the 2018 financial statements that have been audited by KAP Tanubrata Sutanto Fahmi Bambang and Partners, where the company should be able to maximize the function of the Audit Committee as the internal audit controller of the company’s financial statements in ensuring the security of the information presented in the company’s financial statements, so that this results in harming the legal rights of stakeholders. In this case, it can be concluded that PT. Garuda Indonesia (Persero) Tbk has violated the principle of accountability in GCG.

4.2 Mechanisms for Imposing Sanctions Against Violations of Good Corporate Governance (GCG) Principles in Submitting the 2018 Financial Statements by PT. Garuda Indonesia (Persero) Tbk

4.2.1 Authority of Granting Sanctions

The violation of GCG principles in the submission of the 2018 financial statements by PT. Garuda Indonesia (Persero) Tbk is a form of violation in the Capital Market sector. In this case, the capital market sector is part of the financial services sector. Therefore, the institution that has the authority to implement a system of regulation and supervision that is integrated with all activities in the financial services sector is the OJK, as mandated in article 5 of Law No. 21 of 2011 concerning OJK (OJK Law).[13]

In this case, in exercising its authority, OJK coordinates with other institutions namely the IDX and the Ministry of Finance in the field of the Financial Professional Development Center (PPPK). This is done in an effort to support the effectiveness of the implementation of tasks by the OJK. In the context of law enforcement, OJK’s authority is to:

a) Conduct audits in the Capital Market sector;
b) Investigate in the Capital Market;
c) Authorize the administration;
d) Authorize the civil field.

4.2.2 Sanction mechanism:

1. Inspection

OJK has the authority to conduct audits in the Capital Market sector. The examination was conducted when there were alleged violations of the laws and regulations in the Capital Market sector. Investigation of alleged violations can come from internal sources (including the results of supervision and monitoring) or external sources (including SRO reports or complaints from the public). Based on the results of the examination, the FSA can take action to foster or impose administrative sanctions for violations of statutory provisions in the Capital Market sector. If the results of the examination are either found to indicate an violation of the Capital Market criminal provisions or loose the interests of the Capital market, the results of the examination can be upgraded to the investigation stage. However, if the violation does not constitute a criminal offense, the results of the examination are recommended to the OJK Capital Market Supervisory Executive Chief along with proposed administrative actions in the form of administrative sanctions and/or Written Orders as stipulated in POJK No.36/POJK.04/2018 concerning Procedures for Examination in the Capital Market Sector.[14]
2. **Determination of Administrative Actions**

   Based on the formulation of Article 14 paragraph (3) POJK No.36/POJK.04/2018 concerning Procedures for Examination in the Capital Market Sector, the authority to impose administrative sanctions is the Chief Executive of the OJK Capital Market Supervisor, whose decision-making is based on the recommendations of the examiner. In this case, administrative sanctions given to PT. Garuda Indonesia (Persero). Tbk is in the form of fines and written warnings to improve and present the Annual Financial Statements of PT. Garuda Indonesia (Persero) Tbk as of December 31, 2018, and conducted a public expose of the improvement of the financial statements.

   Related to administrative sanctions in the form of fines, the amount of fines that can be determined by the OJK in the Capital Market field has been explained in Government Regulation No.45 of 1995 concerning Conducting Activities in the Capital Market Sector as amended by Government Regulation of the Republic of Indonesia No. 12 of 2004 concerning Amendments to Government Regulation No. 45 of 1995 concerning Organizing activities in the Capital Market.[15]

5 **Conclusion**

   1. In the case of violation of GCG principles committed by PT. Garuda Indonesia (Persero). Tbk in the submission of the company’s 2018 financial statements consists of:
      a) Transparency
      b) Responsibility
      c) Accountability

   2. In the of sanction mechanism carried out by the OJK in coordinating with the IDX and the Ministry of Finance has been in accordance with applicable laws and regulations. The mechanism is as follows:
      a) Through examination. The legal basis for the audit by OJK is written on POJK No.36/POJK.04/2018 concerning Procedures for Examination in the Capital Market Sector. The procedure for the inspection will commence after obtaining the appointment of the OJK Capital Market Supervisory Executive Chief. After the inspection, the examiner makes a report on the results of the inspection to be used as a basis to prove the presence or absence of violations of the provisions of the legislation in the capital market sector to the OJK Capital Market Supervisory Executive Chief.
      b) The imposition of administrative sanctions. This is done by the OJK Capital Market Supervisory Chief Executive based on the recommendations of the examiner. In this case, administrative sanctions imposed on PT. Garuda Indonesia (Persero). Tbk for GCG violations is in the form of fines and written warnings to improve and restate PT Garuda Indonesia (Persero) Tbk Annual Financial Statements as of December 31, 2018, and conduct public exposures for the improvement of the financial statements.
References

[5] “BUMN Minister Regulation No. PER-09/MBU2012 regarding changes to the above.”
Juridical Review of Validity of the Gross Split Sharing Contract Agreement in Oil and Gold Business Activities

M. Nabil Widhiyanto1*, Achmad Busro1, Ery Agus Priyono1
Program Studi S1 Ilmu Hukum, Fakultas Hukum, Universitas Diponegoro
{Widhiyantonnbl@gmail.com1, achmd.buro@live.undip2, eryap@live.undip.ac.id3}

Abstract. This study aims to determine the validity status of the PSC Gross Split Scheme agreement following the Minister of Energy and Mineral Resources (ESDM) Regulation No. 8 of 2017 which regulates the refund of operating costs for the construction including goods, equipment, and land purchased by the Contractor that has been acquired becomes state property in conflict with Government Regulation (PP) No. 35 of 2004. The method used in this study is a normative legal method with descriptive research specifications, and qualitative analysis methods. This study concluded that the agreement did not meet the requirements of halal causes and still contains the principle of proportionality. The impact of not fulfilling the validity of the agreement will impact on the status of the agreement becomes null and void.

Keywords: Production Sharing Contract, Legal Terms of Agreement, Principle of Proportionality.

1 Introduction

1.1 Background

Natural Resources (Sumber Daya Alam/SDA) are all biological and non-biological resources that are used by human beings to find food and raw material for and energy needs.[1] SDA is divided into two, namely SDA that can be renewed and cannot be renewed.[2] Renewable natural resources are natural resources that can be reproduced both by natural factors and technology in a relatively short time, while non-renewable natural resources are natural resources that can be re-created in a very long time and are processed naturally. So the re-creation of natural resources requires thousands or even millions of years.

The natural resources have already been regulated in the Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia.

Mohammad Hatta the author of this article explained that state control is not the state being a business actor but the state has the power to make regulations aimed at economic smoothness. These regulations are meant to prohibit the exploitation of weak people by people who have capital.[3], [4] One of the natural resources in Indonesia is Oil and Gas reserves. Oil and Gas in Indonesian Regulations and Regulations are regulated in Law Number 22 of 2001 concerning Oil and Gas.[5] The Oil and Gas Law divides oil and gas business activities into two namely upstream business activities and downstream business activities. Upstream
Cooperation Contracts in the Oil and Gas Law consist of Production Sharing Contracts and other contracts. The agreements commonly used in international practice. The contracts that are usually valid are Service Contracts, Pure Service Contracts, and Risk Contracts.

Further provisions related to upstream business activities are regulated in PP No. 35 of 2004 Jo. PP No. 34 of 2005 Jo. PP No. 55 of 2009 concerning Upstream Business Activities. PP No. 35 of 2004 regulates two types of cooperation contracts, namely Production Sharing Contracts (later known as Production Sharing Contracts/PSCs) and Service Contracts. Article 56 paragraph 2 PP No. 35 of 2004 provides provisions in the form of returning the operating costs for the Contractor in the Production Sharing Contract which came to be known as Cost Recovery. Cost Recovery itself aims to prevent the contractor's actions to acquire oil and gas production areas as if they belong to the Contractor because these costs have been reimbursed by the state.

The Minister of Energy and Mineral Resources (ESDM) in 2017 issued Ministerial Regulation (Permen) Number 8 of 2017 which then underwent several changes namely ESDM Ministerial Regulation No. 52 of 2017 Jo. ESDM Ministerial Regulation No. 20 of 2019. The ESDM Ministerial Regulation regulates the type of new Revenue Sharing Contract, namely the Gross Split Revenue Sharing Contract (PSC Gross Split Scheme). The Gross Split Production Sharing Contract explained in ESDM Regulation No. 8 of 2017 is a Production Sharing Contract in upstream business activities based on the principle of gross distribution without a mechanism for returning operating costs to the Contractor. The ESDM Ministerial Regulation was issued with one legal basis, Government Regulation No. 35 of 2004 so it is feared that there will be legal uncertainty because the Permen contradicts PP. This is not only a matter of the hierarchy of legislation but also be an issue in the realm of private law specifically regarding the status of agreements from the PSC Gross Split Scheme.

Article 1320 paragraph 4 of the Civil Code regulates the terms of the agreement in the form of a halal cause. Although the PSC Gross Split Scheme is based on the ESDM Ministerial Regulation, it contradicts the PP on Upstream Business Activities. So, it should be investigated whether the agreement still fulfills a halal reason or not. The thing that needs to be investigated is related to the principle of proportionality in the PSC Gross Split Scheme agreement in view of Article 21 of the ESDM Regulation No. 8 of 2017. It regulates that all goods and equipment purchased by the Contractor become state property and likewise with land that has been acquired as provided for in Article 22 paragraph 1 of the Ministerial Regulation. These provisions are felt to be unprofitable and tend to be burdensome for the Contractor. PSC Cost Recovery Scheme itself Every validity status of an agreement and the content of the proportionality principle in it certainly has an impact therefore the author also wants to do research on how the impact of the validity status of the PSC agreement in the Gross Split Scheme and content of the principle of proportionality in it. If the agreement does not meet the legal requirements of the agreement or does not contain the principle of proportionality in it, the author wants to examine how the legal impact of the agreement.

1.2 Formulation of the Problem

Based on the explanation above, there are three problems to be questioned in the study, namely:

1. Has the PSC Gross Split Scheme Cooperation Agreement made between the Special Task Force for Upstream Oil and Gas Business Activities (Satuan Kerja Khusus
Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi (SKK Migas), and the Cooperation Contract Contractor fulfilled the legal requirements for the agreement?

2. Does the PSC Gross Split Scheme Cooperation Contract Agreement made between SKK Migas and the Cooperation Contract Contractor contain the principle of proportionality in it?

3. What is the impact of the legal or illegal status of the PSC Gross Split Scheme Cooperation Contract, and the content of the proportionality principle in it made between SKK Migas and the Cooperation Contract Contractor?

2 Method

The method used in this research is normative legal research with descriptive methods. Meanwhile, the data collection method of this research is the literature.

3 Results and Discussion

3.1 Validity Analysis of Contracts for Profit Sharing in Gross Split Schemes Based on Legitimate Terms of Agreement.

Article 1320 of the Civil Code requires that an agreement must fulfill four conditions, namely an agreement, a skill, an object that is promised, and a legal cause. An agreement is a conformity of statement of the will of the parties between one party and another party.[11] The Production Split Contract Agreement with the Gross Split Scheme has met the terms of the agreement, namely that the agreement is carried out in the form of signing at the end of the agreement text between the SKK Migas and the Cooperation Contract Contractor. The agreement takes place in the form of a will theory which occurs when the will of the recipient is stated.[12] The function of the signature itself in an agreement is as a sign of identity and a sign from the parties that signed it that they agreed to what was stated in the deed.[13]

The Gross Split Production Sharing Scheme Contract Agreement also meets the proficiency requirements. Legal subjects in civil law consist of people and legal entities.[14] Perpres No. 9 of 2013 Jo. Perpres No. 36 of 2018 gives the authority for SKK Migas to manage upstream oil and gas business activities based on a Cooperation Contract.[15] SKK Migas in this case is the party that gets the attribution from the delegated legislator namely the President to manage the upstream oil and gas business activities.[16] The party responsible for representing SKK Migas in the agreement is the Head of SKK Migas based on ESDM Regulation No. 17 of 2017 concerning the Organization and Work Procedure of SKK Migas provides the task for the Head of SKK Migas to represent SKK Migas in carrying out the duties and functions of the institution, one of which is the signing of the Cooperation Contract.[17]

The legal relationship that occurs in this agreement is a civil legal relationship between the government as a public legal entity represented by SKK Migas and the Cooperation Contract Contractor.[18] The government in this agreement abandoned its immunity as a sovereign state based on the concept of Iuri Gestiones.[19] The government, when making an
agreement in private law, is considered to have been subject to the rules in private law as well as in the Cooperation Contract agreement.[20]

The object conditions agreed in the Gross Split Production Sharing Scheme Contract Agreement have also been fulfilled in the agreement. The object promised in an agreement is an object that becomes the obligation of the parties for an achievement that must be certain and can be counted.[21] Article 1333 paragraph 1 of the Civil Code stipulates that an agreement must have a principal of at least the type of goods that can be determined.

The object agreed in the Gross Split Production Sharing Scheme is the object that can be determined, namely an agreement to carry out a cooperation agreement between the Contractor and the Government of Indonesia (represented by SKK Migas). Therefore, the Contractor can carry out exploration and exploitation activities with the mechanism of gross production sharing without return operating costs. This is in accordance with Article 1.1.1. in the text of the Gross Split Production Sharing Contract template which stipulates that the contract is a Cooperation Contract in the form of a Gross Split Production Sharing Contract.

The provisions in the agreement clause refer to ESDM Regulation No. 8 of 2017 Article 1 paragraph 7. The Production Sharing Contract itself is not a mechanism to transfer the state's right to control oil and gas wealth but is a means for the private sector to be able to participate in oil and gas mining activities.[22]

The object of the agreement can also be calculated because the template consisting Chapter I, Chapter II, and Chapter VI regulates the amount of profit sharing for the parties and the duration of the contract which refers to the Oil and Gas Law and ESDM Ministerial Regulation on Production Sharing Contracts Gross Split Scheme. The term of the agreement is 30 years with a share of 57% of the state and 43% of the Contractor for oil production and 52% of the state and 48% of the Contractor for natural gas production which is then adjusted to the variable component and progressive component.

The final requirement to fulfill the legal conditions of the agreement is to see whether the agreement meets the requirements for a legal reason or not. Article 1337 of the Civil Code stipulates that an agreement becomes invalid if it contradicts the Statutory Regulations, decency, and public order. Non-fulfillment of these conditions makes the agreement null and void so that the agreement is considered to have never existed before.[23]

Production Sharing Contracts are based on concepts set out in the Oil and Gas Law and PP No. 35 of 2004. It is an agreement between the Government and the Cooperation Contract Contractor to give the Contractor the right to conduct upstream business activities on state-owned land provided. However, all risks and costs are borne by the contractor, and if the Contractor succeeds in finding commercial oil and gas reserves, it will be replaced by the state at the time of sharing production. These costs are in PP No. 35 of 2004 must obtain approval from SKK Migas at the work plan and budget stage.

The Gross Split Production Sharing Contract Agreement as stipulated in the ESDM Ministerial Regulation on the Gross Split Production Sharing Contract and in the draft text of the agreement is a production sharing contract in the upstream oil and gas business activities based on the principle of gross distribution without a mechanism of returning operating costs. The definition is certainly different from Article 56 paragraph 2 PP No. 35 of 2004 governing the provisions of the Contractor receives the costs they have incurred for the work plan and approved budget.

The principle of lex superior derogat lex inferior law states that if two legal rules are contradictory then what applies is a hierarchically higher regulation.[24] Hans Nawiasky, as quoted by Maria Farida, divides the legal norms in a country into four groups in sequence, namely the Staatsfundamentalnorm, Staatsgrundgesetz, Formell Gesetz, and Verordnung &
Autonome Satzung which, if compared to the laws and regulations in Indonesia sequentially, are then divided into Pancasila, the Constitution, and the Verordnung & Autonome Satzung which. When implemented to the Laws and Regulations in Indonesia, it will be sequentially divided into Pancasila, the Constitution NRI 1945, Law, and finally PP, Perpres and Permen.[25]

ESDM Ministerial Regulation on Gross Split Production Sharing Contracts in the legal basis states that PP No. 35 of 2004 as one of the legal basis of the regulation. The legal basis in a statutory regulation is a juridical basis for the formation of a statutory regulation.[26] The draft script for the Gross Split Production Sharing Scheme also makes PP No. 35 of 2004 as one of the legal basis of the Contract, but the concept of the Production Sharing Contract of the Gross Split Scheme is different from the concept of the Production Sharing Contract stipulated in the PP on Upstream Business Activities.

The ideal provisions in the Gross Split Production Sharing Scheme agreement should be in line with the Statutory Regulations that form the legal basis, namely PP regarding Upstream Business Activities especially ESDM Ministerial Regulation on Contracts for Sharing in the hierarchy in terms of Legislation contrary to the Regulations in topped of that is PP. The Profit Sharing Contract of the Gross Split Scheme also fails to meet the four legal conditions of the agreement, which are legal reasons.


The evaluation of the content of the proportionality principle in the Gross Split Production Sharing Scheme Agreement done by the authors is by comparing the theory of the proportionality principle with the clauses set out in the text template of the Contract Split Profit Sharing Scheme. Agus Yudha Hernoko stated that a contract has the principle of proportionality if it contains four things, namely:[27]

1. The government gives contractors the same rights, opportunities and opportunities to find a fair exchange for the parties.
2. The parties are free to determine the substance that is fair and unfair to them.
3. The contract can guarantee the implementation of rights and at the same time the distribution of obligations proportionately to the parties to the agreement.
4. In terms of a dispute in the agreement, the burden of proof and other related matters must be measured based on the principle of proportionality so as to produce a solution that benefits both parties.

The author argues that the core of criteria number one and two is to give freedom to the parties only theory number one emphasizes the condition or position of the parties while in theory number two places more emphasis on the substance of the contract.

The form of the Production Sharing Contract of the Gross Split Scheme is a standard agreement because it has provided a draft agreement document. A standard agreement is an agreement in which almost all the contents of the agreement have been determined by one of the parties and the clauses which have not been determined are only related to certain matters.[28], [29] Although the Contractor is not the party who will compile the contents of the Gross Split Production Sharing Scheme Agreement, this does not mean that the agreement does not reflect the freedom of the parties in it. This is because upstream business activities must be viewed in terms of private and public law so that it is the duty of the state to protect
all Indonesian people, one of them is by standardizing the text of the Gross Split Production Sharing Scheme in order to protect Indonesia's natural wealth.

The second criterion related to the exchange of rights and obligations of the parties, in this case the author feels the provisions stipulated in Article 5.2. in the template of the agreement concerning the obligation for the Contractor to provide funds and purchase or lease all equipment, equipment and materials needed to be purchased or leased using rupiah or foreign currency according to the contractor's work plan. This is due to the fact that Chapter X stipulates that all ownership rights to goods, equipment purchased by the Contractor for upstream oil and gas business activities will become state property as well as land acquired. This provision seems to burden the Contractor because it is the Contractor who buys goods and equipment and conducts land acquisition so that it is ideally owned by the Contractor.

The reality that happens is that goods, equipment, and land that have been acquired must belong to the state because it is the one that finances all of these things. Funding by the state is carried out not by reimbursing operating costs as the Cost Recovery Scheme of Production Sharing Contracts, but financing is done by the state distributing production results to the Contractor from the products of which state ownership is actually owned. The division of production output for the Contractor by 43% for oil and 48% for natural gas is not merely sharing its ownership in oil and gas, but based on the results of the research conducted by the author in the form of an interview also accompanied by the intention that the Contractor can finance its operational activities from the distribution of production results.

The conclusion is that the goods, equipment, and land must indeed belong to the state and this does not violate the principle of proportionality. The Gross Split Production Sharing Contract Agreement regulates the mechanism if there is a dispute that occurs in the implementation of the agreement. The principle of proportionality requires that the resolution of disputes, the burden of proof, the severity of errors and other matters must be measured proportionally so as to produce an elegant and win-win solution. This is evidenced by Article 11.2 and Article 11.3 of the draft agreement text regulating that if a dispute occurs it is deliberated and if it fails to be carried out by deliberation it will be resolved at the Indonesian National Arbitration Board (BANI).

Deliberation is one of the communalistic characteristics of Indonesian society that is commonly practiced by Indonesian people to solve problems together. The provisions stipulated in Article 11 of the draft agreement text reflect proportional dispute resolution criteria because of trying to find a win-win solution.

3.3 Analysis of the Impact of the Validity of the Agreement and the Content of the Proportionality Principle in the Agreement.

The author believes that when an agreement does not contain the principle of proportionality, that is due to the agreement does not provide recognition related to the opportunity and proportional position to the parties to freely determine the substance in a fair way. Therefore, the agreement violates the provisions of Article 1320 paragraph 1 of the Civil Code. The agreement can also be considered to violate Article 1320 paragraph 4 of the Civil Code in terms of halal conditions if the agreement contains clauses that conflict with public order or violate the Laws and Regulations prohibiting incriminating one party as an example of the Law on Consumer Protection.

The impact of not fulfilling the legal requirements of the agreement in the Gross Split Production Sharing Scheme Agreement makes the agreement not have legal force as regulated in Article 1335 of the Civil Code. The parties to the agreement cannot sue for arbitration to
decide that the other party must fulfill their achievements because the agreement was deemed never to exist.\[29\]

Conditions that occur if the Gross Split Production Sharing Scheme Agreement has met the legal requirements of the agreement also does not make the agreement free from legal issues. This is because there is no separation of assets between SKK Migas and the Government of Indonesia due to the legal basis for the establishment of SKK Migas not to mention SKK Migas as an independent legal entity with assets separate from state assets.

4 Conclusion

Firstly, the Gros Split Scheme Sharing Production Agreement does not meet the requirements of the validity of the agreement. In this case, it does not meet the requirements for halal reasons. The concept stipulated in the Gross Split Production Sharing Scheme in the Minister of Energy and Mineral Resources Regulation and the agreement template found to be different than the one on PP No. 35 of 2004. Therefore, it can be said to be contrary to legal reasons.

Secondly, the Gross Split Production Sharing Scheme agreement still contains the principle of proportionality in the agreement. The state of governing all goods, equipment, and land purchased by the Contractor, in which the acquisition has been acquired becomes state property does not mean that it will harm the Contractors. In fact, they already obtained funding from the state to carry out its operations even if it is not in the form of returning operating costs.

Third, the status of the Gross Split Production Sharing Scheme agreement is a null and void agreement. The parties to this agreement cannot make demands that the other party fulfill its performance in arbitration.
References


[5] Law Number 22 of 2001 concerning Oil and Gas.


[10] “ESDM Minister Regulation No. 8 of 2017 concerning Gross Split Production Sharing Contract Jo. ESDM Minister Regulation Number 52 of 2017 Jo. ESDM Minister Regulation Number 20 of 2019.”


[17] ESDM Minister Regulation No. 17 of 2017 concerning the Organization and Work Procedures of Special Work Units for Upstream Oil and Gas Business Activities.


Predatory Pricing in Business Activities in the Telecommunication Field

Desy Putri Utami1*, Budi Santoso2, Rinitami Njatrijani3
{desypatriutami@yahoo.com1, budi.santoso@live.undip.ac.id2, rinitami@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. Predatory pricing is a form of practice of selling goods or services at very low prices, with the aim of getting rid of competitors or inhibiting the entry of new competitors in a business field. By law in Indonesia, the use of predatory pricing practices is contrary to Law Number 5 of 1999. Advertising practices in competitive prices and a number of bonuses offered by cellular operators as telecommunications business players are indicated as a consumer withdrawal strategy. The low pricing strategy in advertising practices is indicated as the desire of telecommunications business players to monopolize the market to protect their position and close the gap for new business actors to enter the market. In connection with this matter, a study of one of the telecommunications business operators in Indonesia has been carried out with the aim of finding out predatory pricing in the telecommunications sector and government regulations and actions regarding predatory pricing practices in the telecommunications sector. The results of the study are expected to encourage the government to make regulations governing the minimum and maximum cost limits imposed by telecommunications businesses. To regulate the practice of predatory pricing and improve service and quality of telecommunications services. To regulate the practice of predatory pricing and improve services and the quality of telecommunications services.

Keywords: Predatory Pricing, Telecommunications, Advertising

1 Introduction

An economy that is developing towards market orientation leads to competition in various activities in the national economy. Competition has the potential to drive an increase in the number of business actors which in turn will increase the number of offers and types of goods available in the market. In order to make the business competition carried out fairly, a fair business competition climate is needed. In relation to the rapidly developing telecommunications sector, every community already has one or even more than one telecommunications device in the form of a cell phone.

With the growing needs in the field of telecommunications for the community, the telecommunications operators began competing to offer their products with a variety of advertisements such as giving an offer in the form of “one-hour free two-hour telephone”. With this advertisement, the public will mostly choose the telecommunication operators that provide the best and cheapest offer. This is where telecommunications operators begin to think of ways to make people use their services which results in many operators offering crazy prices beyond the calculation of their own production, which ends with predatory pricing behavior of the service providers.
As in the Indosat Ooredoo advert which in 2016 imposed a telephone tariff of IDR 1/second to all 24-hour nonstop operators, which, if linked to Article 20 of Law Number 5 of 1999, can be proven that Indosat Ooredoo conducts selling loss on its products, which can be seen from applying a tariff of IDR 1/second that will produce IDR 60/minute to other operators, while the interconnection tariff set by the government is IDR 250/minute, which makes the tariff price of IDR 1/second no longer reasonable (non-reasonable) and Indosat companies should also experience a loss of IDR 190/minute, which is impossible for a company to do if it does not have strong capital power to subsidize tariffs so that they are below cost and should be suspected that aims to shift market competitors.

In business activities, fraudulent competition is something that cannot be avoided by business actors. On one party can provide benefits and cause harm to other parties. Competition occurs when there are several entrepreneurs engaged in the same/similar field of business, jointly running a company in the area of operation (same marketing), each of them trying as much as possible to exceed the others to obtain maximum profit.[1]

Competition can be viewed from the side of the law where in competition there will always be a tendency to bring down one another with another party which in this case can be in the form of unlawful actions.[2] One of the actions against the law that is usually carried out by business actors is Predatory Pricing or commonly referred to as selling loss.

Predatory pricing is the practice of selling goods or services at very low prices, with the intention of removing competitors from the relevant market, or creating barriers to entry to potential new competitors. If competitors or potential competitors cannot maintain the same or lower prices without loss, then business actors will be eliminated from competition or choose not to compete in the relevant market.[3]

In the event of predatory pricing or selling loss can have a monopolistic impact on business actors doing so. Monopoly is a market situation where only one business actor or one group of business actors controls a production and/or marketing of goods and/or the use of certain services, which will be offered to many consumers resulting in the business actor or group of business actors being able to control and control level of production, price and at the same time marketing area. From the provisions of Article 17 of the Anti-Monopoly Act, it turns out that not all monopoly activities are prohibited. Only monopolistic activities that fulfill the elements are prohibited.[4]

In guaranteeing development and security in business competition, Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition was issued. The implementation of Law Number 5 of 1999 is considered effective in becoming the basis for driving economic restructuring and can create a culture of competition so that it can continue to encourage and increase the number of healthy business actors in the future. One form of anti-competitive behavior that is of concern in Law Number 5 of 1999 is predatory pricing.

In Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition in Article 20 says that:[5]

“Business actors are prohibited from supplying goods and or services by selling at a loss or setting a very low price with a view to getting rid or deadly competitors in the relevant market so that it can result in monopolistic practices and or unfair business competition.”

Therefore, based on this law, business actors can obtain an explanation and a better understanding of this predatory pricing behavior.
Based on the description above, the author's reason to explore the problem becomes research in the framework of compiling legal writing on the Legal Studies Scholarship Program at Diponegoro University in Semarang with the title “Predatory Pricing in Business Activities in the Telecommunications Field based on Law No. 5 of 1999”

Based on the background description above, there are several issues that will be examined and formulated as follows:

1. How is the practice of advertising in the field of telecommunications which is indicated as the practice of “Predatory Pricing”?
2. How is the proof regarding “Predatory Pricing” based on Law Number 5 of 1999?

2 Method

The approach method used in this study is an empirical juridical approach. The juridical approach is intended that this research be reviewed from the regulations which constitute secondary data and empirical approaches namely legal research that uses primary data.[6] Therefore the approach developed is to describe the applicable laws and regulations related to the practice of implementing positive law.[7]

3 Results and Discussion

3.1 Advertising Practices in the Field of Telecommunications Indicated as Predatory Pricing Practices

In ancient Rome, advertisements were used in the form of stone stamps, in 1650 The Weekly News began to include advertisements. Initially the advertisements were still veiled, because there were still no more professional ways to handle them.[8] The development of advertising increased when the industrial revolution occurred. Print advertising grew faster in Britain when Richard Steele published a newspaper titled Tatler in 1709. In 1711 Richard Steele together with Joseph Addison published the Spectators newspaper. The advertising business also grew rapidly in the 1920s when the print world began publishing printed material in color.[9]

After World War II, advertising in television media developed rapidly and continued to establish itself as the largest advertising media. Because of its nature that is able to present sound as well as motion pictures, this media began to be viewed by advertisers. Recorded in history, in 1948 the first television commercial spearheaded by J. Walter Thompson began airing. In the beginning, television commercials were still veiled. However, in the end, television advertisements became more open. in 1955 color television was introduced.[9] Today, advertising is growing rapidly. Advertising is much influenced by technological developments. Now, advertising has become big business. Creativity began to vary, so advertising became more varied. The media used are not only limited to newspapers, magazines, radio and television, but also using a variety of other media.

The ability to make good advertisements and be able to attract the attention of potential consumers is not easy. In addition to advertising designer creativity, mobile operators should also be able to understand the characteristics of the target market to be achieved. One of the characteristics of Indonesian people like what is called “free” or “free”. A culture that likes
free stuff is not only at the lower class level, but also reaches the middle to upper classes who are not spared from having this same pleasure. Not surprisingly, many of the operators present a variety of bonuses, ranging from free sms, credit, cheap rates to free calls which are then delivered through attractive advertisements with several well-known figures.

The bonus strategy and low tariff system are used by cellular operators in order to increase the loyalty of prepaid card users. Although these low tariffs are not the only reason for customer loyalty to cellular operators, which is caused by the average consumer stating that cellphone numbers have already been spread, and if there is a change in the cellphone number, this consumer feels reluctant to have to inform the new number again to the relations, colleagues, friends.

Consumers are divided into two groups, namely trial consumers, and permanent consumers. Trial consumers can turn into permanent consumers if they are satisfied with the service of the chosen cellular operator. And so are the reasons consumers remain to survive or move from these cellular operators. Various bonuses and freebies may not necessarily all make all consumers interested because of differences in needs.

### Table 1. Basic telephone tariffs for fellow prepaid Semarang area operators

<table>
<thead>
<tr>
<th>No</th>
<th>Operator</th>
<th>Product</th>
<th>average rate per minute</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Telkomsel</td>
<td>SimPATI</td>
<td>IDR 31.33 / minute</td>
</tr>
<tr>
<td>2</td>
<td>Indosat</td>
<td>IM3 Ooredoo</td>
<td>IDR 10 / minute</td>
</tr>
<tr>
<td>3</td>
<td>XL Axiata</td>
<td></td>
<td>IDR 333.5 / minute</td>
</tr>
<tr>
<td>4</td>
<td>Smartfren</td>
<td></td>
<td>IDR 240 / minute</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
<td></td>
<td>IDR 40 / minute</td>
</tr>
</tbody>
</table>

*Source: based on telephone data packages offered by operators*

Cheap tariffs are now becoming a pleasure in competing with the use of reaching more consumers or increasing market share that looks still wide open to work on. With the impact if in the telecommunications business is running naturally, certainly consumers will benefit from getting many choices to determine which telecommunications operators will be the choice. One of which is possible with the low tariffs offered by cellular operators as consideration for selection. In addition, consumers also expect to get good service, variety, quality and affordable prices. However, with the war in the telecommunications business tariffs at this time also need to be aware of.

This has the potential for violations of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, especially in the provision of Article 20 which states that business actors are prohibited from supplying goods and or services by selling or setting prices in a very low prices with the intention of eliminating or shutting down competitors' businesses in the relevant market, so that it can result in monopolistic practices and or unfair business competition. Very low price offer with a view to getting rid of business competitors, is called Predatory Pricing.

Examples of telecommunications advertisements that indicate predatory pricing:

1. Indosat in 2016
2. XL in 2017
3. IM3 Ooredoo in 2017

### Table 2. Ads that indicated predatory pricing throughout 2016-2018
### 3.2 Proof of Predatory Pricing Based on Law Number 5 of 1999

In addition to Article 20, the prohibition on pricing is also regulated in Article 7 of Law Number 5 of 1999 concerning prohibitions on pricing below market prices. However, Article 7 and Article 20 will be applied differently by the Commission depending on the facts of the case by case. Article 7 requires an agreement with a competing business actor to set a price below the market price, while Article 20 does not specify an agreement.

In Article 20 can be broken down into several elements contained in the Article:[8]

1. **Elements of Business Actors.** The definition of business actors as referred to Article 1 number 5, which is every individual or business entity, whether in the form of a legal entity established and domiciled or carrying out activities within the Indonesian jurisdiction, either alone or jointly through an agreement, organizes various business activities in the economic field.

2. **Supplier Element.** The meaning of supplying as referred to the explanation of Article 15, which is to supply supplies, both goods and services, in the sale and purchase, leasing, leasing, and leasing activities.

3. **Element of Goods.** Definition of goods according to Article 1 number 16 is every object, both tangible and intangible, both movable and immovable, which can be traded, used, used, or utilized by consumers or business actors.

4. **Service Element.** Service Definition according to Article 1 number 17 is every service in the form of work or achievement traded in the community to be used by consumers or business actors.

5. **Elements of Sale and Loss.** Sale and loss is the selling price determined by the business actor below the expected cost.

6. **Extremely Low Price Elements** are prices set by business actors that are unreasonably low.

7. **With the intention to mean that the activity is carried out with a desire or purpose.**

8. **Eliminating or Shutting Down** means removing or eliminating a competing business actor from the relevant market or closing down his business.

9. **Competitor Business Element** is another business actor’s business in the same relevant market.

10. **Market Elements,** According to Article 1 number 9, market is an economic institution where buyers and sellers can directly or indirectly carry out trade in goods and or services.

11. **Related Market Elements** are markets related to the reach or certain marketing areas by business actors for the same or similar goods and or services or substitutions of said goods and/or services.

12. **Monopolistic Practices,** according to Article 1 number 2, is the concentration of economic power by one or more business actors which results in the mastery of the production and/or marketing of certain goods and or services, which creates unfair business competition and can harm the public interest.
13. Elements of Unfair Business Competition, according to Article 1 number 6, is competition between business actors in carrying out production and or marketing activities of goods and or services carried out in a way that is dishonest or under the law or impedes business competition.[8]

Based on Law Number 5 of 1999, KPPU has the authority to impose sanctions on business actors violating the provisions of Article 20 in the form of administrative sanctions, principal criminal penalties, and additional penalties can be imposed in Article 47, Article 48, and Article 49.

The impact of predatory pricing practices;

a. If it is successful

In the success of the practice of predatory pricing carried out by cellular operators will have an impact, including:

1. Operators, predatory pricing in the telecommunications business has an impact on operators in the form of their business being eliminated or even dead from the market, and experiencing losses due to the loss of consumers who turn to companies that carry out these predatory pricing actions.

2. Consumers, at the beginning of the practice of predatory pricing this can be beneficial because of the low price fixing, but over time will cause losses after the predatory pricing actors set high prices after getting rid of competitors in the market, and consumers have no other choice in selecting operators cellular because the exclusion of other companies.

b. If it fails

Before a company conducts predatory pricing practices, it should consider two conditions in conducting predatory pricing practices, namely the company must be sure that its competitors will die first compared to the company, and believe that the profits after the implementation of predatory pricing will exceed losses during the predatory pricing practice. However, despite taking into account the requirements and being sure of what will be done, there will still be a gap to fail, and in doing this predatory pricing practice also has the possibility of failure to do so, if the predatory pricing practice fails to be carried out by the cellular operator then the operator will suffer loss, setback, lose consumer confidence, or even go bankrupt.

The resource person said that if the strategy was accompanied by an increase in the quality of the product it would be able to increase the share of the company. However, if it only lowers prices to make no sense, so customers will switch because they are interested in low prices, then the competitor has violated the rules set out in Law No.5 of 1999, and BRTI should reprimand them.[9] Regarding losses incurred by operators when competitors engage in predatory pricing practices, the resource person said that when looked in closer, not all customer segments will turn away when competitors apply the strategy, maybe only in the Youth segment that is still not sustainable in financial terms. But more or less will certainly cause losses, because on one hand the company must maintain Net Income, so it will not be able to follow the strategy, so that loyal customers will move, causing losses.[9]

In the role of the government, the public expects very much the KPPU's decision to be able to make the telecommunications business not only benefit the cellular operator company, but also pay attention to the services provided to the quality telecommunications service users. The informant said that during the war the price of telephone and SMS at that time, the government had played an active role by providing a minimum tariff limit, so operators could...
not provide tariffs below the tariffs that had been set. Then on July 11, 2003, through Ministerial Decree Number 31 of 2003, established the birth of the BRTI (Telecommunications Regulatory Agency) This institution was intended to be able to regulate, supervise and control telecommunications services in Indonesia equally for all cellular operators, both BUMN and private. Telecommunications businesses are required to submit information to BRTI regarding the development of the telecommunications business being carried out. However, the establishment of the BRTI is indeed one of the provisions politically required by the DPR to the government to be able to make telephone tariff adjustments. Which means that the formation of BRTI does not have to be telephone tariffs that can be adjusted directly.

Related to the telephone tariff adjustment problem, which basically determines the ITRB not directly related to the telephone tariff adjustment because this tariff adjustment is directly related to the costs incurred by the telecommunications operator, including the rebalancing method which must be used as a basis tariff setting by the organizer.

The resource person was of the opinion that BRTI had carried out its role quite well, by carrying out supervision of telecommunications operators quite tightly. And enforcing regulations governing the procedures for running a telecommunications business.[9]

4 Conclusion

1. Low tariffs offered by cellular operators to consumers through telecommunications advertisements have indeed become a special pleasure in competition, such as reaching more consumers to increase market share within the telecommunications company concerned, and which should then be watched out for. This kind of competition has the potential to result in monopolistic practices and unfair competition among the telecommunications business actors. The tariff war offered through various types of advertisements has led to lower telecommunications costs offered by operators. At a glance, it does seem to benefit consumers who use it, and in reality instead, the quality and service received by consumers are also increasingly felt to be directly proportional to the decreasing price of telecommunications offered. Although a number of telecommunications advertisements are indicated to have carried out predatory pricing practices, but based on the research, they so far are still at a reasonable level.

2. Regulations on predatory pricing use Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Article 20 clearly states that business actors are prohibited from carrying out acts of selling at very low prices with the intent and purpose resulting in monopolistic practices and or unfair business competition. Meanwhile, Article 7 states that business actors are prohibited from making agreements with competitors to set prices below market prices resulting in unfair business competition. In Law Number 5 of 1999 also stipulates sanctions for the practice of predatory pricing in Article 47 for administrative sanctions, Article 48 for basic crimes, and Article 49 for additional crimes. Then, the role of the government to respond the predatory pricing is coming from the KPPU's decision to make the telecommunications business not only concerned with profits but also concerned with services provided to consumers. On July 11, 2003, through
Ministerial Decree No. 31 of 2003 stipulated the birth of BRTI to regulate, supervise, and control telecommunications services in Indonesia.

5. Suggestion

1. Telecommunications companies need to be more focused on the level of quality and service intended for consumers rather than obsessed with attracting more consumers, because the demand for telecommunications services will still not decline, and even tend to increase. Therefore, what is needed by telecommunications companies is to retain consumers by offering better quality and service.

2. The government needs to start making regulations to regulate the upper and lower limits of cellular telecommunications costs in accordance with the production costs incurred by companies. The regulations are meant to control telecommunications costs so as not to be too high and not too low, and to prevent the practice of predatory pricing which results in monopoly and unfair business competition in the business of cellular telecommunications.
References


[5] Law Number 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition.


The Provincial Government’s Authority Regarding the Post-Mining Activities

Alfi Soka Hananti1*, F.C. Susila Adiyanta2, Muhamad Azhar3
{alfinyook@gmail.com*1, susila.adiyanta@live.undip.ac.id2, azhar@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. As a form of government action in the effort to exploit mineral resources in Indonesia, supervision, especially in the mineral and coal mining sector is carried out in order to supervise and control them so that the implementation of state control over these resources is truly carried out for the greatest prosperity of all people. This study aims to firstly, find out how the authority of the Central Java Provincial Government in supervising mining activities. Secondly, to know the juridical consequences of implementing supervision of mining activities in the Central Java region based on Law Number 23 of 2014 concerning the Regional Government. The research method used by researchers is the empirical juridical method. The study was conducted by reviewing the implementation or implementation of positive legal provisions regarding supervision in mining business activities based on factual events that occurred in the community in accordance with the data and facts found. The study discussed the supervision authority of the provincial government in supervising post mining activities and how they were implemented in the field before and after the ratification of Law Number 23 of 2014 concerning Regional Government. The results of the study indicate that supervision has not been running as it should.

Keywords: Provincial Authorities, Oversight, Mining Activities, Law Number 23 Of 2014 concerning Regional Government

1 Introduction

Indonesia has always been famous for its rich natural resources in the fields of agriculture, fisheries and even mining [1]. Each region of Indonesia has its own natural potential, especially in the fields of oil and gas (oil and gas), as well as minerals and coal (minerals). In addition, natural resources are also abundant in the mining sector, such as: gold, copper, silver, petroleum, and geothermal. Potential mineral mining resources are spread in 437 locations in western and eastern Indonesia, including copper and gold in Papua, gold in Nusa Tenggara, nickel in Sulawesi, bauxite and coal in Kalimantan and other minerals scattered in various places [1].

Paragraph four of the opening of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) emphasizes the country’s goal to protect the entire nation of Indonesia and all of Indonesia’s blood spills, as well as to advance public welfare, improve the life of the nation, and participate in implementing world order based on independence, lasting peace and social justice. [2] Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that “Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people”. This provision is an affirmation of the phrase promoting public welfare in the opening of the 1945 Constitution of the Republic of

ICSTIAMI 2019, July 17-18, Jakarta, Indonesia
Copyright © 2021 EAI
DOI 10.4108/eai.17-7-2019.2303331
Indonesia, thus the state obtains constitutive legitimacy to control and carry out governance of the earth, water, and natural resources to be used for the greatest prosperity of the people.

The right to control the state is the authority of the state to regulate, manage and supervise the management or exploitation of minerals, and contains the obligation to use it as much as possible for the prosperity of the people. State control is held by the government. Thus, the role of the government in the mining sector in relation to the ownership rights has becomes very important to manage the wealth of natural resources so that it can be enjoyed by many people with the aim of creating a just and prosperous society. The state is obliged to be present in order to manage and oversee the public service branches, so that the results can be used for the amount of prosperity of the people. In this case the use of the word “controlled by the State” indicates the existence of a character state that has sovereignty, so that it can act in and out. So in this case the use of the word “controlled by the state”, means referring to the control and implementation by the central government. Article 33 of the 1945 Constitution of the Republic of Indonesia refers to “authority rights” over mineral materials in the hands of the state, not the government. On the other hand, mineral rights to the minerals are in the hands of the Indonesian people (all Indonesian people). Likewise, mining rights are in the hands of the government and economic rights are in the hands of business actors.

The 1945 Constitution of the Republic of Indonesia gives a mandate to the state through executive institutions to conduct policies (regulations) and management measures (bestuursdaad), regulation (regeleendaad), management (beheersdaad), and supervision (toezichtshoudensdaad) for the purpose of the maximum prosperity of the people. The oversight function by the state (toezichtshoudensdaad) is carried out by the state, c.q. the government, in order to supervise and control so that the implementation of control by the state of the said resources is truly carried out for the greatest prosperity of all people. The word “controlled by the government” can also mean the local government.

One form of supervisory authority carried out by the government is by issuing permits for the management of Energy and Mineral Resources (ESDM). The authority is given to local governments because not all regions in Indonesia have the same EMR potential. This is intended to be more effective control and coordination.

Supervision of the use of ESDM is very important and carried out by the government so that the practice does not deviate from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is to be used for the greatest prosperity of the people. Supervision also aims to ensure that exploration and exploitation activities by companies are carried out properly in accordance with applicable rules and are expected to not cause damage in the future. Supervision is carried out in the form of granting permits for the use of mining resources for legal subjects (legal entities, cooperatives and individuals).

Supervision in principle is done as a preventive measure whether the activities carried out in accordance with existing provisions. Supervision of mining business activities is basically aimed at making IUP holders more focused in conducting business activities. In theory, George R. Terry argues that supervision is intended to determine what has been achieved, evaluated, and implemented in corrective actions if necessary, in order to ensure the intended results. Relevant to this opinion, supervision is absolutely necessary in the management of mining businesses in accordance with the principle of the goal of supervision, so that it does not deviate from the permit.

ESDM governance is mandated to local governments based on the principle of autonomy and co-administration (mede bewind). The application of these principles means that the central government gives special authority to regional governments to manage and manage their respective regions. In Law Number 23 Of 2014 concerning Regional Government (UU
Pemda), the authority to grant mining permits is shared between the central government and the provincial government.

The wide open authority in the regions makes the opportunity for abuse of governmental authority even greater. Opportunities for corruption, collusion and nepotism (KKN) by government officials and mining businesses generally begin at the licensing stage. There are opportunities to manipulate land area in exploitation activities such as manipulation of land ownership documents by individual company employees and local government officials [13]. This clearly violates the mandate of the Article 33 paragraph (3) of the 1945 NRI Constitution which states that the utilization of natural resources must be based on the interests of the people’s prosperity.

This is where the role of supervision is needed. The aim is to increase public legal awareness of the importance of orderly administration, especially in the mineral and coal sector.

Based on the description above, the main problem identification and formulation are as follows:

1. What is the authority of the Central Java Provincial Government in supervising mining activities after the enactment of Law Number 23 of 2014 concerning Regional Government?
2. What are the juridical consequences of implementing supervision of mining activities in the Central Java region based on Law Number 23 of 2014 concerning Regional Government?

2 Method

This research uses empirical juridical methods. Data processing and analysis in this research was done analytically descriptive. Regulatory impact assessment (RIA) method is used to analyze legal issues. This method is a process of systematic analysis and communication of policies, both new policies and existing policies [14]. Scientific activities include field research and comparative studies of legal materials.

3 Results and Discussion

3.1 Central Java Provincial Government Authority

3.1.1 Supervision in Mining Permits in Central Java Province

In the life of the nation and state, the system of governance is a decisive factor [15]. Supervision is part of the government’s actions to prevent violations of the applicable provisions [16]. The Central Java Provincial Government in exercising the authority to supervise mining activities is based on several laws and regulations including the Minerba Law, the PPLH Law, the 2014 Regional Government Law, and the related implementing regulations below. This is in line with the concept of the rule of law, namely the principle of legality. All government actions must come from positive law. Every state administration official in acting (carrying out his duties) must be based on the legal authority given the legislation. Thus, every act of state administration officials must have a legal basis. Therefore,
each state administration official must carry out a legal authority prior to carrying out his
duties based on statutory regulations [17].

The mining permit implementation according to the Minerba Law is carried out in a
decentralized manner based on the principle of broadest autonomy. This system refers to the
provisions in Law Number 32 of 2004 concerning Regional Government (now replaced by the
2014 Local Government Law). This law confirms that the management of the mineral and coal
sub-affairs is divided into three parties namely: the central government; provincial regional
government; and district/city government.

The implementation of supervision according to this Law uses the principles of
externality, accountability, and efficiency by taking into account the harmony of relations
between government structures [18]. The field of mining affairs is included in matters of an
optional nature, namely matters that actually exist and have the potential to improve the
welfare of the community in accordance with the conditions, uniqueness, and superior
potential of the region concerned [19], so that the determination of the distribution of IUP
awarding functions is divided based on the distance that can be reached by each government.
The Province has the authority to grant IUP, Production Operation IUP for mining business
activities that exist in cross-regency/city areas within a range of four to 12 miles; Whereas
districts/cities in granting IUP, Production Operation IUP and IPR for mining business
activities that are in the district/city area up to four miles [20].

The authority to supervise mining activities that have a direct impact on the environment
belongs only to the provincial government. Concentration is applied to facilitate investigation
and verification in the case of violations by business actors which result in environmental
pollution/damage. Whereas, the regional government only focuses on granting IUP, IUP
Production Operation and IPR in its area, especially IPR which is a milestone in the local
economy. The authority to grant IPR by the regency/city government is based on the
ownership of the WPR area which does not exceed 25 hectares [21] and the number of mining
points that are not small. Therefore, this authority is given to local governments because they
are considered to be more understanding about the conditions, potential and threats of their
respective regions.

The birth of the 2014 local government law gave several changes to the affairs of the
regional government in managing mineral and coal mining [22]. There are fundamental
differences regarding the division of concurrent government affairs in the Regional
Government Law. The deconcentration system appears to be more dominant in the distribution
of concurrent government affairs. It changes to this system of authority include, among others,
the maritime and mining sector. At present the division of authority no longer exists on three
parties, but there are only two namely the central government and the provincial government.

This change in management paradigm is basically done so that all arrangements regarding
the use of mineral resources become more effective and efficient, because the entire licensing
process is currently centered on the province. Seen from the details of the arrangement
regarding the relationship between the center and the regions shows the government’s desire
to tidy up the existing order and authority in the provincial and district/city regions.[22]
Supervision is more controlled because it is carried out directly by provincial officials.

At present the district/city government no longer has authority in carrying out affairs in
the field of mineral and coal. The Regency/City authority that was lost included making
regulations related to ESDM, granting permits (except geothermal), guidance and
supervision[23]. The authority to grant IUP, Production Operation IUP in the regency/city
area up to a distance of four miles is now drawn to the province. No exception to the granting
of IPR which is now the authority of the provincial government.
This formal change in the paradigm of division of affairs has certainly led to clashes between legal forms. This is because the Minerba Act as a sectoral law (lex specialis) should refer to the general law (lex generali). Conflicts of norms occur because of district/city regional authority, such as the authority to determine the WPR and issue IUP which in the Minerba Act becomes the authority of the regent/mayor switches to provincial authority. The transfer of authority is not accompanied by revocation of the authority of supervision and violation of sanctions to holders of IPR, IUP or IUPK. Legally the authority is still attached to the regent/mayor based on the valid Minerba Act and is still valid as a positive law. Such behavior can be seen for example for the supervisory authority in Article 140 Paragraph (3) as well as the imposition of sanctions in the form of revocation of IUP and IUPK in Article 119 of the Mining Law which according to Article 409 of the Regional Government Law revokes several laws, excluding the Minerba Law.

This problem can be solved using the principle of lex posterior derogat legi priori ie the latest law (lex posterior) overrides the old law (lex prior). The enactment of the Minerba Act is still valid as long as the Local Government Law does not regulate certain matters, so both of these regulations are still legally valid.

At present, the authority to supervise mining activities is carried out by the central government (ministers and governors). Although the autonomous region no longer has the authority to supervise, the role of the district/city regional government is still needed in providing recommendations on the determination of WIUP. Thus, the district/city regional government does not necessarily lose its power in its own territory. However, all supervisory decisions remain at the center as long as determined by legislation.

3.1.2 Stages and Procedures

a. Stages and Procedure for IUP Application

Applications for mining business licenses are divided into three types, namely request for WIUP, application for Exploration IUP, and application for Production Operation IUP. To obtain an IUP as intended, prospective applicants must submit an application to the Head of the Regional Investment Board (BPMD) now DPMPTSP) by fulfilling four requirements namely administrative requirements, technical requirements, financial requirements, and environmental requirements. These requirements must be met by prospective applicants who function as the first filter in the framework of direct supervision. This requirement refers to the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 1796 K / 30 / MEM / 2018 concerning Guidelines for Implementing, Evaluating, and Issuance of Licensing in the Mineral and Coal Mining Sector.

Another thing that needs to be considered before submitting the application prerequisite is the Application Requirements Evaluation Sheet. After all the requirements have been met, the applicant can fill out an evaluation sheet in accordance with the business license requested.

Upon the request, the person receiving the request verifies the completeness document. An application that has fulfilled the document requirements will be given a receipt. Application documents received are submitted to the Technical Unit for evaluation.

After the documents are evaluated and met the requirements, the technical unit prepares the draft decree. Requests that have fulfilled the requirements will be given a receipt. Application documents received are submitted to the technical unit.
Then the IUP Decree is signed by the Minister or the Governor, in accordance with his authority or by the Head of the Provincial One-Stop Investment/Integrated Service Coordinating Board who is granted authority[27]. Decrees that have been signed are numbered and dated in accordance with the respective official script, for the applicant and copies for archives and copies and a Decree is conveyed to the applicant [27].

b. Supervision Steps and Procedures

Supervision is carried out directly and indirectly. Direct supervision is carried out by visiting the mining site. Activities in the form of checking directly to the location/field in accordance with the coordinates listed. This check is carried out by the mine inspector who has been appointed by the authorized official. Whereas indirect supervision is carried out without visiting the place of implementation of the supervised activity or work, or in other words carried out remotely by studying and analyzing all documents concerning the object being supervised. This supervision takes place at the permit application stage and also after the permit issuance. In the application process, supervision is carried out by way of providing a community survey. Meanwhile, post-licensing supervision is carried out through monitoring of the results of evaluations of reports on the implementation of mining activities.

3.2 Juridical Consequences of Supervision of Mining Activities in the Central Java Region

3.2.1 Juridical Consequences of Supervision of Mining Activities in Central Java

Juridical consequences of the supervision of the mining business that is granting permits and sanctions. Permission will be issued after going through the evaluation and checking process. The provincial Energy and Mineral Resources Office issued an IUP recommendation as one of the prerequisites for the mining business licensing process. The following is a table for publishing IUP technical recommendations in the Central Java region from 2016 to 2019.

<table>
<thead>
<tr>
<th>Issuance of Technical IUP Recommendations/Year</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>WIUP</td>
<td>402</td>
<td>306</td>
<td>179</td>
<td>134</td>
</tr>
<tr>
<td>Exploration IUP</td>
<td>350</td>
<td>230</td>
<td>148</td>
<td></td>
</tr>
<tr>
<td>Production Operation IUP</td>
<td>192</td>
<td>177</td>
<td>117</td>
<td>70</td>
</tr>
<tr>
<td>OP Sales IUP</td>
<td>32</td>
<td>58</td>
<td>52</td>
<td>36</td>
</tr>
<tr>
<td>IUP OP Processing/Purification</td>
<td>17</td>
<td>24</td>
<td>30</td>
<td>6</td>
</tr>
<tr>
<td>IUJP Mining</td>
<td>4</td>
<td>16</td>
<td>5</td>
<td>8</td>
</tr>
</tbody>
</table>

Source: Central Java ESDM Government Agency Performance Report [28], [29], [30]

The initial purpose of withdrawing supervisory authority to the provincial government is one of which is to centralize administration, so that the licensing bureaucracy becomes more efficient, effective and targeted. As explained, supervision is currently carried out by the provincial EMR office which was previously carried out by the district/city EMR office.
However, it seems that the goal was not successful if you look at the data presented in the table.

Changing the bureaucratic system of mining business licensing are precisely the consequences of falling demand and the issuance of technical IUP recommendations each year. Data such as those listed above were taken after the enactment of the Regional Government Law in 2014. It can be seen from the table that the issuance of IUP recommendations conducted by the Central Java Provincial Energy and Mineral Resources Office tends to decrease rather than increase. An example can taken from the recommendations of WIUP, IUP Exploration, and Production Operation IUP where the average annual decline reaches half of the previous year’s achievements.

Based on interviews with sand and stone mining businesses, some of them complained about the same thing. Concentration of licensing at the provincial level is even more troublesome because it forces businesses to take care of permits directly to the provincial capital. Businesses must prepare more costs and time to take care of licensing. This problem was then also supported by the unavailability of the Online Single Submission (OSS) system in mining licenses.

Supervision currently carried out by the province causes the reach of mining entrepreneurs to be even further. To get a permit, the entrepreneur must take care of the province which is further away. As a result, entrepreneurs become lazy to take care of mining business licensing. This led to a decline in mining business permit applications. The decrease in this request is then directly proportional to the level of legal awareness of mining entrepreneurs. The entrepreneurs finally choose to run their business without obtaining a permit. This illegal practice is referred to as mining without permission (PETI). In addition, the factor of mining activities which increased along with the need for infrastructure development in Central Java, also did not rule out the possibility of an impact on the rise of PETI [31].

These forms of PETI is vary. There are practices of PETI carried out by individuals and business entities with no bagging IUP at all [32]; there is a violation committed by a licensed businessman but has expired but does not immediately renew; and there is also the practice of PETI in the form of mining production operations (processing and refining) even though the entrepreneur only has an Exploration IUP [33]. These illegal practices not only harm the country’s goal of advancing public welfare, but are also harmful to environmental sustainability and safety.

Table 2. Ordering Illegal Mining Areas in Central Java (2013-2017)

<table>
<thead>
<tr>
<th>No</th>
<th>Description</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2013</td>
<td>2014</td>
<td>2015</td>
<td>2016</td>
<td>2017</td>
</tr>
<tr>
<td>1</td>
<td>Illegal mining area (ha)</td>
<td>96, 20</td>
<td>664, 35</td>
<td>738, 70</td>
<td>593, 00</td>
<td>550, 00</td>
</tr>
<tr>
<td>2</td>
<td>Illegal mining area sized (ha)</td>
<td>82, 74</td>
<td>574, 49</td>
<td>640, 46</td>
<td>517, 10</td>
<td>484, 50</td>
</tr>
</tbody>
</table>
Mining without a permit is a problem that is still faced by Central Java Province. The area of illegal mining in Central Java in 2017 covers 550 ha, found to decrease compared to 2016 which covered 593 ha. The character of mining without a permit is sporadic and local in nature so that the area cannot be determined exactly. The provincial government together with the integrated team has curbed illegal mining, with the percentage of mining areas without permits being regulated reaching 88.10% in 2017, an increase compared to 2016 which amounted to 87.20%. The development of controlling illegal mining areas can be seen in the table above.

Based on the table, in 2014 to 2015, there was an increase in the area of PETI from 664.35 ha to 738.70 ha. This increase in extent could have been possible due to a shift in the monitoring paradigm as explained previously. Business actors tend to be indifferent to administrative documents because the bureaucracy has just changed authority. The possibility of ambiguity arises in the community which in turn encourages violations. However, in the following years the number has slowly declined, followed by the percentage of the area of PETI which has been controlled which always exceeds 85%. This means, the provincial EMR office is quite capable of accommodating violators of mining business administration [31]. Supervision of these illegal practices was carried out fairly well as evidenced by an increase in the percentage of achievements in the PETI area that was successfully controlled by the government.

In order to improve or restore the function of ex-mining people’s land, a reclamation of ex-mining land has been carried out in 2013-2018 covering an area of ± 11 Ha, at the mining location without permission carried out by the people or small scale mining [31]. That number seems small compared to the one in 2017 which covered 550 ha [31]. Indeed, 11 hectares are an accumulation of many years. That is, the implementation of the reclamation policy is still very far compared to the total area of the PETI. Therefore, supervision must be applied massively and intensively so that mining activities remain in accordance with environmentally sound and sustainable rules and in accordance with applicable laws and regulations.

### 3.2.2 Barriers to the Implementation of Supervision of Mining Activities in the Central Java Region

Some obstacles for the government in conducting supervision of mining business activities are the lack of understanding of mining entrepreneurs regarding the provisions of the applicable legislation; The lack of active provincial EMR office in providing understanding of entrepreneurs related to the implementation of good mining practice in the field; Fulfillment of occupational health and safety which is still far from the specified standards; limited human resources at the provincial ESDM service as a supervisory party; illegal miners; lack of awareness of mining entrepreneurs over the importance of orderly administration of mining business permits; and the conflict between the Minerba Act and the Regional Government Law.
3.2.3 Solutions to the Obstacles to the Implementation of Supervision of Mining Activities in the Central Java Region

The solution that can be done by the government is to maximize the resources available at the provincial EMR office to facilitate mining entrepreneurs who lack knowledge of regulations and administration. This is done by empowering regional officials well, such as by appointing district/city-level service officers to supervise mining in the regions. And by renewing the sectoral mining law.

4 Conclusion

The authority of the Central Java provincial government oversight of mining business activities covers the entire series of business activities starting from the pre-application of permits to post-mining activities in Central Java in carrying out the duties and authority of supervision. The basis for the placement of this supervisory authority refers to Law Number 23 of 2014 concerning Regional Government. Supervision is carried out directly and indirectly by technical officials. Direct supervision is carried out by visiting mining business locations based on existing coordinates. Indirect supervision is carried out through the provision of IUP recommendations and periodic evaluation and inspection of mine activity reports.

The consequence of supervision in mining business activities is the provision of permits and sanctions. Research shows that there is instability in achieving supervision. Several obstacles that impede the implementation of supervision stem from overlapping rules. In this case, it can be concluded that the supervision of the granting of permits and sanctions in relation to the current deconcentrating system has not been running well.

The suggestions that can be conveyed in writing this law include: 1) directing the preparation of good administration by counseling mining entrepreneurs; 2) empowering regional officials well, such as by appointing district/city-level service officers to supervise mining in the regions; and 3) reforming the mining sector regulations by the government to avoid overlapping regulations. The current Minerba Act still refers to the existing provisions in the old Local Government Law. Even though the implementation of the Minerba Law is still valid and recognized positively, the renewal is needed to create a harmony and legal certainty.
References


[18] *Article 11 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government*.

[19] *Article 13 paragraph (2) of Law Number 32 Year 2004 concerning Regional Government*.

[20] *Article 7 and 8 of Law Number 4 of 2009 concerning Mineral and Coal Mining*.

[21] *Article 22 letter d of Law Number 4 of 2009 concerning Mineral and Coal Mining*.


[25] *Article 40 Governor Regulation of Central Java Number 18 Year 2016 concerning Service Delivery in the Field of Energy and Mineral Resources in the Province of Central Java.*


[27] *Regulation of the Minister of Energy and Mineral Resources No. 34 of 2017 concerning Licenses in the Field of Mineral and Coal Mining.*


[32] *Article 158 of Law Number 4 of 2009 concerning Mineral and Coal Mining.*

[33] *Article 160 paragraph (2) of Law Number 4 of 2009 concerning Mineral and Coal Mining.*
The Utilization of GSO by Indonesia as a Subjacent State Based on Space Treaty 1967

Richo Wembi Rajanun Nafis1*, M. Kabul Supriyadhie2, Adya Paramita P.3
{richonafis@gmail.com*1, kabul.supriyadhie@live.undip.ac.id.2, adyaprabandari@gmail.com3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. GSO is a ring-shaped orbit located at six earth radians above the equator, and is the most strategic place to place satellites because they are in a fixed position in space against the earth. The existence of the principle of first come, first served makes injustice in the use of GSO. This makes the countries where positions are under the GSO region or under the state demand for justice for the use of GSO which must be in fair, equitable and rational for the common good. Issues that will be discussed in the writing of this law are: (1) Indonesia's position as a nation under the International Law, (2) the use of GSO by Indonesia as a country under the 1967 Space Treaty. The research uses a normative juridical approach with descriptive analytical research specifications. The source of the data is secondary data collecting from literature study. The method of data analysis is qualitative analysis. The results of research is that Indonesian territory may be affected by celestial bodies that can threaten the safety of Indonesian citizens. By ratifying the 1972 Liability Convention, Indonesia as an underdeveloped country has the right to claim damages to the launching country when their satellite or space object falls onto Indonesian territory, and incur losses.

Keywords: GSO; Indonesia; 1967 Space Treaty.

1 Introduction

The development of technology at this time is something that must be taken into account for any country. Each country is trying to launch satellites into space to meet the interests of their country. The launch of the Sputnik I satellite by the Soviet Union in 1957 and followed by the United States had triggered other countries to carry out activities in space.

With the development of activities in space, the principle that the sovereign state of the airspace above it to an unlimited height becomes invalid. Space requires its own arrangements that are different from the airspace settings of a country. Then, on January 27, 1967, a treaty governing space was signed namely the Treaty on Principles of Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (Space Treaty 1967). In Articles I and II of the Space Treaty 1967 states that space is the property of all people. Therefore, it cannot be made an object of ownership or sovereignty by a country and used freely for the common their own interests.[1]

One of the activities in space is the use of Geostationary Orbit (GSO) which has a strategic position for satellite placement. Indonesia, as a country under the certainty of the existence of the GSO has very important roles. Conducting GSO utilization activities must be in accordance with applicable regulations, in 2002 Indonesia ratified the 1967 Space Treaty as stipulated in Law No. 16 of 2002 concerning the ratification of the Space Treaty1967. Thus in
carrying out activities of utilizing the GSO Indonesia, it must comply with the applicable rules.

In writing the paper, the formulation of the problem to be discussed is as follows:

1. What is the position of Indonesia as a niche in International Law?
2. How is the use of GSO by Indonesia as a country under the 1967 Space Treaty?

2 Method

The method of approach used in this study is normative juridical research. It is legal research conducted by examining literature or secondary data as a basic material to be investigated by searching for regulations and literature relating to the problem under study.[2]

The research specifications used in this study are analytical descriptive. Data analysis used in this study is a qualitative analysis in which the results of the study will be described in the form of sentences which are arranged systematically.

3 Results and Discussion

3.1 The Position of Indonesia as a Colle State in International Law

3.1.1 Space Delimitation

The development of human activities in air space and space raises legal controversy. So the need for a dividing line between air space and space.[3] However, several theories emerge that can be used to determine the limits of air space and space as follows:[3]

a. The boundary line theory is based on the conception of the atmosphere
   According to this theory, air space and space are limited by the height of the atmosphere. The higher the atmosphere, the greater the pressure. As a result, the piston / jet powered aircraft will not be able to fly at a certain height, and only planes that are powered by rockets can fly to that height.

b. The theory of atmospheric division
   According to this theory, the limits of air space and space are based on the maximum height an airplane can fly, precisely in the stratosphere region only. The rest is the area of space.

c. Von karman theory
   According to the theory, the limits of air space and space based on an elevation the aerodynamic lift can work on an aircraft that is at an altitude of 90-100 km above sea level.

d. Perigee theory / lowest point of a satellite
   According to this theory, air space and space are limited to the lowest point of a satellite orbiting the earth, which is approximately 160 km above sea level.

e. Line theory is based on the point where there is no attraction to the earth
According to this theory, it is believed that the boundary of the air-space space ends at the point where the attraction of the earth is gone or rather the attraction of the earth is getting smaller.

f. Strength theory

According to this theory, the limits of air space and space are based on the technical ability of a country in carrying out a real supervision that can be done with the ability to technically reach the air space / space of a country.

g. Zone theory

According to this theory, the airspace is divided into airspace which is subject to sovereignty and a crossing area which is 150-240 km above sea level. And above these two zones is free space.

From 7 (seven) theories mentioned above, it shows that the division of boundaries between air space and space is a vital thing. It relates to the legal implications about the rights and responsibilities of space activities that are different from flight activities using airplanes. Of the various proposals submitted, but until now there has been no international agreement regarding the determination of the boundaries of air space and space. This is because there are different points of view and different interests in the use of space.[3]

On the one hand, there is a group that holds that space delimitation is needed, and on the other hand, there are other groups who view such delimitation as unnecessary. The reasons for those who consider the need for this delimitation are: to guarantee legal certainty; the fact that airplanes can only fly in airspace and cannot fly in vacuum, otherwise the requirements are not absolutely treated for spacecraft; formulate legal provisions to prevent military activities in space.

The reasons of those who deem unnecessary delimitation are: the existence of delimitation will expand the demands on the country's sovereign territory; will cause problems with crossing rights and status of the spacecraft; in fact the physical boundary between air space and space is very thin and very difficult to determine with certainty.

Based on the above conditions, it can be seen that the discussion of space delimitation issues tends to the problem of establishing a special legal regime, whether the special legal regime is called aerospace object, sub-orbital flight and space traffic management.[4]

The aerospace object regime, where the definition of an aerospace object is, “an object which is capable of both of traveling through outer space and using its aerodynamic properties to remain in airspace for a certain period of time.”[5] Determination of this regime can be said as a functional approach. If this is applied, the determination of air and space boundaries is not necessary. The purpose of this legal regime is based on where the aerospace object is, whether in air space or in space which will produce practical problems related to the application of law.

Whereas the sub-orbital flight regime with the definition of sub-orbital flight is a flight with altitude above the civil flight. The establishment of this regime indicates a new zone outside air and space that regulates human activities in using technology in the zone. This arrangement makes the activities in it special. So, if there are conflicts with the air and space, the regime will harmonize it.[4]

In the space traffic management (STM) regime, where the STM is defined, “Space Traffic Management means the set of technical and regulatory provisions for promoting safe access into outer space, operation in outer space and return from outer space to earth free from physical or radio frequency interference “. This regime indicates the management of space
traffic which leads to special provisions for the purpose of space traffic safety. The enactment of this regime means the formulation of regulations that are more technical in nature and are only for safety purposes. Therefore, the establishment of this regime must respect existing air and space laws in conducting space traffic.[4]

From the description above, it can be concluded that the three regimes above can be used as problem solvers regarding space delimitation by using a functional approach to aerospace objects that are based on the function or mission of the object and not using a spatial or regional approach, zoning system for sub-orbital flight which creates its own zone, and a system that regulates space traffic safety for space traffic management.

Regarding the above problems, Indonesia has its own views. At the UNCOPUOS session in 1998, Indonesia in essence conveyed its views regarding aerospace objects which explicitly stated that in formulating space delimitation, it should use an approach that considers the special needs of developing countries. At the 2003 National Aerospace Congress, Indonesia adopted a spatial approach in determining space delimitation. Then, in Act Number 21 of 2013 concerning Space, it does not explicitly mention space delimitation. But Article 1 Number 1 contains the definition of space, namely “Space is the space and its contents which are located outside the air space which surrounds and surrounds the air space”. Article 1 Number 2 contains the definition of Space which is “Space is everything about Space and relating to the exploration and utilization of space”.

From this understanding, it is reflected that space activities include not only space in the sense of territory but also all activities carried out in the context of exploration and use. From the contents of these two Articles, it can be seen that Indonesia is aiming at a functional approach in the case of space delimitation. However, in a general explanation, it is stated “Space is a space and its contents that are outside the air space, as well as those that surround and enclose the air space. Naturally Space is located about 100-110 km above the air space or Earth's atmosphere.[4]

From the description above Indonesia's attitude reflected changing indications. However, in essence, if in 2003, Indonesia was positioned as a spatial state based on the results of the 2003 congress, then in Law Number 21 Year 2013 on Space would indicate a functional approach. Whereas in the general explanation it indicates a spatial approach.

3.1.2 Indonesia's Position as a Colong Country

Indonesia as a country whose territory is under the longest GSO lane can make it possible for Indonesia to be hit by satellites or other countries' spacecraft. This is supported by the increase in the number of man-made celestial launches into space. The possibility of malfunction can not be avoided, and also satellites whose lifetime has been depleted will cause more space objects that can fall to earth.

Judging from the consequences, as is known that there are man-made celestial bodies launched into space using nuclear power. So if the object falls in the territory of the country below it can cause disruption to the health / safety of humanity and other creatures.

The effects that can be caused by the fall of celestial bodies that still contain radioactive material that falls on the surface of the earth can be stated as follows:[6]

a. Short-term effects, divided into two types, namely mild and severe types. Symptoms that appear in the mild type are: sore throat, fever, malaise, fatigue, and hemoglobin and leukocytes will decrease dramatically. Severe types are characterized by symptoms such as: the onset of certain diseases (skin, lung, bone, etc.).
b. Long-term effects, damaging to genetic material that can cause abnormalities in the genesis of offspring. Humans affected by this long-term effect will result in offspring born in a state of disability.

c. The slow effect, which is radiation that hits the body that will damage the organs of the body slowly and only cause fatal danger after years.

Contamination of other objects around the location of the fall of the celestial body, among others, in the air, drinking water, food, grass where at a certain time will also cause harm to humans who come in contact with these objects.

During the fall of the Soviet Union Cosmos 954 Satellite carrying nuclear power sources in the form of uranium with isotope 235, on January 24, 1978 at 11.53 GMT it had entered the Earth's atmosphere and crashed north of the Queen Charlotte islands off the coast of Canada. From the results of operations that have been carried out in two stages has produced a conclusion that the fall of the satellite has caused nuclear radiation.

As one of the countries under the earth, the possibility of being hit by space objects both in the form of satellites and other forms can occur in areas of Indonesia whose population is also quite large. Then, it needs a special international law to protect the affected countries in order to obtain compensation. There are two international treaties that contain basic provisions regarding responsibilities in space law, namely, the 1967 Space Treaty and the 1972 Liability Convention. Then the provisions are detailed again in the 1972 Space Liability Convention.[7]

Under the convention, the launching country is responsible for compensating the countries affected by the launching state's celestial bodies. This obligation is stated in Article II of Space Liability 1972, “A launching state shall be absolutely liable to pay compensation for damage caused by its object space on the surface of the earth or to aircraft in flight”. Whereas what is meant by launching state in Article I letter c, is, “1) A state launches or procures the launching of space object; 2) A state frome whose territory or facility a space object is launched.”

So, based on the above article, launching countries are not only countries that launch celestial objects, but also countries that have the opportunity to participate in launching celestial objects, and countries whose territories or facilities provide a space object launch. In this case, these countries are partially responsible for the losses caused by the launch.

There are two principles of liability in the 1972 Liability Convention. The first principle is absolute liability. This principle can be used when losses occur on the surface of the earth, such as being hit by a building by a piece of celestial body, damaging to nature due to nuclear contamination on the surface of the earth, and causing casualties because of the celestial body. The second principle is liability based on fault (liability based on fault). This principle is used when losses occur not on the surface of the earth and in the air. However, losses occur in spaceships, for example in the case of celestial bodies which cause damage due to crashing into other celestial bodies belonging to other launching states that have been placed in their orbits.

When viewed from the perspective of the country underneath (the country that was struck) then this is very beneficial. Indonesia itself has ratified the 1972 Liability Convention set forth in KEPPRES No.20 of 1996 concerning the ratification of the Convention on International Liability for Damage Caused by Space Objects, 1972 (Convention on International Responsibility for Losses caused by Space Objects, 1972). So if there are satellites or other celestial objects that fall in the territory of Indonesia and cause losses, then the responsibility can be asked to the launching country that launched the satellite or celestial body.
From the description above, it can be seen that with the ratification of the 1972 Liability Convention, Indonesia as an underdeveloped country has the right to claim damages to launching countries if their satellites or space objects fall into Indonesian territory and cause losses.

3.2 Utilization of GSO by Indonesia as a Blank Country Based on the 1967 Space Treaty

3.2.1 Legal Regulations on the Use of GSO

Geostationary Orbit is an orbital path above the equator at an altitude distance of approximately 35,871 km from the earth's surface. An object (such as a satellite) placed in the orbit has the same rotation time as the Earth's rotation time.[8] So, objects placed in GSO's orbit appear to be stationary on that orbit.

In the case of GSO utilization, there are legal provisions specifically regulating the use of the GSO. In the 1967 Space Treaty Article I, II, and IV which essentially states that in the use of space which includes GSO, the moon and other celestial bodies must be fair and without discrimination, it should not be used as an object of ownership of a country in any way, as well as in its use must be done for peaceful purposes. The article is the basis for countries in the use of GSO.

In the 1973 ITU Convention said that, GSO is a limited natural resources (limited natural resources), and each country gets a fair share and can use it fairly (equitable access). This is stated in the amendment to the formulation of Article 33 paragraph 2 of the ITU Convention, namely, “all countries have equal access for space radio communication services and positions in the GSO”. [9] From the amendment to the formulation, it can be seen that all countries have an opportunity of fair access to use GSO.

3.2.2 Utilization of GSO by Indonesia

Utilization of Geostationary Orbit (GSO) which previously could only be used by developed countries, especially the United States and the Soviet Union when they were in the Cold War atmosphere. Today, many developing countries including Indonesia have also been able to utilize the GSO slot. Previously through international forums countries that felt disadvantaged (developing countries) because they could not utilize the GSO struggled to assert their right to be able to take advantage of the GSO. Because at that time it was undeniable that there was an injustice in the use of GSO, where only developed countries could enjoy the orbit because it had adequate technological and economic capabilities. Whereas developing countries cannot utilize these orbits.

GSO has a unique orbital nature, where celestial bodies placed in these orbits will seem to be stationary. Because of its unique nature, many countries want to place their satellites on the GSO. However, given that GSO is a limited natural resource, it must be maintained so that there is no saturation in its utilization by calculating the capacity of the GSO path.[10] The following are some of the activities that utilize the GSO path as follows:

a. Remote sensing (remote sensing)

Remote sensing is a method of identifying systems of nature and / or determining the condition of objects on the surface of the earth and goods below or above them by means of observation from the air and space platforms. Remote sensing has a positive impact on human life, for example for the management of natural resources, environmental development, increase food production, weather forecasts, natural disaster management, settlement planning
and land use, mapping, and others. But remote sensing also has a negative impact on countries today. With remote sensing, a country can spy on other countries. Therefore the country conducting remote sensing must obtain permission from the country that was targeted for sensing. Then the results of the sensing must be notified to the country which is the object of sensing so that there is no misuse of the results or data from the sensing.[3]

In 1975, the UNCOPUOS legal subcommittee reached agreement on several important elements in remote sensing, namely:[8]

1) That remote sensing activities using space technology should be done for the benefit and benefit of all humanity.
2) The activity must be carried out in accordance with the provisions of international law and the UN Charter and in accordance with the 1967 Space Treaty.
3) Countries that implement remote sensing programs through space technology should invite the participation of other international communities.
4) These activities actions need to be taken to protect the earth's environment.

b. Telecommunications and Information

This telecommunications and information activity initially focused on the importance of service and search rescue. However, in its development, it then expanded its services to become a global communication network for mobile communication services, for example those engaged in publishing, management, data, law, bookkeeping, advertising, and a sharp increase in the types of communication space from just voice becomes other services such as navigation, direct broadcasting, messages, digital radio, multimedia. Then also the expansion of the use of the earth's orbit and the development of global information infrastructure network services.[11]

For Indonesia, the use of GSO is very important for the welfare of the Indonesian people. Indonesia's interests in the use of GSO are actually stated in the Preamble to the 1945 Constitution of the Republic of Indonesia through the placement of communication satellites for the benefit of Indonesia. The basic interest of every nation and state is its survival which must be filled with a struggle to achieve its national goals and objectives. In this case the basic national interests that need to be defended and fought for by the Indonesian people are:[9]

1) The protection of the Indonesian nation and the integrity of the national territory of the Republic of Indonesia from any challenges, threats, obstacles, and disturbances that come from outside or inside.
2) The creation and maintenance of national stability, and the occurrence of regional and international stability for the success of Indonesia's subsequent national development.
3) Maintaining world order based on freedom, lasting peace and social justice.

The above interests of Indonesia can be realized through the use of GSO, namely by utilizing the results of scientific and technological advances and GSO potential as much as possible to support national development, in order to realize national goals and objectives as contained in the Preamble to the 1945 NRI Constitution.

Indonesia's decision to have its own communication satellite is a strategic decision, because its benefits can unite the nation and spur the development of communication technology and Indonesian space technology. In addition to the use of GSO through the use of satellites that are owned and operated by themselves, Indonesia also utilizes satellites from other countries or international organizations stationed at GSO for weather monitoring, environmental monitoring and navigation of air and sea traffic. Realizing that the GSO has the potential to be used for other purposes, it is possible that in the future Indonesia will also take
advantage of the GSO for the purposes in the fields of application above. With the condition and status of the use of GSO has become a vital area of interest in Indonesia.

The above interests of Indonesia can be realized through the use of GSO, namely by utilizing the results of scientific and technological advancements and GSO potential as much as possible to support national development, in order to realize national goals and objectives as contained in the Preamble to the 1945 NRI Constitution.

Based on the above facts, Indonesia's interests in GSO both now and in the future are:

1) Guaranteeing the continuity of the use of GSO by Indonesia for the purposes of telecommunications, broadcasting, and meteorology as well as the possibility of developing other fields.
2) Guaranteeing Indonesian satellites from all threats and interference from other parties that can harm Indonesia.
3) Guaranteeing GSO from its use. It may have a negative impact both on the environment of the GSO itself and the earth, especially on the territory of Indonesia.
4) an opportunity for Indonesia to use the orbit slot and frequency spectrum at any time in the GSO at any time if needed at the national interest.
5) Condemning the use of GSO from all forms of activities that are not for peaceful and humanitarian purposes.

With the existence of international rules governing the GSO, in accordance with the principles of justice and non-discrimination in the use of space listed in Article I Space Treaty 1967 and Article 33 paragraph 2 ITU Convention 1973 makes developing countries able to utilize the GSO for the benefit of their countries. Indonesia currently has satellites operating on the GSO and non-GSO lines. The most important thing is that the use of GSO channels through local satellites and satellites from other countries is used to improve the welfare and security of Indonesian citizens' lives.

4 Conclusion

1) In the case of determining the delimitation of space up, there is no international agreement on this matter, and instead, it tends to use a functional approach. Meanwhile, Indonesia is more inclined to a spatial approach. Then, with the enactment of Presidential Decree No. 20 of 1996, Indonesia has the right to claim compensation from launching countries if their satellites or space objects fall into Indonesian territory.

2) The use of GSO must be done fairly, and is without discrimination. Its use must be carried out for peaceful purposes. For Indonesia, the use of GSO can be done through the placement of communication satellites, weather through observations, navigation, and others whose purpose meets the interests of the Indonesian state, in particular, improving the welfare of its citizens without violating applicable regulations.
References


Supervision of the Imported Soil Beans Containing Insects by Semarang Agricultural Quarantine

Dentata Gama Ashari1*, Rinitami Njatrijani2, Edy Sismarwoto3
{dentashr@gmail.com1*, rinitami@live.undip.ac.id2, edy.sismarwoto@live.undip.ac.id3}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. Horticultural Import Control needs to be carried out strictly by the government. Products that enter Indonesia must be good for consumption. The case of the dangerous insect Khapra beetle (Trogoderma Granarium) occurred in tens of tonnes of imported Sudanese peanuts found in Tanjung Emas Port. The case was investigated with the first problem of how to carry out the supervision of Class I Barantan Semarang, and the second was how the measurements carried out by Class I Semarang Barantan to imported Sudanese Nuts containing Khapra Beetles in Semarang City. This study uses a normative juridical methodology with an empirical approach, using primary data and secondary data which are then analyzed using qualitative descriptive techniques. The results showed that the monitoring of peanuts containing insects at Tanjung Emas Port has been carried out in accordance with the policies of Semarang City Class I Officials and in accordance with the applicable laws and regulations. The surveillance measures that have been carried out by Barantan Class I Semarang on the import of Peanuts from the country of Sudan resulted in the Rejection of Non-conformity Notifications and Automatic Detection.

Keywords: Horticultural Import Supervision, Trogoderma Granarium, Quarantine Actions.

1 Introduction

Food is a basic human need whose fulfillment is for human right guaranteed in the 1945 Constitution of the Republic of Indonesia. Food commodities in Indonesia that are favored by the people are the Fresh Origin of Plants (PSAT) category, one of which is Horticultural Food Products. Horticultural Products is one type of fresh food that is regulated in Indonesia.

One category of Fresh Horticultural Products that is favored by Indonesian people is Peanuts, both peanuts for consumption or peanuts for industrial raw materials. As a result of these high needs, Peanut demand to other countries continues to rise, but on the other hand, Peanut production in Indonesia tends to fall with low production so that the dependence on imports to meet growing needs is greater.

Before entering Indonesia, Horticultural Food Products must pass administrative requirements and document suitability. After going through the next administrative phase, following the required stages in accordance with statutory provisions. The suitability of the document will determine whether the product is appropriate for distribution in the community or not.
Efforts to guarantee legal certainty that have been made by the government, then law enforcement must be done. One of them is through supervision. According to M. Manullang, understanding of Supervision is a process to determine what work has been carried out, assess it and correct it if necessary with the intention that the implementation of the work is in accordance with the original plan.[1]

Supervision conducted by Barantan Class I Semarang can be suspected whether supervision has been carried out accordingly since it is the first line of defense in protecting and preserving animal biological resources from the threat of pests and quarantine plant diseases which greatly influences the potential production and productivity of agricultural commodities and other biological resources. This can be proven by the presence of food products that do not meet the expectations of the community and are not suitable for food because they contain something harmful.

Food cases that do not meet the provisions and endanger the attack on Imported Food Products. Food Products in the form of Imported Horticulture Products that occurred during 2019 were the entry of imported Peanuts from the State of Sudan which contained dangerous insects called the Khapra Beetle (Trogoderma granarium). At the end of November 2019, Barantan Class I Semarang detected five containers or around 95 tons of imported Sudanese Peanuts that entered through the Port of Tanjung Emas in Semarang were again exposed to Khapra beetle insects (Trogoderma Granarium). Tens of tons of imported Peanuts were attacked by beetles Khapra (Trogoderma Granarium) lives alighted and lays eggs in the bean and attaches to the walls of containers and is very large. The majority of the Khapra Beetles on imported peanuts are still larvae, light brown. The condition of some of the Peanuts in the sack has broken.

Khapra beetle (Trogoderma Granarium) is a warehouse insect, including a type of dangerous insects that have very high destructive power. These insects target the commodity beans and can survive for decades without eating. According to the Regulation of the Minister of Agriculture of the Republic of Indonesia Number 93/Permentan/OT.140/12/2011 concerning Types of Quarantine Plant Disturbing Organisms (hereinafter referred to as OPTK), these insects are included in Group 2 Category A1.[2] Remembering the WTO organization which has declared Indonesia to be a free country of the Khapra Beetle since 2009.

Violations that occur in the case of imports of horticultural products in the form of imported Peanuts have been contaminated in the warehouse of the country of origin. Then, the question is how can these Peanuts enter to Indonesia. Even though the administrative requirements have been met, the facts in the field are not in accordance with what is expected by the community. In this situation, it is clear that the importer loses time and cost as well as the impact of Indonesia in the future.

Considering that the Indonesian Government cannot limit horticultural imports, because Indonesia has entered into an agreement in free trade. In this case, the government can only tighten the door to import and import risk analysis in the country of origin. invitation and standard set by Indonesia, namely the Indonesian National Standard (SNI).

From the description above, the problems that can be arranged include:

1. What is the supervision policy of Semarang Class I Agricultural Quarantine Agency on the Import of Horticultural Products in the form of Peanuts that contain insects in the Port of Tanjung Emas?

2. What control measures should be taken by Semarang Class I Agricultural Quarantine Agency on the Import of Horticultural Products in the form of Peanuts containing Khapra Beetle insects in the City of Semarang?
2 Research Method

The research methodology used in this study is the normative juridical methodology with the empirical approach method. The research specification in writing this paper is descriptive-analytical, that is, this research will disclose applicable laws and regulations related to the implementation occurring in the field based on the results of the survey as well as with legal theories that occur in the object of research.[3]

3 Results and Discussion

3.1 The monitoring policy and its implementation by Semarang Class I Agricultural Quarantine Agency on the import of Peanuts containing Khapra beetle insects

Class I Agricultural Quarantine (Barantan) Semarang always monitors the implementation of quarantine. In supervising Barantan Class I Semarang based on policies:
1. Law Number 18 of 2002 concerning Food
2. Law Number 13 of 2010 concerning Horticulture
3. Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine
4. Government Regulation of the Republic of Indonesia Number 14 of 2002 concerning Plant Quarantine
5. Regulation of the Minister of Agriculture of the Republic of Indonesia Number 271 of 2006 concerning Procedures for Implementing Certain Plant Quarantine Actions by Third Parties
6. Regulation of the Minister of Trade No. 60 of 2012 concerning Provisions on the Import of Horticultural Products
7. Regulation of the Minister of Agriculture No. 51 of 2015 concerning Types of Quarantine Plant Disturbing Organisms
8. Regulation of the Minister of Agriculture No. 55 of 2016 concerning Supervision of Food Safety of Fresh Food Importation from Plants
9. Regulation of the Minister of Agriculture No. 16 of 2017 concerning Recommendations on the Import of Horticultural Products

Supervision of quarantine as mandated in Law Number 21 of 2019 concerning Animal, Fish and Plant Quarantine which is carried out to protect the preservation of biological natural resources from the threat of Quarantine Animal Disease (HPHK) and Quarantine Plant Disturbance Organisms (OPTK) and regulations other regulations. What is meant by Animal, Fish and Plant Quarantine according to Article 1 of Law Number 21 of 2019 reads:[4]

“Animal, Fish and Plant Quarantine, hereinafter referred to as Quarantine, is a system of preventing the entry, exit, and distribution of quarantine pests and animal diseases, quarantine fish pests and diseases, quarantine plant-disturbing organisms, and supervision and/or control of food safety and food quality, feed safety and feed quality, Genetically Engineered Products, Genetic Resources, Biological Agents, Invasive Foreign Types, Wild Plants and Animals, and Endangered Plants and Animals that are included in the distribution, distribution from one Area to another, and/or issued from the territory of the Unitary Republic of Indonesia.”
It is the obligation of the Barantan Class I Semarang to conduct quarantine when there is a Carrier Media imported in the territory of Indonesia contaminated by HPHK, HPIK and OPTK. Based on Article 5 of Law Number 21 of 2019, Quarantine Organization is based on the level of adequate state protection against HPHK, HPIK and OPTK. Under Article 6, it is stated that the inclusion of carrier media for the first time or if there is a change in the status of the disease in the country of origin of quarantine measures is based on sanitary and phytosanitary agreements.

Any horticultural product that enters into Indonesian territory must be subject to quarantine. The implementation of quarantine actions is regulated in Law Number 21 of 2019 Article 28 that the implementation of quarantine actions is carried out prior to import or export customs notification submitted and carried out using the risk category.

One of the many Peanuts imported by the people of Indonesia is Peanuts Imported from Sudan, considering that Sudan is the 5th largest producer of Peanuts in the World. However, the fact is that the import of Peanuts at the Port of Tanjung Emas in Semarang is not in line with the expectations of the Indonesian people. Imported Peanuts that should be directly circulated and traded must be carried out beforehand, because they are not fit for consumption because they contain dangerous insects. detrimental to importers because it takes time and costs.

Based on the case, it is the authority (competence) of Class I Semarang Officials to conduct quarantine supervision and actions based on Law Number 21 of 2019 on Animal, Fish and Plant Quarantine, Government Regulation Number 14 of 2002, regulations on IWRM and regulations on RIPH. 8P Quarantine Action is regulated in Article 16 of Law Number 12 of 2019 and Article 72 regulates the supervision and control of security and quality of food and feed, PRG, SDG, Biological Agents, Invasive Foreign Types, wild plants and animals which are also rare which are integrated with quarantine measures at the point of entry and expenditure. The implementation of Barantan Class I Semarang in supervising the 8P quarantine action on imported horticultural products in the form of peanuts containing insects from Sudan according to Law Number 21 of 2019 includes:

3.1.1 Examination

Based on Article 37 Examination as referred to in article 16 paragraph (1) letter a consists of:

a. Administrative examination and document suitability; and
b. health inspection, food safety test, food safety test, food quality test, and/or food quality test.

a. Carry out administrative checks and document suitability

Before the Quarantine Action is carried out, service users must fulfill the requirements and completeness of documents and other obligations. Administrative Examination is carried out by functional officials by taking into account the type of media and the importing Administrative documents which must include:

a. Phytosanitary Certificate
b. SIP (Entry Permit)
c. Import permit/PIB
d. Cargo manifest/high school
e. PSAT import description
f. PSAT security certificate  
g. Treatment Certificate  
h. Packing list 
i. Invoice  
j. Recommendation from the Director General of Animal Husbandry  
k. BL (Bill of Lading)

Importers or those authorized (usually EMKL) needs to provide those documents in order to successfully import the product successfully. Documents submitted online and must already have a username and password to be able to log into the Barantan Class I Semarang website. [5]

One of the Peanut Importers from Sudan is CV Langgeng Anugerah Makmur which already fulfilled the requirements and suitability of administrative documents. Specific mandatory requirements for the import of PSAT are Peanuts attaching printed documents in the form of:

a. Phytosanitary (PC) is a plant health certificate from the country of origin that issues the Quarantine of the country of origin. In the case of imported peanuts, it has fulfilled the requirements for this administration document, which is the issuance of peanut plant health certificates from the Quarantine of Sudan.

b. CoA (Certificate of Analysis) is an additional requirement for importing peanuts which is a certificate of analysis. Because peanuts are for human consumption, there must be a CoA to determine whether they are Good for Consumption. The certificate of analysis contains the results of the laboratory testing of the bean, its pesticide content, bacteria and its heavy metal content

c. Prior Notice is a type of PSAT certificate, attached at the time of import and issuing the country of origin.

d. A hot certificate is a substitute for CoA if the laboratory has not been registered in the Quarantine of the country of origin. The issuing Hot Certificate is the government of the country of origin or the laboratory of the country of origin.

b. Health check up

Inspection of Imported Peanuts from Sudan entering Indonesia is carried out by visual inspection method by Plant Quarantine Officials. Health checks of Peanuts are carried out on a conveyance, beginning with the opening of the container and then opening it on the Peanut wrapping sack. Furthermore, taking and submitting Peanut Seed commodity samples amounted to 0.5 kg with a random sampling method that is from one sack to another using ganco to ascertain the condition of the Peanuts and put into plastic which will be carried out health checks at Class I Labantan Laboratory Semarang with microscopic testing methods during 1 hour.

Based on the information from the health examination, the physical condition of the Peanut (Arachis hypogaea) carrier media is 95 tons of good seeds but some of them have been damaged and destroyed and are not free from harmful OPTK namely the Khapra beetle insects (Trogoderma Granarium) which are still alive and are very numerous. Then, the Plant Quarantine Officer immediately issued five containers containing 95 Tons of the Peanut from the Port by issuing a certificate for the Quarantine Treatment (KT-2).

3.1.2 Exile

Based on Article 41 paragraph (1), it is states that:
“Alienation and Observation as included in Article 16 paragraph (1) letter b and letter c are conducted to detect certain HPHK, HPIK and OPTK which due to their nature require a long time, facilities, and/or special conditions.”

Imported Peanuts from Sudan do not need to be exiled because based on physical examination it has been found that insects can be seen directly with the eye or visually so it does not require a long time. Alienation and Observation is only done for the entry of seeds or seeds. non-seeds will only be removed from the port to be treated and not sequestered.

Barantan Class I Semarang does not need to do Simap (Alienation and Observation) because it already has a registered laboratory so it is sufficient to do detention before being given further treatment and wait for the results of the lab for 2-3 weeks and then can be released immediately. Exile is only done if Barantan Class I Semarang does not yet have a registered Laboratory.

3.1.3 Observation

Pursuant to Article 42 paragraph (1), Observations are done at the Import and Export Points or at the designated Quarantine Installation.

Based on Government Regulation Number 14 of 2002 concerning Plant Quarantine, which states that if during exile and observation, the result will turn out according to following criteria:[6]

a. The carrier media is not free from OPTK Category I, whether rotten or damaged, then it will be rejected;

b. The carrier is not free from OPTK Category II, then it will be further treated;

c. The carrier is free from OPTK, then it can be released carried out.

Observation of Peanut Imports is in accordance with the place of entry, namely at the Tanjung Emas Port of Tanjung Emas Port Quarantine (TPK). Observation is carried out on Peanut carrier media in containers. (possessed) Insect Khapra beetle still alive allegedly from the country of Sudan. The Khapra beetle is a type of insect that belongs to Group II, which is a type of insect that can be released from the Carrier by treatment. The Class I Semarang Quarantine Plant Quarantine Officer who will recommend the OPTK contained in the peanut will then be treated based on an analysis of the risk of insect species.

3.1.4 treatment

Based on Article 43 which states that:

1) the treatment is carried out to free or disinfect Carrier Media or other actions that are preventive, curative and/or promotive.

2) Treatment is needed if after examination or alienation and observation it turns out that Carrier Media:

   a. Contracting or suspected contracting HPHK or HPIK, or;

   b. Not free or suspected of not being free from OPTK.

3) The treatment can only be done after the Carrier Media is examined physically first and is considered not to interfere with subsequent observations and examinations.

The treatment for imported peanuts that are suspected of not being free from OPTKini is in accordance with the type and risk analysis of the OPTK namely Khapra Beetle which according to the rules must be given fumigation treatment with methyl bromide.
The implementation of fumigation treatment is carried out at the Plant Quarantine Installation (IKT) and is not carried out entirely by the Plant Quarantine Officer, the authority in this case is delegated by a 3rd party that has been registered and part of Barantan Class I Semarang. As a 3rd Party, Submitting requirements as a fumigator to the local Barantan then the local Brantan submits to the center, then an evaluation of the fumigator audit and the feasibility of the fumigator is conducted.

IKT is determined by the Head of the Agricultural Quarantine Agency and is valid every 1-2 years, and can be extended. There is also another place that is a recommendation from the Head of the local Quarantine Center, valid every 3 months and can be extended. However, IKT or other places every 6 months must be monitored and evaluated whether the IKT is still suitable for plant quarantine. It is not allowed to carry out arbitrary checks, there must be a place determined by the head of the body.

Private companies that fumigate imported Peanuts that contain Khapra Beetles are the SemarangCV Mitra Indo Mandiri MKT Depot.

Fumigation treatment is guided by Permentan Number 37 of 2009 concerning the use of pesticides with active ingredients of Methyl Bromide for quarantine treatment and pre-shipment treatment. Peanuts containing Khapra beetle insects were fumigated at a dose of 80 g/m³ of Fumigan for 2 x 24 hours at temperatures > 20°C. In accordance with procedures established by the Agricultural Quarantine Agency and stated in the treatment column on the Phytosanitary Certificate.

Fumigation is done by closing the container using an airtight plastic curtain. Fumigation rooms must be gas-tight. Fumigation treatment is done by spraying (gassing) with the pesticide Methyl Bromide (CH₃Br). The gas release phase is the most dangerous stage during the fumigation process. To that end, the Fumigator must ensure that the fumigation area is safe and the implementation of gas release must follow the established procedures. Fumigation treatment measures against Peanuts amounting to 95 tons from the Sudanese country infested by the Khapra beetle.

The results of methyl bromide fumigation on Khapra beetles for 2 x 24 hours were successful. The Khapra beetle in the Peanut is dead, Peanut is free from OPTK. Then after the fumigation treatment the peanut is safe for consumption, but the condition of the Peanut is partially damaged and destroyed.

3.1.5 Detention

Under Article 44, detention is carried out to secure Carrier Media under the supervision of the Quarantine Officer.

Under Article 70 it states that:

1. Quarantine actions as referred to in Article 16 paragraph (1), the documents are issued, and if necessary, Quarantine seals are installed by Quarantine Officials in accordance with their area of competence.

2. Every person is prohibited from opening, releasing, deciding, disposing, or damaging the Quarantine seal as referred to in paragraph (1) without permission from the Quarantine Officer in accordance with the area of his competence.

Detention is carried out by installing seals on imported Peanuts stating that the commodity is under the supervision of a plant quarantine officer according to Law Number 21 of 2019, in this case peanuts cannot be directly circulated to the public because they contain Khapra beetle insects and must be treated first in accordance with statutory provisions.
3.1.6 Rejection
Under Article 45 it states that:
(1) Rejection as referred to in Article 16 paragraph (1) letter f is carried out to prevent the spread of HPHK, HPIK, or OPTK and to prevent human health problems and damage to living natural resources.
(2) as referred to in paragraph (1), the Carrier Media that is inserted into, removed from, or entered from an Area to another Area within the territory of the Unitary State of the Republic of Indonesia is carried out if:
   a. the inspection is carried out on a conveyance at the Entry point:
      1. Contracting HPHK, HPIK, or not free from OPTK; or;
      2. Types of entry prohibited.
   b. Requirements are not met
   c. After being treated as referred to in Article 43 cannot be cured and/or disinfected from HPHK, or HPIK, or cannot be released from OPTK; or
   d. After the deadline for fulfilling the required documents, the entire requirements that must be completed are not fulfilled.
Imported peanuts are not rejected, because in the administrative examination the Peanut has fulfilled the requirements and completeness of the document and after being given fumigation treatment with methyl bromide, it turns out that the imported Peanut can be freed from Khapra beetle insects.

3.1.7 Extermination
Based on Article 50 which states that:
(1) In the event that the Carrier Media entered does not find the owner, examination will be carried out on the Carrier Media.
(2) If the results of the inspection referred to in paragraph (1) turn out to be Carrier Media:
   a. Contracting HPHK, HPIK, or not free of OPTK; and/or;
   b. After being treated, it cannot be cured and/or disarmed.
(3) Annihilation as referred to in paragraph (2) letter a is the responsibility of the Central Government.
Peanuts Imported from Sudan No extermination is done. Annihilation is only done if the Carrier Media is rejected by Barantan Class I Semarang.

3.1.8 Liberation
Under Article 55 it states that:
(a) Exemption as referred to in Article 16 paragraph (1) letter H is carried out by issuing:
   a. Certificate for importation; or
   b. Health certificate or sanitation certificate for expenditure.
(b) Exemption as referred to in paragraph (1) of Carrier Media inserted into or included from one Area to another within the territory of the Unitary State of the Republic of Indonesia is carried out if it turns out:
   a. After checking as referred to in Article 37 letter b, it is not infected with HPHK, HPIK or free from OPTK;
b. After exile and observation as referred to in Article 41, are not infected with HPHK, HPIK, or free from OPTK; or
c. After the treatment as referred to in Article 43, can be cured from HPHK, HPIK or can be released from OPTK.

The Semarang Class I Agricultural Quarantine Center issues a plant quarantine/safety certificate for Fresh Origin of Plants (PSAT) called the KT-9 letter, stating that based on the Quarantine, Animal, Fish and Plant Laws and the Food Law and its implementation regulations and the results of plant quarantine measures/PSAT safety supervision turned out to be 95 tons of imported Peanuts from Sudan in the form of seeds fulfilling all the requirements stipulated for the inclusion of carrier media and can be freed from the Khapra Beetle OPTK as well as fulfilling all the stipulated PSAT requirements. The territory of the Unitary Republic of Indonesia. Peanuts are declared safe for consumption and can be distributed to the public.

3.2 Supervision actions that should be taken by the Semarang Class I Agricultural Quarantine Agency against the Khapra Beetle insect

3.2.1 Insect Khapra Beetle (Trogoderma Granarium)

The Khapra beetle named Trogoderma granary Everts has the synonym Trogoderma affrum Priesner, included in the order Coleoptrea, family Dermestidae (Hinton 1975). The khapra beetle was first reported for its presence in India but has now been found in several countries in Asia, Australia, Europe and America.

Trogoderma granarium is a warehouse pest that is at risk of causing high economic losses. This pest is a type of insect Class II Category A1 Quarantine Plant Disturbant in Java. This means that these insects do not yet exist in Indonesia and are among the insects that can be released from the Carrier by treatment. This pest is found in many imported commodities, especially for grains and can survive for years without eating.

Trogoderma granarium reported by Lowe et al. (2000) is one of the hundred most damaging warehouse pest insects in the world. In October 1970, the khapra beetle was found in Indonesia in imported rice which was stored in a warehouse for several months in Semarang, and suffered heavy damage and had become flour (Dano 1997).

The ability of this khapra beetle is naturally only in a short and limited distance because the image cannot fly. Imago and larvae in the khapra beetle can be spread with the help of wind and can be expanded with the help of infested materials and means of transportation.

3.2.2 Fumigation with Methyl Bromide for Plant quarantine treatment

In accordance with the provisions of the applicable laws and regulations, carrier media that are suspected of not being free from OPTK must be treated. Such treatment can be in the form of physical, biological or chemical treatment.

Fumigation is a form of chemical treatment. Treatment actions by fumigation are generally chosen if the OPTK that is targeted for treatment includes insect pests, mites, nematodes, or mollusks. Fumigation aims to free Carrier Media in the form of plants from pest insects, mites, nematodes, or the Moluska.

Provisions of Article 16 Paragraph (1) of Law No. 21/2019 states that the existence of plant quarantine measures SP. Fumigation, including treatment, is the authority (competency) of plant quarantine officers.

However, in its further regulation, the law does not require that the authority to carry out the quarantine action be carried out entirely by the plant quarantine officer. In certain cases,
the authority can be delegated to a third party of its implementation. The delegation of authority can be seen in Article 72 PP No. 14/2002.

According to Minister of Agriculture Regulation No. 271 /Kpts/HK.310/4/2006 concerning the requirements, and procedures for carrying out certain plant quarantine actions by third parties in point a considering that in the framework of the smooth implementation of certain plant quarantine actions. The implementation of fumigation by third parties may only be carried out by fumigation companies that have been registered by the Agricultural Quarantine Agency. The requirements referred to in Article 6 Paragraph (3) of the aforementioned Permentan are listed in the Fumigation Company Registration Guidelines, which are legally binding and must be carried out by fumigation companies in the context of plant quarantine treatment measures.

Methyl bromide is a colorless, odorless, non-combustible gas at normal temperatures easily liquid under certain pressure, so it is supplied and stored in liquid form under pressure in a tube.

Fumigation with methyl bromide is one of the standard treatment used for quarantine and pre-shipment purposes because it can kill pests in various stages up to 100 percent.

3.2.3 Supervised actions that should be carried out on Peanuts that contain Khapra Beetles

Following up on the findings of the Khapra beetle insect and the effect of methyl bromide on imported horticultural products, especially Peanuts, Barantan Class I Semarang synergistically conducted an audit of all Horticultural Products, especially grains that entered the territory of the Republic of Indonesia. This audit was carried out to examine the process as a whole and identify critical points that enable product quality and safety standards not being met. Based on the audit results stated that the Khapra Beetle (Trogoderma Granarium) is a warehouse insect from the country of origin including a dangerous insect species in the world that has a destructive power and results in very high economic losses. Quarantine treatment of Khapra beetle insects with methyl bromide fumigation also has an effect on commodities. Peanuts belong to the type of commodity that absorbs fumigants, especially at high doses, can produce noticeable sulfur stains, especially when the product is processed.

According to the statement of Mr. Heri Widarta S.P., M.Sc as the Coordinator of the Class I Plant Quarantine Functional Office in Semarang, an officer must follow up and anticipate the findings of the Khapra Beetle. In carrying out supervision of the entry of imported horticultural products, especially Peanuts from the country of Sudan for the future, Semarang Class I Class performs the actions:

1. Rejection, Rejection that refuses to import Horticultural Products, especially Peanuts originating from the Country of Sudan. Semarang Class I Quarantine Center will automatically reject the import of Peanuts from Sudan, even though the administrative requirements are complete and fulfilled. Given the case of Peanuts Imported from Sudan which contains high-risk insects occur repeatedly and can endanger the lives of Indonesian people.

According to the Regulation of Minister of Agriculture Number 51 of 2015 concerning Type of Quarantine Plant Disturbing Organism, Khapra Beetle is a type of insect category A1 group 2.[8] Category A1 means that the OPTK has never been found in Indonesia, Group 2 is all OPTK that can be released from the Carrier by treatment. According to the Khapra Beetle's literature, it can survive decades without eating. So that it can survive, especially in Indonesia, the conditions are very supportive, namely in Indonesia there are many seeds.
2. Notification of Non-compliance, Barantan Class I Semarang sends a notification of Non-compliance (Notification of Non Compliance). They will notify the head office of the country of origin, that the peanut seeds are infested with the Khapra beetle. It is likely that the Agricultural Quarantine Agency will notify or warn the country of origin that there may not be imports from there.

Barantan Class I Semarang also made a circular letter to be aware of the entry of Khapra Beetles from endemic countries, especially those of Africa and South Central Asia, as Khapra Beetle endemic countries, delivered on September 10th to all UPTs throughout Indonesia.

3. Automatic Detection, Barantan's action policy, which is called automatic detection. It is an action that states that once a commodity has entered Indonesia, for example, the peanut commodity from Sudan will be directly fumigated, there will be no need for more inspection and warning to trading partner countries so that they do not ignore the provisions of Barantan Class I Semarang and vice versa. They pay attention to our provisions, namely once entered must be allowed to import beans but do not import pests.

4 Conclusion

1. Supervision of imported horticultural products in the form of Peanuts containing Khapra Beetles in the Port of Tanjung Emas Semarang has been carried out in accordance with the policies of the Semarang Class I Agricultural Quarantine and in accordance with the procedures of the Law and other relevant regulations. The form of supervision starts from import licensing to monitoring the treatment of the SP Act. Quarantine measures to free OPTK Khapra Beetles by fumigation methyl bromide at a dose of 80g/m for 48 hours. As a result, the Khapra Beetle died and the Peanut was safe for distribution to the community.

2. Khapra beetles are dangerous insects that have a high risk of loss to the country's economy. They includes insect species category A1 Group 2 based on Permentan 51 of 2015 concerning OPTK Types. The Khapra beetle will die when treated with Methyl Bromide Fumigation. Methyl Bromide is a pesticide that is very limited and dangerous and has a bad influence on commodities and humans. With this pesticide, Barantan Class I Semarang will take action if found importers will import Peanuts from Sudan, which resulting in automatic rejection, Non-compliance Notification, and automatic detection.

References


[8] Regulation of the Minister of Agriculture No. 51 Year 2015 concerning Types of Quarantine Plant Disturbing Organisms.
Corporate Criminal Liability Practice in Criminal Action of Living Environment

Artur Pande Simbolon\textsuperscript{1*}, Pujiyono\textsuperscript{2}, Purwoto\textsuperscript{3}
\texttt{\{artursimbolon@gmail.com\textsuperscript{*1, pujiyono@live.undip.ac.id, purwoto@live.undip.ac.id\textsuperscript{3}}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275\textsuperscript{1}

\textbf{Abstract.} Based on the adage \textit{societas delinquere non potest}, only humans can be convicted (\textit{natuurlijk persoon}). Along with the times, the corporation can be charged with criminal liability. This research is needed in order to answer the problem of applying criminal liability to corporations in environmental crime. The approach method used is normative juridical using secondary data. The results of the study found that from the decisions examined, there were different views on the offenses committed by the corporation due to the variety of regulation of corporate criminal liability according to the type of criminal action. Therefore, the draft Criminal Code needs to be ratified immediately to eliminate law enforcement doubts caused by the differences in the regulation of corporate criminal liability in criminal law in Indonesia.

\textbf{Keywords:} Corporate Criminal Liability, Environmental Pollution Crime

\section{Introduction

\subsection{Background

Corporate crime triggers the modernization of law in Indonesia because it was initially held to the principle that legal entities (rechtpersonen) do not commit criminal acts and therefore legal entities cannot be convicted based on the legal adage “societas delinquere non potest” or “university delinguere non potest”. However, in line with the development of economic activity in parts of the world, there was a paradigm shift, that a crime can not be separated from the continuation of an activity and economic growth, in which corporations play a role in supporting or helping the smoothness of a crime. In line with the development and growth of this corporation, the impact can cause negative effects, therefore the position of the corporation has begun to shift from being a mere subject of civil law to the subject of criminal law.[1]

Even so, in many cases of environmental pollution involving corporations often the responsible party is the management.

For example, the case of environmental pollution carried out by PT Vision Land Semarang. In the case of unauthorized disposal of waste to the environment media by PT Vision Land Semarang, the defendant was Eom Dong Chul alias David Eom. The defendant worked at PT Vision Land Semarang as General Manager (GM).[2]

There are also cases of environmental pollution that have been proven by PT National Sago Prima (PT NSP) in Bengkalis, Riau. In the case of B3 waste committed by PT NSP, the defendant Ir. Erwin as branch manager of PT National Sago Prima (PT NSP), which operates...
in the Meranti Islands Regency, Riau Province. Besides Ir. Erwin who has been arrested, also as General Manager at PT. Sago Plantation NSP named Nowo Dwi Priyono alias Nowo was also arrested.[3]

This happens because there are still many people who consider that the corporation is a legal fiction, which therefore cannot be held responsible for criminal liability and cannot be punished, and in it there are innocent shareholders, who must bear the consequences of imposing criminal sanctions, in addition to stakeholders others must suffer the consequences.

The Expert Team for the Compilation of the New Criminal Code in its 1985 report stated the motivations for corporate responsibility are:

"By taking into account the development of the corporation, namely that it turns out that for certain offenses it was determined that the management as a convicted person was apparently not enough. In economic offenses it is not impossible that the fines imposed as punishment to the board are compared with the profits received by the corporation by committing the act, or the loss inflicted by the community, or suffered by its competitors, the profits and/or losses are greater than the fines imposed as a criminal. Accompanation of the management does not provide sufficient guarantees that the corporation will not once again commit acts that are prohibited by that law."[4]

From the description above, the writer tries to examine the corporal punishment in the case of environmental pollution crime, namely PT Kallista Alam. The company is engaged in plantations and agriculture, especially oil palm plantations, business, various industries, especially the palm oil processing industry.[5] PT Kallista Alam is proven to have violated Article 108 of Law Number 32 Of 2009 Regarding Environmental Protection and Management,[6] which is to clear land by burning land.

1.2 Research Formulation

1. What is the corporate responsibility policy in the legislation in the field of environmental pollution that applies in Indonesia?
2. What is the judge's consideration of PT Kallista Alam's criminal liability in the environmental crime?

2 Research Method

The approach method used is normative juridical. The research specifications used in this study are analytical descriptive. The data used is secondary data.

3 Results

3.1 Provisions of the Laws and Regulations Regarding the Imposition of Liability for Environmental Pollution in Corporations

Based on the sound of Article 59 of the Criminal Code, it can be concluded that the corporation is not known as a criminal law subject by the Criminal Code.[7]
This is because the Criminal Code adheres to the principle of “non-potest delinguere universities” which basically states that only humans can be convicted.

However, the existence of Article 103 of the Criminal Code which becomes a bridge article provides an opportunity for laws outside the Criminal Code whose rules differ from the provisions in Book I of the Criminal Code, including the provisions regarding criminal liability. Law Number 32 of 2009 concerning Environmental Protection and Management based on Article 103 of the Criminal Code regulates other matters regarding criminal liability. In addition to humans, corporations can also be liable for criminal liability.

In addition to Article 1 Item (32) of Law Number 32 Of 2009 concerning Environmental Protection and Management, the subject of environmental criminal acts defines that every person is an individual or business entity, both legal and non-legal.

Business entities with legal entities consist of limited liability companies (PT), foundations and cooperatives. While business entities that do not have a legal entity consist of civil alliance, firm, and limited partnership (CV). These business entities may be subject to environmental crimes with the provisions in Article 116 through Article 120 of Law Number 32 Of 2009.

Article 116 of Law Number 32 of 2009 concerning Environmental Protection and Management explains the parties responsible for criminal acts committed by, for, or on behalf of business entities, criminal prosecution and criminal sanctions are imposed on:

a. Business entity, and/or;

b. A person giving the order to commit the crime or the person acting as the leader of the activity in the crime.

An environmental crime referring to Paragraph (1) is committed by a person, based on a work relationship or based on other relationships acting within the scope of work of a business entity, the criminal sanction is imposed on the order giver or leader in the crime without regard to the crime being carried out alone or together.

Then in Article 117 of Law Number 32 Of 2009 concerning Environmental Protection and Management explains that if a criminal charge is submitted to the issuing order or the leader of a criminal act as referred to in Article 116 Paragraph (1) letter b, the criminal threat that is imposed is in the form of imprisonment and fines aggravated by one third. Article 117 of Law Number 32 of 2009 concerning Environmental Protection and Management itself is based on the theory of vicarious liability, in which all elements of acts and intentions in environmental crime are in the corporation, but the management or other parties who responsible for being the party that receives criminal sanctions.

Business entity management is the party that carries out management of the relevant business entity in accordance with the articles of association. The management of business entities includes those in reality have authority and are involved in deciding policies or actions of business entities which can be qualified as criminal acts. Every individual who is appointed and has organizational or operational responsibility for specific behavior, or who has an obligation to prevent a violation by a business entity that is carrying out the obligation to carry out environmental protection and management as regulated in Article 68 of Law Number 32 of 2009, can criminal liability is held responsible for the occurrence of environmental crimes.[8]

A person whose role is a manager in a business entity organization must take action to prevent the occurrence of prohibited actions. However, when the role is not taken, it does not lose their position in the context of giving direction to the business entity's actions (which in fact the act was carried out by another employee). In this condition the person can also be said
to be the lead person. A person can also be said to be factually leading a criminal act in a business entity/corporation if he is aware of the occurrence of the relevant crime, but he does not take steps to prevent the prohibited conduct and by accepting the circumstances of the prohibited act.[7]

Observing the formulation of Article 117 of Law Number 32 Of 2009 concerning Environmental Protection and Management which stipulates that a criminal threat to a giver of an order or a leader of a criminal offense is aggravated by one third, then the one who is prosecuted and sentenced is the management. The management of a business entity pursuant to Article 117 of Law Number 32 Of 2009 concerning Environmental Protection and Management is prosecuted and sentenced based on its personal responsibility or is the individual responsibility of the management. That is, if the Public Prosecutor indicts a person who manages a business entity by connecting Article 117 of Law Number 32 Of 2009 concerning Environmental Protection and Management in the indictment, then the accused is the person who is the executive (as an individual responsibility of the management of the business entity). The threat of punishment handed down to management (as an individual responsibility) in the form of prison and fines.

Article 118 of Law Number 32 of 2009 concerning Environmental Protection and Management explains that against the criminal acts as referred to in Article 116 Paragraph (1) letter A, criminal sanctions are imposed on business entities that are represented by management authorized to represent inside and outside the court is in accordance with the laws and regulations as the functional offender. Some experts consider that this Article is an alternative to Article 117 to convict management. As an example, Takdir Rahmadi considers Article 118 to constitute criminal charges against corporations using the theory of vicarious liability. This assumption is not quite right because Article 116 of Law Number 32 Of 2009 regarding Environmental Protection and Management itself has stated that corporations can be prosecuted and subject to criminal sanctions.

Article 118 of Law Number 32 Of 2009 concerning Environmental Protection and Management places more emphasis on the parties responsible for representing the corporation, because the corporation itself cannot be present at the hearing. For example, the rules in Article 98 Paragraph (1) of Law Number 40 Of 2007 concerning Limited Liability Companies where directors represent the company both in court and outside the court.[9] Looking at civil cases such as compensation, the directors clearly represent the company in the trial, but that does not mean that the directors compensate if the party is convicted of a crime. The Board of Directors only serves as the company's representative in administrative matters. Therefore, it can be said that the understanding that Article 118 of Law Number 32 Of 2009 concerning Environmental Protection and Management as a justification for imposing criminal responsibility on management is wrong.

Corporations themselves cannot be subject to the main penalties in the form of imprisonment. Corporations may only be subject to a principal criminal form of a fine. Therefore, Law Number 32 of 2009 concerning Environmental Protection and Management adds the types of crimes that can be imposed on corporations in the form of business entities through Article 119 of Law Number 32 of 2009 concerning Environmental Protection and Management which reads:

"In addition to criminal offenses as referred to in this Law, business entities may be subject to additional criminal or disciplinary actions in the form of:

a. Expropriation of Profits from Criminal Acts;
b. Closure of All or Part of Business Sites and/or Activities;
c. Corrections due to criminal acts;"
d. Obligation to do what is neglected without rights; And/or

e. Placement of Companies Under Capability for a maximum of 3 (three) years.

Within the Article 119 of Law Number 32 Of 2009 concerning Environmental Protection and Management, there are words and/or which means that the application of criminal sanctions can be normalized or accumulated, so as not to cause confusion for law enforcers in implementing these criminal sanctions. The procedure for applying the criminal sanction is stated in Article 120 of Law Number 32 Of 2009 concerning Environmental Protection and Management, which for criminal sanctions from points (a) to (d), the public prosecutor coordinates with the relevant agencies in carrying out the execution. Then for point (e), the company's capability is carried out by the government. It is not clear whether the central or regional government has the authority to carry out the allowance.

3.2 Judges' Considerations in Imposing Criminal Liability for Corporations in Criminal Acts on Environmental Pollution in Decision Number 131/Pid.B/2013/PN.MBO jo. Decision Number 201/Pid/2014/PT BNA jo. and Decision Number 1554 K/Pid.Sus/2015 [10], [5], [11]

3.2.1 Position Case

Convicted PT Kallista Alam is a company engaged in the field of Plantation, Industry, Supplier and Transportation. The defendant has an oil palm plantation area of ± 1605 (one thousand six hundred five) Ha and has obtained a Plantation Business Permit in accordance with the Aceh Governor's letter No. 525/BP2T/5322/2011 dated August 25, 2011 concerning Business License for Oil Palm Plantation Plantations, the plantation area is included in the Leuser Ecosystem and National Strategic Areas which are determined based on Government Regulation No. 26 concerning National Spatial Planning.

In undertaking oil palm plantations, the clearing of oil palm areas has been carried out, namely land clearing and planting of oil palms for the plantation area of the Alue Geutah Division, the Gunung Kong Division, Division II, VII, VIII, IX, X of PT. Kalista Alam as planned in 2012 will be planted on land that is ready to be stacked or stacked, namely blocks A1, A2, A3, A5 and A7.

However, on Friday, March 23, 2012, a fire broke out at A2 Block VII Division VII of PT. Kalista Alam with an area of about 5 (five) hectares. The area is included in the area of the Suak Bahong plantation that has not yet been planted with oil palm but has been stacked, and a planting hole has been prepared. The fire originated from PT. Kalista Alam, which at the time the fire was burning into the A2 block garden land that had been done stacking but had not yet been planted, at that time the fire burned up the pile lanes (north-south) on the A2 block this fire lasted until Tuesday 27 March 2012 and no blackout attempts from PT. Kalista Alam.

The fire also repeated again, namely on Sunday, June 17, 2012 to Sunday, June 24, 2012 in Block E42B Division VIII covering ± 8 (eight) Ha, at the time the fire was heading north, burning stack of stacking and bad oil palm plants (the growth is stunted and the leaves are yellow).

From the results of the inspection also found that the oil palm plantation of PT. Kalista Alam has carried out land clearing activities on peatlands with a thickness of more than 3 meters and in areas that have been designated as national strategic areas protected by applicable laws and regulations, and has also carried out activities to prepare land by burning
systematically and planned through omission against fires, especially in areas where land clearing is being carried out and this has been happening for years.

### 3.2.2 Indictment

Against the actions, the convicted is charged with a single indictment namely:

- Article 108 jo. Article 69 Paragraph (1) letter (h), Article 116 Paragraph (1) letter (a), Article 118, Article 119 of Law Number 32 of 2009 concerning Environmental Protection and Management and jo. Article 64 Paragraph (1) of the Criminal Code

- Article 108 of Law Number 32 Of 2009 reads:
  
  Every person who burns land as referred to in Article 69 Paragraph (1) letter h, shall be sentenced to a maximum imprisonment of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000 (ten billion rupiah).

  If the convicted person is a corporation, then it cannot be imposed with imprisonment, and can only be subject to fines and additional penalties for the corporation as stipulated in Article 119 of Law Number 32 Of 2009.

  Article 69 Paragraph (1) letter (h) of Law Number 32 Of 2009 reads:

  Everyone is prohibited from clearing land by burning.

  This Article contains prohibitions or acts prohibited. If the offender is proven to have committed an offense for which the accused is subject to criminal sanctions. In the case of PT Kallista Alam, the criminal act charged was the burning of land in an effort to open up oil palm plantations in the city of Meulaboh, Nanggroe Aceh Darussalam.

### 3.2.3 Decision of Meulaboh District Court Judge Number 131/Pid.B/2013/PN.MBO

The Meulaboh District Court judge handed down the verdict to PT Kallista Alam with the following ruling:

1. To state the actions of the defendant PT. KALLISTA ALAM which have been proven legally and convincingly guilty of committing the crime of “ENVIRONMENTAL LIVING DONE”;
2. Drop the criminal action against Defendant PT KALLISTA ALAM, therefore with a fine of IDR 3,000,000,000.00 (three billion rupiah)

### 3.2.4 Judges’ Considerations in the Meulaboh District Court Decision Number 131/Pid.B/2013/PN.MBO

Below is a summary of the considerations of the Meulaboh District Court Judges in Decision Number 131/Pid.B/2013/PN.MBO regarding the types of offenses and corporate criminal liability, namely:

#### a. Elements of Everyone

Law Number 32 of 2009 concerning Environmental Protection and Management, a new terminology is used, “every person”, which in general terms states that each person is an individual or a corporation, so as such there must be a person/humans as legal subjects
charged with an act that is prohibited and threatened by law. In addition, based on the facts revealed at the trial, the Defendant has confirmed his identity as contained in the Prosecutor/Prosecutor's indictment, regarding the truth of the Defendant's identity has also been justified by witnesses at the trial, so that the Panel of Judges believes that in examining and hearing this case there was an error about the person who was accused as the Defendant, therefore everyone in this case was the Defendant named PT. Kalista Alam represented by its Director Subianto Rusid.

Although it is necessary to prove whether the Defendant has carried out a series of acts of conduct as charged by the Prosecutor/Public Prosecutor, if the Defendant has indeed carried out a series of acts of conduct that meet all the elements of the Article of the criminal law charged, then by itself the elements “Everyone” has been fulfilled that the Defendant is the perpetrator of the criminal act in this case.

b. Elements of Opening a Land by Burning

The panel of judges was of the opinion that in determining whether PT Kallista Alam cleared land by burning, it had to be related to whether it had caused damage to the land, in this case peatlands managed by the defendant PT. Kalista Alam.

The panel of judges also argued that according to Law Number 32 Of 2009 concerning environmental protection and management in Article 2 regarding the principle, the principle of prudence is regulated, so that thus the management of PT Kallista Alam's plantation is not careful and the defendant's employees and staff are unable extinguishing the fire, it must be stated that land clearing has been carried out by burning.

In the interview, Dr. Basuki Wasis also stated from the results of observations and analysis of soil samples in the laboratory that it is true that at the location of the study there had indeed been environmental destruction due to burning of peat soils in the creation of oil palm plantations.

Dr. Basuki Wasis stated from the results of observations and analysis of soil samples in the laboratory that it was true that at the research location there had indeed been environmental destruction due to burning of peat soils in the creation of oil palm plantations. The sample was taken by the investigator together with expert Prof. Bambang Hero Saharjo, M.Ag. in the location of the fire when conducting a ground check or field survey after observing the data of the host area in Aceh, especially in the PT Kallista Alam plantation. Therefore the panel of judges believes that this element was fulfilled by the defendant.

c. Elements Performed By Legal Entities

The panel of judges was of the opinion that a legal entity, namely an independent legal subject, was one of them a Limited Liability Company.

PT Kallista Alam itself was founded by Notary Liliani Handajawati Tamsil, SH Notary Deed Number: 18 dated March 11, 1980 PT Kalista Alam Limited Liability Company, which subsequently was changed based on Notary Sartono Simbolon, SH Deed Number: 05 dated August 4, 2008 Minutes of PT Kalista Meeting Nature, and changes by Notary Ny. Yanty Sulaiman Sihotang, SH Notary Deed Number: 06 dated October 4, 2011. PT Kallista Alam as a legal entity also has clear organs, namely management and commissioners, its shareholders and appoints Subianto Rusid as Director of the Company. Therefore the panel of judges believes that this element was fulfilled by the defendant.

d. The Elements of Some Acts that have Relationships are such that they are viewed as continuing actions
The panel of judges is of the opinion that in this element some of the acts that were indicted against the Defendant must be of similar kind. The meaning of the word “some actions must have such a relationship” this relationship can be interpreted in various ways, for example due to the time equation, the place where the occurrence of some of these actions and so on, Hoge Raad interpreted “continued action” as actions the same type and at the same time are the implementation of the same purpose, an action which is continued is not enough if some of the acts are similar acts, but these actions must also be an implementation of the same purpose which is prohibited by the Law.

According to Memorie van toelichting (MvT) theoretically it is said that there is a continuing act (voortgezette handeling) when there is someone committing multiple actions. Each of these acts constitutes a crime or a violation and between the acts there is a relationship such that it must be seen as a continuing act, where “there is such a relationship” the criteria are:

1. There must be a decision of the will, which is directed at one object in a crime (object delict).
2. Each action must be of the same type.
3. The grace period between the acts is not too long.

Based on the facts revealed at the trial as considered in the previous elements. It turned out that the fire occurred on March 23, 2012 covering an area of 5 hectares in block A 2 of Division VII witnessed by witness Farwiza together with witness Suratman, there was no extinction and at that place was in a state empty, and fires from 17 June 2012 to 24 June 2012 covering an area of 8 hectares in Block E42B Division VIII.

In the second fire, even when expert Bambang Hero Saharjo came to the place there was no fire control/prevention system, did not have access to an easily traversed road in mobilization, the provision of sufficient funds in the fire prevention program.

Based on the description of the above considerations, the Panel of Judges is of the opinion that the element “Committing several acts that have a relationship so that they are seen as continuing actions” has been fulfilled in the Defendant's actions.

Based on the entire description of the above considerations, all elements of the Article as charged by the Prosecutor/Public Prosecutor in a single indictment have been fulfilled, so that the Tribunal has the confidence that the defendant has been legally proven and convincingly guilty of committing a criminal offense. CONTINUOUSLY “.

4 Discussion

4.1 Discussion I

In consideration of the Meulaboh District Court Panel of Judges, it is explained that in this case, the application of Article 116 Paragraph (1) letter a and Article 118 of Law Number 32 of 2009 can be done. The panel of judges considered that Law Number 32 of 2009 regulates corporate punishment, which is defined in Article 1 Item (32) of Law Number 32 of 2009, so that PT Kallista Alam as a defendant could be convicted of a criminal sentence.

The panel of judges also believes that the defendant is a subject of independent law, which is a limited liability company. The panel of judges also considered that PT Kallista Alam was a legal entity that had clear organs, namely the management and commissioners, its
shareholders and appointed Subianto Rusid as the Company's Director. In this case it can be concluded that the panel of judges considers PT Kallista Alam as the subject of criminal law and the panel of judges identified the mens rea of management as the mens rea of PT Kallista Alam.

Judges' consideration in this matter is appropriate, that the imposition of criminal liability against corporations is regulated in Law Number 32 of 2009. The application of Article 116 and Article 118 of Law Number 32 of 2009 is in accordance with the theory of identification, which states that those who commit actus reus is a controlling person (directing mind or controlling mind) of the corporation, so the mens rea of directing mind can be identified as the corporation itself, which in this case is PT Kallista Alam.

4.1.1 The Decision of the Banda Aceh High Court Judge Number 201/Pid/2014/PT. BNA

The Banda Aceh High Court Judge handed down the verdict to PT Kallista Alam with the following ruling:

1. Receive an appeal request from the defendant PT Kalista Alam;
2. Improve the decision of the Meulaboh District Court, dated July 15, 2014 Number: 131/Pid.B/2013/PN.Mbo, just regarding the formulation of an ammunition/qualification of a criminal offense handed down to the defendant so that the sentence reads as follows;
   1) Stating the defendant PT Kalista Alam has been proven legally and convincingly guilty “Doing Criminal Action Opening Lands for Plantation of Palm Oil by How to Damage the Environment.”
   2) Convicting a criminal against a defendant, therefore, with a criminal fine of IDR 3,000,000,000.00 (three billion) rupiah.
   3) Strengthening the decision of the Meulaboh District Court on July 15, 2014 Number: 131/Pod.B/2013/PN Mbo for the rest.
   4) Imposing court fees on the defendant in two court levels, which are appealed at IDR 10,000 (ten thousand rupiah).

4.1.2 Judges' Considerations in the Decision of the Banda Aceh High Court Number 201/Pid/2014/PT. BNA

The Panel of Judges of the High Court carefully studied the legal considerations given by the District Court. The High Court agreed with the legal considerations of the first-rate Judge which in the decision that the defendant was proven legally and convincingly guilty of committing a crime as charged., However, the High Court was of the opinion that the formulation of an amar/the qualification (straafsfeit) of a criminal offense committed by the defendant. The High Court disagrees because the core of the criminal act in the indictment is opening up land for oil palm plantations by continuing to damage the environment, so that the District Court's decision must be improved, and the Judge's consideration the first tier was taken over and taken into consideration by the High Court itself in deciding this case in the appeal level.

Therefore, the Panel of Judges of the Court of Appeal took over the consideration of the first-rate Judge, so the Court of Appeal upheld the decision of the Meulaboh District Court on July 15, 2014 Number 131/Pid.B/2013/PN MBO, for the remainder of the petition for appeal.

4.2 Discussion II
In the consideration of the Banda Aceh High Court Panel of Judges, it was explained that PT Kallista Alam was considered as the perpetrators of land clearing by burning. This is different from the District Court Judge's decision which states that PT Kallista Alam allowed land burning to occur.

Judge's consideration in this matter is appropriate, because the offense in this case is not an offense of commissions. The panel of judges is based on Article 69 Paragraph (1) letter h of Law Number 32 Of 2009 which states that everyone is prohibited from clearing land by burning. The word “do” in the Article explains that the act must be done by the perpetrator, and not by another party, so it is not possible to allow delinquency. PT Kallista Alam, in this case benefited from the clearing of the land, and PT Kallista Alam was proven to have planned the burning based on the hotspots that appeared, only on dead and yellow palm land and land that had not yet been planted with palm seedlings. Article 116 Paragraph (1) letter a of Law Number 32 Of 2009 also stipulates that if an environmental criminal offense is committed by, for, or on behalf of a business entity, then the business entity may be prosecuted and subject to criminal sanctions. Then, it can be concluded that the imposition of corporate criminal liability can only be applied if an environmental criminal offense is committed by, for and on behalf of a corporation, so that in an environmental crime, it is not possible for a corporation to be convicted of a criminal offense.

4.2.1 Decision of the Supreme Court Judge Number 1554 K/Pid.Sus/2015
The Supreme Court Judge ruled in cassation with the ruling as follows:
1. Refuse an appeal request from the Appellant/Defendant: PT. The NATURAL KALLISTA;
2. Charge the Defendant to pay the court fee at this cassation level in the amount of IDR 2,500.00 (two thousand and five hundred rupiah).

4.2.2 Judge Considerations in the Supreme Court Decision Number 1554 K/Pid.Sus/2015
The panel of judges believes that corporate prosecution/prosecution as subjects of theoretical or normative criminal offenses is justified. Corporations whether incorporated or non-legal entities or humans as individuals are both legal subjects of the offender and can be held accountable and sanctioned both civil, criminal and administrative. As long as there are facts of the trial, it can be proven that there is a relationship between the corporation and the management of the corporation/director which is realized through actus reus and mens rea perpetrators. So, both legal subjects must be held responsible and sanctioned. As is the case in the a quo. Various theories that can be used justify the filing of prosecution and corporate punishment for example, identification theory, functional theory and so on;

4.3 Discussion III

The panel of judges is of the opinion that corporate criminal liability is justified by supporting consideration in and the decision of the Meulaboh District Court and the decision of the Banda Aceh High Court.

The panel of judges also argued that as long as there were facts in the trial, it could be proven that there was a relationship between the corporation and the management of the corporation/director which was realized through actus reus and mens rea perpetrators, both legal subjects must be held responsible and sanctioned. The consideration of the panel of judges strengthens the application of the theory of identification in the verdict of the
Meulaboh District Court, that the corporation is seen as a separate entity from the subject of human criminal law. In addition, it can be said that the panel of judges at each level recognizes that the theory of identification is in Law Number 32 of 2009 concerning Environmental Protection and Management. Therefore, it can be concluded that the Supreme Court judge's decision was correct.

5 Conclusion

5.1 Conclusion

From the description, it can be concluded that:

1. In the applicable regulations in Indonesia, if an environmental criminal offense is committed by, for and on behalf of a business entity, those that will be prosecuted and sentenced are, namely:
   a. Corporations and people who act as leaders of activities or who give orders to commit environmental crimes;
   b. Corporations;
   c. People who give orders or act as leaders of activities in criminal acts;

2. Judge's considerations on Decision Number 131/Pid.B/2013/PN.MBO, Decision Number 201/Pid/2014/PT BNA, and Decision Number 1554 K/Pid.Sus/2015 have several differences and similarities. In the verdict of the District Court Judge, PT Kallista Alam was considered to have the same mens rea as the management of the corporation, which is characteristic of identification theory. Even so, District Court judges considered that the offense committed by PT Kallista Alam was an omission offense (omnissa). The panel of judges of the Banda Aceh High Court is of the opinion that Article 69 Paragraph (1) letter H does not constitute an offense for an omnissa, so it must be corrected. Whereas in the decision of the Supreme Court Judge, the panel of judges agreed with the decision of the District Court Judge Meulaboh and the decision of the Banda Aceh High Court Judge regarding the appointment of PT Kallista Alam as a convict; therefore, the decision of the Supreme Court Judge strengthened the decision of the Banda Aceh High Court Judge, and rejected the petition the appeal of the defendant.

5.2 Suggestion

There are several suggestions from the author regarding the issue of imposing criminal liability on corporations, including:

1. It is better for law enforcers in Indonesia to be more daring in convicting corporations. Law enforcers need to understand more about the theory of corporate punishment such as identification theory or theory of functional offenders. So, they are not too dependent on the vicarious liability theory which imposes criminal liability on the management, especially when the corporation causes great damage, and benefits from criminal acts.

2. It is recommended that the Criminal Code concept governing corporate criminal liability be ratified immediately, because the different corporate criminal penalties in each legislation can cause confusion for law enforcers in applying criminal penalties to the corporation.
References


[5] *Decision of the Banda Aceh High Court Number 201/Pid/2014/PT.BNA*.


[10] *Decision of Meulaboh District Court Number 131/Pid.B/2013/PN.MBO*.

Proportional Principles in Kumon Franchise Cooperation Agreement

Shafira Inan Zahida*, Ery Agus Priyono2, Dewi Hendrawati3
{Shafirainan@gmail.com*, eryap@live.undip.ac.id2, dewi.hendrawati@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. Franchise is one form of standard agreement. The contents of the agreement are determined by the franchisor only, so that, in its contents, it allows an imbalance between the franchisor and the franchisee that will harm either party. This study addresses three issues, namely (1) Whether the agreement meets Article 1320 of the Civil Code, (2) Whether the agreement meets the principle of proportionality, (3) Legal consequences when the agreement does not meet the principle of proportionality. The research approach method used in writing this law is Normative Juridical. Normative jurisdiction is done by examining library materials which are secondary data. The results of the Kumon franchise agreement meet all the legal conditions of the agreement. The contents of the franchise agreement are found several articles that do not meet the principle of proportionality, although the Kumon franchise agreement can still be said to be valid and binding on the parties that made it because this agreement has met Article 1320 of the Civil Code.

Keywords: franchise, proportionality principle, standard agreement

1 Introduction

1.1 Background

Most countries in the world in the current global era try to develop their economies and expand economic activities to various countries, especially to developing countries by expanding their businesses, so that these countries can continue to be recognized in economic activities and international trade.[1] One way of expansion carried out by large countries is by doing franchise business in various countries, including in Indonesia.

Franchising began in the United States in the 1950s marked by the emergence of “giant” franchises in the field of fast food, Kentucky Fried Chicken founded by Colonel Harlan Sander’s (1950) and McDonald’s by Maurice and Dick McDonald’s (1955). McDonald’s then thrived on Ray Kroc’s services.[2]

The development of the franchise business in Indonesia until March 1996 is estimated to have operated 119 foreign franchises, while the local franchise is estimated to be around 32 companies. Franchises nearly doubled with an estimation at around 70 companies in 2004.[3]

This Franchise Agreement is the granting of permission from the Franchisor to use Intellectual Property Rights (hereinafter referred to as IPR) to the Franchise Recipient by paying royalties for the use of the IPR. It also can be said that franchise is a granting for a
license covering various Franchisor’s Intellectual Property Rights, for example, trade names, logos, design or patent. So that the parties can provide mutual benefits to each other.[4]

The agreement in book III of the Civil Code adheres to an open system, which means that the parties are free to enter into an agreement with anyone, determine the conditions, the implementation and the form of the contract, both oral and written, in addition, are allowed to make good agreements that have been known in the Civil Code and outside the Civil Code.[5]

Franchise agreement is a contract outside the Civil Code. The franchise agreement is regulated in Government Regulation No. 42 of 2007 concerning Franchising is the main foundation about franchising.[6]

According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons are bound to one or more persons. An agreement can be said to be valid if it has fulfilled the provisions contained in Article 1320 of the Civil Code explaining that in an agreement to be valid it is required to fulfill the following conditions:
1. Agree those who bind themselves;
2. The ability to make an engagement;
3. A certain thing
4. A lawful cause.

Franchise agreements basically use the standard agreement system. A standard agreement is an agreement whose contents are made by one party, and the other party cannot express his will freely so that there is no bargaining about the contents of the agreement.[7] In order to keep the franchise agreement working to guarantee and protect the interests, rights, and obligations of the parties, the franchise agreement must fulfill several principle. One of the principles that work best to deal with this case is the principle of proportionality.

1.2 Formulation of the problem

Based on the above background, the authors raise the problem as follows:
1. Is the contents of the Kumon franchise agreement in accordance with the legal conditions of the agreement according to Article 1320 of the Civil Code?
2. How is the application of the proportionality principle in the Kumon franchise agreement?
3. What are the legal consequences if an agreement does not fulfill the principle of proportionality?

2 Method

The method of approach used in this study is the normative juridical approach. This research uses descriptive - analytical specifications. Data analysis method used in this research is qualitative analysis.

3 Results and Discussion

3.1 Kumon History
Kumon is one of the institutions in Indonesia. Law Number 20 of 2003 Article 26 paragraph (5) explains that the Course and Training is a form of continuing education to develop students’ abilities with an emphasis on mastering skills and competency standards, and developing entrepreneurial attitudes and professional personality development. The basic principle of the Kumon method which was disseminated to Indonesia in October 1993 is the recognition of the individual potential and abilities of each student, to develop this potential to the fullest, guidance and a supportive environment are needed without limiting the age of the student.[8]

Kumon was born from a father’s love for his son in 1945. Toru Kumon is a talented high school mathematics teacher, and when he saw his son, Takeshi, not excelling in mathematics in his school. He writes math worksheet problems to be solved by his son every day. Toru Kumon believes that educators have a responsibility to foster a mindset of independent learning in children, so he created teaching materials for Takeshi that can encourage him to learn independently.[9]

Toru Kumon, founded The Osaka Institute of Mathematics in 1958 in the city of Osaka, from then on, Kumon gave learning opportunities to as many children as possible.[10] Kumon first opened an overseas class in New York, United States in 1974. In this case, a Japanese family whose children had studied with Kumon in Japan moved to America along with the transfer of their father’s work there. They requested that Kumon be available for children who moved abroad to meet the needs of students and their parents who moved abroad so the Kumon class opened the first Mathematics Class in New York, United States.[10]

Kumon established the group management structure in 2000. Each regional head office at that time stepped up its efforts to advance and support the Kumon Method and help to find a place in the local community. The 2008 marked the 50th anniversary of the founding of Kumon.[10] For more than 50 years, more than 16 million students around the world have experienced the results of the Kumon Method Learning. [11]

3.2 Application of Legitimate Agreement Terms (Article 1320 Civil Code) in the Kumon Franchise Agreement

The agreement is considered valid if it has fulfilled the conditions specified in Article 1320, namely:

1. Agree those who bind themselves;
2. The ability to make an engagement;
3. A certain thing;
4. A lawful cause;

3.2.1 Agree those who bind themselves

Based on this Kumon Franchise Agreement, the parties namely the Kumon Institute of Education Company Limited as the franchisor and the Human Resources Development Foundation, Lestari as the franchisee have agreed to make a Franchise Agreement and agree to the matters stipulated in the contents of the agreement. This can be seen in the premise contained in the agreement:

“Therefore, taking into account the agreements and agreements herein, the parties hereby agree to enter into a Franchise Agreement with the following terms and conditions.”
The parties agreement also has a signature on the closing of this Franchise agreement. Signing was carried out by Sary Halim as the Franchisee representing the Human Resources, Sustainable and Takeshi Kumon Development Foundation as the Franchisor representing the Kumon Institute of Education Company Limited.

3.2.2 The ability to make an engagement
The franchisor, in this agreement, is the Kumon Institute of Education Company Limited. Company Limited (Co.Ltd) or Limited Liability Company is described in Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies which explains the Company is a legal entity based on this understanding. The franchisees in this agreement are the Human Resources Development Foundation, Sustainable. Foundations are explained in Article 1 number 1 of Law Number 16 of 2001 concerning Foundations which explains that foundations are legal entities.

Legal entities as legal subjects in addition to humans who are considered to be able to act in law and who have rights, obligations and legal relations with other people and other bodies, so based on the description above the company and foundation are legal entities that have rights and obligations so The Kumon Institute of Education Company Limited and the Human Resources Development Foundation, Lestari are legal subjects who can enter into agreements.

3.2.3 A Certain Thing
A certain thing in this agreement is that the franchisor will give the franchisee the right to use the expertise, experience and thoughts of the Franchisor and the use of the Franchisor Brand, information from suppliers related to the Kumon System, and conduct a Kumon System Course in Place for a certain period of time.

3.2.4 A Halal cause
Article 1320 of the Civil Code does not explain the definition of halal causa. In Article 1337 the Civil Code only states that prohibited causa. A cause is forbidden if it conflicts with the law, decency and public order.

The object of the agreement in this franchise agreement is the License. The license which is the object of this study is a lawful thing because it does not violate the provisions of the law, decency, and public order if done in accordance with the laws and regulations of Law Number 26 of 2014 concerning Copyright which regulates the license. So that this agreement has fulfilled the fourth condition of the validity of the agreement which is a halal cause.

Based on the above analysis, it can be concluded that this Franchise Kumon agreement has fulfilled the four legal requirements for the formation of an agreement based on the provisions stipulated in Article 1320 of the Civil Code, so that this agreement can be said to be valid and binding on both parties bound therein.

3.3 Application of the Principle of Proportionality in the Kumon Franchise Agreement
Under the Kumon franchise agreement, according to the author, there are several Articles that do not meet the application of the principle of proportionality, namely:

3.3.1 Article 7.1 concerning insurance
This article explains that Franchisee must bear the burden of compensation to the Franchisor himself and release the Franchisor from any student, member or third party
demands arising from the implementation of the Kumon Course System. According to the author, the contents of this article are deemed not to meet the principle of proportionality because the Franchisee must take responsibility for the demands of students, Members, or third parties as well as the franchisee must also provide compensation for Franchisor’s compensation due to the holding of the Kumon System Course. The Franchisor should be responsible for organizing the Kumon System Course because in organizing matters in the Kumon System Course the Franchisee must first approve the Franchisor, the franchisor should take responsibility if there is a loss or demand from students, Members or third parties.

3.3.2 Article 9.3 concerning the prohibition on terminating the agreement

This article explains that in terminating the agreement due to any reason the franchisee is not allowed either alone or together directly or indirectly to do or join or think or wish in the education system that will compete with the Kumon System in Indonesian territory for a period of five years. The formulation in this article, according to the author, does not fulfill the principle of proportionality because the existence of this article is deemed to be detrimental to the franchisee. Franchisees after the termination of this agreement cannot develop their business opportunities independently because there are restrictions as stated in this article.

3.3.3 Article 10.6 concerning termination of the agreement

Article 10.6 explains that all Franchisees’ rights and interests in this agreement will automatically terminate if the franchisee is bankrupt, unable, or liquidated or in another case, the appointment of a recipient or guardian for the Franchisee or casie or a temporary suspension of the operation of the Kumon System Course. Article 10.6 contains:

“This agreement and all rights contained therein (except Article 9 will continue to apply in the interest of the Franchisor) will automatically terminate jointly with all the rights and interests of the Franchisee here, without any notification to the Franchisee in the event that the Franchisee is bankrupt, unable or being liquidated or the appointment of a recipient or guardian for Franchisees or casie or temporary suspension of the Kumon System Course.”

This article is deemed not fulfilling the principle of proportionality because of the termination or termination of franchisee rights and obligations, it is better for the franchisor to make advance notice and grace period for the franchisee regarding termination or termination of rights and obligations. According to the authors, it was felt that the relationship between the rights and obligations between the two remained clear until the conclusion of the agreement made by the parties.

3.3.4 Article 10.9 concerning termination of the agreement

Article 10.9 explains that the parties will waive the entry into force of Article 1266 of the Civil Code, so that if an agreement can be canceled, the judge must not request it, in other words the parties in the agreement can cancel this agreement themselves.

Which according to Agus Yudha Hernoko by emphasizing the formulation of termination “must be requested to the Court”, the word “must” in the provisions of Article 1266 of the Civil Code is interpreted as a rule that is compelling (dwingend recht) and therefore should not be ruled out by the parties through their agreement clauses. The author in making the agreement should not rule out Article 1266 of the Civil Code because according to the grammatical itself in Article 1266 the Civil Code there is the word “must” which indicates the
existence of obligations and these are compulatory provisions so that according to the author this Article cannot be ruled out. [16] This article does not show the principle of proportionality because the Franchisor will find it easier to terminate this agreement unilaterally because it is not necessary to ask the judge in advance with a protracted process.

3.4 Legal consequences if the agreement does not fulfill the principle of proportionality

Lindawaty Sewu stated that if the terms of the legality of the agreement as stipulated in Article 1320 of the Civil Code have been fulfilled, then based on article 1338 of the Civil Code, the agreement will have the same legal force as the law as long as it does not conflict with the law, decency and public order, must also fulfill the conditions for validity of the agreement.[3]

This agreement fulfills the legal requirements of Article 1320 of the Civil Code and is carried out in good faith and does not conflict with legislation, decency and public order, so that this agreement fulfills the provisions of Article 1338 of the Civil Code, and as long as the parties, both the Franchisor and Franchisee, perform achievements - the achievement as stated in this agreement and does not breach the contract, then this agreement does not fulfill the conditions for canceling an agreement as referred to in Article 1265 of the Civil Code.

The franchise agreement between the Kumon Institute of Education Company Limited and the Human Resources Development Foundation has several articles, in which, according to the author, do not apply the principle of proportionality, namely Article 7, Article 9.3, Article 10.6, Article 10.9, and Article 15.5. An agreement that does not meet the principle of proportionality in it there is no proportion of the distribution of rights and obligations between parties that takes place properly and properly, and with the principle of proportionality not fulfilled, there is no exchange of rights and obligations of the parties that are fair.

The principle of proportionality is not one of the four legal conditions of an agreement. So, if an agreement does not fulfill the principle of proportionality as long as the agreement meets the legal requirements of an agreement provided for in Article 1320 of the Civil Code and the contents of the agreement do not violate the law, decency and public order, then this agreement will remain a valid.. So, based on the description above the franchise agreement between the Kumon Institute of Education Company Limited and the Human Resources Development Foundation, Lestari is a legal agreement and is binding on the parties.

4 Conclusion

Based on the description, the conclusions can be drawn as follows:

1. The franchise agreement between the Kumon Institute of Education Company Limited and the Human Resources Development Foundation has fulfilled all the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code. The requirements for Article 1320 of the Civil Code are fulfilled:
   a. The agreement of both parties to this agreement is marked by the premise that both parties agree to enter into an agreement, and signatures from both parties are available.
   b. The prowess to make an agreement in this agreement is carried out between PT and the Foundation as a party. Based on Article 1 number 1 of Law Number 16 of 2001 concerning Foundations, foundations are legal entities, and based on Article 1 of
Law Number 40 of 2007 concerning Limited Liability Companies, PT is a legal entity. A legal entity is the subject of an agreement because it has rights and obligations so it can be said to be competent to make an agreement.

c. A Certain Thing. In this agreement the object of the agreement is that the Franchisor gives the franchisee a license, and the license is a predetermined object.

d. A Halal cause. The object of the agreement is a license where the license is a lawful thing because it does not violate the provisions of the law. The license is regulated in Law Number 28 Of 2014 concerning Copyright. License also does not violate decency and public order so that the License is a lawful cause.

2. Franchise Agreement between Kumon Institute of Education Company Limited and Sustainable Human Resources Development Foundation is not in accordance with the Proposionality Principle. An agreement that meets the Proposionality principle will provide recognition of the rights, opportunities, and opportunities for the parties to determine the contents of an agreement. This agreement considers as standard agreement so that the contents of this agreement are only made by the Franchisor; therefore, the franchisee is only given the option to take or leave the contract. This agreement also contains several articles that are considered unfair and detrimental to the franchisee, namely Article 7.1 concerning insurance, Article 9.3 concerning the termination of the agreement, Article 10.6 and Article 10.9 concerning termination of the agreement, and Article 15.5 concerning the right to transfer.

3. The Franchise Agreement between the Kumon Institute of Education Company Limited and the Sustainable Human Resources Development Foundation is indeed not fulfilled in this agreement. According to Article 1320, the legal condition of an agreement is the agreement of those who bind themselves, the ability to make an engagement, a certain matter, and a lawful cause. This agreement has fulfilled all four legal conditions of the agreement. Article 1338 of the Civil Code allows making agreements in the form of any content as long as the agreement is implemented in good faith. Thus, it can be said that the agreement can contain anything as long as it still meets the legal requirements of the agreement in Article 1320 of the Civil Code, and the agreement is carried out in good faith. So that even though this agreement does not fulfill the Principle of Proportionality, this agreement is still considered valid and binding.
References


Choosing Structural Legal Assistance: a Paradigmatic Study on the Effort of Justice

Fahmi Baiquni1*, Erlyn Indarti2, Aditya Yuli Sulistyawan3
{fahmibaiquni97@gmail.com1, erlynindarti@yahoo.com2, adityayuli38@gmail.com3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751,2,3

Abstract. This study aims to understand the structural legal aid, and the contribution of paradigmatic study in structural legal aid as an effort to realize justice. This research is conducted using field research by conducting observations and interviews with stakeholders related to the application of structural legal aid with the support of literature review. Structural legal aid has a different way of working than usual legal aid. The way it works in carrying out legal aid cannot be separated from the meaning of justice believed in. This makes structural legal aid interesting to be studied. Through philosophical studies, the main paradigmatic study will be traced in detail and in depth paradigms that guide structural legal aid.

Keywords: structural legal aid, philosophy, paradigm, justice.

1 Introduction

The state of Indonesia is a state of law. The statement is contained in Article 1 paragraph (3) of the Law of the Republic of Indonesia. The article emphasizes that the methods used by the state in solving problems must be carried out according to law. Rules are made, containing what is and isn't allowed. Every regulation that has been mutually agreed upon is made by the state, so that citizens are given proper attention. Law needs to be seen as an expression of the ideals of community justice.[1]

Therefore, a state which has declared itself to be a state of law must under any circumstances be able to realize justice.

The inauguration of Indonesia as a state of law listed in Article 1 paragraph (3) of the 1945 Constitution sends a message that there is a strong desire of the state to guarantee the implementation of equality in law, among others marked by the regulation of the right of everyone to get equal treatment before the law, as well as guarantee for everyone to get access to justice (justice for all and access to justice). These rights are the basic rights of every person that is universal. This is important to understand because so far, the state has always been confronted by groups of people who are poor or unable, both economically and knowledge to understand the law itself (legally blind) so that they cannot get justice.[2] Based on this, some legal figures were moved to form not only a forum for advocacy, but also legal education for them. Later, this movement would be known as its concept as 'Structural Legal Aid'.

In Indonesia, there is an institution called the Legal Aid Foundation (YLBH-LBH). This institution was formed on the idea of Adnan Buyung Nasution. In 1969, Buyung who was a young advocate launched the concept of legal aid that breathed the movement in the third congress of PERADIN in Jakarta, to be further realized by forming LBH in 1971.[3] Since it
was formed in Jakarta, it was called LBH Jakarta. After operating for a decade, the legal status of LBH was upgraded to YLBH. Until then, the legal aid institutions were formed in several regions in Indonesia.[4] In the case of LBH, the concept of Structural Legal Aid was developed.

Another fact about legal aid is about the Law Aid Law itself. The regulation on legal aid was only officially issued by the government in 2011, namely Law Number 16 of 2011 concerning Legal Aid.[5] Furthermore, in Article 1 of this Law it is explained that Legal Aid is a legal service provided by Legal Aid Providers free of charge to Legal Aid Recipients. This law becomes the basis of citizens' rights, especially for the poor or unable to obtain justice. The poor status of the person can be proven through a poor certificate from the village, it is contained in Article 14 of the Legal Aid Act. These laws also regulate the terms and procedures for providing legal assistance, funding, prohibitions, criminal provisions, transitional provisions, and the closing provisions are at the end of the law.

The implementation of the Law on Legal Aid which actually has long been carried out by YLBH-LBH. This foundation was officially established in 1970, long before the issuance of Law No. 16 of 2011. Other than that, what YLBH-LBH did not only provided legal assistance, but also community legal education. This is an interesting thing from YLBH-LBH. The author intends to conduct a study of the concept of Structural Legal Aid applied by YLBH-LBH. In accordance with the scientific discipline of the basics of legal science that the author is taking, the author plans to conduct a paradigmatic study of structural legal aid.

The knowledge of what is meant by the author's paradigm is obtained from lectures in Philosophy of Law. Erlyn Indarti introduces students to the 'paradigm' through the thinking of Egon G. Guba and Yvonna S. Lincoln. Furthermore, this paradigm study according to Guba and Lincoln is what the writer will use as a knife of analysis in writing this law. According to the author, the paradigm of Guba and Lincoln is more systematic and concise, and rational.

The true paradigm is a philosophical system of 'umbrella' which includes certain ontology, epistemology, and methodology. Each consists of a series of 'basic beliefs' or worldviews that cannot be easily exchanged with 'basic beliefs' or worldview from ontology, epistemology, and other paradigm methodologies.[6] Through a paradigmatic study, the flow of Legal Philosophy which is basically a basic belief or worldview can be traced and sorted into ontology, epistemology, and methodology.[6] The paradigm can actually be referred to as 'mental tools/tools (mental tools) that we use each time we [try] to understand the various situations and conditions that we have, are, or will one day face. In short, the paradigm is the consensus of a scientific community; and arguably it is a concrete set of problem solutions.[6] Using paradigm as a tool to see the problem can be called a paradigmatic study.

The paradigmatic study enables Legal Philosophy to explore the differences that exist between the various schools of Legal Philosophy to then build understanding and use in more detail, subtle, and sharp.[6] By studying the main points of the flow of Legal Philosophy, it is hoped that the dynamics of various kinds of thinking about law can be traced. Other than that, the complexity of the law will also be revealed by various perspectives. Each school of Philosophy of Law is present with its own nature and legal objectives. The Philosophy of Law [Law] is not the same as the 'paradigm'. Every school of Philosophy [Law] is actually a part - and can be said to be embodied or born or rooted from a certain 'paradigm'.[6]
2 Research Method

In this paper, the author uses the term 'research process' to refer to the 'research method' section that is commonly used in the positivism principle. The research process can be seen as a series of phases that are interrelated and inseparable from one another. This aims to deliver researchers in order to achieve a deep understanding of the problems of the study in accordance with the objectives of the investigation to be achieved. Denzin and Lincoln in 'Introduction: Entering the Field of Qualitative Research' in the 'Handbook of Qualitative Research' (1994) as quoted by Agus Salim stated five stages of the level that constitute a series of research processes, namely researchers and things being studied as multicultural subjects; important paradigms and interpretive points of view; research strategy; methods for collecting data and analyzing empirical materials; the art of interpreting and describing the results of research.[7]

This research uses the tradition of qualitative research. According to Bogdan and Taylor, qualitative research is a research procedure that produces descriptive data in the form of written or oral words from people and observable behavior.[7]

Meanwhile, Kirk and Miller define qualitative research as a particular tradition in social science that fundamentally depends on observing humans, both in their area and in their terminology.[7] Another expert, David Williams, writes that qualitative research is collecting data on a scientific setting, using natural methods, and carried out by people or researchers who are scientifically interested.[7]

Denzin and Lincoln stated that qualitative research is research that uses a natural setting, with the intention of interpreting the 'phenomena' that occur and are carried out by involving various existing methods.[7] While Jane Richie, stated that qualitative research is an attempt to present the social world, and its perspective in the world, in terms of the concepts, behaviors, and issues concerning the human being studied.[7] From some of the opinions above, it can be understood that qualitative research involves the ability of the senses (able to capture phenomena) and the ability of the mind (being able to interpret).

Based on the paradigm proposed by Guba and Lincoln, this research is guided by the Constructivism paradigm. According to Guba and Lincoln in the Handbook of Qualitative Research as quoted by Erlyn Indarti, paradigm is an umbrella philosophy that builds and encompasses ontology, epistemology, and methodology that cannot be interchangeably between one paradigm with another paradigm, which represents a basic belief system from their use and then link their users to a certain worldview.[6] Furthermore, Guba and Lincoln propose 4 (four) main paradigms that cover more systematic, dense, and rational ways. The four paradigms are positivism, post-positivism, critical theory et al, and constructivism. The four paradigms are distinguished from one another through responses to 3 (three) fundamental questions, which include:ontological ',', epistemological ', and' methodological 'questions.[6]

Berikut ini adalah 'Set Basic Belief' dari keempat paradigma utama tersebut:

<table>
<thead>
<tr>
<th>Question</th>
<th>Positivism</th>
<th>Postpositivism</th>
<th>Critical Theory et al</th>
<th>Constructivism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontology</td>
<td>Naive Realism: external reality, objective, real, and understandable</td>
<td>Critical Realism: external, objective, and real realities that are understood imperfectly</td>
<td>Historical Realism: 'virtual' reality formed by social, political, cultural, economic, ethnic and gender</td>
<td>Relativism: compound and diverse realities, based on social-individual, local and</td>
</tr>
</tbody>
</table>
3 Discussion

3.1 LBH and Structural Legal Aid

The legal aid program in Indonesia which is institutionalized and has a large scope is only started since the establishment of the Legal Aid Institute in Jakarta on October 28, 1970. What is meant by legal aid is special legal assistance for low-income people or popularly known as 'the poor'. Meanwhile, structural legal aid is a term that can easily turn into a slogan, while people expect something clearer and more decomposed.[8]

The legal aid movement must be seen as an effort to uphold human rights for the poor, who have long been 'held captive' by rich people, and that human rights will not be given away. Through the legal aid movement, that right must be usurped even though it must be realized that legal aid alone is not enough. Unclear and unfair structures must be overhauled and replaced with more equitable patterns of relationship.[9]

The purpose of legal aid thus needs to be expanded, not only limited to individual legal assistance but also rural. The mistake of the legal aid movement in Indonesia so far is because
the legal aid movement is too individual and urban in nature. Talking about human rights, then, the most oppressed due to violations of human rights are the poor from the lower structure who live in rural areas. It is time for our legal aid movement to actively come to the countryside and do legal aid work in the broadest sense.

The important thing is this legal assistance to free poor people from the structures that oppress them. If this is the case, then the legal aid movement must be able to open the eyes and feelings of the poor that they are victims of an unjust social system. Awareness that they are poor and oppressed must be pumped on them.

In changing the structure, the idea of a structural approach to legal aid must be spread, in addition to continuous lobbying. The legal aid movement must not only present itself as a representative of the poor, but become part of the lives of the poor themselves. With 'manunggal' with the people, the legal aid movement will be able to appreciate the problems that exist in the people and find a more appropriate solution. The mistake so far has been the direct involvement of legal aid itself. Providers of legal assistance tend to be the spokesperson of the poor, making the poor as a commodity.

The purpose of structural legal aid is to realize a law capability of changing an unequal structure towards a just structure, where the rule of law and its implementation guarantee equality both in the political and economic fields. That is, the implementation and development of law in the perspective of structural legal aid in the context of helping build a just and prosperous society.

In providing legal assistance, YLBHI has certain principles. YLBHI designed four priority cases that were of primary concern, including criminal, labor, environmental and natural resource allocation and land cases. In particular, the land case received a lot of attention because it was related to the distribution of economic resources of the poor. The issue of land in the future is very important because there will be many victims from development projects carried out by the government and the private sector. This land acquisition has the potential for extensive conflict.

In addition, there is characteristic possessed by LBH-YLBHI in providing legal assistance, namely the case which is not only seen as something that must be resolved, but also to see a deeper social conflict. Thus the steps taken are not limited to legal actions but also politics, such as urging legislative institutions to demand recognition of rights, fair laws and the rejection of arbitrary powers.

This perspective has implications for the evaluation system. Successful implementation of the program is not only seen in the win-win cases handled but also considers other social impacts.

For LBH priority cases, the four sectors are to be entry points in developing:

1. The legal function of realizing people's rights which has been de jure recognized
2. Alternative mechanisms for resolving legal conflicts with a public dimension
3. The function of criticism through the judiciary as a forum
4. Institutionalization of legal values and norms through awareness raising activities and publications in the legal field
5. Ideas on the establishment, renewal and enforcement of laws
6. The legal interests of people experiencing injustice through the courts, bureaucracy and other constitutional channels
7. The act of delegitimation and deconstruction of the concepts of state life which weakens the position of the people and at the same time constitutes an effort to fight against State hegemony.
The cases that need to be dealt with by this approach are first, the nature of the conflict revealed through the case is not only for the benefit of individuals, but also for the interests of lower social groups. Regardless of how many justice seekers are asking for legal assistance from LBH. Second, the vertical nature of the conflict, which confronts weak and strong groups of people. Third, the possibility for legal reform and development to better guarantee the interests of the poor.[8]

In the future, the characteristics of LBH organizations are more oriented to lower class people, especially farm laborers, small farmers, fishermen and urban marginal groups. These groups are part of the Legal Aid Society (MBH) and are an alternative way for collective advocacy, together with other non-governmental organizations. In addition to being the basis of the organization, they are a driving force for the achievement of justice for all.

3.2 Paradigm, Flow of Legal Philosophy and Structural Legal Aid

The following table presents the Paradigm, Legal Philosophy, and Structural Legal Aid:

<table>
<thead>
<tr>
<th>Paradigm</th>
<th>Flow of Legal Philosophy</th>
<th>Legal Reading</th>
<th>Structural Legal Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positivism</td>
<td>The Flow of Positivism Law</td>
<td>The law is read rigidly, textually, without interpretation</td>
<td>As far as possible prioritizing non-litigation and extra-legal efforts.</td>
</tr>
<tr>
<td>Post-Positivism</td>
<td>Realist, Sociological and Society Law Flow</td>
<td>The law is read with independence and subjectivity in interpretation</td>
<td>Doing the interpretation before accepting the case that came in. Whether it is a structural case or not. Also, interpret how much influence litigation has on cases received. Given the litigation path tends to be used as a last resort in handling cases.</td>
</tr>
<tr>
<td>Critical Theory et.al</td>
<td>Critical Legal Theory, Feminist Jurisprudence, and Critical race Theory</td>
<td>Law is based on reality/virtual structure so that: • tends to be unjust, oppressive, lame, exploitative. • cannot be trusted just like that • obligatory to be interpreted critically</td>
<td>Efforts to mediate the parties to the dispute. There is a critical legal education that is held for the community. In addition it also held campaigns against cases that were being dealt with, built movements and mobilized the community for mass action.</td>
</tr>
<tr>
<td>Constructivism</td>
<td>Constructivist Law Flow</td>
<td>Dialogue as an effort to resolve the problem. By bringing together the parties to negotiate. Then provide an opinion on the problems that occur.</td>
<td></td>
</tr>
</tbody>
</table>
From the table above, the positivism paradigm with a naive realism ontology will read the law rigidly, textually and without interpretation. In handling legal cases, one of the strategies of structural legal assistance is through channels outside the judiciary. This method is preferred as far as possible because litigation efforts tend to have little influence on the structural cases being faced. Because in the positivism paradigm, law is also a closed logical system, which means regulations can be deducted from applicable laws without the need for guidance from social, political and moral norms.[10]

In contrast to the positivism paradigm, the positivism paradigm with ontology critical realism makes it possible to interpret the readings of the law. LBH examined the legal cases that came into them. Before approving the case being handled, LBH will see whether the case has structural elements/has other social impacts. If the legal case is an ordinary case, meaning there is no structural element or social impact, then structural legal assistance will provide legal opinion or suggest the dispute to take the case to another legal aid agency.

Moving far from the two paradigms above, there is the paradigm of critical theory et. al. This paradigm sees that law is based on an understanding of virtual reality so it cannot be trusted just like that. Critical theory sees that the law comes from understanding virtual reality which tends to be oppressive, lame, and exploitative. Therefore the law needs to be interpreted critically. These characteristics are characteristic of the way structural legal aid works. This can be seen from structural legal aid work such as:

- Provide critical legal education to the community
- Hold discussions about structural cases and their legal regulations
- Creating a campaign
- Open dialog space
- Mobilize the community for mass action

Whereas the constructivism paradigm assumes that law is a mental construction in the form of consensus or agreement that is relatively, and diverse. The constructivism paradigm will promote dialectical and hermeneutic dialogue, namely by understanding the opinions of each party and interpreting them to then produce consensus/resultante. These methods are also carried out in structural legal assistance, namely by bringing together the disputing parties to negotiate and dialogue honestly to reach an agreement. In these negotiations, LBH provided a legal opinion in accordance with the values of justice he believed in.

4 Conclusion

Based on the studies conducted in this legal research, there are several things that can be drawn as conclusions, including:

1. Through philosophical studies, it can be traced and distinguished subtly regarding structural legal aid. It can be found out the paradigm that guides structural legal aid. Paradigmatically, structural legal aid in this study was answered differently according to each paradigm that sheltered it. Different views of each paradigm can contribute ideas in studies of structural legal aid.

2. Structural Legal Aid with the paradigm of critical theory based on the concept of structural legal aid, justice can be achieved when there is no oppressive, lame, and exploitative system structure.
References


Policy to Eradicate Crime Funding of Terrorism as Transnational Organized Crime

Ardken Fisabillah¹, Pujiyono², Umi Rozah³

{afisabillah97@gmail.com¹*, pujiyono@live.undip.ac.id², umi.rozah@live.undip.ac.id³}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹,²,³

Abstract. One type of crime that occurs in the community is terrorism funding. The funding of terrorism in Indonesia has expanded and spread to various elements of society. Terrorism funding that promises considerable material rewards makes many people want to commit acts of terrorism without knowing a clear cause and effect. Terrorism funding is the way that foreign terrorists recruit new members in Indonesia. The issue of financing terrorism has also become a problem in various countries including the ASEAN Region, which is no exception to Indonesia. This study aims to determine and analyze criminal law policies in eradicating funding of terrorism as a transnational organized crime in positive law, also, in knowing and analyzing criminal acts of financing terrorism as a transnational organized crime in the future.

Keywords: Policy, Criminal Funding of Terrorism, Indonesian Criminal Law, Transnational Organized Crime.

1 Introduction

Terrorism is part of a crime that cannot be classified as an ordinary crime. Academically, terrorism is categorized as an extraordinary crime and categorized as crime against humanity. At the juridical level, terrorism is a crime against state security in view of such categories, so eradication is certainly not able to use the usual methods as handling ordinary crime such as theft, murder or persecution. The crime of terrorism is a form of action that threatens the security and sovereignty of the Unitary Republic of Indonesia (NKRI).

Terrorism is not really a new phenomenon because it has existed since the 19th century in the international political arena. In general it is closely related to the domestic stability of a country. However, today, terrorism has broad dimensions related to various aspects of life and transcending national boundaries. Terrorism no longer only targets political life as it first appeared, but also has penetrated and damaged and destroyed the joints of human life, such as declining economic activity and disturbed humanitarianism and civilized culture of society so that it is classified as one of the eight transnational crimes.

Terrorism is a crime against humanity and a crime against civilization that is a threat to all nations and enemies of all religions in this world. Terrorism in its development has built an organization and has a global network where terrorist groups operating in various countries have been co-opted by an international terrorism network and have relationships and mechanisms of cooperation with each other both in the operational aspects of infrastructure and supporting infrastructure.
Based on paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia, one of the objectives of the establishment of the Republic of Indonesia is to protect all Indonesians and all Indonesian blood. One form of implementing this national goal is to protect all Indonesians from the threat of terrorism. The criminal act of terrorism is an international crime that endangers world security and peace and is a grave violation of human rights, especially the right to life. The series of criminal acts of terrorism that occurred in the territory of the Unitary State of the Republic of Indonesia have resulted in loss of life regardless of victims, widespread public fear, and loss of property that has a wide-ranging impact on social life, economic, political, and international relations. For example, the impact of the Bali bombing tragedy in October 2002 reduced local economic activity throughout 2003 by reducing the income of Balinese residents by around 43 percent, partly due to layoffs with 29 percent of the workforce in Bali. The Bali tragedy also affected the national economy among others by decreasing the flow of foreign tourists (tourists) by 30 percent. In a high intensity and continuously, terrorism can threaten the life of the nation and state.

In Indonesia, the claim that terrorism is a real threat, only surfaced after 11 September 2001, precisely since the tragedy of Legian Bali on October 12, 2002. Although previously Indonesia has experienced a number of incidents even more than 25 incidents of terrorism since the hijacking of the Garuda Woyla aircraft, the blasting of Borobudur Temple, and The BCA building in 1984 and 1985, with perpetrators of Indonesian citizens, was followed by a number of explosions in a number of Indonesian regions. As a country with the largest Muslim population in the world, there are groups that base themselves on the struggle of certain groups known as radical Islam. This group has the goal of the struggle to build an Islamic state that applies Islamic law purely in state law. This goal usually arises because of dissatisfaction with government policies that are considered too secular and dictated by many Western countries to marginalize Muslim Fundamentalists. The marginalization covers at least the political and economic aspects.

Politically, in the past the New Order government distanced itself from radical Muslim groups because of the trauma of the DI/TII rebellion. In addition, radical Muslim groups receive very strict supervision in every activity from government officials. At the same time the launching of a single ideology, namely Pancasila by the government, was met with stiff resistance from terrorist groups, which resulted in repressive actions from the security apparatuses.

In general, terrorist funding comes from two main sources. that is, financial support provided by organizations that collect and make these funds available to terrorists or terrorist organizations. A person with sufficient finance can also provide substantial funding for terrorist groups. The second source of terrorist funding or terrorist organizations is income generated directly from several activities that generate funds. Such funding can come from crime or other illegal activities. A terrorist group in a certain region can finance itself for example through kidnapping, extortion, tax evasion, fraud, robbery, narcotics trafficking, and other criminal activities.

Requests and collection of funds from the public is one way to obtain funds to support terrorism activities. Often the fundraising is carried out on behalf of organizations that already have status as charitable organizations or aid agencies, or organizations aimed at specific communities. Most of its members do not have adequate knowledge about the use of donated funds. For example, supporters of terrorist activities in one country have legitimate activities in other countries to maintain sources of financial funds. Supporters of these activities get funding by infiltrating and taking over an institution whose members are immigrant communities where the organization originated. Some methods of collecting funds include
withdrawing funds from each member, selling goods, cultural attractions, social activities, door-to-door socialization among the community and donations from members who are classified as capable in the community. Funding for terrorist groups can also involve income derived from legal sources or from a combination of legal and illegitimate sources. The extent to which the role of legitimate funds in supporting terrorism varies depends on terrorist groups and the geographical location where terrorist activities are carried out. From a technical point of view, the methods used by terrorists and their organizations to obtain funds from illegal activities are not much different from the methods used by conservative criminal organizations.

In collecting funds, terrorists work in an organized manner, both in small and large groups by distributing tasks to each of their members and making it easier to raise funds. There are two forms of collecting terrorist funds, namely legal and illegal. Legal activities are carried out in the form of activities such as contributions from members of the terror network and sympathizers both at home and abroad. Illegal activities are carried out with criminal acts such as robbery of banks and government-owned financial institutions, gold shops, non-Muslim entrepreneurs, ITE/cyber crimes and money laundering by conducting business that appears to be legal.

Terrorists began to enter the banking sector by using pseudonyms to hide their real identities and the purpose of using funds in accounts. The most appropriate way to overcome the entry of terrorists into the banking system is by freezing terrorist assets and assets, as stated in the FATF special recommendation. Currently there are 17 Indonesian citizens registered in UNSC 1267, with three of them successfully frozen, namely Encep Nurjaman alias Hambali, Zulkarnaen, and Umar Patek.

When terrorists or terrorist organizations obtain their funds from legitimate activities (such as donations), what terrorists or terrorist organizations do is to disguise the relationship between these legitimate activities and terrorist activities carried out. This makes financing of terrorism difficult to detect or trace. Another important aspect that makes financing terrorism difficult to detect is the size and nature of the transaction. Funding used to increase terrorism activities does not always relate to large amounts of money, and transactions that are carried out are not complex, and can even involve humanitarian funds (for example subsistence assistance).

1. How is the policy to eradicate the crime of financing terrorism as a transnational organized crime in the perspective of criminal law in Indonesia?
2. What is the concept of preventing the crime of financing terrorism as a transnational organized crime in the future?

2 Method

The approach used is a normative juridical method. The specifications of this study are descriptive.

Secondary data used in this study can be divided into 3 (three), namely: Primary legal materials, secondary legal materials, and tertiary legal materials.
3 Results and Discussion

3.1 Policy to Eradicate Crime Funding of Terrorism as Transnational Organized Crime in Perspective of Criminal Law in Indonesia

Indonesia places ASEAN as an important part in collaborating efforts to tackle terrorism. This is done because terrorism in Indonesia is believed to have an international network, including in several ASEAN countries. The Bali Bombing incident involving a terrorist network from Malaysia strengthened this belief. The importance of cooperation agreements between ASEAN countries was conveyed in Indonesian President Megawati’s speech at the 36th ASEAN anniversary in Jakarta in 2003:

“Regional plans of action to tackle such problems had long been established as part and parcel of ASEAN’s functional cooperation, but suddenly these appeared to be inadequate in the face of the cataclysms like terrorist attacks in the United States and in Bali. These two tragedies roused the entire civilized world to the immense danger of international terrorism and other transnational crimes. It became clear that no single country or group of countries could overcome this threat alone. In Indonesia’s view, which is shared by the rest of the ASEAN members, it would take a global coalition involving all nations, all societies, religions and cultures to defeat this threat.”

Indonesia has a comprehensive strategy in handling terrorism funding that combines hard and soft approaches. In dealing with hard approach, Indonesia has issued Law No. 15 of 2003 concerning the Stipulation of Regulations governing the Substitute for Law Number 1 of 2001 concerning Eradication of the Criminal Acts of Terrorism,[2] which was then carried out to change with Law No. 5 of 2018 concerning Amendments to Law No.15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2001 concerning Eradication of Terrorism Criminal Acts (Law on Terrorism) and Law Number 9 of 2013 concerning Prevention and Eradication of Acts of Terrorism Criminal Funding for Terrorism.[3] Furthermore, in the context of strengthening efforts to counter terrorism funding, Indonesia has also ratified the Joint Regulation on the Inclusion of Identity of Persons and Corporations in the List of Suspected Terrorists and Terrorist Organizations and the Blocking of bank account accounts as well as on the Funds belonging to People or Corporations that are Listed in the List of Suspected Terrorists and Terrorist Organizations.[1]

It is noteworthy that in the new Terrorism Law, there is the addition of many regulatory substances to strengthen the existing arrangements in Law No. 15 of 2003, including:[1]

1. New criminalization of various new formulas of acts of terrorism, such as types of explosives, following military or paramilitary training or other exercises both domestically and abroad with the intention of committing criminal acts of terrorism;
2. The imposition of sanctions against perpetrators of criminal acts of good consensus, preparation, trial and assistance to commit criminal acts of terrorism;
3. Expansion of criminal acts on founders, leaders of corporate activities against corporations that are imposed on the founders of management, or people who direct additional criminal activities in the form of revocation of the right to passport within a certain period of time;
4. Decisions on criminal proceedings such as the addition of arrest, detention and extension of arrest and detention for the benefit of investigators and public
prosecutors as well as examination of cases of criminal acts of terrorism by public prosecutors;
5. Protection of criminal acts as a form of state responsibility;
6. Prevention of criminal acts of terrorism carried out by related agencies in accordance with the respective functions and authorities coordinated by BNPT; and
7. Institutional BNPT and its oversight and the role of the TNI.

In addition, there is a strategic fundamental formulation of the results of the input of various members of the Special Committee with the government Committee. If further described, the substance includes the following substances:[1]

1. Define clearly what actually terrorism is, so that the scope of terrorism crimes can be clearly identified so that the criminal act of terrorism is not identified with sensitive matters in the form of sentiments towards certain groups or groups with some aspects of the crime;
2. Eradicate criminal sanctions to revoke citizenship status. According to the universal declaration of human right 1948, it is the right of every person to citizenship and no one can be revoked arbitrarily or denied the right to change his citizenship;
3. Remove the article known by the community as Guantanamo article which places a person as suspected of terrorism in a certain place or location that cannot be known by the public;
4. Add comprehensive provisions regarding the protection of victims of terrorism crime starting from the definition of the victim, the scope of the victim, the granting of the victims’ rights which was originally in Law 15 of 2003 only regulates compensation for restitution, whereas in the Act of Terrorism the Criminal Act has governed granting rights in the form of medical assistance, psychological rehabilitation, psychosocial rehabilitation, compensation for victims who died, the provision of restitution and compensation;
5. Arrange the granting of rights to victims who suffered before the Terrorism Act was passed. This means that for the victims since the first Bali bombing, the bombing of Thamrin;
6. Add prevention provisions. In this context, prevention consists of national preparedness for counter-radicalization and deradicalization;
7. Include provisions that victims of terrorism are the responsibility of the state;
8. Include the duties, functions and authorities of the BNPT
9. Add provisions regarding supervision;
10. Add to the provisions for the involvement of the TNI which in the case of its implementation will be regulated in a presidential regulation within the time of its formation a maximum of 1 year after this Law is passed;
11. Amend the provisions on political crimes in article 5, which stipulates that criminal acts of terrorism are excluded from political crimes that cannot be extradited. This is in accordance with Law Number 5 of 2006 concerning Ratification of the International Convention on Combating Bombings by Terrorists; Add articles that provide sanctions against state officials who abuse the power.

In addition to making changes to the Law on Terrorism Funding, Indonesia also supports prevention efforts including implementing the UN Security Council Resolutions 1267 (1999) and 1988 (2011) which are in line with Indonesia’s national law related to Combating terrorism financing. On that basis, Indonesia already has a List of Suspected Terrorists and
Terrorist Organizations, and a flow of terrorism funds based on a list of Al-Qaeda Sanctions and a List of Taliban for the freezing process transnational extraordinary crimes and crossing national borders. Therefore, the actions taken by the government are carried out both preventive (preventive) and repressive (responsive).[4]

3.2 Concept of Criminal Prevention of Terrorism Funding as a Transnational Organized Crime in the Future

Other cooperation through the ASEAN Convention on Counter Terrorism (ACCT) is one of the achievements of the special ASEAN cooperation in the field of combating terrorism. ACCT was signed at the 12th ASEAN Summit in Cebu, Philippines on January 13, 2007. This convention provides a strong legal basis for enhancing ASEAN cooperation in the area of combating terrorism and financing terrorism. Besides having a regional character, ACCT has a comprehensive scope that covers aspects of prevention, enforcement, in the rehabilitation program so that it has added value when compared to similar conventions. In addition, the convention includes various collaborative cooperation in the field of handling the root causes of terrorism including, cooperation to encourage interfaith dialogues which are ideas and thoughts for Indonesia that have been adopted globally.[4]

ACCT is expected to provide added value compared to international legal instruments similar to designs that have strong regional characteristics. As stipulated in the ACCT, this convention shall take effect 30 days after ASEAN Member States submit the six instruments of ratification to the Secretary General of ASEAN. Indonesia itself ratified ACCT through Law No. 5 of 2012 which was ratified on April 9, 2012. In 2013, all ASEAN countries have ratified the ACCT marked by the submission of instruments of ratification by Laos and Malaysia to the ASEAN Secretariat in January 2013. With the signing of the ACCT by all ASEAN member countries, ASEAN has taken other steps in fulfilling the ASEAN Security and Political Blueprint, as well as in efforts to develop the ASEAN region by creating a safer situation for everyone.[4]

Cooperation carried out by governments in the region is flexible in nature, tailored to their individual needs. to always be the same. This happens due to many things, and one of them is because each ASEAN member country has a different perception, but the regional countries have the same goal as tackling terrorism funding comprehensively. As a concrete step, cooperation in a bilateral perspective is also carried out. An example is the formation of a memorandum of understanding between Indonesia and the Philippines to establish a framework for dealing with security disturbances and crime between the two countries. This memorandum of understanding will provide a framework for cooperation in preventing, suppressing, combating international terrorism and transnational crime.[4]

The post-retreat commitment of the ASEAN Defense Ministers (ASEAN Defense Ministers’ Meeting/ADMM) in Singapore on February 6, 2018 stated that the crime of financing terrorism was considered the most serious security threat. In addition, ASEAN defense ministers are very concerned about the rise of terrorism in the region carried out by individuals and groups that are increasingly sophisticated with tactics and deadly weapons. The ASEAN Defense Ministers also stated the scale and complexity of the threat of terrorism in the region continues to grow due to the flow of foreign fighters and cross-border terrorists. That is why, ASEAN defense ministers agreed to increase counterterrorism to improve ASEAN resilience against terrorist funding, work together to respond to ongoing threats, and ensure recovery from terror attacks.[4] Through the efforts of the Defense Ministers in this region, ASEAN will increase practical cooperation through joint exercises and training,
sharing information, increasing dialogue and various practical experiences, and fighting terrorist propaganda through disseminating positive messages about respect, inclusive and moderation.[4]

The same regional cheer is considered effective in tackling terrorism funding. The Government of Indonesia and the five ASEAN countries agreed to work together on the exchange of strategic information through “Our Eyes” to counter the threat of financing terrorism and radicalism. Cooperation aims to ward off and also deal with all acts of terrorism and radicalism together so that these crimes do not spread and cause anxiety and fear among citizens of a number of countries. The mechanism adopted is that participating countries can exchange strategic information that can be used to help improve operations against funding of terrorism and radicalism.[5]

The five countries that agreed were Malaysia, the Philippines, Thailand, Singapore and Brunei Darussalam. Each of these countries has a different way of dealing with the threat of terrorism. Therefore, synergy and coordination are needed in order to obtain strategic information. Like the concept of “Five Eyes” by the United States and its allies, the cooperation involves elements of defense or military collaborations and integrated intelligence networks that can be carried out in which participant countries can exchange strategic information, which can be used to help improve operations against funding of terrorism and radicalism.[5]

4 Conclusion

The eradication of the crime of financing terrorism in Indonesia is done in 2 ways, namely soft approach and hard approach. In relation to the soft approach, Indonesia carries out a program of de-radicalization and counter-radicalization. The de-radicalization approach is a counterweight to the law enforcement approach using the criminal law tool for overcoming crime with a penal approach. While the hard approach is to issue laws and ratify international treaties that Indonesia is involved in and addressed to, which forms the legal basis for the Indonesian National Counterterrorism Agency (BNPT), the Indonesian National Armed Forces (TNI), and the Indonesian National Police (POLRI) for eradicate terrorism funding. The crime of financing terrorism is a transnational crime that is difficult to handle by one country. Therefore, it requires regional cooperation in order to build regional security in the Southeast Asian region. ASEAN has a set of counter-terrorism policies that have been ratified at different times by its members as a form of regional policy harmonization. Although ASEAN countries have their own authority to establish cooperation between countries outside the region, encouragement will be the same for other ASEAN member countries. Harmonization is the maximum achievement for efforts to tackle regional areas.
References


Legal Protection for Copyrighted Song Holders for Songs Used by Other Parties Illegally

Berthania Pitaloka Puspaasri¹, Budiharto², Ro’fah Setyowati³
{berthaniaapitaloka@yahoo.co.id¹, budiharto@live.undip.ac.id², rofah@live.undip.ac.id³}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹, ², ³

Abstract. A song is one of the works that comes from the human thought process which is then manifested in the form of creation that can be heard its beauty in the unity of lyrics, notations, and instruments. The creation of songs requires absolute rights, namely copyright to provide legal protection for the creator. The purpose of this research is to know and understand the forms of legal protection for copyright holders of songs and analyze the responsibilities of those who use and carry out commercial activities of copyrighted music. The method used is a normative juridical approach, with the specifications of descriptive analysis. Data are collected from the secondary data, with the analytical method of Qualitative Analysis. Based on the results of the study, it is revealed that the form of legal protection for copyright holders for songs commercialized by other parties in the form of registration of the work is given the right to sue against copyright infringers, and impose sanctions in accordance with copyright infringement committed. The responsibility of those who use and carry out commercial activities without permission is to pay a sum of money in compensation for the losses suffered and return the title song that was replaced to the original one.

Keywords: Protection, Copyright, Song.

1 Introduction

1.1 Background

In making a creation to produce a copyrighted work, it is necessary to think through the ideas and ideas of the creator. These ideas can be in the form of books, songs or music, works of art, photography, drama, poetry, and others. Due to a large number of works needed by the creator, the creation should belong to the personal creator of the work.[1] Therefore, a copyright must be given as part of Intellectual Property Rights to protect and defend the ideas and creators’ ideas.

Copyright consists of economic rights and moral rights. Economic rights are the rights to obtain economic benefits for the Work and Related Right products. Moral Rights are rights inherent in the Creator or Actor that cannot be removed or deleted without any reason, even though Copyright or Related Rights have been transferred. Copyright protection is not given to ideas or ideas because the copyrighted work must have a distinctive form, is personal, and shows authenticity as a work that is born based on ability, creativity, or expertise, so that the work can be seen, read, or heard.[2]

In Indonesia, the regulation of protection of creation began from the entry into force of Auteurswet 1912 (Stb. 1912 No. 600), 23 September 1912 during the reign of the Dutch East
Indies. After Indonesia gained its independence and the National Copyright Act was first formed in 1982, which changed several times; however, the musical works are still listed as works protected by copyright.[3] Along with the times, the Copyright Act continues to change, beginning with Law Number 6 of 1982 concerning Copyright, then the law was changed to Law Number 7 of 1987 concerning Copyright, subsequently changed to Law Number 12 of 1997 concerning Copyright, was later changed again to Law Number 19 of 2002 concerning Copyright, and finally changed to Law Number 28 of 2014 concerning Copyright which is still valid today.[4]

Cases related to copyright infringement of recent songs that have occurred are Reporting the songwriter of children’s songs Tita Nurwati or broadly known as Titta Rizky against PT. Global Music Digital Era (GMED) to East Java Regional Police. This happened because PT. Digital Music Global Era which has uploaded and commercialized songs by attracting economic rights through Ring Backtone (RBT) without Tita Nurwati’s permission as the owner as well as the creator and procedure of the song Galau and Allah. PT. Global Music Digital Era violated articles including copyright infringement Article 113 paragraph (2), Jo Article 9 paragraph (1) letter d, Jo Article paragraph (3) RI Law Number 28 of 2014.

The case between Tita Nurwati and PT. The Digital Music Global Era (GMED) above is one of the many copyright violations of ownership of a song. So, many cases of copyright infringement that occurred in Indonesia is something that is worrying the creators of a work. A form of creativity someone who should be valued, it is used as an opportunity to seek benefits for various parties who are not responsible. This is a violation of the Copyright Act.

Based on the above problems, the authors are interested in conducting further research on the issue of copyright infringement of the song that occurred between Tita Nurwati as the song owner and PT. Global Music Digital Era (GMED) as the party that uploads and commercializes songs through Ring Backtone (RBT) without permission and legal remedies under the title “Legal Protection for Copyrighted Song Holders for Songs Used by Other Parties Illegally.”

1.2 Formulation of the problem

Based on the background stated above, the problems that will be examined in this study are:

1. What is the form of legal protection for copyright holders for songs commercialized by other parties?
2. What are the responsibilities of those who use and carry out commercial activities of copyright from the copyright owner without permission?

2 Method

The method of dependency used in the writing of this law is normative juridical. This legal research specification uses descriptive analytical research. This research is considered as normative, so the data needed in this study is secondary data. In this study, the method of analysis used by the writer is qualitative analysis.
3 Results and Discussion

3.1 Legal Protection for Copyright Holders of Songs Commercialized by Other Parties

In a cultural perspective, music as an artistic element of culture cannot be separated from the social reality of the dynamics of life that develops in the society concerned. As an art, music cannot be separated from life. Even the intrinsic values of a musical work (song) on a certain scale are a reflection that represents a picture of the socio-cultural conditions associated with other fields of life, including the cultural security of a nation[5].

Music that always goes hand in hand with human life up to the present day continues to experience significant developments and changes. These conditions resulted in increasingly intense competition in the world of music and the people involved in it. This competition occurs haphazardly, resulting in the emergence and occurrence of violations of the law, for example such as piracy, recording, arranging, duplicating, transferring manifest and change the composition of part or all of a song without the permission of the owner.

3.1.1 The Case of Tita Nurwati

Based on the results of an interview with Rozi Maulana, [6] advocate at the Law Office of Togar Situmorang & Associates, this case began where Tita Nurwati was the legitimate creator and producer of the song Galau and Allah sung by a young artist named Rayvelin. Then, PT. Global Music Digital Era as the label that houses songs of Tita Nurwati has intentionally violated the law by commercializing and uploading it without Tita Nurwati’s permission as the owner, creator, and legal producer of the song that has been registered with the Director General of Intellectual Property.

PT. Global Music Digital Era as the label of Tita Nurwati is indicated to have carried out commercial activities and uploaded without permission via Youtube and used the song as RBT (Ringback Tone) in several providers namely Telkomsel, Indosat and XL. In addition, Tita Nurwati as the songwriter did not know that PT. Digital Music Global Era has replaced the title song ‘Allah’ with the name ‘Sholawat’. Then, there are indications of other violations, namely PT. Global Music Digital Era falsified the signature of the contract, this is because Tita Nurwati as the songwriter felt never signed a contract with any party, and the copy of the contract that was said to have been signed was not held by Tita Nurwati so Tita Nurwati did not know the contents of the contract.


From the series of cases above, the position can be concluded that PT. Global Music Era Digital has committed copyright infringement against Tita Nurwati by commercializing and uploading songs to Youtube and changing the title song “Allah” to “Sholawat” without permission and there are indications that PT. Digital Music Global Era has falsified Tita Nurwati’s signature.

3.1.2 Infringed Author Rights

Copyright is one of the rights contained in Intellectual Property Rights (IPR). Unlike other rights in Intellectual Property Rights (IPR) which give full rights to own and control a work of creation, copyright exists to prevent and protect the work of others. Copyright is born
automatically since the creation is realized and is embedded in the creator until a certain
period. That is what gives birth to the moral rights of the creator of his creation.

As the creator and rightful owner of the song Galau and Allah, Tita Nurwati has the
absolute right to protect and maintain her creation for her exclusive rights as creator of a
copyrighted work, which have been violated by PT. Digital Music of the Digital Era as
explained in Act Number 28 of 2014 concerning Copyright Article 4 and has also changed
the song title without the author’s permission, so that the integrity of the moral rights of the
creator has also been violated as provided for in Law Number 28 of 2014 concerning
Copyright Article 5.

Besides that, PT. Global Music Digital Era also intentionally commercialized and
uploaded without the permission of Tita Nurwati’s song via Youtube and used the song as
RBT (Ringback Tone) in several providers namely Telkomsel, Indosat and XL. Due to these
conditions, economic rights which are one of the exclusive rights of Tita Nurwati are not
fulfilled as stated in Law Number 28 of 2014 concerning Copyright Article 9.

In addition to changing the song title and intentionally commercializing without the
author’s song permission, PT. Digital Music Global Era is also suspected of violating the law
by faking contract signatures. Thus PT. Global Music Digital Era has committed acts of
lawlessness that enter the realm of criminal law.

To better know and understand about copyright infringement committed by PT. Digital
Music of the Digital Era to Tita Nurwati, the writer conducted an interview with Rinitami
Njatriani, as a lecturer at the Faculty of Law of Diponegoro University who was competent
and expert in studying Intellectual Property Rights, especially regarding Copyright. According
to him, the cause of copyright infringement in the case is because first, law enforcement
related to copyright is not maximal in this case the right to receive royalties. Second, the point
is that people will do anything to be able to meet the needs that they think will never be
enough, including by doing copyright infringement. Third, the Government needs to echo
outreach to the general public, especially people who own the work with the theme of the
importance of registering the work.

From the description above, it can be concluded that PT. Digital Music Global Era has
violated the rights possessed by Tita Nurwati as a legitimate songwriter namely exclusive
rights including moral rights and economic rights.

3.1.3 Legal Protection for Copyright Holders under Law Number 28 of 2014 Regarding
Copyright

Legal protection given to the people of Indonesia is an implementation of the principles of
recognition and protection of human dignity and sources that originate from Pancasila and the
principles of the rule of law based on Pancasila. Legal protection is essentially every person
has the right to get protection from the law. Almost all legal relations must receive protection
from the law.

The results of a copyrighted work are produced and developed on the basis of the thought
and creativity of the creator. Thus, it requires a very long time to produce a work of
creation. In addition, the work of creative works also analyzes the various effects contained
therein. So, legal protection for song and music composers or even legal protection for songs
and music is a common and absolute thing because in making a copyrighted work there are
consequences that can be caused.

Legal protection of copyright is inseparable from the notion of copyright that is based on
Law Number 28 of 2014 concerning Copyright Article 1 Paragraph 1, which contains:
“Copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a work is realized in tangible form without reducing restrictions in accordance with statutory provisions.”

Then it is reaffirmed in Law Number 28 of 2014 concerning Copyright Article 4 which explains:

“Copyright as referred to in Article 3 letter A is an exclusive right consisting of moral rights and economic rights.”

An exclusive right in a copyright is a privilege granted to the creator for his work. Absolute exclusive rights are reserved for the creator so that other parties are not allowed to use a copyrighted work without the author’s permission. In the case of the song Galau and Allah by Tita Nurwati, her exclusive rights as the creator of the titles of the two songs were violated by PT. Global Music Digital Age. Because PT. Digital Music Global Era did not fulfill Tita Nurwati’s moral and economic rights by intentionally commercializing without the permission of Tita Nurwati’s song via Youtube and using the song as RBT (Ringback Tone) in several providers, replacing the title song ‘Allah’ with the name ‘Sholawat’ without Tita Nurwati’s notice and permission.

Viewed from the object, economic rights include the right to announce and the right to reproduce. Announcement is reading, broadcasting, exhibiting, selling, distributing or distributing a work by using any tools including internet media, or doing it in any way so that a work can be read, heard or seen by others. Whereas propagation is an increase in the number of a work, both in whole and in a substantial part, by using the same or unequal materials, including permanent or contemporary outsourcing.[8]

The moral rights include the right of the creator to put his name in the work and the right of the creator to prohibit others from changing their work, including the title or content of the song. The moral rights system basically comes from the fact that the copyrighted work is a reflection of the personality of the creator.

The systematic arrangement in Law Number 28 Of 2014 concerning Copyright regulates the explanation and protection of the work. However, there are no rules that clearly and specifically study the creation of songs or music. Law Number 28 of 2014 concerning Copyright only explains very little about the creation of songs and music. One of them was mentioned in Law Number 28 of 2014 concerning Copyright article 40 paragraph (1).

In this case, Tita Nurwati’s song Galau and Allah belongs to a protected work. Because based on the results of an interview with Rozi Maulana [6], advocate at Togar Situmorang & Associates Law Office that the song Galau and Allah owned by Tita Nurwati has been popular with the public and registered with the Directorate General of Intellectual Property Rights (DJKI). Thus, PT. Digital Music Global Era who intentionally commercialized and changed the song title without permission from Tita Nurwati has violated copyright law.

Talking about the registration of a work is actually not determined by the Copyright Act required to be registered. The fact that a work is not registered raises many problems regarding law violations of the work. Copyright registration should have several benefits, namely:[9]

1. Anticipating the existence of other parties who use without permission;
2. Anticipating disputes with copyright holders;
3. Requesting the cancellation of the recording of our Work by another party which is done without rights.
The registration of the work is carried out at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia. By registering these songs officially, it will record the name, address, and title of the work in question in the public register of the work that was held specifically for this purpose. Records are made on the public register of works and official announcements are made in the addition of state news. The procedure for registering a work is as follows:[10]

a. Application for registration of a work must be submitted by filling out the form provided in Indonesian and typed in duplicate

b. Applicants must attach:
   1. Special power of attorney if the application is filed through a power of attorney.
   2. For song creation, examples of the creation are 10 pieces of notation or poetry.
   3. An official copy of the notary deed of establishment of a legal entity or a photocopy of it, if the applicant is a legal entity.
   4. Photocopy of residence identification card.
   5. Proof of payment of application fees.

c. In the case of an application for registration of a work in which the copyright holder is not the creator, the applicant is required to attach proof of the transfer of copyright.

According to Rinitami Njatriani,[7] in the practice of copyright, there is a dualism of registration of creation. The first opinion says that copyright does not need to be registered because it automatically belongs to the creator, Tita Nurwati. The second says that copyrights need to be registered in order to get a Copyright Certificate. Copyright certificates can be used as evidence so that there is legal certainty that the copyright certificate from Tita Nurwati really belongs to her, so that it has a guarantee of legal certainty. However, law enforcement related to copyright has not been maximally carried out by law enforcement. Thus, if there are problems related to copyright cases, especially those that occur with Tita Nurwati, it is still considered to be of little importance and is ignored by the community and law enforcement.

From the description that has been described above, it can be concluded that PT. Global Music Digital Era has committed a copyright violation against Tita Nurwati by commercializing and uploading songs to Youtube and changing the title song “Allah” to “Sholawat” without permission so that it has violated its exclusive rights namely moral rights and economic rights. The form of legal protection for Tita Nurwati’s copyright case has been regulated in Law Number 28 of 2014 concerning Copyright, but its implementation has not been maximized.

3.2 Responsibilities of those who use and carry out commercial activities of copyright from the copyright owner without permission

Responsibility is human self-awareness of all intentional and unintentional behavior and actions. Responsibility must also come from the heart and self-will for the obligations that must be accounted for.[11] To obtain or increase awareness of the responsibility must be pursued and sought through education, counseling, exemplary, and piety to God Almighty.

Speaking of civil law, responsibility cannot also be separated from Intellectual Property Rights. Every person or legal entity that has a relationship with Intellectual Property Rights, especially in the field of song must be responsible with his creation and respect the creation of others so that legal problems do not occur in the future.
3.2.1 Law Enforcement for Parties Using and Conducting Commercial Copyright Activities from Copyright Owners without Permit under Law Number 28 of 2014 Regarding Copyright

Law enforcement against copyright is not something that stands alone apart from the performance of law enforcement in general. Law enforcement against copyright is an integral part of the law enforcement system in the State of Indonesia. The law functions as a means of protecting human interests. For human interests to be protected, laws must be implemented effectively. Law enforcement can take place normally, peacefully and can occur due to violation of the law. In this case, the law violated must be upheld. Through law enforcement, this law can become reality.[3]

In this case a violation of copyright law committed by PT. Digital Music Global Era, they have commercialized and uploaded without permission via Youtube and is used as an RBT (Ringback Tone) in several providers namely Telkomsel, Indosat along with XL song titled Troubled and God owned by Tita Nurwati. In addition to commercializing and uploading without permission, PT. Digital Music Global Era is also indicated to have replaced the title song ‘Allah’ with the name ‘Sholawat’ without notice and with the permission of Tita Nurwati as the song owner. This situation proves that PT. Digital Music Global Era violates the provisions of Law Number 28 Of 2014 concerning Copyright Article 5.

If PT. Global Music Digital Era is proven to have violated the law on copyright owned by Tita Nurwati and thus can be ensnared by the provisions of Law No. 28 of 2014 concerning Copyright Article 113 paragraph (2).

In addition to changing the song title and intentionally commercializing without the author’s song permission, PT. Global Music Digital Era is suspected of violating the law by faking a contract signature. Tita Nurwati said she had never signed a contract with any party, and Tita Nurwati never held a copy and did not know the contents of the contract. Thus, if PT. Global Music Digital Era is proven to have violated the law, so it can be snared by the Indonesian Criminal Code Article 264 which is punishable by a maximum imprisonment of eight years.

Law Number 28 of 2014 concerning Copyright regulates that a copyrighted work will receive legal protection if the work of each creator’s work can show its authenticity. This principle confirms that every copyrighted work will not be protected by Law Number 28 of 2014 concerning Copyright if a copyrighted work is a copy of someone else’s.

From the description above, it can be concluded that law enforcement against violations that have been committed by PT. Digital Music Global Era must be upheld as stipulated in Law No. 28 of 2014 concerning Copyright because the songs created by Tita Nurwati have been registered at the Directorate General of Intellectual Property which of course gets legal protection.

3.2.2 Case Dispute Settlement between Tita Nurwati and PT. Global Music Digital Age

In this case the problem that occurred between Tita Nurwati with PT. The Global Music Digital Age can be resolved through two legal instruments. Law Number 28 Of 2014 concerning Copyright regulates and provides two legal instruments that can be used to crack down on perpetrators of Copyright infringement on songs or music, namely through means of criminal and civil law instruments. In addition to these instruments, Law Number 28 of 2014 concerning Copyright Article 95 also regulates dispute resolution by litigation and non-litigation, including through alternative dispute resolution, arbitration, and courts.
In resolving this case, the parties should choose to settle disputes outside the court (non-litigation) through Alternative Dispute Resolution namely mediation. Mediation is carried out with the help of the mediator. Mediation is the right choice because settlement in a judicial institution takes a lot of time, costs higher, the desired decision is difficult to obtain, and causes new problems so that mediation is considered to be an effective choice to reconcile the parties to the dispute. Mediation is carried out to obtain agreement from the parties to the dispute so that it is reached (Win-Win solution) which is a decision where no one wins or loses in the dispute.

From the explanation above, it can be concluded that law enforcement against copyright infringement on songs created by Tita Nurwati where PT. Digital Music Global Era must be responsible for his actions by paying a sum of money in compensation for the losses suffered by Tita Nurwati and returning the song titles that were replaced to the original titles. The parties agreed not to proceed with the dispute on the court line so that the end of the dispute was peace.

4 Conclusion

Based on the results of research and discussion can be concluded include the following:

1. The forms of legal protection for copyright holders for songs commercialized by other parties including registration of works in the Directorate General of Intellectual Property (DG Intellectual Property Rights), giving the right to sue copyright infringers, and imposing sanctions in accordance with copyright infringement committed. In this case, PT. Global Music Digital Era has committed copyright infringement by changing the title of the song without the author’s permission so that it violates the moral rights of the creator. In addition, it has violated Tita Rizky’s economic rights as the copyright holder by intentionally commercializing and uploading without Tita Nurwati’s permission via Youtube and using the song as RBT (Ringback Tone) in several providers. Therefore, PT. Global Music Digital Era must be sanctioned in accordance with copyright infringement committed.

2. The responsibility of the party that uses and conducts commercial activities of the copyright of the copyright owner without permission, that is by paying a sum of money as compensation for the injured party and returning the song title that was replaced to the original one. In this case, PT. Digital Music Global Era violated the copyright of Tita Rizky as the injured party because the song had been used without permission by PT. Global Music Digital Era for commercial purposes and change the title song “Allah” to “Sholawat”, so that PT. Digital Music Global Era must be responsible for paying a sum of compensation to Tita Nurwati and returning the title song to “Allah”, as the original one.

5 Suggestion

Based on the results of the study, the author can provide several suggestions including the following:

1. For songwriters
In an effort to provide optimal legal protection, it is expected to register the work which constitutes a guarantee to obtain legal protection in the event of acts of violation used by other parties for commercial activities.
References


[7] Interview with Rinitami Njatrijani, Lecturer at the Faculty of Law, Diponegoro University (September 29, 2019, in the Lecturer Room at the Faculty of Law, Diponegoro University).


Implementation of Land Redistribution as an Effort to Increase Community Economic Revenue

Diah Ayu Kholivia Zulfa¹, Nur Adhim², Ana Silviana³
{kholivia15@gmail.com¹, nur_adhim@live.undip.ac.id², ana_silviana@live.undip.ac.id³}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹,²,³

Abstract. Land reform program is a strategy to achieve justice in the acquisition and use of agricultural land. The purpose of land reform is to enhance farmers' incomes and living standards. To carry out these objectives, the government implements a land redistribution program. Land redistribution of Land Reform Objects has been carried out in Cangak and Jatiroyom Village, Bodeh Subdistrict, Pemalang Regency in 2018. The results obtained in this study are Land Reform Distillation Objects for Landreform in 2018 in Bodeh Subdistrict, Pemalang Regency with 400 fields, covering 56.6 hectares. Freehold rights are for Jatiroyom Village and Cangak Village, both are in Bodeh District. The productivity results obtained from the agricultural sector can increase farmers' economic income. In the implementation of land redistribution of land object information there are factors and supporting and inhibiting factors, both external and internal factors.

Keywords: Land Reform, Land Redistribution, Increasing Community Income.

1 Introduction

Land is one of the most important fields in the socioeconomic life of the Republic of Indonesia. To support and drive development, natural resources, both in production and land, are needed as pillars as well as the foundation of development. Along with the development of civilization, the development is needed due to technological advancements, and the economic sector activities are increasingly rapid and diverse. The dynamics of development have put land tenure becoming increasingly important and strategic.

On the one hand, the land must be utilized for the maximum welfare of the people, physically, mentally, fairly, and evenly, while on the other hand, it must also be preserved. As a gift from God as well as strategic natural resources for the nation, the state and the people, land can be used as a means to achieve the welfare of the Indonesian people so that it is necessary for the State to participate in regulating it. This is in accordance with the constitutional mandate as stated in Article 33 Paragraph (3) of the 1945 Constitution which reads “The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people” that means, earth, water, and the natural resources contained therein must be managed in such a way as to be able to transform society economically, culturally and ecologically. This provision becomes the philosophical foundation for the government in the framework of natural resource management (SDA) and regulates the rights to control land as outlined in Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Resources (hereinafter referred to as UUPA).[1]
State Gazette Number 2043 is the proof that the Indonesian people have already had agrarian laws national[2]. In Law Number 5 of 1960 Article 10 paragraph (1) “Every person and legal entity possessing a right to agricultural land in principle is required to actively work on it or work on it by preventing methods of extortion.” This indicates that the land functions socially Therefore, agricultural land must be actively worked on. Since September 24, 1960, the peasant people have the legal power to fight for their rights to land, do equitable distribution of produce and cultivate their land for prosperity.

The problem of inequality in land ownership is often found by Indonesians. The farmers do not have agricultural land, while the upper economic group has many land. So, this is contrary to the objectives of the LoGA. In order to achieve the objectives of the establishment of the LoGA, efforts were made to reform the agrarian law which later came to be called Agrarian Reform with the main objective of land reform which was one of the programs, namely the redistribution of ownership and control of land.

Land redistribution is part of land reform and land reform is part of agrarian reform. Agrarian reform with the principle of justice and welfare of the people is carried out gradually and has been started since 2007. The purpose of land redistribution is to achieve equitable distribution of agricultural land, because in reality in Indonesia there are still many farmers who have land that is less balanced with the necessities of life that must be fulfilled, there are even some farmers who do not have agricultural land.

Bodeh Subdistrict is one of the regions that conducts land redistribution programs due to the expiration of the ex-land use rights (HGU). Starting from the existence of the land of Cultivation Right Number 540.2/001/1/33/92/20-10-1992 on behalf of PT. Adi Wiyata Panca Arga is located in Bodeh District, Pemalang Regency with an area of approximately 72,277 Hectares, and that was originally a plantation which is quite healthy and develops quite well with cacao, sengon, coconut, sugar cane and rubber. One of the abolition of the right to cultivate (HGU) is due to the expiration of the term, then the status of the land becomes state land. The former right-holders are required to protect the land concerned before the next recipient or land user is determined. After that period ends, then the state will regulate its management and use.

Based on data from the Central Statistics Agency (BPS) in Pemalang Regency in 2018, Bodeh District has an area of 8,598.56 hectares. With a population of 2018 of 61,728 people (BPS of Pemalang Regency in 2018). This village has a residential area of 926.61 ha, 2,587.03 ha of paddy agriculture, 660.82 ha of moor, forest area of 4,067.55 ha. From the total area, Bodeh District still has quite large rice fields.[3]

The large area of paddy fields shows that agricultural land in Bodeh District is still fertile and has the potential to be developed into an agropolitan area, which is an area whose community economy is based on the agricultural sector. To develop Bodeh District as an agropolitan area, it is necessary to control and optimize the use of agricultural land. From year to year, the area of paddy fields is decreasing, especially for rice plants, so it is feared that it could disrupt food availability in Bodeh District. Meanwhile, on the other hand, the surrounding community is the community that most do not own land.

For this reason, the Pemalang District government held a land redistribution program for land reform objects carried out in several villages in Bodeh Subdistrict. One of which was in Jatiroyom Village and Cangak Village because the locations of the former land use rights were located in both areas of the Village. The land used in this land redistribution program is land landforms covering land that was formerly used for Cultivation Rights Number 540.2/001/1/33/92/20-10-1992 on behalf of PT. Adi Wiyata Panca Arga, which had expired and later became State land. With this activity, it is expected that the legal certainty of land
rights will be guaranteed so that land productivity will increase and land utilization efforts will develop so that there is no longer an imbalance in agricultural land ownership which is detrimental to small farmers.

Based on the description above, the author is interested to find out and explore more about the matter by conducting a study entitled “Implementation of Land Redistribution of Land Object Reform as an Effort to Increase Community Economic Income (Study on Land Redistribution Activities in Bodeh District, Pemalang Regency)”. Based on the background above, several problems can be formulated as follows:

1. How is the implementation of Land Redistribution Land Object activities in 2 (Two) Bodeh Subdistrict Villages in increasing community economic income?
2. What is the land reform policy in an effort to improve the community's economy?
3. What factors are supporting the implementation of Land Redistribution activities in Bodeh District and the obstacles behind?

2 Method

The method used in this research is a sociological juridical approach (social legal approach). The juridical research of the researcher is guided by Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Giving Compensation.[4] Sociological legal research aims to take measurements of certain statutory regulations regarding its effectiveness.

The research specifications used in this study are analytical descriptive. The data needed in this study the authors take from primary data and secondary data.

3 Results and Discussion

3.1 Implementation of Land Redistribution of Land Object Information in Bodeh District, Pemalang Regency

The redistribution program of TOL (Land Object Landrefrom) in Cangak Village and Jatiroyom Village, Bodeh District was decided by Decree of the Head of Regional Office of the National Land Agency of Central Java Province Number 11/KEP-33.14/I/2018 dated 11 February 2018 concerning the Determination of the Location of Land Redistribution Activities Object of Landreform in Central Java Province Fiscal Year 2018.[5]

The implementation of TOL redistribution in Cangak Village and Jatiroyom Village, Bodeh District covers the terms and priorities, procedures, and rights and obligations of land redistribution recipients.

Based on the results of the author's interview with Mr. Koso as the Head of Hamlet I of Cangak Village, Bodeh District, Pemalang Regency, explained that the recipient of TOL redistribution totaling 393 families, all of them were cultivators. The recipients of the TOL redistribution are spread in two villages in Bodeh sub-district namely Cangak Village and Jatiroyom Village. In total, there are 400 plots of land that have been redistributed.[6]

As regulated in Article 9 of Government Regulation No. 224 of 1961 concerning Implementation of Land Distribution and Giving Compensation, there are two conditions. These requirements are divided into two conditions, general and specific. General conditions
include Indonesian citizens; Residing in the sub-district where the relevant land is located; Strong work in agriculture.

Looking at the data in the field, the recipient of TOL redistribution in Cangak Village and Jatiroyom Village, Bodeh District, Pemalang Regency is a group member. Cultivators are farmers, who legally work or actively cultivate land that is not theirs, by taking all or part of their production risk. Cultivators here are the first priority as stated in Article 8 paragraph 1 letter a Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Giving Compensation.

According to the author, recipients of TOL redistribution in Cangak Village and Jatiroyom Village, Bodeh Subdistrict, Pemalang Regency have fulfilled the requirements and priorities of Article 8 jo Article 9 of Government Regulation No. 224 of 1961 concerning Implementation of Land Distribution and Distribution of Indemnity and Implementation Guidelines and Guidelines for Implementation of TOL Redistribution Activities 2018.

According to the Guidelines for the Implementation of Landreform Activities for Fiscal Year 2018, there are several procedures and stages in the implementation of land redistribution. The stages of the TOL redistribution activities are as follows:

The following are the steps in implementing Land Redistribution activities:
1. Preparation and Planning
   Activities in preparation and planning consist of: Preparation of Operational Guidelines for Activities (POK), Coordination of Preparation and Planning of Activity Schedule, Determination of Location, Determination of Implementers.
2. Implementation of Activities
   The implementation of Land Redistribution Activities in Pemalang Regency can be reported as follows:
   a. Location of Activity
      The Redistribution of Land Objects for Landreform in Pemalang District was carried out in Cangak Village and Jatiroyom Village, Bodeh District. This location is based on the Decree of the Head of the Regional Office of the National Land Agency of Central Java Province Number 11/KEP-33.14/I/2018 dated February 11, 2018 concerning the Determination of the Location Location of the Redistribution of Land Objects in the Land of the Land of the Province of Central Java for the 2018 Budget Year.
   b. Event organiser
   c. Physical and Financial Targets
   d. Activity Stages

In the implementation of Land Re-Land Land Redistribution activities, the steps taken are:
1. Counseling
   The outreach of Land Redistribution activities in Pemalang District was carried out in Cangak Village and Jatiroyom Village, Bodeh District on April 12, 2018 with Minutes Number 310.4/BA-33.27/IV/2018 and Minutes Number 310.5/BA-33.27/IV/2018.[7]
2. Inventory and Identification of Subjects and Objects
   Inventory and Identification Phase of Subjects and Objects are carried out by officers to the cultivators, including:
a. Subject Data: domicile address, subject identity in accordance with KTP or other certificate from the Village/Lurah Head, family card, photocopy of KTP, statement of physical control of the parcel of land.
b. Data Object: use and utilization of land (agriculture), in accordance with the Decision on Location Determination, according to the conditions set in the legislation, physically and legally clean and clear.

The results of the Inventory of Subjects and Objects in Cangak Village and Jatiroyom Village, Bodeh District are 400 fields/393 Family Cards (KK).

3. Landreform Advisory Committee
   The District/City Landreform Advisory Committee was formed in accordance with Presidential Decree Number 55 of 1980 concerning the Organization and Working Procedures for the Implementation of Land Reform.[8]

4. Affirmation of Land Landform Information
   Issuance of Decree of the Head of Regional Office of the National Land Agency of Central Java Province Number 938/KEP-33.27/X/2018 Date 09-10-2018 concerning Affirmation of Land which is directly controlled by the State to become Land Object of Land Reform to land located in Pemalang Regency, Central Java Province.[9]

5. Selection of Recipient Candidates for Land Redistribution
   Selection is carried out for prospective land redistribution recipients to ensure the suitability of data on the List of Cultivators and compliance with applicable terms and conditions with the results of the Official Report on Juridical Data Collection/Selection of Land Recipient Objects in Landreform Objects in Cangak Village and Jatiroyom Village, Bodeh District Pemalang District Number 04/BA.Redis/V/2018 05-11-2018.

6. Measurement and Mapping of Plots
   The resulting output is a Map of Land and Measurement.

7. Issuance of Decree on Land Redistribution of Land Objects

8. Bookkeeping Rights and Issuance of Certificates
   Based on the Decree of the Head of the Land Office of Pemalang Regency Number 938/KEP-33.27/X/2018 and Number 939/KEP-33.27/X/2018 concerning the Granting of Ownership Rights in the Context of Land Redistribution of Land Reform Objects in Cangak Village and Jatiroyom Village.

9. Submission of Certificates

10. Beneficiary Farmer Development Facilities
   The activities of fostering beneficiary farmers are carried out in the Cangak Village Hall and Jatiroyom Village, Bodeh District, Pemalang Regency with the final result in the form of Minutes Number 899/BA-PEN/X/2018 on October 22, 2018.[10]

11. Budget Realization
   Land Redistribution Activity in Pemalang District in 2018 with a budget target of IDR 65,858,000.00 realization until 31 December 2018 reaching IDR 65,857,900.00 (99.99%).

Based on the results of the author's research, the implementation of land redistribution in Bodeh District itself, there are 393 Family Card recipients of land rights with a total land area of 56.5 Ha.

The effectiveness of the implementation of TOL redistribution in 2 villages of Bodeh Subdistrict, Pemalang Regency is influenced by several factors. According to Lawrence M.
Friedman in his book entitled “Law and Society”, quoted by Soerjono (Soerjono Soekanto and Abdullah Mustafa, 1982: 13), the effectiveness of a law is strongly influenced by three factors, which we know as legal effectiveness, where the three factors are:

1. Legal Substance. The substance of the law is the core of the law itself.
2. Legal Structure. The legal structure is law enforcement. Law enforcers are law enforcers who are directly involved in the field of law enforcement.
3. Legal Culture. Legal culture is how the attitude of the legal community in which the law is carried out. If public awareness to comply with established regulations can be applied then the community will be a supporting factor. However, if the community does not want to comply with existing regulations, the community will be the main obstacle in enforcing the regulation in question.

From the results of the author's research on the implementation of TOL redistribution in 2 villages in Bodeh Subdistrict, Pemalang Regency, the implementation of TOL redistribution has been carried out effectively. Both in terms of substance, structure, and legal culture. Legislation regarding land redistribution is clear and can be applied well. The legal structure, specifically the National Land Agency as the organizer of TOL redistribution, has selected prospective recipients of TOL redistribution to the maximum extent possible. Meanwhile, the community has become a good supporting factor by fulfilling the criteria and conditions as a prospective recipient of TOL redistribution. So if viewed from the theory of legal effectiveness according to Lawrence M. Friedman, it can be said that the implementation of TOL redistribution in 2 Villages of Bodeh Subdistrict, Pemalang Regency has been effective.

3.2 Redistribution of Land Object Landreform Policy in Increasing Community Economic Revenue

Analysis of the increase in income of farmers receiving land redistribution in 2 villages in the Bodeh District of Pemalang Regency is presented as follows:

1. Condition of the Community Before Land Redistribution

Mr. Yasin and Mr. Lukis, farmers receiving land redistribution from Jatiroyom Village, Bodeh District, Pemalang District explained that agriculture in Jatiroyom Village is agriculture with a technical irrigation system so that it is possible to plant corn for 2 (two) times planting in 1 (one) year. The capital spent on nursery, fertilizing, medical expenses, up to the harvesting costs for 600 m² (six hundred square meters) of paddy fields is around IDR 1,330,000 (one million four hundred thirty thousand rupiah). The yield obtained for 600 m² (six hundred square meters) is 6 quintals of corn and the price of corn according to market prices in 2015 was IDR 4,000 per kg (four thousand rupiah per kilogram). Income from redistribution of land management in one harvest (once every 6 months) is IDR 1,070,000.00 (one million seventy thousand rupiah).[11], [12]

Mr. Rustani and Mrs. Casmiatun, recipients of redistribution land from Cangak Village, Bodeh District, Pemalang Regency, planted their agricultural land with corn crops. The capital required for the land area of 933 m² (nine hundred thirty-three square meters) is around IDR 1,700,000 (one million seven hundred thousand rupiah). The yield obtained for 933 m² (nine hundred thirty-three square meters) is 10 quintals of corn and the price of corn according to the market price in 2015 was IDR 4,000 per kg (four thousand rupiah per kilogram). Income from redistribution of land management in one harvest (once every 6 months) is IDR 2,300,000.00 (two million three hundred thousand rupiah).[13], [14]
Based on the results of the author's research, prior to the land redistribution activity, some recipient farmers did not yet have land or agricultural land. However, after the end of the HGU period, the community has been working on the land. Before the redistribution of the land, the smallholder farmers wanted the government to redistribute the land immediately and the smallholder farmers received certificates of ownership so that the farmers felt safe because the land was already in the form of ownership rights.

2. Community Conditions after Land Redistribution

The results of the interview with one of the redistribution recipients in Cangak Village and Jatiroyom Village, Bodeh District, Pemalang Regency are as follows:

After getting land redistribution, the tiller farmers get the same land area. Each sharecropper gets 1,151 m². The capital needed for a land area of 1,151 m² is around IDR 2,870,000 per harvest. This capital includes corn seeds, fertilizer. The yield obtained for 1,151 m² was 1.5 tons of corn and the price of corn according to market prices in 2018 was IDR 4,500 per kg (four thousand rupiah per kilogram). Income from redistribution of land management in one harvest (once every 6 months) is IDR 3,880,000.

Farmers' welfare depends on the level of income of farmers and the benefits obtained. The level of welfare of a household can be seen through the amount of income received for the household concerned. Welfare level is a concept that is used to express the quality of life of an individual or a community in an area at a certain time. The concept of welfare owned is relative, depending on how the assessment of each individual on welfare itself. Prosperity for someone with a certain level of income can not also be said to prosper for others.

Based on the results of the author's research, in the opinion of the author that the condition of the area of land controlled by the recipient of the redistribution land prior to the redistribution activity is not owning land, and instead, most of them depend on their income for other businesses such as renting land or doing business outside agriculture such as trade and some work as employees and retired civil servants. Thus, the results of land redistribution activities clearly provide increased income/income for land-receiving farmers. The price of agricultural products, especially food commodities, is also a factor that determines the income of farmers.

Based on the results of the research and analysis of the author, the authors argue that the land redistribution activities carried out in 2018 in the Cangak Village and Jatiroyom Village, Bodeh District, Pemalang Regency have an impact on farmers receiving land redistribution, namely:

a. Farmers who previously did not own land became land, so that it had an impact on reducing poverty in rural areas and reducing inequality in land tenure and ownership;
b. Farmers receive an increase in economic income after land redistribution activities can help to meet their daily needs;
c. Farmers feel safe because their land is certified;
d. The welfare of farmers has increased after the land redistribution activity.

3.3 Support and Constraints or Obstacles in the Implementation of Land Redistribution of Land Objects
3.3.1 Supporting Factors in Land Redistribution Activities

a. Availability of data and complete information. The implementation of TOL redistribution requires valid data so that the program is right on target. Data relating to land redistribution has also been used to analyze the location of land redistribution, whether it meets the requirements to be proposed to be TOL (clean and clear), and whether the subject of the prospective recipient of land redistribution is eligible to receive the land. Based on the results of the author's research, the data needed relating to land redistribution is complete. The data such as data on land redistribution of landowners, maps, maps around land redistribution plans of land reform objects.

b. Mature and gradual preparation. The implementation of land redistribution needs to be planned, organized and controlled carefully and thoroughly and in accordance with its stages both in the context of asset reform and access reform.

c. Support from the surrounding government. Based on the results of the author's research, after the former land use rights have expired, the party from the Village Apparatus proposes to the Government to redistribute the land to smallholder farmers. This was agreed by Mr. Regent of Pemalang Regency. This land redistribution has become a government program in order to improve the welfare of farmers' lives and more importantly the land can play a role in the national economy.

3.3.2 Obstacles or Obstacles in the Implementation of Land Redistribution Activities

a. Barriers and solutions faced by the Pemalang District Land Office

- Increasing number of land redistribution objects;
- The location requested is sporadic and quite steep, so that the measurement implementation faces obstacles;
- Data management applications, especially in the issuance of Decree on Land Rights must be made by name (not collectively)

While the steps that need to be taken in overcoming the problems and obstacles mentioned above are as follows:

- Inventorying potential locations for Land Redistribution objects;
- Improving coordination with the measurement survey and mapping sections in monitoring measurement results in the field;
- Entering data carefully and accurately, so that the resulting output is valid.

b. Constraints and solutions faced by Recipient Land Redistribution Recipients

- Community (farmers or tenants) understanding of the use and purpose of certificates as evidence of land rights is still low;
- There are some farmers who receive land redistribution as a result of land reforms, whose land shares are not in accordance with what has been cultivated so far;
- At the time of measurement of the land of the land reform, the land has been planted with corn. So this inhibits measurement.

Based on the results of research and analysis of the problems faced, there are several steps in handling the problems that occur in the Land Redistribution of Land Objects in Bodeh District, Pemalang Regency, including:
• It is necessary to provide guidance to Redistribution recipient farmers, by means of developing and maintaining production facilities and infrastructure, roads, irrigation, processing of agricultural products, markets, clean water, electricity, social facilities as well as coaching subjects, namely fostering farming, learning and facilitation of access to capital and marketing.

• There needs to be supervision or monitoring carried out at every stage of the activity so that all processes are in accordance with the norms, standards and procedures specified in the legislation.

Based on the results of the author's research, supporting factors imposed in the implementation of land redistribution activities have a positive impact on the implementation of redistribution because the presence of these factors can encourage redistribution activities. The inhibiting factors that occur in this redistribution activity are factors that occur both from internal and external. The inhibiting factor did not significantly affect the implementation of the redistribution activity because the solution or the effort made to overcome the obstacle was also in accordance with the problem that occurred.

4 Conclusion

1. Implementation of Land Redistribution Activities as an Object of Land Reform in Bodeh Subdistrict Pemalang Regency in 2018 has been carried out in accordance with the procedures and mechanisms of the implementation stages of land redistribution activities based on regulations and applicable laws. The Redistribution of Land Objects for Landreform in 2018 in Bodeh Subdistrict, Pemalang Regency, amounting to 400 fields, covering an area of 56.6 Ha, with the granting of ownership rights for Jatiroyom Village and Cangak Village, Bodeh District, has been confirmed in the Decree of the Head of the Defense Office of Pemalang Regency Number: 938/KEP -33.27/X/2018 and Number: 939/KEP-33.27/X/2018.

2. The policy of land redistribution of land object reforms provides economic impacts for farmers receiving land redistribution. The productivity results obtained from the agricultural sector can increase the economic income of farmers, at least to meet the daily needs of farmers, for example being able to buy rice for food for 1 month. Income contributions from farming are still deepens highly on the receiving land for redistribution in Cangak Village and Jatiroyom Village and even are still a source of income.

3. In the implementation of landreform activities, the encouragement is that all government parties support the existence of the land-reform program and the obstacle is community understanding (farmers or tenants) about the use and purpose of certificates as evidence of land rights is still low. This is proven when the officers identify subjects and objects. There are still many farmers who do not want to or even refuse to certify their land. On the other hand, which also impedes landreform activities, there are some farmers receiving land redistribution of land reformed objects whose land shares are not in accordance with what has been cultivated so far, and at the time of measurement of land reformed land, the land has been planted with corn. So this inhibits measurement.
5 Suggestion

1. For farmers receiving land redistribution. Plots of land that have become objects of land reform and that have been distributed to the community should be used according to their purpose as agricultural land. The developments that happen in society today have been an imbalance in population growth with the availability of agricultural land, so the need for agricultural land will be very significant in the future, especially in agricultural societies.

2. For the Pemalang District Land Office. The problem of regulation, control and ownership of land, especially agricultural land, is still relevant and must be carried out seriously. One of the efforts is that the government should be able to carry out the land reform program seriously. In this case, it is not only carried out in the form of regulations, but also very is needed is how the implementation of these regulations, thus farmers’ access to owning their own land as a prerequisite for improving their welfare can actually be realized.

3. For Cangak Village and Jatiroyom Village Officials. There must be an approach to the Pemalang District Government and coordination of relevant agencies in the implementation of land redistribution activities through invitations to socialization and meetings to all parties concerned.
References

[1] Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Resources (hereinafter referred to as UUPA).


[12] Interview with Mr. Lukis, recipient of land redistribution, (Pemalang, 22 January 2020).

[13] Interview with Mr. Rustani Interview, recipient of land redistribution, (Pemalang, 22 January 2020).

Legal Protection of Breeder Rights and Farmer Rights concerning Protection of Plant Varieties

Elsya Lucia Gracella1, Budi Santoso2, Edy Sismarwoto3
{elsyalucia08@gmail.com1, budisantosotmg@lecturer.undip.ac.id2, edy_sismarwoto@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. Plant Variety Protection (PVT) is a part of Intellectual Property Rights (IPR) which is highly needed in agriculture in Indonesia. Regulations on the Protection of Plant Varieties are contained in Law No. 29 of 2000 concerning Protection of Plant Varieties. The drafting of the PVP Act should protect the rights of breeders (Breeder’s Rights) and may not damage the farmers' privileges (Farmer's Privilege). However, there are still cases regarding the Protection of Plant Varieties which in their settlement do not use the PVP Law. This study uses normative juridical methods with qualitative analysis. The data in this study are secondary data obtained from primary, secondary and tertiary legal entities. Furthermore, these data are analyzed using qualitative data analysis methods. The results showed that the regulation of PVP in the PVP Law in Indonesia is still unclear and balanced in regulating between Breeder’s Rights and Farmer Rights. It is also known that there are still many plant breeders who have not yet registered plant varieties for their breeding, due to the complexity and high cost of PVP registration.

Keywords: Breeder's Rights, Farmer's Rights.

1 Introduction

The era of globalization, marked by increasingly intense competition in various fields of activity, as is happening today, can lead to ambivalence for a nation and state. On the one hand, it can be advantageous if the nation and country have adequate readiness to compete with other nations and countries.

The agriculture sector in Indonesia is one of the fields that can be developed as a means to be actively involved in international trade, bearing in mind that agricultural products are export commodities that are urgently needed in various foreign countries. This can be realized when all components of this nation are united in building a strong agriculture and are able to compete with the agricultural products of other countries, both in terms of quality and price. Conversely, if there is no commitment to develop resilient agriculture, Indonesia can instead become a market for agricultural products from other countries. This has happened in recent years. The life of a resilient agricultural sector will be the foundation for the Indonesian people to carry out development in other sectors.[1]

Meanwhile, the rapid development in the economic, social and food technology sectors has caused food problems to become problems of a global dimension. Science and technology in the field of food have advanced rapidly, so that the problem is not only focused on food products that can be used as a potential commodity for increasing income of the community
and the state, but also on the source of food production itself that can be engineered such as the creation of plant varieties which can produce superior products.[1]

In Indonesia, the ability to produce new varieties, especially high-quality varieties, is still low. Even though variety is one of the factors that greatly determines the quantity and quality of agricultural products. A new variety of plants is produced by assembling commonly called plant breeding. Breeding is a process and also produces a product. Plant Breeding Activities (Assembling Plant Varieties) require a very long and long time, sometimes, a certain variety of plants takes 15 years from the start of the plant breeding process until it is ready to be marketed. Protection of Plant Varieties (PVP) is given to plant breeders as a tribute to their efforts in producing new plant varieties that provide benefits to the broad agricultural sector based on Law Number 29 of 2000 concerning Plant Variety Protection.[2]

Protection of Plant Variety Protection is a guarantee for plant varieties produced by breeders (breeders) so that the crop varieties they produce are not stolen by others. In addition, the existence of this PVP system causes the research and development activities of new plant varieties to grow faster.[1]

The existence of the Protection of Plant Varieties (PVP) is possible for farmers, breeders, seed entrepreneurs to be open to each other in terms of accessing germplasm sources from around the world. Germplasm (genetic resources) is the body part of plants, animals, or microorganisms that have the function and ability to inherit traits, so that the development of the agricultural world will be more advanced and developed.

Elucidation of Article 10 of Law Number 29 of 2000 concerning Protection of Plant Variety Protection states that basically, the law is drafted to create clear and firm laws in providing legal protection for breeders' rights, and also to create a climate conducive to the development of activities plant breeding. Protection of breeder's rights is given while taking into account the farmer's privilege to be able to reuse some of the yield (seed) of protected plant varieties for replanting in the next planting season, as long as the use is not for commercial purposes.

Therefore, it can get revealed that everything that is done in order to produce new plants cannot be separated from the goal of meeting farmers' needs for quality seeds. However, in reality, the farmers still lack the privileges they have. We can see through the Nganjuk District Court verdict that sentenced him to six months in prison and one-year probation may not plant corn and a fine of Rp 200 thousand against a farmer named Tukirin. The sentence was handed down by the Assembly on the basis of illegal certification of seed patents owned by PT Benih Inti Subur Tani (BISI), which was carried out by Tukirin.

The Assembly is of the opinion that Tukirin has violated Article 61 paragraph 1 (b) jo. Article 14 paragraph 1 of Law No. 12 of 1992 concerning Plant Cultivation Systems.[3] Ironically, Tukirin, who is blind to the law, apparently never carried out any certification, it is known that in fact Tukirin is a creative farmer who succeeded in innovating the way of cultivating corn by crossing between corn plants and one of the crossed seeds is a seed that has been patented by producing it. PT BISI.

Based on the case of Tukirin, we might think whether it is indeed due to the lack of understanding of law enforcement officials regarding the provisions of Law Number 29 of 2000 concerning Plant Variety Protection or even the provisions of Law Number 29 of 2000 concerning Plant Variety Protection which is unclear in regulating Protection against Breeder and Farmer, proven by not using the provisions of the law in deciding the case at all.

The problems are formulated as follows:
1. How is the protection of plant breeders rights stipulated in Law No.29 of 2000 concerning Plant Variety Protection?
2. Are the provisions of Law No.29 of 2000 concerning the Legal Protection of Indonesian Plant Varieties already accommodating in relation to legal protection of Farmers' Rights?

2 Method

The method of approach used in this study is a normative juridical approach. The research specification to be used is analytical descriptive. Data collection is called secondary data.

3 Research Results and Discussion

3.1 Overview of Plant Variety Protection

3.1.1 History of Plant Variety Protection

Protection of Plant Varieties is a provision in IPR that is still relatively new in the history of its protection as an immaterial right granted to individuals by the state. In other countries, such as the United States, although not specifically written in the regulations of the country, it is well known for the existence of regulations concerning protection of plant varieties. The regulation came into force in 1930 in conjunction with the publication of The United States Patent Act 1930. And in Europe, laws relating to the protection of plant varieties and their results have been known since the 16th century.

In 1961, several countries in the world agreed on an international convention on the protection of plant varieties, an international agreement contained in the International Convention for the Protection of New Varieties of Plants, better known as UPOV. UPOV is an acronym for Union International pour la protection des obtentions vegetale.[4] In Indonesia, protection of plant varieties has begun to be regulated since 1989, namely in the regulation of IPR in the field of patents. In the Patent Law of 1989 it is stated that patent protection cannot be granted to food, beverages and plant varieties, especially for rice, maize, cassava and sweet potato commodities. In 1997, the Patent Law was amended in the form of revocation or elimination of the provisions prohibiting the granting of protection for food, beverages and plant varieties. So that in the 1997 Patent Law, food, drinks and plant varieties can obtain protection in the form of patents.[5]

Although the 1997 Patent Law permits the granting of patent protection to plants, the 1997 Patent Law cannot provide comprehensive protection for aspects of new varieties. For this reason, the Government of the Republic of Indonesia made new laws aimed at protecting plant varieties more thoroughly in Law No.29 of 2000 concerning Plant Variety Protection.

3.1.2 Convention concerning Protection of Plant Varieties

Almost all countries that regulate Plant Variety Protection are basically based on the norms contained in The International Convention for the Protection of New Varieties of Plants. The convention was formed by European countries on December 2, 1961 which was followed up with the establishment of an institution called the International Union for the Protection of New Varieties of Plants (UPOV). The institution is Independent, international scale, and is an organization between governments as subjects of international law, based in Geneva.[6]
Regulation of Plant Variety Protection in Indonesia, in addition to being encouraged by the UPOV convention, is also due to the birth of TRIPS (Trade Related Aspects of Intellectual Property Rights). Given that Indonesia is a member of the WTO, Indonesia has an obligation to implement the provisions contained in TRIPS. Other International Conventions relating to the Protection of Plant Varieties, include:

1. International Treaty for Plant Genetic Resources for Food and Agriculture (International Agreement on Plant Genetic Resources for Food and Agriculture).
2. Convention on Biological Diversity.

This International Agreement on Plant Genetic Resources for Food and Agriculture has become a binding agreement for Indonesia since it was ratified as stipulated in Law Number 4 of 2006 concerning Ratification of the International Agreement on Plant Genetic Resources for Food and Agriculture.[7]

The Convention on Biological Diversity is an international agreement on biodiversity with a global and comprehensive scope. This convention aims at the preservation and sustainable use of biodiversity fairly.[6]

3.2 Legal Protection of Breeders' Rights According to the PVP Law

3.2.1 Legal Protection of Breeder Rights outside the PVP Law

Law Number 29 of 2000 concerning Plant Variety Protection (PVP Law) is one of the legal provisions that provides protection to breeders for the results of their breeding activities, however, before the existence of the PVP Law, it has been accommodated in Law Number 12 of 1992 concerning the System Plant Cultivation (UU SBT). The SBT Act regulates the protection of recognition and appreciation that will be obtained by those who have succeeded in creating a new variety or called a plant breeder.

Article 11 of the SBT Law states "Any person or legal entity can conduct plant breeding to find superior varieties". This provision can encourage enthusiasm for breeders both individuals and legal entities to conduct breeding activities in order to find new plant varieties.

Provisions in Article 55 of the SBT Law regulate awards relating to:
1. To the inventor of the right technology and the theory and new scientific methods in the field of plant cultivation can be given an award by the government.
2. To the inventor of new types and/or superior varieties, can be given an award by the government and has the right to name their findings.
3. Every person or legal entity whose plants have certain advantages can be given an award by the government.
4. Provisions regarding the awarding as referred to in paragraph (1), paragraph (2) and paragraph (3), shall be further regulated by the government.

Article 45 Government Regulation Number 44 of 1995 concerning Plant Germination also regulates the award given to breeders for the varieties they find, as follows:

1. The Minister gives awards to inventors of superior varieties and/or technologies in the field of seed.
2. Further provisions regarding the awarding as referred to in paragraph (1) shall be regulated by the Minister.

Elucidation of Article 45 paragraph (1) of Government Regulation Number 44 of 1995 concerning Plant Breeding states that:[8]
1. The awarding in this provision does not constitute recognition of ownership rights as in the case of patents or other civil rights.

From the explanation of Article 45 paragraph (1) of Government Regulation Number 44 of 1995 above and article 55 paragraph (2) of the SBT Act which states that, "to discoverers of new types and/or superior varieties, awards can be given by the government and have the right to give names to the findings." it can be revealed that the form of recognition and appreciation given by these provisions is only limited to giving the breeders the right to give names to the new varieties of their findings.

3.2.2 Legal Protection of Plant Breeders in the PVP Law

Protection of Plant Breeders in Indonesia was originally regulated in the SBT Act but the SBT Act only stipulates that the Protection of Breeders is limited to the breeder's right to name new varieties of findings. Then in 2000 Indonesia made a more detailed law concerning the Protection of Plant Varieties, namely Law No.29 of 2000 concerning Protection of Plant Varieties. In this PVP Law, the existence of breeders who conduct breeding will be protected or more protected than the previous regulation, anyone who produces varieties of plants that meet the provisions of the PVP Law can obtain PVP rights and get economic benefits from the results of the breeding. In Articles 4, 6, 8, and 42 the PVP Law is also regulated relating to the protection of the rights possessed by beginners.

The provisions of Article 4 paragraph 1 of the PVP Law regulates the period of protection given to breeders for varieties of their findings. Article 4 paragraph 1 of the PVP Law states that:

1. Period of PVP
   a. 20 (twenty) years for annual crops;
   b. 25 (twenty five) years for annual plants.

The annual crops referred to by the PVP Law are plants for tree species and vines for example rice, sugar cane, tobacco, cotton, potatoes, mushrooms, corn and so on. As for the annual crops referred to in the PVP Law, for example teak, oil palm, rubber, manga, sago and so on.

The provisions contained in Article 4 paragraph 1 of the PVP Law are similar to those contained in the provisions of Article 19 of the 1991 UPOV Convention. The provisions of Article 19 of the 1991 UPOV Convention concerning "duration of the breeder's rights" states that:

1. [Period of protection] The breeder’s right shall be granted for a fixed period.
2. [Minimum Period] The said period shall not be shorter than 20 years from the dato of the grant of the breeder’s right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

The provisions of Article 19 of the 1991 UPOV Convention can be interpreted that breeders' rights must be granted for a predetermined period of time. The period of time granted must not be less than 20 years since the issuance of breeders' rights (PVP rights), and for trees and vines the period of protection provided cannot be less than 25 years.

The provisions of the UPOV Convention adopted in Law No.29 of 2000 concerning Plant Variety Protection are not binding conditions for Indonesia considering that up to now, Indonesia has not ratified the UPOV Convention, meaning that there is an opportunity for
Indonesia to draw up legal provisions protection of plant varieties in accordance with national needs, without having to directly adopt the provisions contained in the UPOV Convention.

The PVP Law also mentions various rights possessed by PVP rights holders (Pemulia rights). Article 6 of the PVP Law regulates the right of breeders to give permission to other persons or legal entities to carry out propagation of varieties of their findings. In addition, the provisions of Article 6 of the PVP Law also regulates the rights still attached to breeders when the plants found are used as origin varieties of new varieties developed further (essential derivative varieties).

The provisions of Article 8 of the PVP Law regulates the right of breeders to obtain appropriate compensation from a variety resulting from their breeding activities. This is done by taking into account the economic benefits obtained from these varieties. Article 8 of the PVP Law states that:

1. Breeders who produce varieties as referred to in article 5 paragraph (2) and paragraph (3) are entitled to receive appropriate compensation by taking into account the economic benefits that can be obtained from the verification.
2. The benefits referred to in paragraph (1) may be paid:
   a. In a certain amount and at the same time;
   b. Based on percentage;
   c. In the form of a combination of a certain amount and at the same time with prizes or bonuses; or
   d. In the form of a combination of percentages with prizes or bonuses, the amount of which is determined by the parties concerned.
3. The provisions referred to in paragraph (1) do not abolish the breeder's right to keep their names listed in the PVP rights granting certificate. The rewards referred to in the provisions of article 8 of the PVP Law are rewards arising from an employment agreement made between the breeder and another person or legal entity.

Parties to carry out propagation or other activities as stipulated in the provisions of Article 6 paragraph 3 of the PVP Law. In contrast to the transfer of PVP rights regulated in Article 40 of the PVP Law, the rights agreement with this license is bound to certain periods and certain conditions.

The provisions of Article 6, 8, and 42 above show that the scope of protection contained in the PVP Law does not only include the breeder's moral rights but also includes economic rights. In addition to regulating the rights of PVP holders in the PVP Law also regulates several obligations for PVP rights holders contained in Article 9.

Article 9 of the PVP Law stipulates that:

1. PVP rights holders are obliged to:
   a. Carry out PVP rights in Indonesia;
   b. Pay the annual PVP fee;
   c. Provide and show examples of seed varieties that have received PVP rights in Indonesia.

3.2.3 Transfer of PVP Rights Holder Rights

Regulations relating to the transfer of PVP rights are contained in Article 40 paragraph (1) which states that:

1. PVP rights can be transferred or transferred because:
   a. Inheritance;
b. Grant;
c. Will;
d. Agreement in the form of a notarial deed; or
e. Another reason justified by law.

The transfer of protection rights for plant varieties must be accompanied by other Plant Variety Protection documents related to it. Every transfer of Plant Variety Protection Rights must be recorded at the Office of Plant Variety Protection and recorded in the General Register of Plant Variety Protection by paying a fee the amount determined by the Minister of Agriculture. The transfer of Plant Variety Protection Right does not erase the Breeder's right to keep the name and other identities included in the Plant Variety Protection Right Certificate.

3.2.4 Exclusive rights owned by Breeders or PVP Rights holders

As explained in the previous points, it can be revealed that the form of respect for breeders' rights as stipulated in the provisions of Article 55 of the WNB Law and Article 45 paragraph 1 of Government Regulation No. 44 of 1995 concerning Hatcheries, does not regulate and recognize the rights breeder's ownership of the variety of his findings. As a result, the economic rights held by breeders related to the plant varieties found are not protected. This can be seen by the absence of provisions governing sanctions for the use of plant varieties for propagation or commercial purposes without the approval or permission and inventor (breeder).

Unlike the PVP Law, seen in the preamble number d the PVP Law states "that in order to further increase the interest and participation of individuals and legal entities to carry out plant breeding activities in order to produce new superior varieties, plant breeders or holders of Plant Variety Protection rights need to be granted certain rights and adequate legal protection of these rights. " The concept of respect and legal protection contained in the PVP Law covers the provision of legal protection for intellectual property in producing crop varieties, including the right to enjoy economic benefits and other rights.

It is known that breeding high quality superior varieties requires large investments, both in terms of energy (mind, intellect), labor, material resources, funds, and patience, as well as perseverance, and these efforts can take quite a long time, many years (10-15 years on many species of plants). Once the superior quality varieties are released, these varieties can be immediately multiplied by other parties, thereby robbing the profit opportunities of their beginners who have mobilized large investments.

Granting exclusive rights to a breeder who produces a superior quality variety to exploit his findings, will encourage breeders or seed industry institutions that employ breeders, to invest in breeding activities and will contribute greatly to the development of agriculture, as a whole, increasing farmer's income, prospering society at large.

Robert M. Sherwood's Theory is Economic Growth Stimulus Theory. This theory recognizes that protection of intellectual property rights is a tool of economic development, in the form of the overall objective of establishing an effective protection system for intellectual property rights.

The law gives exclusive rights to a breeder who produces a superior quality variety to exploit his findings, will encourage breeders or seed industry institutions that employ breeders, to invest in breeding activities and will contribute greatly to agricultural development.
This background of thought is the core foundation why a new high quality variety must be protected in the form of PVP rights as stipulated in Law No.29 of 2000 concerning Plant Variety Protection, with the main objective being to develop and develop a national seed industry in anticipation of the globalization era (open competition), national food problems, population, employment and community income at large, as well as the utilization of national biological resources.[6] However, the exclusive nature of breeders' rights is not full because there are restrictions that are also regulated in the PVP Law.

The provisions of Article 10 paragraph (1) of the PVP Law states that:

1. Not considered a violation of PVP rights, if:
   a. Using part of the harvest from protected varieties, as long as not for commercial purposes;
   b. Using protected varieties for research, plant breeding, and assembly of new varieties;
   c. Using by the Government of protected varieties in the context of food and drug procurement policies with due regard to the economic rights of PVP rights holders.

Application and implementation turns out that breeding is still very little, especially those carried out by farmers. Although the law gives exclusive rights to a breeder who produces a superior variety of quality to exploit these findings.[10]

The difference between Law No.12 of 1992 concerning Plant Cultivation Systems (UU SBT) and Law No.29 of 2000 concerning Protection of Plant Varieties (UU PVT) is the protection of economic rights held by breeders. The SBT Act does not provide protection for economic rights held by breeders, but provides protection for breeders' moral rights. Whereas the PVP Law was drafted as an effort to provide legal protection for breeder's intellectual property in producing crop varieties, including the right to enjoy economic benefits and other rights while taking into account the farmers' privileges.

3.3 Legal Protection of Farmers' Rights under the PVP Law

As explained earlier, that the PVP Law was prepared by taking into account the farmers' privileges. However, if we refer to the considerations of the PVP Law, it is seen that the legislators only focus on providing protection to plant breeders in general without giving special protection to farmers. The clauses in the preamble also did not discuss at all related to the protection of farmers' rights.

Then looking at the contents of the law, the existing articles prioritize exclusive protection of plant breeders. Though the possibility of plant breeders registering new varieties is very small considering the complex and expensive registration rules. The regulation applies to individuals and legal entities that wish to register new varieties.[11]

Article 7 paragraph (1) states that "Local varieties belonging to the community are controlled by the State". This provision means that local varieties are varieties that have already existed and are cultivated down by the farmers, as well as belonging to the community and controlled by the state. With this provision, farmers can use the variety without paying because the variety basically belongs to the farmers whose authority is carried out by the state. Then Article 10 paragraph (1) contains exceptions in violation of Plant Variety Protection rights. These provisions provide a loophole for plant breeders to use seeds that have been protected with the condition that the use is not done for commercial purposes and their use for research, plant breeding, and assembly of new varieties.
Then in the explanation of Article 10 paragraph (1) point a, it states that:

"What is meant by not for commercial purposes is individual activities especially small farmers for their own needs and does not include disseminating activities for the needs of their groups. This needs to be emphasized so that the market share for varieties with PVP is maintained and the interests of PVP rights holders are not harmed."

Provisions regarding farmers' privileges in the provision of Article 10 paragraph 1 point a of the PVP Law aims to protect the rights of small farmers to save part of the harvest (seeds) of protected plant varieties for reuse in the next planting season. However, this category of "small farmers" who obtain farmers' privileges (farmer's privilege) is not regulated in the PVP Law.

The absence of a definition of "small farmers" who can obtain farmers' privileges (farmer's privilege) can create multiple interpretations and legal uncertainties in their implementation. Without the provisions governing the category of farmers who can obtain farmers' privileges (farmer's privilege), farmers will be very vulnerable to charges of propagation that are prohibited by law or illegal certification and this will be very detrimental to farmers. However, not regulating the category of smallholders who have farmers' privileges in the PVP Law will also be very detrimental to breeders, because with no classification and a clear definition of smallholders, farmers who have extensive agricultural land including agro-industry entrepreneurs can participate in enjoying the farmer's privileges.

The PVP Law itself basically needs to include provisions relating to the classification of farmers who have the privilege to replant seeds from varieties of plants that have PVP rights for the next planting season. However, the limitation of the category of farmers who can enjoy the privileges of farmers is not intended to hinder the practices of other farmers who are included in the farmers' rights (farmer's rights) such as the right to exchange and sell seeds/propagation material from their own crops.

Based on the description above, it can be concluded that the PVP Law needs to include provisions regarding the category of small farmers who can have farmer privileges.

In addition to the definition of "smallholders", the terms "not for commercial purposes" and "for their own purposes" used in the Elucidation of Article 10 paragraph (1) point a can also be interpreted as restrictions on the activities of farmers to sell or restrictions on the activities of farmers to sell or commercialize the final crop varieties (harvest) that are protected from the plants they plant themselves.

Meanwhile, in the habit that has been carried out for centuries, such as the habit of exchanging seeds, and selling seeds among peasants who are not protected in the PVP Law. In fact, the habits that have been going on for years or even centuries also provide several types of plant varieties that exist today.

With the ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture through Law No.4 of 2006 concerning the Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Agreement on Plant Genetic Resources for Food and Agriculture), Indonesia has granted recognition of farmers' rights (farmer's rights) defined as "Farmers' Rights mean rights arising from the past, present future contributions of farmer's in conserving, improving, and making available plant genetic resources, particularly those in the centers of origin/diversity".[7] Farmers' rights can be interpreted as rights arising from past, present and future contributions from farmers to conserve enhance and make available genetic resources for plants, especially those at the center of plant diversity.
Based on the description above, it can be concluded that the PVP Law needs to be revised by including provisions on the protection of farmers' rights (farmer's rights) that provide guarantees to farmers to continue to carry out existing customs or culture for centuries. This is in line with the provisions contained in Article 9 of Law No.4 of 2006 concerning Ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture.

In addition to the farmers' right the PVP Law also needs to be revised by regulating the right of farmers to get compensation when the varieties of plants protected by PVP rights do not show superior characteristics as promised. This revision is also intended to provide clear, firm, and balanced legal protection to breeders' rights as well as farmer's rights.

4 Conclusion

Based on research that has been done as explained in previous chapters, it can be concluded as follows:

1. Provisions in Law No.29 of 2000 concerning Plant Variety Protection have governed the Economic Rights of Plant Breeders. However, the provisions of Law No.29 of 2000 concerning Plant Variety Protection provide unequal treatment between the rights of Breeders and Farmers' rights, such as the absence of explicit provisions related to the rights of farmers while the rights of breeders are very clearly regulated.

2. Law No.29 of 2000 concerning Plant Variety Protection provides only a little protection to farmers and its regulation is implicit in nature so that it creates uncertainty in its enforcement.
References
Implementation of Online Auction (E-Auction) in the State and Auction Service Office

Nabila Noviandra¹, Marjo², KartikaWidya Utama³
{nabnov99@gmail.com¹, marjo fh undip@gmail.com², kartikawidyautama@yahoo.co.id³}

Fakultas Hukum, Universitas Diponegoro, Semarang, Indonesia ¹, ², ³

Abstract. In order to provide optimal services for auction service users of the Office of State Assets and Auction Services (KPKNL), the Directorate General of State Assets under the auspices of the Ministry of Finance of the Republic of Indonesia built an internet-based auction implementation system called Electronic Auction (E-Auction) that is applied to KPKNL throughout Indonesia including the Semarang City KPKNL. The purpose of this study is to determine the reasons for the implementation of e-auction at the Semarang City KPKNL, to know the procedure for submitting e-auction applications at the Semarang City KPKNL, and to know the obstacles in implementing the e-auction at the Semarang City KPKNL and the efforts to overcome them. The method used by the author is normative juridical. The data analysis method used is descriptive qualitative. The study was conducted at the Semarang City KPKNL. The results of the study found that all e-auction application submission activities are carried out through the Indonesian Auction Portal either through the website or the application on android which requires users to have an account at the Indonesian Auction Portal to submit an e-auction application - as well as being an e-auction participant. Where implementing, there were still some obstacles that came from external and internal factors, however, the City of Semarang KPKNL continued to make efforts to overcome these obstacles.

Keywords: Online Auction, Auction Applicant, Office of State Assets and Auction Services, Indonesian Auction Portal.

1 Introduction

General sales have officially been regulated into legislation in Indonesia since 1908, marked by the enactment of VenduReglement (Regulation of Stl. 1908 Number 189), VenduInstructie (Auction Instructions of Stl. 1908 No. 190). The auction rules as a colonial legacy still apply. Auction is known as a named agreement (nominaat)/special agreement (benoemnd) because the agreement has its own name, “auction”, and is regulated and named by the legislators, this is mentioned in the Vendor Regalement. The auction is specifically regulated outside the Civil Code (Civil Code). Auctions are generally a means of bringing together sellers and buyers with the aim of determining a fair price for an item.[1] The auction is carried out with special provisions in the Civil Execution Law. Changes have occurred in the auction, both the principles contained in the regulations, the auction institution itself and the changes in the auction process. There are at least three purposes for regulating auctions in law, namely:

1. To meet the needs of auction sales, which are regulated by many laws and regulations.
2. To meet or implement judicial decisions or dispute resolution institutions based on the law in the context of upholding justice (law enforcement).

3. To meet the needs of the business community in general, it is possible for producers or owners of personal goods to sell at auction.

Then, there are the principles underlying the implementation of the auction of sale of goods, namely, first, the Transparency Principle, which means that openness is the most important principle that builds auction rules, nothing is hidden, the public is treated equally to compete in buying goods at auction. Second is the Principle of Certainty which includes certainty related to whether or not the auction will be carried out, related to the place of the auction, and related to the guarantee money that has been paid by prospective buyers if the auction does not happen or is canceled. The third is the Principle of Competition which means that bidders participate in this auction by competing to achieve the price desired by the seller of goods. The fourth is the Principle of Efficiency, namely the implementation of the auction must pay attention to the timeliness, and practicality of the location of the auction so that the auction can be carried out in an orderly and not protracted. The last or fifth is the Principle of Accountability, namely the auction must be held accountable, the auction must be carried out by the authorized official and in an appropriate location according to the applicable laws and regulations.

In Indonesia, auctions are carried out both by the State Assets and Auction Services Office (KPKNL) and the privately owned Auction Hall. The Office of State Assets and Auction Services (KPKNL) is a vertical agency of the Directorate General of State Assets under and directly responsible to the Head of the Regional Office of the Directorate General of State Assets, while the Regional Office itself is directly responsible to the Director General of State Assets (DJKN) under the auspices Ministry of Finance whose provisions are regulated in Minister of Finance Regulation No. 170/PMK.01/2012 Organization and Work Procedures of the Vertical Agency of the Directorate General of State Assets.[2]

The current auction is regulated under Minister of Finance Regulation No. 27/PMK.06/2016 2016 concerning Bidding Implementation Guidelines. [3] When this Ministerial Regulation comes into force, the Minister of Finance Regulation Number 93/PMK.06/2010 concerning Bidding Implementation Guidelines as amended by Minister of Finance Regulation Number 106/PMK.06/2013, is revoked and declared invalid.

Minister of Finance Regulation No. 27/PMK.06/2016 regulates matters related to auctions, such as the auction must be carried out by and/or in front of the Bidding Officer unless the Law or Government Regulation stipulates otherwise, when the auction is held, Auction Minutes must be made, auctions which carried out in accordance with applicable provisions cannot be canceled, the type of auction consisting of an Execution Auction, Mandatory Non-Execution Auction, and Voluntary Non-Execution Auction, and the Head of the Office of State Assets and Auction Services (KPKNL) and Class II Auction Officers are not permitted to refuse an auction application if the application has already been fulfill the legal requirements of the subject and object. Regulation of the Minister of Finance No. 27/PMK.06/2016 divides the auction into 3 separate classifications namely Execution Auction, Mandatory Non-Execution Auction and Voluntary Non-Execution Auction.

In today’s era of globalization it cannot be denied that technology has developed rapidly. The development of technology in various aspects would also have an impact on human life, ranging from communication, daily life, which all becomes more practical because of the development of technology. One aspect affected by globalization is the service aspect in the field of Government, almost all government platforms now have websites and social media as
a way to facilitate access for the community. The advantage of this technological development is used by most people to make transactions via the internet, because it is more efficient and cost-effective.

The Directorate of Auction with the Directorate of State Assets Management and Information Systems initiated an online auction application facility (e-auction) to provide convenience services from the Auction Applicant (seller) side and the Office of State Assets and Auction Services (KPKNL)[4].

The development of the auction through the internet is inseparable from the many problems that occur at this time, in 2014, the Directorate General of State Assets also initiated the implementation of the Online Auction by launching an Electronic Auction Management Information System (SMILE). However, in its implementation, SMILE is still difficult to understand by the wider community because the community still lacks info on the existence of a website to participate in this auction. So that the auction process experienced innovation in 2018. DJKN updated the online auction system to be more user friendly and can run the auction process quickly with a new website namely http://lelang.go.id and this online auction system is a contemporary auction that relies on connections internet in the auction process.

Arrangements regarding internet auction or e-auction previously did not exist in the VenduReglement and Instructie Vendors which were the basis for the auction arrangement in the past, but along with the development of the era and technology, now e-auction has been known and started to be sought after by the wider community, so that a new regulation regarding auctions was issued which also regulates e-auction.

Online auction (e-auction) is explained in the Regulation of the Minister of Finance of the Republic of Indonesia No. 90/PMK.06/2016 Concerning Guidelines for Implementing Bidders with Written Bidding without Bidders Attending Via the Internet. According to Article 1 Number 1, Regulation of the Minister of Finance of the Republic of Indonesia No. 90/PMK.06/2016 Concerning Guidelines for Implementing Bidders with Written Bidding without the Attendance of Bidders Via the Internet, online Auction (e-auction), namely:[5]

“Auction with Written Bidding without the presence of Bidders through the Internet, hereinafter referred to as Internet Auction, is the sale of goods open to the public with a written bidding price without the presence of bidders to reach the highest price, which is done through an internet-based auction application.”

With the new regulation, the media for conducting the auction will be expanded. Auction is no longer just selling goods that are open to the public directly, but indirectly through electronic/internet media. As a new breakthrough in the civil execution system, namely auction sales, it does not mean this online auction (e-auction) has no loopholes for shortages. Because the system is not perfect, sometimes this unstable system can be detrimental to bidders.

Based on the description above, the authors formulated several key issues to be examined, namely as follows:
1. Why must be an online auction (e-auction) in the sale of goods at the Office of State Assets and Auction Services (KPKNL) Semarang?
2. What is the procedure for submitting an online auction (e-auction) in the sale of goods at the Semarang Office of State Assets and Auction Services (KPKNL)?
3. What are the obstacles in implementing an online auction (e-auction) at the Semarang Office of State Assets and Auction Services (KPKNL), and how are efforts to overcome these problems?
2 Research Methods

The method of approach used in this study is Normative Juridical Method. The research specifications used to strengthen the legal research process are descriptive analysis studies, because they only describe the object of the problem which is then analyzed and finally drawn conclusions from the results of the research.

This primary data can be obtained from auction officials who will be interviewed related to the online auction of the sale of goods, as well as the participants of the online auction of selling goods both sellers and buyers, who follow the online auction process organized by the Semarang City KPKNL. Secondary data for legal journals is obtained from library data or better known as legal material, such as binding and complementary laws and regulations.

The method used to analyze the data used in this research is descriptive qualitative, because the expected research results are analytical descriptive, that is the results derived from quality data and are relevant to the research material.

3 Results and Discussion

3.1 Reasons for Online Auction (E-Auction) at the Office of State Assets and City Auctions Semarang

The development of the times and the increasingly high mobility of the community resulted in all matters in daily activities of the community are also required to be more practical in order to support community mobility. Therefore, the auction is designed to be easier and can be followed by everyone wherever located. Then an innovation arose to make the auction more practical and easier for the public so that it attracted many interested people, thereby causing the auction to be carried out using digital media and named e-auction or online auction. After the issuance of PMK No.90/PMK.06/2016 concerning Guidelines for Implementing Auctions with Written Bids without the presence of Bidders via the Internet, the online auction was implemented at the Semarang City KPKNL based on directions from the Head Office and the Minister of Finance to innovate in relation to the auction sale of goods at the Semarang City KPKNL. The current digital era encourages a person to do work easily and thoroughly and in the shortest possible time, so that the effectiveness and efficiency in doing a job is very calculated.

According to DanyKuryanto, Semarang Municipal KPKNL Expert Auction Officer, the online auction itself was held with the aim to simplify and shorten the process of conducting the auction, because buyers do not have to be present directly when conducting auctions. Buyers can simply monitor through the official application of the Indonesian Auction and through the official website of the Directorate General of State Assets (DJKN) for the implementation of online auctions namely www.lelang.go.id. Indonesian Auction Application and website www.lelang.go.id is the official DJKN application, which is a place for online auction organizers, both KPKNL and Private Auction Centers.[6] Online auctions are held to mitigate risk[7], because all this time the auction is always identical to anarchist, because usually the debtor does not want to surrender his assets voluntarily. Then avoid the risk of suspicion that the auction can be arranged, because if carried out online all depends on the system, the auction winner is determined automatically by the system based on the amount highest bid.
The public is now increasingly encouraged to become more familiar with online auctions, and people are introduced to the advantages and benefits of taking part in online auctions. Moreover, the Semarang City KPKNL also slowly began to replace the conventional auction by requiring all applications to be submitted online. This certainly encourages an increase in the frequency of e-auction implementation in the Semarang City KPKNL.

The reasons for conducting online auctions at KPKNL are very diverse, beginning with the increasingly high mobility of the people and rapid technological advances, demanding that everything be done effectively and efficiently. Therefore, the Minister of Finance directs the auction to be carried out online which is then followed up by the Director of the Auction of DJKN by issuing the DJKN Auction Director's Office Note Number ND-1284/KN.7/2019 dated August 21, 2019 regarding Implementation of Online Auction Applications. The online auction aims to facilitate and make comfortable both the applicant and the auction participant. The auction is carried out online in essence to develop the implementation of the auction to be more modern, effective and efficient so that the public does not consider the auction to be difficult and can be manipulated, as well as increasing the confidence of auction users in the performance of the KPKNL Semarang City.

3.2 Procedure for Submitting Online Auctions at the Office of State Assets and Auction Services (KPKNL) Semarang City

Submission of tender applications to the Semarang City KPKNL is done online. Applicants will submit online auctions using the official website of the Directorate General of State Assets (DJKN) through the domain address www.lelang.go.id, and it can also be accessed through an application located on the Play Store specifically on Android called Lelang Indonesia.[7] Based on information from the Class 1 Auction Officer at the Semarang City KPKNL, before submitting an online auction application through the Indonesian Auction application or through the website www.lelang.go.id, an auction applicant is required to fulfill several requirements, namely:

1. Register as a user/user on the application and the Indonesian Auction website.
2. Upload photos or scan results of Identity Card (KTP). Then the ID card will be examined by the appointed Bidding Officer.
3. Register a Taxpayer Identification Number (NPWP) through the Indonesian Auction Portal, which will then be verified automatically by the Directorate General of Taxes.
4. Register the account number of the auction applicant that is used when the KPKNL will deposit the net results of the auction if the auction is sold.[8]

Then, the auction applicant submits an auction request through the Indonesian Auction Portal by submitting a new auction request, then the type of auction that will be submitted to KPKNL, the types of auctions that can be submitted to KPKNL are Execution Auction, Mandatory Non-Execution Auction and Voluntary Non-Execution Auction. Applicants who have determined the type of auction will be directed to choose the type of transaction, to sell the goods, the selected object is the sale/auction lot, then all information that has been entered is saved so that the data will be stored on the Indonesian Auction Portal server. Once the data has been uploaded, the applicant will be directed to complete the form through the Indonesian Auction Portal. This form will contain the method for submitting net auction results, the identity of the online auction applicant and selecting the Semarang City KPKNL as the party conducting the auction, then choosing the status of the auction object. The identity of the
auction applicant is filled in using the identity and identity number of the auction applicant, it can be from the Resident Identity Card, Driving License, or Employee Identification Number. Auction applicants are also required to add objects to the auction, namely an explanation of the items to be sold through an auction, which includes:

1. Location of goods to be sold through auction;
2. The limit value, which must be filled with numbers;
3. Security deposit, in the range of a minimum of 20% to a maximum of 50% of the specified limit value;
4. Nature of goods, goods to be auctioned in the form of movable property, immovable property, and intangible goods.

After all relevant data has been entered, the bidder must upload a 4-sided photograph, i.e. from the front, back side, right side and left side of the item to be auctioned. This photo is used for object data purposes that will be offered through the Indonesian Auction Portal.

Before uploading these documents, if the tender applicant is an organization/business entity, it must first be ensured that there is a power of attorney from the head of the organization concerned to delegate this online auction registration to the head of the relevant section of the agency to conduct the auction. So that the application made has clear legal documents and can be used as strong evidence. Auction applicants will be directed to complete data regarding online auction applications through the Indonesian Auction Portal. If the previous process has been saved and successfully uploaded to the Indonesian Auction Portal server, the auction applicant must verify that the uploaded documents are correct and can be accounted for, then the auction applicant must select the submit button so that all data and verification that has been done can be uploaded to the Indonesian Auction Portal server.

Online applications that have been sent to the Semarang City KPKNL will be followed by a verification process by the Semarang City KPKNL officer related to the completeness and suitability of the data uploaded by the auction applicant. If it is complete and appropriate, the application status will change to Digital Document Compliance.

According to respondents from Central Java BPD and BPR GunungRizki, the Petitioner still had to send physical documents to the Semarang City KPKNL via Pos Indonesia or submit them directly to the Semarang City KPKNL officer. After the documents are declared complete and appropriate, the physical documents are sent by including the tickets that have been printed directly through the Indonesian Auction Portal. Physical documents that have been sent to the Semarang City KPKNL will be checked for compliance with documents that have been uploaded online through the Indonesian Auction Portal, when they are complete, the status of the tender application will change to Physical Documents. The city of Semarang sets an auction schedule. The auction determination letter can be downloaded through the Indonesian Auction Portal.

When the auction determination has been issued by the Semarang City KPKNL, the auction applicant is required to make the auction announcement. Pursuant to Article 53 of PMK No.27/PMK.06/2016 concerning the Bidding Implementation Guidelines, auction announcements are carried out through newspapers/daily newspapers which are published daily at the place where the auctioned goods are located.

The first announcement was made with brochures posted at strategic locations. The second announcement was made by advertising in a local newspaper. Every 1 (one) newspaper can only be included 1 (one) request. In the announcement made by the auction applicant the object to be auctioned must be listed along with the data that is to explain the object (for example the auction is a house, then the area of the land and building area are
mentioned), the time of the e-auction (based on server) and location auction namely website [www.lelang.go.id](http://www.lelang.go.id) and the Indonesian Auction application on android.

If all announcements have been made, the auction applicant is just waiting for the auction to be held, which is based on server time (West Indonesia Time).

### 3.3 Obstacles in the Implementation of E-Auction and Efforts to Overcome the Obstacles

#### 3.3.1 Obstacle

Online auctions have obstacles in terms of the system, the organizer, and the regulations. The online auction system that has not been maximized causes maintenance to keep the system running normally, but sometimes it hinders the process of conducting the auction, while the obstacles of the e-auction organizers namely the Semarang City KPKNL are the personnel whose numbers are less for the increasing number of requests each year, according to Roestam Arifianto as the Semarang City KPKNL Class I Auction Officer this is due to the frequent rotation of the Auction Officer at the Semarang City KPKNL, which results in a new Auction Officer having to undergo an adaptation beforehand to maximize his work in the Semarang KPKNL environment.

The regulations regarding auction announcements stated in Article 51 of PMK No. 27/PMK.06/2016 concerning Bid Implementation Guidelines that require the auction to also be announced through local newspapers, causing the cost for the auction process to be even higher because if the auction e-auction announcement must be one column for only one application. While, the external obstacle of the online auction is the lack of public knowledge and interest in this online auction, so people tend to be lazy to take part in online auctions because it is considered difficult, because to be an auction applicant must upload digital documents, and still have to send physical documents too, to people old lay people certainly have difficulty implementing it due to limited knowledge of technology, and also not knowing the existence of this online auction which causes the lack of auction buyers.

#### 3.3.2 Effort

Efforts that can be carried out by e-auction organizers of the Semarang City KPKNL are by requiring auction applications to be submitted online, adding officers at the Semarang City KPKNL to support the effectiveness and efficiency of the online auction, and allowing announcements with local newspapers to be adjusted to the number of requests submitted to the Semarang City KPKNL to save the costs. As an e-auction organizer, Semarang City KPKNL is also expected to be able to make an effort to disseminate information about the Indonesian Auction Portal, both through the website and with the Indonesian Auction application that can be downloaded at the Play Store specifically available for devices with an Android-based operational system to attract more Buyer.

### 4 Conclusion

1. The first reason for launching an online auction at the Semarang City KPKNL is the demands of globalization and growing technology. It attracts the DJKN to optimize services to the public in relation to the auction.
2. The main procedure for applying for an online auction at the Semarang City KPKNL is that the applicant must initially have an account at the Indonesian Auction Portal, then meet all the requirements submitted by the website [www.lelang.go.id](http://www.lelang.go.id).

3. The obstacles in conducting online auctions originate from external and internal factors. The internal factors come from the auction system, auction organizers, and auction rules; while the external factors come from the participants and applicants of the auction itself.

5. **Suggestion**

1. The government is expected to improve the infrastructure that supports the implementation of online auctions throughout the KPKNL so that online auctions can be implemented throughout Indonesia.

2. Semarang City KPKNL as an online auction organizer is expected to add personnel to balance the number of requests that come in so that the auction determination does not take long time to issue, and instead to provide a time limit for issuing auction stipulations so that all can be uniform and not delayed.

3. Bidding Officers are expected to be more proactive and comply with the deadline for the issuance of Bid Determination so that the online auction at the Semarang City KPKNL can be orderly and smoothly implemented.

4. The public who is the online auction petitioner requesting online auction at the Semarang City KPKNL should prepare the required documents in proper, and ensure the validity of the auction object as their own. Therefore, the process of issuing the auction determination can be shortened because the data is directly in accordance between digital documents and documents physical.
References


[5] *Minister of Finance Regulation No. 90/PMK.06/2016 concerning Guidelines for Implementing Bidders with Written Bids without Bidders Attending via the Internet.*


[9] Interview with Agus, Central Java BPD ARPK Team (Semarang: Kantor Pusat BPD Jawa Tengah, 17 January 2020).
Protection Efforts for Small Fishermen in Jakarta Bay Due to Reclamation

Irsa Adinda Arnésia1, Amiek Soemarmi2, Untung Sri Hardjanto3
{irsadinda@yahoo.com1, amiek_hk@yahoo.com2, hardjanto.untung@gmail.com3}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275 1, 2, 3

Abstract. Jakarta Bay Reclamation begins with the issuance of Presidential Decree Number 52 of 1995 concerning the Reclamation of the North Coast of Jakarta. In 2014, the construction of 17 reclamation islands began with the laying of the first stone in October, and after the project went on, it caused many pros and cons regarding the impacts, especially on fishermen whose daily activities use the Jakarta Bay as a source of livelihood. The method used in this research is the normative juridical approach. The data obtained are secondary data with interviews as support, while, this study is specified as a descriptive analytical study using qualitative analysis methods. The results obtained in writing this paper are that the reclamation did indeed cause a variety of impacts such as impacts on the environment, impacts on social aspects, as well as impacts on economic aspects, so that with the enactment of Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Pembudi Daya Fish and Salt Farmers The government is expected to provide protection for small fishermen affected by the reclamation.

Keywords: Reclamation, Jakarta Bay, Protection of Small Fishermen.

1 Introduction

The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) states that the Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The article has mandated the Indonesian people to manage and utilize all natural resources they have, including abundant marine resources as well as possible for the prosperity of all the people of Indonesia. The State of Indonesia as an archipelagic country which two-thirds of its territory is a territorial waters and consists of thirty-four provinces stretching from Sabang in the west to Merauke in the east which are all connected and united by the sea.

Based on the Data, Statistics, and Information Center of the Ministry of Maritime Affairs and Fisheries 2018, for the DKI Jakarta area the number of capture fisheries production in 2017 reached 135,619 tons with the number of fishermen tending to decrease each year starting from 2012 which initially amounted to 61,813 people and then drastically reduced to 2,863 people in 2016.[1] This condition is very unfortunate even though the Jakarta Bay as one of the container management and utilization of fisheries resources that have long been the main source of livelihood of traditional fishermen on the north coast of Jakarta.

The Jakarta Bay reclamation project began with the issuance of Presidential Decree No. 52 of 1995 concerning the Jakarta North Coast Reclamation [2] which states the Jakarta North
Coast as a Mainstay Area. The Perpres was then followed up with DKI Jakarta's Regional Regulation No. 8 of 1995 concerning the Implementation of the Reclamation and Spatial Planning for the North Coast of Jakarta.[3] In the view of Save M Dagun's expert, the definition of reclamation is an uneconomic land use for the interests of settlements, agriculture, industry, recreation, and others which includes preservation of land, preservation of water sources, freezing of barren land, drainage of swamp or valley areas and tidal projects.[4]

Article 3 of the DKI Jakarta Regional Regulation No. 8 of 1995 concerning the Implementation of the Reclamation and Spatial Planning of the Jakarta North Coast Area has stated that the Jakarta North Coast Region is divided into 3 (three) sub-regions. The intended sub-region is the western sub-region, the middle sub-region, and the eastern sub-region.

In 2012, DKI Jakarta Governor Regulation No. 121 of 2012 concerning Spatial Planning for the Reclamation of the North Coast of Jakarta [5] stated that there would be 17 islands named islands A to Q. Seventeen islands were then divided into western sub-regions consisting of Islands A to with Island H, the central sub-region consists of Island I to Island M, and the eastern sub-region consists of Island N to Island Q.

Related to how the fate of small fishermen on the north coast of Jakarta after the reclamation project should not be a big problem. The birth of Law No. 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Cultivators and Salt Farmers [6] is a form of state responsibility for the protection of business actors whose main livelihood comes from the sea such as fishermen, fish farmers, and cultivators. Regulations provided by the government are a form of concern for the natural resources owned by Indonesia that really need to be maintained for the sustainability of these natural resources. In order to be able to manage fisheries in Indonesia, its principles have been regulated in fisheries laws. In addition, laws and regulations concerning Fishermen Protection play an important role in providing security for fishermen in carrying out activities and as a form of government concern for small fishermen who depend their lives on Fish Resources.[7]

2 Method

The method used in this legal research is the normative juridical approach. The research specifications used are analytical descriptive through description. The data collection method is carried out by means of literature study to obtain secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials.

3 Research Results and Discussion

According to Law Number 29 of 2007 concerning the Government of the Special Capital Province of Jakarta as the Capital of the Unitary State of the Republic of Indonesia, that DKI Jakarta Province is a special area that functions as the Capital of the Unitary State of the Republic of Indonesia and also as an autonomous region at the provincial level.[8] DKI Jakarta Province as the Capital of the Unitary State of the Republic of Indonesia, as the center of government, and as an autonomous region, so that Jakarta has characteristics that are very complex and different from other provinces. DKI Jakarta Province is always dealing with
problems of urbanization, security, transportation, environment, special area management, and other social problems.

The Special Capital Region (DKI) of Jakarta is divided into 5 urban areas and one regency, namely the City of Central Jakarta, East Jakarta City, South Jakarta City, West Jakarta City, North Jakarta City, and Kepulauan Seribu District which is a division of North Jakarta City. The northern boundary of Jakarta extends 32km along the coast, the western boundary of DKI Jakarta Province is the Banten Province, and in the south and east borders the West Java Province.

In 2018, the total population of DKI Jakarta Province will reach 10,467,630 people. The number of DKI Jakarta residents who work as fishermen in each administrative city varies. North Jakarta occupies the first position for the largest number of residents who work as fishermen with a total of 6,147 inhabitants. Followed by the Thousand Islands which has 4,232 inhabitants. The city of South Jakarta occupies the lowest position of the population who work as fishermen, with only 11 people.

According to the Big Indonesian Dictionary (KBBI) fishermen are people whose main livelihood is fishing.[9] Small fishermen according to Article 1 Number (11) of Law Number 45 of 2009 concerning Amendment to of Number 31 of 2004 Concerning Fisheries [10] is a person whose livelihood is fishing to fulfill daily necessities of life using the largest fishing vessels 5 gross tons (GT).

The level of knowledge of fishermen around the Jakarta Bay such as Cilincing, Muara Angke, and Muara Baru about reclamation activities is still very low at less than 50%. This is due to the low level of involvement of fishermen in the socialization of reclamation activities. The level of knowledge of fishermen in Cilincing shows the highest percentage of more than 40% compared to fishermen in Muara Angke and Muara Baru. This difference is suspected because the fishermen in Cilincing are mostly local residents and not migrant fishermen.[11]

Most of the fishermen said that they would move the fishing area if the catch decreased due to reclamation activities. In addition to moving the location of fishing, the possibility of the fishermen will also move to the village but will continue to fish. This shows that most fishermen will not change their work if the catch declines or even when they cannot do fishery activities due to reclamation activities. Fishermen will still try to search for fish even if they have to move to fishing areas or even move to villages.[11]

Definition of reclamation according to Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, [12] is an activity carried out by people in order to increase the benefits of land resources in terms of environmental and socio-economic aspects by way of drainage, land drainage, or drainage.

The Jakarta Pantura reclamation project is a series of operational policies in addressing national development goals. Operational policy in the reclamation corridor is the process of developing empowering unproductive areas to be efficient. Problems arise when there are differences in interpretation of the reclamation understanding, thus requiring the government to temporarily suspend the Jakarta Pantura project. The polemic brought about the fact that the implementation process was not in accordance with the provisions and was allegedly not paying attention to social and environmental aspects.

3.1 Impact of Reclamation on the Environment

The reclamation of the Jakarta Bay coast has caused a change in the environment of the Jakarta Bay waters. The main changes that occur are in decreasing the brightness of the waters. Changes in water brightness indicate an increase in turbidity of the waters which is the
impact of the process on reclamation efforts caused by dredging and landfill. This is proven by
the results of research conducted by the Fisheries Research Center in 2017 comparing the
brightness level of Jakarta Bay in 2014 (before reclamation) and 2016 (after reclamation). The
results showed a decrease in the level of water brightness in 2014 which amounted to 5.84m to
4.42 in 2016.[13] The possibility of further impacts from increased turbidity is the occurrence
of sedimentation and sediment deposition to the bottom of the water that can change the
bottom of the water.
Coastal reclamation efforts cause the loss of complexity of the existing coastal
ecosystems, such as the loss of mangrove forests and seagrass beds. The results of a joint
research by UNEP and LPP Mangrove stated that the condition of mangrove forests in Jakarta
Bay was severely damaged and some of them had changed functions to become settlements
and cultivation. The condition of mangrove forests in the Bay of Jakarta has experienced
degradation, which is a shrinkage of the area and reduced species diversity.[13]
The impact of the reclamation development of islands C and D that have been felt by
fishermen is the increasingly routine occurrence of tidal or tidal events in their area of
residence. The tide usually only occurred in the east season back then, but now, it happens
almost every day. This has an impact on the inconvenience of their residence. In addition,
siltation also often occurs in the area of the entrance and exit of the ship behind the TPI (Fish
Auction Place), thus making the flow in and out of the ship from TPI into the sea becomes
interrupted.
In dealing with the impact of the reclamation, the community is faced with actions that
should be taken to survive and prevent losses from becoming more sustainable. These actions
are adaptation strategies. Adaptation strategy is an effort to overcome or minimize the
negative impacts arising from an event. In the Jakarta Bay community the adaptation efforts
that have been made to overcome the negative impacts of reclamation are still very limited.
This is due to limited capital and technology owned by fishermen.
The adaptability of the community to the impact of reclamation in relation to changes in
the living environment is still very minimal. They surrender to the tide conditions that occur in
their environment without making any adaptation efforts. Likewise with the silting problems
that often occur in and out of the ship area, they usually only contact the developer to do the
dredging.[14]
3.2 Impact of Reclamation on Social Aspects

Jakarta Bay Reclamation does not only raise technical and environmental problems, but
also causes social and economic problems for the community. Social problems that arise in
the fishing community is like the disruption of social network relations. The social network is an
adaptation strategy that functions as a guardian for the continued subsistence of fishing
households even if it is not to improve the quality of life or social welfare.
Some forms of relations and social networks that exist on the coast of Jakarta Bay are:[14]

a. Relations and social networks between collectors and fishermen who own boats. This
relation was built to ensure the certainty of the catch fish are all sold. Traders
collectors provide facilities by selling fish caught by fishermen, so that the profit
received by fishermen is that fishermen no longer need to market their catch because
there are already those who directly market their fish.

b. Relationships and social networks between Fishermen and Fishermen. The
relationship between ABK fishermen and boat owners is based on their individual
needs because ABK does not have a boat so that it can continue to sea, while ship
owners no longer have to struggle to look for ABK. Social relations between ABK fishermen and boat owners usually lead to the consequences of rights and obligations so as to give birth to a sharing system.

c. Relationships and social networks between groceries and BBM traders and fishermen who have boats. This relationship was built to ensure certainty of production inputs such as rations and fuel. The groceries and BBM merchants provide debt facilities to the fishermen, so the benefits received by the fishermen are that the fishermen do not need to prepare cash because they can owe to the groceries and fuel traders. Usually traders provide a limit for taking 2-3 times the amount of the debt.

3.3 Impacts on Economic Aspects

The impact of reclamation will be felt both during the reclamation process and after the reclamation. The impact felt by fishermen is the loss of fishing areas, disruption to shipping lines, loss of fish resources and disruption of fisheries aquaculture activities. Although most of the fishermen in Jakarta Bay are small-scale fisheries, they still have a very large role in the Jakarta fisheries sector. Disruption to the small-scale fisheries sector can pose a serious threat to the economic stability of Jakarta's coastal communities.

Those who were directly affected by the implementation of the Jakarta Bay reclamation were 24,028 people consisting of 6,268 permanent fishermen (2,464 owner fishermen and 3,804 labor fishermen) and 17,760 migrant fishermen (515 owner fishermen and 515 owner fishermen and labor fishermen 17,245 people).

Overall, the level of income of the owner's household per month decreased from an average of IDR 9,609,515 to IDR 2,267,655. The average income of fisherman household workers (ABK) per month is relatively stable from IDR 2,104,495 to IDR 2,158,832. The dynamics of the magnitude of this income level occur as a result of the existence of alternative sources of livelihood for ABK in other activities outside the fishing business field. Before the construction of artificial islands, many fishermen operated their fishing gear in the area that the islands had built. The area of construction of artificial islands is a good fishing ground with little operational costs. After the artificial islands were awakened, fishermen found it difficult to get fish. The operational costs required also increase by about 2-3 times, this is because fishermen are looking for a fishing ground that is farther than before so that it consumes more time, costs and fuel.

Other impacts also occur on the nets that are installed by fishermen. The nets are often hit by sand carriers which are used as material for reclamation. Because of the damaged nets, fishermen must pay additional fees to repair their fishing gear.

The impact of reclamation on capture fisheries ultimately affects the processing business. Before the construction of these artificial islands, the supply of fish raw materials was easier to obtain. However, after the reclamation islands, processors find it difficult to get raw materials and the price of raw materials is getting higher. The same thing is felt by fish traders who find it difficult to get fish so that the price of fish becomes higher.

The economic value of marine and fisheries resources is an important value in the utilization of resources. The results of the calculation of the value of losses due to economic potential lost from fishermen, growers and fishponds are as follows:

1. Every 1 ha of lost water area causes an economic loss that is received by fishermen in the amount of IDR 26,899,369 per year. The total loss of fishermen due to the reduced waters in the Jakarta Bay is IDR 137,536,474,541 per year.
2. Every green mussel cultivation business unit affected by reclamation results in a loss of IDR 85,599,135 per annum. The total loss of green mussel cultivation in the Jakarta Bay area is IDR 98,867,000,590 per year.

3. Each area of 1 ha of ponds affected by reclamation results in a loss of IDR 27,992,943 per annum. The total loss suffered by farmers in the Jakarta Bay area is IDR 13,632,563,241 per year.

Adaptation efforts undertaken by fishermen in dealing with the impact of reclamation on the economy are that they only increase the amount of fuel and change the shipping lanes because they have not been able to change the technology from small vessels to large vessels. Fishermen also try to move the fishing area which was originally around Kamal Muara to move to the Thousand Islands area.

3.4 Protection of Small Fishermen in Jakarta Bay

In Article 1 number (1) of Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers it is stated that what is meant by the protection of fishermen is all efforts to assist fishermen in dealing with the difficulties of doing fisheries business.

In order to realize the protection that has been promised in Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Hatchers and Salt Farmers, the Government has declared several protection strategies to be used as stated in Article 12 paragraph (2) of the Law - Law Number 7 of 2016 states that protection strategies are carried out through:

a. Fishing Risk Guarantee;
b. Providing fishing infrastructure;
c. Providing Fishing Tools;
d. Guaranteeing Business Certainty;
e. Eliminating of High Cost Economic Practices;
f. Controlling of Import of Fisheries Commodities and Salting Commodities;
g. Assuring the Security and Safety; and
h. Assisting and facilitating the Legal process

In providing protection to fishermen, fish breeders, and salt farmers must be based on the principles listed in Article 2 of Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Breeders, and Salt Farmers as follows:

a. The principle of sovereignty, which means that the implementation of the Protection and Empowerment of Fishermen, Fish Resources and Salt Farmers must be implemented by upholding the sovereignty of Fishermen, Fish Fishers and Salt Farmers who have the right to develop themselves;
b. The Principle of Independence, the intention is the implementation of Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers must be carried out independently by prioritizing the ability of domestic resources;
c. The Principle of Utilization, the intention is the implementation of the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers must aim to provide maximum benefits for the welfare and quality of life of the people;
d. The Principle of Togetherness, the intention is the implementation of Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers must be carried out
jointly by the Central Government, Regional Governments, Business Actors, and the community;

e. The principle of cohesiveness, the intention is the implementation of Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers must harmonize various interests that are cross-sectoral, cross-regional, and cross-stakeholder;

f. The Principle of Openness, the intention is the organization of Protection and Empowerment of Fishermen, Fish Resources and Salt Farmers must be carried out by taking into account the aspirations of Fishermen, Fish Fishers and Salt Farmers and other stakeholders who are supported by information services that can be accessed by the public;

g. The principle of Efficiency-Equitable, the intention is the implementation of Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers must provide equal opportunities and opportunities proportionally to all citizens in accordance with their abilities;

h. The principle of Sustainability, the intention is the implementation of the Protection and Empowerment of Fishermen, Fish Resources and Salt Farmers must be carried out consistently and continuously to ensure the improvement of the welfare of Fishers, Fish Fishers and Salt Farmers;

i. The Principle of Welfare, the intention is the implementation of the Protection and Empowerment of Fishermen, Fish Breeders, and Salt Farmers must be carried out in order to achieve welfare for Fishers, Fish Breeders and Salt Farmers;

j. The principle of Local Wisdom, the intention is the implementation of Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers must consider social, economic, and cultural characteristics and noble values that apply in the local community life; and

k. The principle of the preservation of the function of the environment, the intention is the organization of protection and empowerment of fishermen, fish breeders, and salt farmers must use facilities and infrastructure, procedures and technology that do not interfere with environmental functions, both biologically, mechanically, and chemically.

The safeguard measures that have so far been realized since the law came into force is the provision of fishing risk guarantees in the form of BPAN (Fisherman Insurance Premium Assistance). BPAN is one form of realization carried out by the Government through the Ministry of Maritime Affairs and Fisheries in providing guarantees and protection for fishermen who experience obstacles or accidents when fishing. Based on data from the Director General of Capture Fisheries of the Ministry of Maritime Affairs and Fisheries, throughout 2016 to 2019, the Government routinely provides BPAN to fishermen throughout Indonesia including fishermen in the Jakarta Bay.

2016 data shows that 2,123 North Jakarta fishermen have received BPAN from the Government. In 2017 to 2019, 423 North Jakarta fishermen had received BPAN.[15] The amount that decreased significantly compared to 2016 occurred because part of BPAN had been given using DKI Jakarta APBD funds.

Another effort that has been realized is the provision of fishing infrastructure in the form of fishing vessels. Throughout 2017-2018 the Government through the Ministry of Maritime Affairs and Fisheries has provided assistance in the form of fishing vessels that are seaworthy, worth catching, and worth keeping for fish as mandated by Law Number 7 of 2016.
A total of 8 (eight) units of 5 (five) GT vessels have been given to DKI Jakarta fishermen throughout 2017-2018 with details of the provision of 5 units of vessels in 2017 and 3 units of vessels in 2018. In addition to fishing vessels, the Government has also provided assistance in the form of fishing gear in the form of Gillnett Mid PA Multi Monofilament 10 ply (Millennium) mesh size 4 inch 500 meters/11 pis as many as 5 packages worth IDR 121,790,350 million.[15]

4 Conclusion

Based on these results, the researcher can conclude that the reclamation of Jakarta Bay has several impacts on small fishermen in Jakarta Bay, such as the impact on the environment in the form of decreasing water brightness and silting up, so that it is difficult for small fishermen to lean their ships. Impact on social aspects is in the form of disruption of relations and social networks between fishermen and fish traders, relations between ABK fishermen and boat owners, and relations between fishermen with food and fuel traders. The impact on the economic aspects is in the form of decreased fishing yields and the income of fishermen. In addition, the cost of fuel by fishermen is also added to the economic aspect.

Efforts to protect small fishermen guaranteed by Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Hatchers and Salt Farmers have not been fully realized. The safeguard measures that they have been realized so far include providing fishing risk guarantees in the form of BPAN (Fishermen Insurance Premium Assistance) to 2,546 fishermen, provision of fishing facilities and infrastructure in the form of 5GT fishing vessels totalling 8 units, and assistance in fishing gear in the form of Gillnett nets Millennium worth IDR 121,790,350 million.
References


[10] *Law Number 45 of 2009 concerning Amendment to of Number 31 of 2004 Concerning Fisheries.*


Famous Brand Criteria and Protection of the Law
Based on the Decision of the Court of RI Number 32
PK/Pdt.Sus-HKI/2018

Alya Nuzulul Qurniasari1*, Budi Santoso2, Sartika Nanda Lestari3
{alyaanuzulul@gmail.com1*, budisantosotmg@lecturer.undip.ac.id2, sartikananda@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. The brand does not only function as a differentiator, but also functions as a company asset, especially a well-known brand. The problem of this research is determining the criteria for famous brands according to the Trademark Law and international regulations. Legal protection given to Skyworth brand owners and how the Judges consider the basis in deciding this case. Skyworth Company registered for class 16 in 2004. However, in 2016, Skyworth registered for goods/services class 7, 9 and 11 rejected by the Directorate General of IPR because Linawaty Hardjono had registered the mark goods/services of the same class without Skyworth Company's permission in 2006. The method used is a normative juridical method with qualitative analysis methods. From the results of the Skyworth Trademark research, it is included in the criteria of famous brands according to the Trademark Law and international regulations (Paris Convention, TRIPs, WIPO). Legal protection used is preventive and repressive legal protection. Basic Judges' consideration is the existence of a judge's mistake when deciding a case and when the judge rejects the Plaintiff's claim. The suggestion given is immediately made a register of famous brands according to the criteria in the law and Permenkumham, The Directorate General of Intellectual Property Rights must be more assertive in acting against the perpetrators of brand violations and the criminal sanctions imposed must be in accordance with the law.

Keywords: Legal Protection, Right to Trademark, Famous Trademark

1 Introduction

Protection of Intellectual Property Rights begins with an understanding of the need for a special form of respect for one's intellectual work and the rights that arise from the work itself. Intellectual Property Rights are only available when the intellectual abilities of human beings have formed something that can be seen, heard, read, and used practically. David I. Bainbridge said that Intellectual property is the collective name given to the legal right which protects the product of the human intellect.[1]

Intellectual Property Rights are categorized into 2 (two) groups, namely Copyright (Copy Rights) and Industrial Property Rights (Industrial Property Rights). Copyright (Copy Rights) is divided into Copyright (Copy Rights) and Rights relating to Copyright (Neighboring Rights). Furthermore, Industrial Property Rights are further classified into Patents, Trade Marks, Trade Secrets, Industrial Designs and Integrated Circuit Layout Designs.[2]
Brand rights as one part of Intellectual Property Rights is the most important thing to run a business smoothly and fairly business competition, because with the existence of a brand as a product identification, consumers can know and differentiate the quality of products or services that will use it. Without a brand, consumers will find it difficult to determine which quality products fit their needs. Therefore a brand can be a commercially valuable asset, even a brand is often more valuable than the real assets of a company.[3]

Understanding Trademark in Law No. 20 of 2016 in more detail voiced understanding of the brand, described that the brand is a sign that is displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram or a combination of 2 (two) or more of these elements to distinguish goods and/services produced by persons or legal entities in the trading of goods and/or services. Based on the above provisions, it is clear that the main function of a brand is to distinguish goods or services produced by other similar companies. Thus, the brand is the identification of the origin of the goods or services concerned with the manufacturer.[4]

Under the Trademark Law, a protected mark is a registered mark that gives rise to trademark rights. While the right to the mark is an exclusive right granted by the state to the trademark owner who is registered in the General Register of Marks for a certain period of time using the mark himself or giving permission to other parties to use it. Thus, the right to trademark is a right granted by the state to the owner of a registered mark.[5]

Internationally, well-known brand criteria are also found in the Paris Convention and Trade Related Aspects of Intellectual Property Rights (TRIPS). According to Article 16 paragraph (2) of the TRIPS Agreement, there is a critique of the fame nature of a trademark, among others, by taking into account the knowledge factor of a particular brand in the community, including the knowledge of participating countries about the condition of the mark concerned, obtained from the results of the promotion of the mark. Meanwhile, according to the Paris Convention the criteria for famous brands are not regulated by default. The criteria for declaring a brand as a well-known mark is a matter determined by each country. The notion of a well-known mark exists only in relation to knowledge or brand recognition among certain people in the business field concerned, including knowledge or recognition obtained as a result promotion of a brand.

The expansion of the scope of legal protection for well-known marks in the TRIPs Agreement is contained in Article 16 Paragraphs (2) and (3) of the Indonesian TRIPs Agreement which has ratified the Agreement on Establishing the World Trade Organization as well as being bound to all the provisions in the TRIPs agreement. Thus, relating to expanding legal protection for well-known brands, Indonesia must carry out its international obligations to protect famous brands at least as per the legal protection standards given in Article 16 Paragraphs (2) and (3) of the TRIPs Agreement.[6]

One example of a famous trademark dispute case raised by the author is a trademark dispute case between Skyworth Group LTD and Linawaty Hardjono as the owner of the brand on the same name and logo as the company Skyworth Group LTD. That the Plaintiff in this matter is the Skyworth Group LTD is a well-known company from China which began in 1988 based on the evidence of certificates issued by the Government of China and has long been known in various countries in the world, registered for types of goods class 07, 09, 11.

The Plaintiff sued this case in the Central Jakarta Commercial Court because Linawaty Hardjono had made a bad faith by imitating the plaintiff's Skyworth logo and had similarity in principle and in whole for similar or non-similar services to the plaintiff's services. In addition, due to the actions of the defendant, the plaintiff cannot register its production goods in classes 7.9 and 11 to the Directorate General of Intellectual Property Rights.
Based on the Judex Facti verdict of the Commercial Court at the Central Jakarta Commercial Court, Skyworth Group LTD undertook a legal review to the Supreme Court of the Republic of Indonesia in register Number: 32 PK/Pdt.Sus-HKI/2018,[7] then by the Supreme Court of the Republic of Indonesia the verdict was handed down with amar granted the Plaintiff's claim for the whole. The Defendant was sentenced by stopping the promotion, distribution and or marketing and also withdrawing from the market the products using the Plaintiff's SKYWORTH brand and logo in the Territory of Indonesia or outside the Territory of the Republic of Indonesia and paying the court fees at all court levels and at the review hearing, IDR 10,000,000.00 (ten million rupiah).

From the above background, the problem can be formulated as follows:

1. Are the criteria of famous brands belonging to Skyworth Group LTD in accordance with Law Number 20 Of 2016 concerning Trademarks and Geographical Indications and international regulations?
2. How is the legal protection given to the well-known mark in this case, Skyworth Group LTD, for bad faith from Linawaty Hardjono?
3. What is the basis for the consideration of the Supreme Court Judges in deciding Case Number 32: PK/Pdt.Sus-HKI/2018?

2 Method

The method used in this research is the normative juridical approach. The specifications used are descriptive analysis. Data analysis method used in this study is a qualitative analysis method, namely research that uses descriptive analysis data, so the data that has been obtained will be arranged systematically, logically and juridically.

3 Results

3.1 Position Case

Skyworth Group LTD (Plaintiff) is a well-known company from China which was established since 1988 based on evidence of certificates issued by the Government of China for types of electronic goods contained in classes 07.09 and 11.

On December 13, 2004, the Skyworth Group LTD has submitted an application for registration of the Skyworth trademark and logo for the class of goods/services number 16 to the Directorate General of Intellectual Property Rights and has issued a brand certificate to the Skyworth Group LTD. Without the plaintiff's approval, on December 22, 2006, Linawaty Hardjono registered Skyworth's trademark and logo with the Ministry of Justice and Human Rights eq DG IPR.

On September 3, 2014, Skyworth Group LTD has registered trademarks for the type of goods classification number 7.9 and 11 to the Directorate General of Intellectual Property Rights, but this application was rejected by the Directorate General of Intellectual Property Rights because they had received a registration of Skyworth's goods and services from the Defendant.

For Linawaty Hardjono's actions, Skyworth submitted a lawsuit to the Central Jakarta Commercial Court on November 18, 2015. During the trial at the Commercial Court,
Defendant I and Defendant II through their legal counsel filed an exception. However, the Central Jakarta Commercial Court Judge rejected the exceptions submitted by the Defendants and granted the Plaintiff's claim in full;

The Cassation Petitioner (Linawaty Hardjono) through his attorney, filed an appeal on January 7, 2016. The Supreme Court finally issued a decision Number 165 K/Pdt.Sus-HKI/2016 dated July 8, 2016 with the decision to grant the appeal of the Linawaty Hardjono Party and cancel the appeal Central Jakarta Commercial Court Decision Number 47/Pdt.Sus-Trademark/2015.PN Niaga Jkt.Pst;

On August 28, 2017, Skyworth submitted a request for a review hearing at the Registrar's Office of the Central Jakarta Commercial Court. Based on the judge's judgment, the Supreme Court believes that there is sufficient reason to grant the request for Skyworth Group LTD Review and cancel the Supreme Court's decision No. 165 K/Pdt.Sus-HKI/2016 by punishing the Defendant to stop the promotion and pay the court fee at all levels of justice and at review examination of IDR 10,000,000.00 (ten million rupiah).[8]

3.2 Overview of Famous Brands

The criteria for famous brands are regulated in the World Intellectual Property Organizations (WIPO) agreed in the Joint Recommendation Concerning Provinces on the Protection of Well-Known Marks that these factors can be used to determine whether the brands are in the well-known categories, namely:

1) The level of brand knowledge or recognition in the sector that is relevant to the community;
2) Existence, level and geographical area of brand use;
3) Existence, level and geographical area of brand promotion;
4) Existence and geographical area of any registration or application for registration of a mark;
5) Evidence of recognition of ownership of the right to a mark by an authorized body such as a court ruling that notifies legal ownership of a well-known mark;
6) Brand value.

The definition of a famous brand is not specifically regulated in Law No. 20 of 2016,[9] but the regulation of well-known brands can be seen in the Elucidation of Article 21 paragraph (1) letters b and c, which states the rejection of an application that has similarities in principle or in whole with another party's famous brand for similar goods and/or services. In the Explanation, it was revealed that the rejection was made by taking into account the general public knowledge of the mark in the relevant business field. In addition, consideration is also given to the brand's reputation that is obtained due to intense and massive promotion, investment in several countries in the world by its owner, and accompanied by evidence of registration of the mark referred to in several countries. If this has not been considered sufficient, the Commercial Court will order an independent institution to conduct a survey in order to obtain conclusions about whether or not the brand is the basis for rejection.
4 Discussion

4.1 Criteria for Famous Trademarks according to Law No. 20 of 2016 and International Regulations

4.1.1 According to Law No. 20 of 2016

The criteria of famous Trademarks is stated in the Elucidation of Article 21 of Law No. 20 of 2016. Based on the Elucidation of the Article, it can be concluded that the criteria for brands that can be categorized as well-known brands are:

1) General knowledge of the community in the field of business concerned. The Skyworth Group LTD brand is traded in class 16 (sixteen). So the people who are associated with this class of goods know for sure that the Skyworth Group LTD brand is a well-known brand.

2) Brand reputation because of the incessant promotion. The Skyworth brand is traded in 197 (one hundred ninety-seven) countries, so this brand is very popular in the types of goods grade 7, 9, 11, 16 in Indonesia.

3) Investments made by their owners in several countries. Regarding investments made by Skyworth Group in 197 countries around the world prove that the Plaintiff's Skyworth logo and brand are well known internationally. The following are some countries such as Switzerland, Germany, Russia, Malta, Italy, Oman, Hong Kong, Korea, the Philippines, Bahrain, Laos.


5) The results of a survey conducted by an independent institution but appointed by the Commercial Court.

So, the Skyworth brand is classified as a well-known brand according to Act Number 20 of 2016.

4.1.2 According to the Paris Convention, TRIPS and WIPO

In Article 6 of the Paris Convention for the Protection of Industrial Property bus does not provide definitions or criteria for a well-known trademark (Wellknown Trademark), but rather regulates the form of protection for a famous trademark to the extent that each member or competent authority in a country must reject the same application for registration or similar to a brand that is considered famous in a country. The criteria for declaring a brand as a well-known brand is determined by each country.

Two factors in determining the fame of a brand based on Article 16 paragraph (2) of the TRIPs Agreement are knowledge of the brand and promotion. Brand knowledge refers to public knowledge in the relevant sector, not public knowledge or the general public.

In addition, there is a promotion factor. A brand can be said to be a well-known brand if in its efforts followed by the implementation of promotions such as publications in various media or investments in various countries. One example of this promotion according to Indonesian Jurisprudence can also be done by proving that there is a separate website owned by the brand famous so that the general public can access all information about the brand.[10]
Skyworth Company also has a website that can be accessed in several countries for the investment in 197 countries. The website address includes Hong Kong: https://hk.iskyworth.com/USA; https://skyworthusa.com/.

Promotion can be done in various ways. One of them is Sales Promotion. Sales promotion is a form of promotional activities in the form of samples or examples, coupons or vouchers, premiums, price packages, money back offers and sweepstakes.[11]

Skyworth Company draws a lot to commemorate Skyworth’s Global 408 TV Festival. Under these provisions, consumers are required to purchase 55inch Android Television products belonging to the Skyworth Company and each product purchase, the consumer will get a voucher to be drawn. The prizes offered are also quite diverse, namely travel vouchers, shopping vouchers and spa vouchers.

Promotion by Skyworth Company is not only through the media website and in the form of sweepstakes, but through print media. This can be seen in the promotion of Coocaa Television which is a product of the Skyworth Company in one of the Kompas newspapers.

Other international regulations governing the criteria for the recognition of a brand are the 1999 WIPO Joint Recommendation Concerning Provision on the Protection of Well-Known Marks. These criteria consist of:

1) The level of knowledge and recognition of a brand in the relevant sector in society. The Skyworth brand is traded in the class 16 classification so that people associated with that class of goods know for certain that the Skyworth Group LTD brand is a well-known brand.

2) The existence, area and geographical area of the use of the mark. The Skyworth Company has long been known and circulated in 197 countries and was first established in 1988.

3) The existence, area and geographical area of each brand promotion. Skyworth Group LTD was founded in 1988 until now, this proves that the promotion carried out by the company to maintain its existence requires a lot of effort and costs.

4) The existence and geographical area of each trademark registration. SKYWORTH has been applied to registered trademarks in 197 countries such as the United States in 1999, Germany in 1996 and the United Kingdom in 2008.

5) Evidence of recognition of ownership of the rights to the mark by the authorized body. Proof of ownership of the Skyworth trademark is a certificate issued by the Chinese Government (proof P-2) of its trademark registration in 1988.

6) Brand value. Skyworth Company has good value and high value products in the eyes of consumers to the international scene. This is evidenced by several awards for its brands such as In 2010 Skyworth entered the 10 Best Products in the world Skyworth brand also has a very high brand value, from 2008 to 2014 the number reached 33.4 billion USD.

4.2 Legal Protection for Famous Skyworth Trademark Owners for Bad Faith (Bad Faith) Linawaty Hardjono

Legal protection can be in the form of preventive or repressive protection. Preventive legal protection is done through trademark registration. That the registered mark has legal protection for a period of 10 (ten) years and is retroactive from the date of receipt.

Repressive legal protection is carried out if there is a violation of the right to the mark through a civil lawsuit and or criminal charges. The owner of a registered mark has legal
protection for violations of the right to a mark either in the form of a claim for compensation or termination of all acts related to the use of the mark or based on criminal lawsuits through law enforcement officials.

This has been done by Skyworth by submitting a lawsuit to the Central Jakarta Commercial Court for the ill will of the party Linawaty Hardjono who violated the provisions in Article 21 of Law Number 20 Of 2016 namely the Application was rejected if the mark has the same principle in principle or in whole with the registered trademark of the party Other and well-known brands belonging to other parties for goods that are not of the same type.

Legal protection is also given to the trademark owner as stipulated in Article 76 (1) of Law Number 20 Of 2016, namely that a claim for cancellation can be filed by an interested party based on the reasoning in Article 21. not good according to Article 21 and Skyworth is an interested party to file a cancellation claim.

Skyworth can file a lawsuit for compensation and termination of all acts of the Skyworth trademark owned by Linawaty Hardjono. This is regulated in Article 83 (1) of Law Number 20 Of 2016. The compensation given by the Panel of Judges to Linawaty Hardjono is IDR 5,000,000,000.00 (five billion rupiah). According to the author this is not quite right, because according to Law Number 20 Of 2016 Article 100 paragraph (1) and (2) the maximum compensation amounted to IDR 2,000,000,000.00 (two billion rupiah). As an alternative, it is better if the compensation for the Defendant is not more than what is stipulated in the law, besides that the Panel of Judges can impose a prison sentence of 5 years for Article 100 paragraph (1) and 4 years for Article 100 paragraph (2).

International regulated legal protection is also provided for famous brands. It is regulated in Paris Convention Article 6 bis (3) that there is no set period of time for filing a cancellation mark. Article 10 bis (3) of the Paris Convention requires member States to provide protection to famous brands from unfair competition. Furthermore, in TRIPS Article 16 (1) emphasizes the existence of the principle of honest trade practice to prevent other parties or entities that in bad faith use the brand of goods or services that have been used by other parties before.

4.3 Legal Considerations of the Supreme Court Judge Council on Case in Case Number 32 PK/Pdt.Sus-HKI/2018 in accordance with Law Number 20 of 2016 concerning Trademarks and Geographical Indications

Skyworth submitted a request for a review hearing at the Registrar's Office of the Central Jakarta District/Commercial Court on August 28, 2017. The petition. The Supreme Court granted the Petitioner's Request for Reconsideration with the following considerations:

1) Whereas Judex Juris in its decision had made a judge's error or a real mistake because he had canceled the Judex Facti/Commercial Court Decision at the Central Jakarta District Court Number 47/Pdt.Sus-Merek/2015/PN Niaga Jkt. Pst., November 18, 2015 and by stating the refusal of the lawsuit.

2) Whereas there is no Government Regulation related to Article 6 paragraph (2) of Law Number 15 of 2001 concerning Trademarks, concerning Protection of Famous Trademarks of the same type, the Supreme Court is of the opinion that in accordance with the results of the Civil Chamber Formulation as outlined in Circular Letter The Supreme Court No. 3 of 2015 should have been a Judex Juris verdict stating a lawsuit cannot be accepted, not stating a rejected claim like the Judex Juris decision.

In Judex Juris, it was stated that the Cassation Respondent in submitting the claim to the Central Jakarta Commercial Court had passed the deadline (expired). According to the author,
this is not appropriate because Article 69 paragraph 1 of Law No. 15 of 2001 concerning Trademarks [12] which are now regulated in Article 77 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications that a filing of a claim for cancellation of a mark can only be submitted within a period of 5 years from the date of trademark registration by the interested parties. In this case, Skyworth Group LTD in filing their lawsuit to cancel the logo and trademark of Skyworth owned by Linawaty Hardjono had passed the deadline set by the Act. Cancellation of trademark registration can only be submitted within 5 years from the date of registration considering the SKYWORTH + Logo mark which is one of the objects of dispute has been registered for more than 10 years and even the SKYWORTH + Logo mark has been renewed.

However, Article 77 paragraph 2 of Law Number 20 Of 2016 concerning Trademarks and Geographical Indications states that "a claim for cancellation can be filed indefinitely if the mark concerned is against religious morality, decency or public order", which is in the Elucidation of Article 77 paragraph 2 Law Number 20 Of 2016 "Public Order" also means "bad faith". Skyworth Group LTD has the authority as a Plaintiff because the Plaintiff suffers a loss due to the actions of the Defendant who registered the Skyworth logo and trademark without permission from the Plaintiff in bad faith to piggyback, imitate or cheat the fame of the other party's trademark for the benefit of its business which results in losses to the Plaintiff and has misled and deceived consumers.

The author’s opinion is when Law Number 15 of 2001 is still taken an effect, there is no regulation regarding the protection of famous trademarks which are not of the same type, so in this case the Supreme Court states that the Plaintiff's claim cannot be accepted rather than rejected, this is stated in a Supreme Court Circular Number 3 of 2015. However, in Act Number 20 of 2016 concerning Trademarks and Geographical Indications, it has regulated the protection of famous brands for goods/services which are not of the same type, this is stated in Article 21 paragraph (1) letter c: “Application is rejected if The mark has similarities in principle or in whole with: c. Other parties' well-known brands for goods and/or services that do not have the same type that meet certain requirements.”

Rejection of an application based on a well-known mark for goods and/or services that are not the same type must meet certain requirements. According to Article 19 paragraph (3) Permenkumham Number 67 of 2016, certain requirements include:[13]

a. Any objection that has been submitted in writing by a well-known Trademark Owner against the Application; and
b. Famous brands that have been registered.

Skyworth has filed an objection namely a written lawsuit to Linawaty Hardjono to the Central Jakarta Commercial Court. Skyworth is a well-known trademark that has been registered for class 16 classifications to the Directorate General of Intellectual Property Rights. So that the requirements for filing an objection with Linawaty Hardjono have been met by the Skyworth Group LTD.

In this case, the Judge in the Central Jakarta Commercial Court in its decision has successfully conduct a Judicial Activism to provide protection for famous brands that are not the same type even though there are no implementing regulations because Indonesia is a participant/signatory to the World Trade Organization Agreements with TRIP’s as an attachment and the Paris Convention so it is obliged protect famous brands including those that are not the same type.
5 Conclusion

The criteria of famous brands belonging to Skyworth Group LTD are in accordance with the criteria set out in Law Number 20 Of 2016 on Geographical Marks and Indications and international Regulations such as the Paris Convention, TRIPs and the 1999 WIPO Joint Recommendation Concerning Provision on the Protection of Well-Known Marks. Elucidation of Article 21 of Law Number 20 Of 2016 states the criteria for famous brands consisting of general public knowledge in the field concerned, brand reputation due to promotion, investments made by their owners in several countries, proof of registration in several countries in the world, and the results of surveys conducted by an independent agency, which is relevant to the criteria of famous brands in the TRIPS, Paris Convention, and WIPO.

Legal protection for famous brands in the Skyworth case consists of two, namely preventive and repressive protection. Preventive protection has been carried out by Skyworth Company by registering its trademark (first to file) with the Directorate General of Intellectual Property Rights. In Article 35 of Law Number 20 of 2016 registered trademarks receive protection for 10 years. For repressive protection, the Skyworth Group LTD has filed a claim for cancellation of the mark to the Central Jakarta Commercial Court for acts committed in bad faith (bad faith) by the Party Linawaty Hardjono.

The basis for the consideration of the Supreme Court Judges in deciding the review case of Skyworth Group LTD is that there is a mistake of the judge in canceling the decision Number 47/Pdt. well-known for non-identical goods so the judge rejected the Plaintiff's claim. However, in the Supreme Court Circular Letter Number 3 of 2015, the lawsuit should not be accepted rather than rejected.
References


[9] Law Number 20 of 2016 concerning Brand and Geographical Indications.


Law Protection in Contract Agreement : PT. Telkom with IndiHome Cable Television Customer Service

Dio Prakoso1, Budi Santoso2, Rinitami Njatrijani3*
{dio.prakoso@gmail.com1, budisantosotmg@lecturer.undip.ac.id2, rinitami@live.undip.ac.id3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2, 3

Abstract. IndiHome is the provider that receives the most complaints from the public, so consumers feel less satisfied with their services when compared to other providers. This study aims to determine: 1) Implementation of legal protection in the contractual agreement between PT. Telkom with IndiHome cable television broadcasting service customers, and 2) Responsibility of IndiHome in using cable television broadcasting services if the customer experiences a loss. The approach method in this research is empirical juridical, whether it is in accordance with the provisions of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection that applies or not. Analysis of the results of the study showed that; 1) legal protection in the contract agreement between PT. Telkom with the cable television service provider IndiHome, already contains an agreement regarding: Wi-Fi installation procedure; online and offline registration; IndiHome package fees; payment method; installation, and the contents of the agreement. However, in its implementation, PT. Telkom as the owner still often performs activities that are counterproductive to customer satisfaction; 2) the responsibility of PT. Telkom in the use of cable television broadcasting services if the customer suffers a loss is generally based on the Consumer Protection Act, where the responsibility has fulfilled consumer protection against interference.

Keywords: implementation of legal protection, IndiHome cable television broadcasting

1 Introduction

In line with the increasing needs of the community for the internet in addition to the speed and visual clarity that is increasingly needed, an internet service provider (ISP) has emerged for home as well as digital television, such as First Media, My Republic, Biznet Home, MNC Play, IndiHome Fiber, CBN and Indosat GIG. The rapid development of television technology encourages people to get information quickly. This makes television in Indonesia continue to grow, so that the emergence of pay television as mentioned above is considered a necessity.

Citizens as consumers who wish to become customers of the above providers are required to approve standard agreements that have been made by the provider as organizers or business actors. The agreement is a reciprocal agreement that basically raises the rights and obligations for both parties. Standard agreements made by business actors sometimes override the interests of consumers. This can be seen from the inclusion of standard clauses that are prohibited by the Consumer Protection Act contained in the agreement. Consumers who suffer losses due to the actions of business actors that are contrary to the agreement can make efforts to protect consumers, both through legal and non-legal channels.
From several choices of internet and digital television providers in the city of Semarang, it is not uncommon to leave complaints to consumers because they feel they have been cheated. It is not uncommon for businesses to carry out operations often harming consumers. The loss that is often experienced by consumers is not only a unilateral change of the agreement, but also a service package that is not in accordance with the promotion, a one-sided termination of program reduction without the information provided by the business actor. In the case of dispute resolution between business actors and consumers, the government facilitates the role of the Consumer Dispute Resolution Agency (BPSK) to organize the dispute.

One form of loss that is often experienced by consumers is not only unilateral change of agreements, but a package of services that is not in accordance with the promotion, termination unilaterally, reduction of the program without the information provided by business actors, so to follow up on it, it is necessary to supervise the actors effort. The lack of a role of the government towards business actors who have violated consumer rights, makes the business do not care about consumer rights. At present many business actors ignore consumers by taking decisions unilaterally, and harm consumers, without providing confirmation.

From interviews conducted with several consumers in South Semarang Sub-district, especially those living in Peterongan, Wonodri, Pleburan and Bulustalan, it is known that aspects that are often complained by consumers related to the use of cable television broadcasts include: reduction in the number of TV channels without prior notification from providers, the nominal amount of the bill which often exceeds the provisions, the information service package that is not in accordance with the promotion, the bill still appears even though the Wi-Fi network is no longer active and the cable television network has been unilaterally terminated. The phenomenon of consumer complaints above will take the case of the IndiHome provider, arguing that the IndiHome provider is the provider that receives the most complaints from consumers, as the results of a pre-survey conducted by researchers 2 (two) over the last 2 (two) months. Other cable television business providers, such as; Biznet, MNC Play and My Republic also accept consumer complaints, as experienced by IndiHome, but in terms of quantity and quality, IndiHome providers rank first in obtaining complaints from customers. The pre-survey was conducted 3 - 16 June 2019 in 4 (four) Kecamatan in South Semarang District, namely Peterongan, Wonodri, Pleburan and Bulustalan.

From the pre-survey results, it was obtained that during the last 1 (one) year, IndiHome was the provider that received the most complaints from customers, along with the relative length of time for repair services. Referring to this phenomenon, the writer is interested in conducting research by taking the title, “Implementation of Law Protection in Contract Agreement between PT. Telkom with IndiHome Cable Television Customer Service.”

1.1 Formulation of the problem

The research problems proposed are:
1. How is the implementation of legal protection in the contract agreement between PT. Telkom with IndiHome cable television broadcasting service customers?
2. What is the responsibility of IndiHome in the use of cable television broadcasting services if the customer suffers a loss?

1.2 Framework
Almost all family members at home already hold an Android or iOS device as a means of communication and social media and surfing in all activities for the needs of school lessons, lectures or other social activities. Almost all of these mobile devices are equipped with various kinds of Wi-Fi to be able to connect to Wi-Fi networks both at public places, at home and in offices. From the start of the old Android phones that are usually equipped with 802.11b/g Wi-Fi standards to sophisticated mobile phones that are equipped with 802.11ac dual band wireless Wi-Fi standards.

In Indonesia, there are a number of telecommunications operators who are interested and ready to provide these services, and this shows that the draft regulation was made not because of being talkative to follow other countries, but rather because international trends are quite potential and that the readiness of providers in Indonesia has also enabled services its services. In this regulation, it is mentioned among other things, that the implementation of IPTV services aims to: encourage investment to spur broader telecommunications network infrastructure deployment; improve the efficiency of utilization of the existing local fixed cable network; spur the growth of the domestic content, hardware and software industry; increase social control and community participation through interactive services provided; accelerate the growth of electronic transaction services; provide information technology learning facilities; and restore the function of family togetherness in obtaining information and entertainment.

In the administration of IPTV services, the organizer must: protect the interests and security of the country; maintain and enhance morality and religious values and national identity; promote national culture; encourage the improvement of the people's economic capacity, realize equity, and strengthen the nation's competitiveness; anticipating technological developments and global demands; prevent ownership monopolies and support fair competition; conduct professionally and can be accounted for; and maintain a balance between technological development and social sensitivity.

In addition to the above objectives, this regulation also mentions several interesting things:

1. IPTV Provider is a consortium whose members consist of at least 2 Indonesian legal entities, and already has the licenses needed to provide IPTV services, namely Local Fixed Network Operation Permit, Multimedia Service License for Internet Access Services and Broadcasting Institution Subscribe.

2. Ownership of shares by foreign parties in Local Fixed Network Providers, Internet Service Providers (ISP), and Subscribed Broadcasting Institutions, which are members of a consortium must comply with the provisions of the applicable laws and regulations.

3. In case there are differences in the provisions of share ownership by foreign parties between the Local Fixed Network Provider, Internet Service Provider Multimedia Service Provider (ISP), and Subscription Broadcasting Institution, the ownership provisions are taken by foreign parties whose percentage is the smallest.

4. Whereas in the case of a legal entity incorporated in a Consortium but not included as a Local Fixed Network Provider, Internet Service Provider Multimedia Service Provider (ISP), or Subscription Broadcasting Institution, provisions on foreign ownership of shares in the legal entity must comply with the provisions of ownership by foreign parties as referred to above.

5. For broadcasting services (pushed services), the organizer must provide at least 10 percent of the channel's capacity to distribute domestic production content.
6. For multimedia services (pulled services and interactive services), the organizer must provide domestic production content of at least 30 percent of its content library.

7. The number of domestic Independent Content Providers that contribute to the operation of IPTV services is at least 10 percent of the number of content providers in the content library owned by the Provider and is gradually increased to at least 50 percent within a period of 5 years.

8. The content as referred to above must comply with the provisions of the applicable laws and regulations. The Provider must guarantee that each Independent Content Provider which contributes to the operation of IPTV services has a license in accordance with the provisions of the applicable laws and regulations.

9. In the procedure for licensing, the consortium submits a written application to the Minister for permission.

10. The application must attach the following conditions: background; vision and mission; consortium member data; legality aspects (copy of legal documents for establishment of a consortium, copy of company establishment deed, and copy of Local Fixed Network Operation Permit, Internet Service Access Multimedia Service License, and Subscription Broadcasting Broadcasting Operation Permit); service aspects (type of service referred to in Article 9 that will be offered to customers and service development plans in the next 5 years).

11. It is required to attach the document content aspects for multimedia services (content sources; segmentation of target customers based on content; composition of domestic production content compared to all content; composition of production content of domestic Independent Content Providers compared to all content providers; and description of content excellence).

12. The technical aspects (commitment to the development of network infrastructure and services; commitment to provide network capacity to accommodate content contributions from independent content providers; commitment to develop facilities and infrastructure to support IPTV service activities; standards and technical specifications of the equipment system to be used, and the Internet Protocol Set-Top-Box (IP-STB) standards and technical specifications to be used).

13. The other last aspect required in the application is the business aspect (business development plan; calculation of investment costs; capital adequacy; projected income and cash flow for the next 5 (five) years; projected number of customers within the next 5 (five) years adequacy of human resources, organizational structure of the consortium, and composition data of share ownership by foreign parties of each member of the consortium).

14. Other requirements that must also be attached to the submission of the application are a statement of ability to pay the fees charged by the state; statement of ability to fulfill contributions to the community; and bank guarantees of 5% of the investment costs required in accordance with development commitments and are valid for a period of years.

15. The Minister shall examine the application requirements document within a maximum period of 15 working days after the application is received. Counting 30 working days after the inspection is complete, the Minister issues a principle permit for the operation of IPTV services for which the application is approved. Alternatively, within 30 working days after the examination of the request is complete, the Minister issues a letter of refusal of the request.
16. Principle licenses are valid for 1 year and can be extended 1 time with a maximum validity of 1 year if the owner of the principle license has invested and carried out the development in accordance with the development commitments submitted in the application for an operating license.

17. During the validity period of the principle license, the organizer is prohibited from making changes to the required documents that have been submitted in the application for an operating license unless written approval from the Minister is in accordance with the applicable laws and regulations.

18. The owner of a principle license that is ready to provide IPTV services must submit an application for ULO to the Minister, where the ULO is carried out no later than 15 working days after the ULO application is received.

19. The owner of a principle license that has obtained an operation-worthy certificate has the right to submit a license for the operation of IPTV services, in which the operating license is issued by the Minister no later than 15 working days after the request for an operating license is received.

20. The operating permit is valid for 10 years and can be extended after going through the evaluation process, which must be submitted for an extension no later than 3 months before the validity period ends.

Figure 1. Comparison between cable TV and satellite TV
1.3 Research Method

1.3.1 Method of approach

The approach method used in this research is empirical juridical. The research specification used in this legal research is analytical descriptive research. There are 2 (two) types of data in this study, primary data and secondary data.

The data analysis method used in this study is a qualitative analysis method. Qualitative analysis method is intended as a data analysis that starts with descriptive data that is what has been stated verbally or in writing as well as real behavior that is researched and studied as something intact in qualitative use, especially in research used for requests for information that is explained in the form of description.

2 Analysis of Research Results

Contract agreement between PT. Telkom and the users of IndiHome cable television broadcasting services use standard clauses. Standard clauses are generally practical but not infrequently, the contents of the standard clauses are more focused on consumers, while regarding the responsibilities of business actors are eliminated or minimized. Definition of Standard Clause according to E.H. Hondius, as cited by Syahmin,[1] explained that the standard contract or standard clause is the concept of written promises that are prepared without discussing their contents, and generally stated in agreements that are not limited in number, but certain nature.

In contract law, the term standard clause is also called the “Exoneration Clause”, where in Law Number 8 of 1999 concerning Consumer Protection [2] (hereinafter referred to as UUPK) it is also explained that what is meant by the standard clause is, “any rules or conditions and conditions terms that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers.”

At the bottom of the contract/agreement there are clauses consisting of several points containing additional information, the contents of which are as follows:

1. Willing to receive information from Telkom or Authorized Partners through various media including telephone, sms, email, and internet ads.
2. Willing to include IndiHome numbers in Telkom telephone directory and Telkom directory service 108.
3. Agree that with the enactment of this IndiHome subscription contract document, the old subscription contract for telephone and or internet products and or Usee TV is considered no longer valid (specifically for customers upgrading services).
4. If the customer data on the contract to subscribe to telephone and or internet products and or Usee TV is different from the subscription contract for this IndiHome service, the customer who signs the IndiHome subscription contract is willing to be responsible for any risk of changes in the customer's data (specifically for customers upgrading services).
5. Customers will be charged a monthly rental fee Optical Network Terminal (ONT), STB and Platform, IPTV according to the type of STB used, each additional STB to 2 (two) and so on, will also be charged a monthly rental fee according to the type of
STB and installation costs/settings (according to the prevailing installation conditions) that are billed the following month after the installation of the STB.

6. If the customer successfully subscribes, PT. Telkom will take Telkom's Customer Premises Equipment (CPE) device at the customer's address for IndiHome services.

7. The amount of IndiHome bills, additional packages and ONT + STB rental can change at any time.

At the end of the contract, there is a provision that says, “I agree to be associated with all contract conditions of the IndiHome service subscription and declare that all written information is true.”

Standard party clauses listed by business actors, as stated in Articles 12 and 13 of the agreement clause in the IndiHome service subscription contract transaction are very detrimental to consumers. The inclusion of the Raw Clause makes the position of consumers very weak/unbalanced in dealing with business actors. However, this does not mean consumers can not do anything. Like the article on www.ylki.or.id there is a lawsuit case of David Tobing (lawyer Anny R. Gultom, consumer) against PT. SPI (parking operator) that wins consumers. In the Judgment Verdict (PK) case No.124/PK/PDT/2007 submitted by PT. SPI, the Supreme Court even further strengthened the cassation decision, and rejected the Review filed by PT SPI. The Supreme Court decision requires parking managers to replace lost consumer vehicles in the parking area. More specifically, the decision of the Supreme Court No. 124 of 2007, which requires parking managers to replace lost consumer vehicles in the parking area. This Supreme Court (MA) decision automatically strengthens the position of consumers. More specifically, the Supreme Court (MA) decision automatically strengthens the position of consumers. Law No. 8 of 1999 concerning Consumer Protection concerning the prohibition of inclusion of standard clauses (Article 18), so that the standard clauses listed on each parking ticket become invalid or invalid.[3]

Winning the case above becomes concrete evidence of the irrelevance of the inclusion of a standard clause that transfers the responsibility of the business actor. This means that the Supreme Court and UUPK decisions can put pressure on parking managers who are trying to release responsibility. Likewise, the case affecting IndiHome consumers, as used as the topic of this thesis discussion, at least the Supreme Court decision above can be a reference for dispute with PT. Telkom, which unilaterally does not want to provide compensation to him.[4]

On the other hand, when there is a deviation from the standard clause in entering into an agreement and when there are parties who do not meet the legal requirements of the agreement, then legal consequences will apply.

1. Legal protection in the contract agreement between PT. Telkom, with the cable television service provider IndiHome, already contains an agreement regarding; a) Wi-Fi installation procedures, b) online registration, c) offline registration, d) IndiHome package fees, e) payment mechanism, f) installation, and g) contents of the agreement. From the administrative aspects of a standard agreement, it can be said that to meet the requirements in relation to consumer protection, only in its implementation, PT. Telkom as the owner of IndiHome still often performs activities that can lead to counterproductive emergence of customer satisfaction. From the several agreement clauses, aspects of inaction in responding to complaints of damage to the fiber optic fiber network and the termination of subscription contracts and dispute resolution, are the problems most often found in the community.

2. The responsibility of Telkom, in the use of cable television broadcasting services will apply only if the customer experiences a loss is generally based on the Consumer Protection Act. The responsibility of PT. Telkom to IndiHome consumers in the
agreement to install Wi-fi experiencing internet network disruption is to fulfill consumer protection from internet network disruption as stipulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection. PT. Telkom is also responsible for carrying out Service Level Guarantee where Service Level Guarantee is Telkom's promise to consumers regarding maximum resolution time handling internet access network disruptions, where this document includes a description of service time and penalty services. This Service Level Guarantee is the whole business process of handling disruptions which constitutes an agreement between the people responsible for all activities in the business process for handling disruptions. However, in its implementation Service Level Guarantee, it is not always given properly by PT. Telkom, PT Telkom will be there when there is a disturbance beyond customer’s ability. In this case, customer suffered a lot of material losses, because the customer’s activities were disrupted, although in some cases PT. Telkom provides compensation in the form of a reduction in payment obligations each month, in accordance with the duration of the disruption.

4 Suggestion

PT. Telkom as a State-Owned Enterprise engaged in telecommunications must fulfill its rights and obligations to consumers. PT. Telkom, it should be able to fulfill all its responsibilities to consumers as a form of consumer protection in accordance with applicable laws and regulations. In this case, there are some suggestions so that in the future the quality of service from PT. Telkom through IndiHome can take place more optimally, namely:

1. The Government through the Ministry of Communication and Information and the Ombudsman Commission should always closely monitor internet service companies so that there are no more cases of delays in handling consumer complaints or accumulation of arrears of payments by customers resulting in the termination of internet services, because of the internet service termination policy that causes the most disadvantaged parties is a consumer.

2. Legal protection for IndiHome consumers based on Law Number 8 of 1999 concerning Consumer Protection granted by PT. Telkom might not be in accordance with the reality so IndiHome consumers know that their rights are protected and clearly know the responsibilities of PT. Telkom as a business actor. The role of the Government, entrepreneurs/associations and the community is also likely to help consumers in the problems experienced. So that IndiHome consumers are always loyal and comfortable using the IndiHome service.

References

Copyright Legal Protection of Writing Work on the Site of omgjakarta.com: Law Number 28 of 2014

Emia Alemina¹*, Budi Santoso², Sukirno³
{emiaalemina17@gmail.com¹*, budisusantomg@lecturer.undip.ac.id², sukirno.fh@live.undip.ac.id³}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275¹,²,³

Abstract. Copyright is a term that describes a right granted to the creator for their creation. Writing Paper is one of the copyrighted works protected by Law Number 28 of 2014 concerning Copyright. However, in practice, there are still copyright infringement of papers as in the case on the site Omgjakarta.com which announces the writing of the Do and Don’t Culture Shock, Getting Around, Eat like A Local and City Escapes which is done without permission on the Author. The aim of this research is firstly, to find out the legal protection of copyrighted works used commercially without the permission of the copyright holders of written works, secondly, to find out the implementation of Law Number 28 of 2014 concerning Copyright in the case of the Supreme Court's Decision Number 918 K/Pdt.Sus-HKI/2018. The results showed that within the Supreme Court Decree No. 918K/Pdt.Sus-HKI/2018, users of copyrighted works that are used commercially for personal gain must obtain permission from the copyright holder of the written work. The Copyright Act provides copyright protection to Copyright Holders The Written Paper. This is done to protect the rights held by the Written Copyright holders. Violation of copyrighted works is expressly regulated in Article 9 of Law Number 28 Of 2014 concerning Copyrights in order to protect the rights held by holders of Copyrighted Papers.

Keywords: Copyright, Writing, Omgjakarta.com

1 Introduction

As happened in the case of copyright infringement on papers that were announced without permission to the copyright holders, namely Aju Trisna, Vio Kusuma Putra Jowono, Darrel Arowiguna Jowono, Haryanto Chang, James Weston as the Defendant used the Paper from James Adrian Laime as the Plaintiff to the interests of the omgjakarta.com site. Papers on the site omgjakarta.com namely Do and Don’t Culture Shock, Getting Around, Eat Like A Local and City Escapes have the same content, either in whole or in part with a Cita Karya with Registration Number 02773, 02768, 02766, 0276, 02769 the Plaintiff’s. The act carried out by the Defendant is an act that enriches oneself or is selfish. So that James Adrian Laime as the Plaintiff knows and is aware of the existence of economic rights in the Paper used for the site of the Omgjakarta.com by the Defendant, as the party that has used the Plaintiff's written works only for the Defendant's interests and profits. In accordance with Law Number 28 Of 2014 concerning Copyright,[1] especially in paragraph 1 concerning Economic Rights of the Author or Copyright holder Article 9 paragraph (3) states, “Anyone without the author's permission or Copyright Holder is prohibited from making a Duplication and/or Use Commercially Creation.”
Copyright is one of the rights owned by someone who is, hereinafter referred to as the creator which includes art, culture, literature and science as mentioned in Article 1 of Law No.28 of 2014. This starts from the emergence of Law Number 6 of 1982 concerning Copyrights but in its progress the implementation of national development has increased, especially in the fields of arts and literature as well as to amend Law Number 6 of 1982, Law No. 7 of 1987 was issued which was then amended by giving birth to an Act Law Number 12 of 1997 due to Indonesia's participation in the agreement on Trade Aspects of Intellectual Property Rights (Agreement on Trade Related Aspects of Intellectual Property Right, Including Trade in Counterfeit Goods) which is part of the Agreement on the Establishment of the World Trade Organization Trade Organization) passed by law. Changes still occur with the issuance of Law Number 19 of 2002 because it is considered that there is still a need for renewal and the latest renewal is Law Number 28 of 2014 concerning Copyright which is in force today.

Copyright exclusive rights owned by the creator of the work of his creation which then to be published on the mass media with the aim to protect the work both morally and economically. It is aid that exclusive rights have 2 concepts, namely economic rights and moral rights which is very important for copyright. Said to be important because with these two concepts copyright can be valued more in existence.

In Indonesia, Copyright is regulated in Law Number 28 of 2014 which regulates every work of a person, hereinafter referred to as a protected creator, without reducing restrictions in accordance with statutory regulations. In article 40 of Law Number 28 of 2014 concerning Copyrights contains types of protected works.

Besides protected works, there are also unprotected works contained in Article 41 of Law Number 28 of 2014. Unprotected works include:

a) A work that has not been realized in tangible form;
b) Every idea, procedure, system, method, concept, principle, finding or data even though it has been disclosed, is stated. Described, explained, or combined in a work; and
c) Tools, objects, or products created only to solve technical problems or whose form is intended only for functional needs.

The existence of rules regarding protected and unprotected works will minimize misunderstandings and know which works can be protected and not protected. As regulated in Article 58 paragraph (1) of Law Number 28 of 2014 relating to the period of validity of economic rights over a work, i.e. protection of copyright which includes a work in the form of:

1) Books, pamphlets, and all other written works;
2) Lectures, lectures, speeches and other similar creations;
3) Props are made for the benefit of education and science;
4) Songs or music with or without text;
5) Drama, musical drama, dance, choreography, puppetry, and pantomime;
6) Art works in all forms such as paintings, drawings, calligraphy, sculpture, sculpture, or collage;
7) Architectural works;
8) Map; and
9) Batik art or other motifs.

In the article explained that the legal protection of the work is valid for the life of the creator and continues for 70 years after the creator died from January 1 the following year.
Melisa Pawloski stated the idea that authors and artists have moral rights in their creations, also called moral droit originating from France during the French revolutionary period. True morality has been described as “a collection of prerogative rights, all of which begin with the need to preserve the integrity of the intellectual work and personality of the writer. The moral rights doctrine seeks to secure the intimate ties that exist between literary or artistic works and the personality of the author. In France, the main justification for moral rights is the idea that the work or art is an extension of the artist’s personality and expression of his innermost being. The importance of moral rights is to prevent attacks on the person to a greater extent than for to prevent attacks on work.[2] Categorically, the creations include works of science, works of art and literary works. The works of science itself include books, published works and other written works. This form of protection will become evident if it violates both the essence of moral rights, namely the right of paternity or right of integrity, when the violation occurs the creator can determine the violator to restore rights and interests.

In this growing age with so sophisticated technology, many people are also developing from all sides. Technology that is already sophisticated and easy to access is also used to post the work they have created. The work of creation is not only photos, videos or songs but also works in the form of writing which is often uploaded on a website. Back then, people saw writing only through books and forms or in bookstores, libraries, newspapers, magazines but with the internet technology that can quickly access something that is wanted to be uploaded then people prefer to announce their writing through a website. Precisely, with the existing development, this thing is misused by some audiences for its own interests. Where what often happens in this paper is the act of plagiarism. Where this act of plagiarism means the duplication in the writings of others, the true copying of the works must be done with permission from the creator or copyright holder as stated in Article 9 with Law Number 28 of 2014. In practice, it is even on the contrary, it is rare for anyone to do prior permission to the creator or copyright holder and this is what causes the dispute to occur in court. The criminal provisions governing the duplication of copyrighted works without permission, namely in Article 113 of Law Number 28 Of 2014 concerning copyrights which read: Anyone who without the rights and/or without permission of the Author or the Copyright holder commits a violation of the Creator's economic rights as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 1,000,000,000,00 (one billion rupiah).

Even though there is a copyright law, there are still problems in copying the paper, as the case described above is also influenced by the public’s knowledge that is still unfamiliar with existing regulations. Based on the description above, it is interesting to study further in the form of a thesis with the title “Copyright Legal Protection of Writing Work on the Site of omgjakarta.com According to Law Number 28 of 2014 (Case Study of the Decision of the Supreme Court Number 918K/ Pdt.Sus-HKI/2018).”

Based on the background of the research described above, and in order not to deviate from the subject matter to be discussed, the problem is formulated as follows:

a. How is the legal protection for copyright holders of written works based on Law No. 28 of 2014 on the Decision of the Supreme Court Number 918K/Pdt.Sus-HKI/2018?

b. How is the implementation of Law No. 28 of 2014 in the case of Decision Number 918 K/Pdt.Sus-HKI/2018?

The objectives of this study are:
a. To find out the legal protection of copyright holders of written works based on Law No.28 of 2014 in the Decision of the Supreme Court Number 918K/Pdt.Sus-HKI/2018
b. To find out the implementation of Law Number 28 Of 2018 on the Decision of the Supreme Court Number 918 K/Pdt.Sus-HKI/2018

2 Method

2.1 Approach Method

The approach method used in this research is a normative juridical approach with descriptive analytical research specifications. The data used is secondary data. Secondary data is data obtained by a researcher indirectly from the source (research object), but through other sources.[2] Secondary data is data obtained from library materials, the method used in analyzing and processing the collected data is qualitative analysis.

3 Research Results and Discussion

3.1 Legal Protection of Copyright Holders of Written Paper Based on Law Number 28 of 2014 in the Supreme Court Decree Number 918K/Pdt.Sus-HKI/2018

3.1.1 Arrangement of protection of economic rights over written works according to Law Number 28 of 2014 concerning Copyright

According to Setiono, legal protection is an action or method taken to protect the community from arbitrary actions taken by the authorities that are not in accordance with existing regulations, so that the community continues to feel safe and secure and can enjoy its dignity as a human being.[3]

Violations that occur in the case of copyright can be classified as violations of economic rights or moral rights. We can see in Article 4 of Law Number 28 of 2014 concerning copyright that reads:

Copyright as referred to in Article 3 letter a is an exclusive right consisting of moral rights and economic rights.

So, from that article it can be seen that copyright consists of economic rights and moral rights. However, it does not rule out the possibility of copyright infringement that violates economic rights and moral rights. In article 5 of Law Number 28 of 2014 concerning Copyright, it states that the protection of the creator's moral rights to:

a) keep the name or not the name on the copy in connection with the use of his work for the public
b) Use his alias or pseudonym
c) Change the Creation according to propriety in society
d) Change the title and subtitle of the Work
e) Retain his rights in the event of Distortion of the Work, mutilation of the Work, modification of the Work, or matters which are detrimental to his honor or reputation.
The period of protection is granted indefinitely in accordance with Article 57 paragraph (1) of Law Number 28 of 2014 concerning Copyright. In addition, Article 8 of Law Number 28 of 2014 concerning Copyrights stipulates that the protection of the economic right to:

a) Issuance of Work;
b) Duplication of a Work in all its forms;
c) Translation of Creation;
d) Adaptation, arrangement, or transformation of the Work;
e) Distribution of Works or copies thereof;
f) Performing Works;
g) Announcement of the Work;
h) Communication of Creation; and
i) Tenants of the Work.

Protection of economic rights is given for the life of the creator and continues for the life of the creator and continues for 70 years after the Creator dies, starting from January 1 of the following year as regulated in Article 58 paragraph (1) of Law No. 28 of 2014 concerning Copyright. If the copyright is owned by a legal entity, the protection period is 50 years from the time the announcement was made. The type of work whose protection is given during the life of the creator plus 70 years after the author dies as stipulated in Article 58 of Law No. 28 of 2014 concerning Copyright.

3.1.2 Forms of Protection for copyright holders according to Law Number 28 of 2014

A contract is a legal act based on an agreement to cause a legal effect. Under Article 1338 of the Civil Code (KUH Perdata) known as the Pacta Sunt Servanda, namely “all treaties made legally apply as a law for those who make them. In making agreements, it can be recognized the principle of freedom of contract which is regulated in Article 1320 of the Civil Code (Civil Code), namely through:

1) Agreement from those who bind themselves;
2) The ability to make one engagement;
3) A certain thing;
4) A lawful cause

An agreement is said to be valid if both parties who entered into the agreement have an agreement to do the agreement then both parties are competent in making an agreement which means meeting the competent requirements of a person making an agreement that is an adult (21 years old) or a person married and not in forgiveness. The agreed agreement has something to be achieved in this case is the copyright holder as the object of the agreement and the original owner of the written work. Furthermore, a hala cause does not mean that it is contrary to applicable law.

So with this principle, if you want to make an announcement/copy the copyright holder, you can ask for your rights. Especially the royalty rights if the writing is uploaded on a site for commercial purposes. Which is an effort to protect the good name of the copyright holder and also protect the interests of the copyright holder.

In contrast to this case, where the Defendants did is make an announcement/copying on an Internet site with the domain name www.omgjakarat.com without first entering into an agreement with the Plaintiff. This proves that in this case there was no clear agreement between the parties involved. Whereas in Law Number 28 of 2014 concerning Copyright
clearly regulates the limitations on a person's creation contained in article 9 paragraph (3) which reads:

Article 9
Any person without the author's permission or copyright holder is prohibited from making duplication and/or commercial use of the work.

In Article 9 above it is clear that anyone who wishes to copy and/or use must first obtain permission from the creator or copyright holder, but we can see in the case that there was no permission or agreement to copy the works. When there is no agreement between the user of the copyright of the written work and the copyright holder of the written work, the copyright holder can protect his rights.

3.1.3 Criminal sanctions
Based on Article 9 paragraph (3) of Law Number 28 of 2014, the above case meets the elements contained in Article 9 paragraph (3) of Law Number 28 of 2014. Then, for those contained in this Article to be carried out by the User right copyrighted papers (Defendants) and Copyrighted copyright holders (Plaintiffs). Sanctions supporting what is contained in Article 9 paragraph (3) of Law Number 28 Of 2014 concerning Copyright contained in the following articles include:

Article 96
- Creators, holders of copyrights and/or holders of related rights or their heirs who suffer loss of economic rights are entitled to receive compensation.
- Compensation as referred to in paragraph (1) shall be provided and included at the same time in the court ruling on criminal cases of Copyright and/or Related Rights.
- Compensation Payment to the Author, Rightsholder

Copyrights and/or owners of the Related Rights shall be paid no later than 6 (six) months after the court decision has permanent legal force.

Article 99
(1) The creator, copyright holder, or owner of related rights has the right to submit compensation claim to the Commercial Court for violation of copyright or related rights product.
(2) The claim for compensation as referred to in paragraph (1) may be in the form of a request to surrender all or part of the income derived from the holding of lectures, scientific meetings, performances or exhibitions of works which are the result of infringement of Copyright or Related Right products.
(3) In addition to the lawsuit as referred to in paragraph (1), the Creator, the Copyright Holder, or the holder of the Right to Link can request a decision on the provision or interlocutory decision from the Commercial Court to:
   requesting the confiscation of a Work by Announcement or Duplication, and/or the Duplication tool used to produce a Work resulting from infringement of Copyright and Related Right Products; and/or stop the activities of Announcement,
Distribution, Communication and/or Duplication of a Work which is the result of a violation of Copyright and Related Rights products.

Article 113
(2) Every person who fulfills the elements referred to in paragraph (3) committed in the form of piracy, shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah).

If specified as contained in Article 115 listed above, there are elements as follows:
1) Subjective elements:
   a) Error: fulfills the element of piracy
2) Objective elements:
   a) The author: everyone who has the right to a work in the form of writing.
   b) Against the law: using the copyright of written works without the consent of the copyright holder of the written work or his heirs
   c) The act: commercial use, duplication, announcement, distribution, or communication on the Internet site with the domain name www.omgjakarta.com
   d) Object: creation in the form of writing

3.2 Implementation of Law No. 28 of 2014 in the case of Decision Number 918 K/Pdt.Sus-HKI/2018

To determine whether a work is included in the scope of protected work as stipulated in the 2002 UUHC, is an answer which is not too easy to give. This is because each country regulates the types of protected works in addition to having to be based on conformity with applicable international provisions (the Bern Convention) also given the freedom to determine certain other works to be protected, Article 12 of the UUHC in addition to regulating the protection of books, programs computers, pamphlets, and appearance (published) written works, also provides protection for all other written works. According to this provision, it can be said that only written works in the fields of art, literature and science will obtain legal protection. However, in other countries written works in the form of business letters or work orders, for example, are also classified as protected works.[3]

Even though it is protected by law, it does not anticipate copyright infringement. The Copyright Law has been amended 4 times and is in effect up to now, namely Law Number 28 of 2014. To overcome violations that occur between the user of the copyright of the written work and the copyright holder of the written work as the implementation of Law Number 28 of 2014 concerning Copyright, which explains that the Copyright Holder has moral rights and economic rights.

Regarding the dispute of copyright infringement that occurred in the Supreme Court Decree No. 918K/Pdt.Sus-HKI/2018 that occurred between the user of copyrighted works (Defendants) and the copyright holders of written works (Plaintiffs). The multiplication of written works by the Defendants is the reason for the occurrence of copyright infringement on this paper. The Defendant did not realize that there was protection for the copyright holders of written works if they did not first obtain permission in the form of an agreement.
If there is a copyright violation then the settlement of the dispute is required. Civil dispute that occurs in each copyright violation, attempted settlement of dispute, arbitration or court. Law Number 28 of 2014 concerning Copyright places the settlement of civil trumpets that can be resolved quickly, cheaply and at a low cost in accordance with the principles of justice adopted by the Indonesian civil justice system. This Law places alternative dispute settlement in the first order, followed by settlement through arbitration placed second and court placed third. The civil court authorized in this case is the Commercial Court. Other courts besides the Commercial court are not authorized to handle the settlement of the Copyright Sangketa.[3]

In resolving the case, it was decided at the first level by the Jakarta Commercial Court No.12 K/Pdt.Sus-HKI/2017/PN.Niaga.Jkt.Pst., Juncto No. 56/Pdt.Sus.Hak Cipta/2017/PN.Niaga.Jkt.Pst. which does not satisfy the litigants. With regard to the Decision of the Commercial Court pronounced in a hearing open to the public, an appeal can only be filed. An appeal shall be submitted no later than 14 (fourteen) days from the date the Commercial Court Decision is made in an open hearing or notified to the Parties. [3] Decision at the cassation level by the Supreme Court with a decision No.12 K/Pdt.Sus-HKI/2017/PN.Niaga.Jkt.Pst., Juncto No. 56/Pdt.Sus.Hak Cipta/2017/PN.Niaga.Jkt.Pst. with the verdict the Panel of Judges sentenced the Defendant to pay material damages in the amount of IDR 2,788,000,000.00 (two billion seven hundred eighty eight million rupiahs) and immaterial losses in the amount of IDR 2,000,000,000.00 (two billion rupiah). And punish the Defendants for paying forced money (dwangsom) for late payment of compensation amounting to IDR 50,000,000 (fifty million) per day.

It is revealed that the development of the age will also affect the surrounding environment which will be a challenge for the future. Like what someone used to if they want to see other people's work, they have to go to bookstores, libraries, and so on. But if we look at it now with technology that is so sophisticated, everything we want to do can be processed quickly.

The drastic change of communication actors from using paper to using electronics has changed the existing legal system. The pattern of information retrieval through electronic nature called cyberspace (cyberspaces) has become a new trend in social life. Therefore, in the future Indonesia, as revealed by the Indonesian Electro Communication and Information Society (MEKII), needs to have:[3]

a) An internet watchdog and cyberlaw to regulate some important things in internet usage.

b) The supervisory body will be tasked with preparing legal infrastructure related to Indonesian internet crime.

c) A clearer reinterpretation of the Criminal Code.

d) Government protection for privacy through cyberlaw.

e) Expansion of the meaning of the Civil Code, the Copyright Act and the Trademark Rights Act in relation to this.

f) Legal use of online contracts, privacy, e-commerce, electronic payments, homepage maker responsibilities, e-mail and chat.

4 Conclusion

Based on the research results that have been described, the conclusions can be drawn as follows:

1165
1. Legal protection of copyright has been regulated in Law Number 28 of 2014. Legal protection of copyright is classified into two namely economic rights and moral rights in which the protection of economic rights can be seen in Article 8 of Law Number 28 of 2014 while the protection of moral rights can be seen in Article 5 of Law Number 28 of 2014. However, in the development of increasingly sophisticated technology, it makes the copyright user forget what is the legal protection of copyright, as happened on the site omgjakarta.com which makes an announcement without prior permission from the author of the written work, contained in Article 9 paragraph (3) of Law Number 28 Of 2014.

2. Implementation of Law Number 28 Of 2014 in the Decision of the Supreme Court Number 918K/Pdt.Sus-HKI/2018 can be said to have not been carried out optimally by the parties involved, the copyright user is still not aware of the rights owned by the creator as evidenced by making an announcement without permission of the copyright holder of the paper. It can be said that the implementation of Article 9 paragraph (3) of Law Number 28 Of 2014 concerning Copyrights has not been fully fulfilled.

References

[1] Law Number 28 of 2014 concerning Copyright...
The Arrangement of the Space Billboard : Semarang City

Firman Aji Saputra1*, Untung Dwi Hananto2, Ratna Herawati3  
{ajisaputra103@gmail.com1*, untungdwhihananto@live.undip.ac.id2, ratna_h27@yahoo.com3}

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. The advertisement is a systematic and integrated effort which is carried out in relation to the advertisement, including the planning, structuring, implementation, licensing, supervision, and law enforcement and control activities. This is stated in Semarang City Regulation Number 6 of 2017 concerning Billboards. Based on the experience of the writer, who has been in a motor vehicle accident due to improperly installation of billboards. The duties and functions of the Semarang City Spatial Planning Office in the process of formulating billboard policies include the activities of making study of the layout of billboard points, planning and structuring billboard points, checking and field technical research, as well as requesting billboard point permits. The Semarang City Regional Government has the responsibility to protect the public to the potential risk of danger arising from the installation of billboards in public spaces. In addition, billboards are one of the important elements in regional public services to create order in urban spatial planning and beauty.

Keywords: Office of Spatial Planning, Billboard Administration, Regional Government.

1 Introduction

Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the Unitary State of the Republic of Indonesia is divided into several provinces which then divided into some regencies and cities. Each of which has a government, province, and regency, regions, which are regulated by law. The implementation of the article in question is Law Number 23 of 2014 concerning Regional Government.[1] Furthermore, Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the Regional, Provincial, Regency and City Governments regulate and manage their own government affairs according to the principle of autonomy and duty of assistance.

The capital of Central Java Province, Semarang City, functions as a center of growth in the regional constellation of Central Java. As the Capital of the Province of Central Java and the center of growth, Semarang City has modes and mass public media that play an important role in the distribution of goods and services on a city or broader scale. The availability of facilities and infrastructure of the City of Semarang is an attractive factor for migration, which has resulted in the development of the city's population. With the population increasing, the city of Semarang has an appeal for the organizers of the billboards.[2] Therefore, the billboard is quite potential for the future and will certainly affect the regional income.
The advertisement must be in accordance with the aesthetic arrangement of the city and protect the public interest. As an effort to create order and control the growth of billboards in the city of Semarang, it is necessary to arrange the placement of billboards. Arrangement for advertisement management is an effort to improve guidance, control and supervision as an effort to protect the interests and public order, further improve services to the public in a transparent, open and fair manner.[3]

Semarang City Spatial Planning Department is the executing element of government affairs in the field of public works sub-spatial planning and land affairs. The Spatial Planning Office is led by a Head of Service who is domiciled and is responsible to the Mayor through the Regional Secretary. The composition of the organizational structure of the Semarang City Spatial Planning is regulated in Semarang Mayor Regulation Number 64 of 2016 concerning the Position, Organizational Structure, Duties and Functions, and Work Procedures of the Semarang City Spatial Planning Office.[4] The task of this office is none other than to plan, coordinate, foster, supervise and control and evaluate in the field of advertisement structuring, calculation field and billing field.

Billboards are objects, tools, deeds, or media whose forms and features are designed for the purpose of commercially introducing, encouraging, promoting, or attracting public attention to goods, services, people, or bodies, which can be seen, read, heard, felt, and/or enjoyed by the public. This is regulated in Article 1 number 15 of Semarang City Regulation Number 6 of 2017 concerning Billboards.[5]

The Semarang City Government has the responsibility to protect the public against the potential risk of danger arising from the installation of billboards in public spaces. In addition, to create order in the spatial and beauty of the city, the Semarang City Government needs to reorganize the organization of billboards in the city of Semarang. Therefore, Semarang City Regulation Number 6 of 2017 concerning Billboards was formulated.

Today, despite the implementation of the rules regarding the implementation of billboards, the Semarang City government is still quite difficult in its efforts to control advertisement growth. Many of the establishment of irresponsible advertising spots so that it really disturbs the view, even for the safety of road users. The author's experience in the impact of running an improper billboard was when the writer had an accident because the road signs in Jalan Kaligarang, Semarang were blocked by a billboard which hinder the writer the writer to see the directions, and crashed with other motorists.

The discrepancy in the billboard installation activities results in a deterioration in the quality of the city because urban space is plagued by excessive billboard pollution. In addition, many of the establishment of these signs are not compliant with the rules that have an impact on regional losses from the local revenue sector. As a result of these conditions, if not controlled it can have a negative impact on the quality of Semarang City's public spaces, where each media will compete with each other without regard to the visual pollution that will result and the reduction in local revenue.

As described above, the author would like to conduct a legal research under the title, “Duties and Functions of the Arrangement of the Space of Semarang City in the Operation of Billboard.”
2 Method

This study uses a normative juridical approach. The research specifications in this study were analytical descriptive. The main data source used in this study is secondary data obtained from literature studies. The data analysis method used is qualitative and is presented in the form of sentences arranged systematically so that clear interpretations and descriptions are given in accordance with the subject matter and then conclusions are drawn descriptively.[6]

3 Research Results and Discussion

3.1 Duties and Functions of the Semarang City Spatial Planning Office in Policy Formulation and Supervision of Billboard Operations

Duties and Functions of the Semarang City Spatial Planning Office in the Administration of the Billboard consist of 2 (two) stages, namely the policy formulation stage which includes 4 (four) stages and supervision stages based on the Spatial Planning Office policy as follows:

Policies on Spatial Planning:
(a) Ad Layout Policy;
(b) Construction Policy for Establishing Billboards;
(c) Setting the Road Equivalent Line as regulated in the RTLB; and
(d) Material for Displaying Billboards.

Policy Formulation Phase:
1. Making Study of Layout Point Advertisement;
2. Advertising Point Planning and Structuring;
3. Examining and researching the Field
4. Requesting for a Billboard Point Permit with the procedure:
   a. The applicant submits a request for recommendation to install the billboards to the Spatial Planning Service through the Spatial Planning Service Counter by attaching the necessary requirements;
   b. The Office of the Office of the Spatial Planning Office will check files submitted by the applicant;
   c. If the application file meets the requirements, then it will proceed with the next stage; if not, the file will be returned to the applicant
   d. Application file that has fulfilled the requirements will be continued to the Field of Structuring and Utilization of Buildings to issue recommendations for the installation of billboards;
   e. The Recommendation Letter is submitted to the applicant to proceed to the PTSP DPM in order to issue an advertisement license;

Supervision Stage:
1. Complaints made by the community are chosen to be followed up based on the following criteria:
   a. Construction beyond the GSJ road (Border Line)
   b. Inadequate construction
c. Harm pedestrians

d. Using zinc so glare material

2. Findings in the field mean that the facts are found by a working team formed by the Spatial Planning Office to conduct curbing around;

3. Complaints and findings in the field that enter the Spatial Planning Office will be continued by giving dispositions to the relevant sections to be followed up to the next stage;

4. Billboards that violate the provisions are given the opportunity to clarify or also called the mediation stage;

5. After mediation, the parties involved, namely the Spatial Planning Office and the bill organizers make the minutes of the agreement. The minutes of the agreement consist of several forms, namely the issuance of warning letter I, warning letter II, warning III (giving stickers), and notification of demolition;

6. Warning III (sticker printing) will be directly given if the advertisement organizer is not licensed, the advertisement does not come during clarification/mediation, the advertisement violates the GSJ, or the advertisement organizer does not heed the warning letter I and warning letter II;

7. Demolition of billboards can be done in various ways. First, conducted by the Spatial Planning Office, where the poles and panels become the property of the Spatial Planning Office. Second, carried out by the advertising bureau itself. Third, coordination through judicial operations (Bapenda, DPM PTSP, Spatial Planning Office, Satpol PP).

3.2 Obstacles and solutions in Policy Formulation and Supervision of the Implementation of Billboards in the City of Semarang

Obstacles and solutions in Policy Formulation and Supervision of the Implementation of Billboards in Semarang City are as follows:

a. Obstacles: Semarang City Spatial Planning Department's licensing and supervision system is still offline.
   Solution: the service will be based online. The Spatial Planning Office is trying to deal with the potential for large number of billboard advertisement requests in the city of Semarang, one of which is by preparing online-based services for the smooth and easy service in the Spatial Planning Office, so that, later on, in organizing billboards in the city of Semarang only requires a process and time brief and can be integrated with related parties such as DPM PTSP and Bapenda to prevent violations committed by advertising bureaus.

b. Obstacles: Letters of recommendation from the Spatial Planning Office were not continued to PTSP DPM licensing.
   Solution: simplification of the bureaucracy, which is the recommendation and licensing phases combined into the authority of one institution so that there are no more cases such as billboards that do not proceed to the licensing stage in different institutions.

c. Obstacles: Lack of quantity of Human Resources lacking.
   Solution: acceptance of Non Civil Servants of the State. The Semarang City Spatial Planning Office has just opened vacancies for the reception of Non-State Civil Servants (Non-ASN) City Government Employees aimed at optimizing functions in the Field of
Supervision, especially for field supervisors, so that the Spatial Planning Office's performance can run optimally and organizing billboards in the City Semarang shows order in the layout and beauty of the city and in accordance with applicable regulations.

d. Obstacles: Advertising billboard is misbehaving. 
Solution: confirmation of sanctions by the authorities and a solution to the obstacles to the lack of information disclosure is the official web update of the Spatial Planning Office. The Spatial Planning Office is currently trying to keep updating the official website of the Spatial Planning Office so that information needed by the public can be obtained easily on the official website of the Spatial Planning Office.

4 Conclusion

From the results of the study conclusions can be drawn as follows:
1. The policy formulation process carried out by the Semarang City Spatial Planning Office covers the following activities, namely:
   a. Making of Billboard Point Layout Study
   b. Planning and structuring the billboards
   c. Field Technical Examination and Research
   d. Application for Advertising Point Permit

The current regulation stipulates that the billboard organizing process is carried out by the Spatial Planning Office only at the stage of providing billboard advertisement recommendations. The following is the flow of request for recommendation to install billboards in Semarang City:
   a. The applicant submits a request for recommendation to install a billboard to the Spatial Planning Service through the Spatial Planning Service Counter by attaching the necessary requirements.
   b. The representative of the Spatial Planning Service will check and verify the files submitted by the applicant.
   c. If the application file meets the requirements, then the applicant will proceed with the next stage; if not, the file will be returned to the applicant.
   d. Application file that has fulfilled the requirements will be continued to the Field of Structuring and Utilization of Buildings to then issue recommendations for the installation of billboards.
   e. The Recommendation Letter is submitted to the applicant to proceed to PTPM DPM so that the billboard installation permit is issued.

The process of supervising billboards in Semarang City is carried out by the Spatial, Land and Building Dispute Management Section, as follows:
   a. Complaints made by the community are chosen to be followed up based on criteria.
   b. Complaints and findings sent to the Spatial Planning Office will be continued by giving dispositions to the relevant sections to be followed up to the next stage.
   c. Billboards that violate the provisions are given the opportunity for clarification or commonly called the mediation stage.
d. Furthermore, there are minutes of the agreement consisting of several forms, namely the issuance of warning letter I, warning letter II, warning III (giving stickers), and notification of demolition.

e. Demolition of billboards can be conducted in various ways. First, it is conducted by the Spatial Planning Office, therefore, the poles and panels become the property of the Spatial Planning Office. Second, it is carried out by the advertising bureau itself. Third, coordination through judicial operations (Bapenda, DPM PTSP, Spatial Planning Office, Satpol PP).

2. Obstacles faced and solutions used by the Semarang City Spatial Planning Office in Organizing Billboards are divided into two, namely:

Formulation of advertisement policy

a. Internal: The recommendation and supervision request system that regulates billboards in Semarang City is still offline and not integrated. The solution is that in the future, services should be based online.

b. External: Many applicants who have received letters of recommendation from the Spatial Planning Office are not proceeding with PTSP DPM licensing. The solution is to simplify the bureaucracy, which is the recommendation and licensing stages combined into the authority of one institution so that there are no more cases such as billboards that do not proceed to the licensing stage in different institutions.

Supervision of advertisement management:

a. Internal: The amount of human resources in the Office of Space Management is lacking. The solution used is the acceptance of Non-State Civil Servants who are intended to optimize the function in the Field of Supervision, especially for field supervisors.

b. External: There are still a lot of advertising bureaus in Semarang City which are still doing a lot of fraud in the form of placement and administration. Next problem is the lack of information disclosure in the Department of Spatial Planning to the community. The solution related to the non-professional advertising bureau is the affirmation of sanctions by the authorities and the solution to the obstacles to the lack of information disclosure is the official web update of the Spatial Planning Office.
References


Final Properties Factices and Binding Constitutional Court Decisions by Adding Judicial Order Law Instruments in Testing the Law of the Basic Law

Salsabilla Akbar, Retno Saraswati, Fifiana Wisnaeni
{salsabillakbar@gmail.com, retno.saraswati@live.undip.ac.id, fifiana.undip@gmail.com}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 50275

Abstract. The Constitutional Court as an institution that has the authority to examine the Law against the Basic Law. It has the nature of a final and binding decision, however, in reality, the facts show that the final and binding decision is often not responded positively by the organ of the state administrators so that the decision cannot be implemented. The purpose of this study is to explain the legal facticity of the nature of the Constitutional Court's ruling, and explain and analyze the importance of adding judicial order legal instruments to the ruling of the Constitutional Court in Indonesia. This study uses a normative juridical approach with descriptive analytics to obtain secondary data. Data analysis techniques use a qualitative analysis method that is obtained, selected, and arranged systematically. The conclusion of this research is the decision of the Constitutional Court has the nature of a final and binding decision that has been regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is reaffirmed in Article 10 paragraph (1) letters a through d of the Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court. The existence of legal facticity from the nature of the Constitutional Court's ruling cannot be implemented due to a shift in the Constitutional Court's ruling variant, resulting in the need for further action by the state administrators so that the ruling can be implemented. The problem of the inaccuracy of the decision is due to the absence of a follow-up of the government organ that makes the Constitutional Court requiring the addition of a judicial order legal instrument in the Constitutional Court's decision on judicial review of the Basic Law as one of the efforts to resolve the problem in the Constitutional Court decision.

Keywords: Nature of Decision of the Constitutional Court, Legal Facticity, Judicial Order.

1 Introduction

Indonesia is a constitutional state based on the 1945 Constitution of the Republic of Indonesia (1945 Constitution) in article 1 paragraph (3). In understanding the rule of law, the law that holds the highest command in the administration of the state, [1] in this context the entire system of state administration must be based on the constitution so that the administration of the state delegated to state organs runs according to the legal corridor which is subject to the constitution.

The 1945 Constitution of the Republic of Indonesia guarantees the rights of its citizens through the authority possessed by the Constitutional Court (MK). One of which is the
authority to examine the laws against the 1945 Constitution of the Republic of Indonesia. General (*erga omnes*) based on the facticity of the law contained in article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Legal facticity is a condition that seeks to guarantee legal certainty based solely on the formulation of the law itself.

Based on the legal fact that there is a final and binding power to the Constitutional Court's decision is something that cannot be denied, in reality however, the fact shows that the Constitutional Court's decision is often not responded positively by state administrators in the form of noncompliance with decisions. This is also evidenced by the research of SETARA Institute research in 2016 which showed that there were 19 decisions have not been followed up by state organs.

Non-compliance with the organs of state administrators occurs along with the development of the Constitutional Court's decision which causes the development of the implementation of the decision, namely:

a) Decision of the Constitutional Court that can be directly executed (Self Implementing)

b) Decisions of the Constitutional Court which cannot be directly executed (Non-Self Implementing)

The lack of compliance of the organs of state administrators towards the Constitutional Court's decision shows that there are implementation problems in the Constitutional Court's decision, especially on the Constitutional Court's decision which requires follow-up. So, a judicial order legal instrument is needed so that there is clarity of action that needs to be carried out by the state's organizing organ after the Constitutional Court's decision.

Based on the description above, the problem formulation that can be compiled consists of:

1. How is the implementation of the facticity final and binding on the Constitutional Court's decision in Indonesia?
2. What is the importance of adding a judicial order legal instrument to the Constitutional Court's decision in judicial review of the constitution?

2 Method

The method used in this research is the normative juridical approach. According to Soerjono Soekanto, the normative juridical approach is legal research carried out by examining literature material or secondary data as a basic material to be investigated by conducting a search of the regulations and literature relating to the problem under study [2]. This normative juridical approach begins by reviewing the laws and regulations and other regulations and is expected to provide a real and systematic picture and answers to these problems.

2.1 Research Specification

The research specification used is analytical descriptive, which is the research method used aimed at describing a problem in a particular area or at certain times. Researchers try to express the facts as complete as it is [3]. Descriptive research aims to systematically and accurately describe facts and characteristics about the population or regarding a particular field.
2.2 Method of collecting data

The method of approach that the authors take in writing law is normative juridical, so that the data used are secondary data. Secondary data is data obtained by a researcher indirectly from the source (research object), but through other sources. Legal material is the most important part in legal research. Without legal material, it would not be possible to find answers to the issues raised [3].

Legal material taken by researchers consisted of primary legal materials:
- a. NRI 1945 Constitution;
- b. Law Number 30 Of 2002 concerning the Corruption Eradication Commission;
- c. Law Number 5 Of 2010 concerning Amendments to Law Number 22 Of 2002 concerning Clemency;
- d. Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning MK;
- e. Law Number 12 of 2011 concerning Formation of Regulations and Regulations;
- f. MK Decision Number 34/PUU-XI/2013 concerning Testing of Law Number 8 of 1981;
- g. MK Decision Number 107/PUU-XIII/2015 concerning Testing of Law Number 5 Of 2010 concerning Amendment to Law Number 22 Of 2002.

Secondary legal materials consist of:
- a. Books
- b. Journals
- d. Paper

Secondary legal materials consist of:
- a. Indonesia Dictionary
- b. Black Law Dictionary

3 Results and Discussion

3.1 Legal Facticity of Final and binding nature of the Constitutional Court's Decision

Legal facticity is defined as a condition that seeks to guarantee legal certainty based on the formulation of the law itself [4]. The Constitutional Court through article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia and reaffirmed in article 10 paragraph (1) letters a through d of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, [5], [6], has legal facts that contain its authorities along with provisions regarding the final nature and binding decisions of the Constitutional Court. Based on the legality of the law the Constitutional Court's, the decision can be said erga omnes, which according to Bargir Manan, it is a decision whose consequences apply to all cases that contain similarities that may occur in the future, so when the legislation is declared invalid because it contradicts the 1945 Constitution then it becomes null and void for everyone [7]. The occurrence of developments in the Constitutional Court's
decision, namely from the decision rejecting, unacceptable, and granted to be increased to conditional constitutional decisions, conditional unconstitutional, postponement of enforcement, until the formulation of new norms makes the validity of the decision not only as a direct decision can be implemented without having to make new regulations or changes to the conditional (Self Implementing) and there are also those who need further regulation (Non-Self Implementing) [8]. The validity of Non-Self Implementing decisions causes problems in the factual nature of the law and is binding on the Constitutional Court's decision when it is not followed up by state organs such as:

a. Decision Number 34/PUU-XI/2013 concerning Testing of Law Number 8 of 1981 concerning Criminal Procedure Law to the 1945 Constitution of the Republic of Indonesia, where in this decision the Court granted the MK the request for retesting (PK) can be done more than once but in fact there was a non-compliance by the Supreme Court by issuing a Supreme Court Circular which contradicted the contents of the Constitutional Court's decision.

b. Decision Number 107/PUU-XIII/2015 concerning Testing of Law Number 5 of 2010 concerning Amendment to Law Number 22 of 2002 Regarding Clemency in which the Constitutional Court principally issued a decision granting the request that the time for filing a request for clemency must be returned to Law Number 22 of 2002, but until now there has been no changes made by the legislature to the decision.

Both decisions are examples of decisions that require follow-up (Non-Self Implementing). This problem requires awareness of the harmonization and obedience of the parties in the decision so that the Constitutional Court's decision can be carried out in accordance with the fact of the law of the nature of the final and binding that has been regulated in the 1945 Constitution of the Republic of Indonesia to the Court and the spirit of the birth of the Court.

3.2 The Importance of Adding Judicial Order Legal Instruments in the Judicial Review of the Basic Laws

1. Judicial Order

The Constitutional Court's decision is a legal product whose consequences are felt by all citizens, this certainly needs to be supported with maximum implementation. Decisions of the Constitutional Court need to get guarantees so that each of its decisions can be carried out. This guarantee can be realized through the addition of a judicial order legal instrument intended as a legal order given by the Constitutional Court through its decision to force related institutions to take the necessary follow-up according to the Constitutional Court's decision.

2. Application of Judicial Orders in Other Countries

The application of a judicial order was carried out by the Constitutional Court of the Federal Republic of Germany (FCC) in August 1995 which required the statutory organs to comply with the FCC’s constitutional interpretation [9]. Another case also occurred in the United States where the Supreme Court contained a judicial order in its decision. Based on the implementation problems in Germany and the United States, it cannot be denied that this might happen in Indonesia. Therefore, it can be used as a solution in suppressing the problem of the Court's decision to implement the judicial order.

3. Application of the Judicial Order in Indonesia
The Constitutional Court in its legal fact has not yet regulated the legal instrument of the judicial order. However, if observed, the Constitutional Court would have issued a decision that adapted the concept of a judicial order, namely the decision of the Constitutional Court Number 102/PUU-VII/2009 dated July 6, 2009 concerning Testing of Law Number 42 of 2008 concerning Election of President and Vice President, the concept of judicial order lies in the decision in the opinion section, which states:

“[3.23] Considering whereas before giving a Decision on the constitutionality of the articles petitioned for review, so that on the one hand it does not cause impairment of the citizens' constitutional rights and on the other hand does not violate the provisions of the applicable laws and regulations, the Court needs to order the General Election Commission (KPU) to further regulate the technical implementation of the use of voting rights for Indonesian citizens who are not registered in the DPT with the following guidelines: ...”

In these considerations, there is a clause “The Court Needs to Order the General Election Commission (KPU)” in which in this case the Republic of Indonesia has appointed the KPU institution to follow up on the verdict in this case. The designation of the institution in this ruling reflects the use of judicial order in the ruling of the Republic of Indonesia. This decision has also been followed up by related institutions with the inclusion of this RI Constitutional Court ruling in Law Number 8 of 2012 concerning General Elections of Members of the People's Legislative Council, the Regional Representative Council, and the Regional People's Representative Council. Follow-up carried out by related institutions is a form of maximum implementation, indicating that indeed the addition of judicial order legal instruments inherent in the Constitutional Court's decision in testing the law against the 1945 Constitution of Indonesia in Indonesia can be a solution to suppress the problem of the implementation of the Constitutional Court's decision.

4 Conclusion

Based on the studies conducted in this legal research, there are several things that can be drawn as conclusions, including:

1. The legal fact of final nature and binding decisions of the Constitutional Court contained in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is reaffirmed in Article 10 paragraph (1) letters a to d of Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court. Therefore, every decision issued by the Constitutional Court applies to all citizens, and does not escape the organs of state administrators. There is no further legal remedies can be made, however, in reality, the facts show that the final decision and binding are often not responded positively by the organ of the state administration so that the decision is not implemented.

2. A judicial order legal instrument is needed because:
   a. The need for legal certainty regarding the implementation of the decisions of the Constitutional Court, especially on decisions that are non-self implementing.
b. The application of judicial order legal instruments has been applied by other countries, and is proven to be able to overcome the problem of implementing the decision.

c. Indonesia once applied the concept of a judicial order to Decision Number 102/PUU-VII/2009 issued by the Constitutional Court.
References


Overview of the Release of Sanction for Workers
Withdrawing the Self before the End of the Contract

Venia Miranda Dewi Hascaryo1,*, Solechan2, Nabibatu Sa’adah3
{VeniaMiranda97@gmail.com1, solechan@live.undip.ac.id2, nabitatass@gmail.com3}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2, 3

Abstract. Imposition of sanctions is very important in the world of work. The sanctions imposed by companies on workers who resign before the end of the contract period are not all the same. Imposition of sanctions can be seen if the employee makes mistakes, violations, and even to the detriment of the company will be imposed or given sanctions and fines in accordance with what has become a regulation at Bank Mandiri and the provisions of Act Number 13 of 2003 concerning Employment. research shows that in terms of granting authority to impose sanctions on workers who resign before the end of the contract period at Bank Mandiri is in accordance with statutory regulations. Imposing sanctions for resigned workers are required to compensate in accordance with fines that have been determined in each section of work. Efforts that can be done by Bank Mandiri to obtain their rights related to workers who resign before the end of the contract period only want accountability from workers in accordance with work agreements that have been agreed and signed by workers.

Keywords: Imposition of Sanctions, Resign, Contract, PT. Mandiri Bank

1 Introduction

1.1 Background

Some entrepreneurs realize that the most important asset in a company is Human Resources (HR). Human Resources (HR) will be managed well and professionally if the demands of business progress can be carried out in a balanced manner, which can develop and grow productively [1].

According to Article 27 paragraph (2) of the 1945 Constitution which states that every citizen has the right to work and livelihood that is decent for humanity, and also has a goal that is to get everyone who works to get the job that he wants, and every person who works is able to earn enough income for himself and for the needs of his family [2].

Many people who work by binding themselves with other parties, the labor law regulates the relationship based on an employment relationship. According to Article 1 number (15) of Law Number 13 of 2003 regarding Manpower states that, “the employment relationship is a relationship between employers and workers or laborers based on work agreements that have elements of workers, wages and orders.”[3]

Work relationship referred to in the Manpower Act is a work engagement sourced from the Act. The provisions of an employment agreement that are related to work or employment are not part of the law of the agreement, therefore it can be said that the provisions of the
employment agreement are not a supplementary law. This means that the provisions of the employment agreement are forced, and therefore it must be obeyed by any party.[4] In the provisions of the Manpower Act, work agreements are divided into two namely PKWT and PKWTT.

A company, before carrying out activities that involve workers and employers, requires an employment agreement between the employer as the first party and the worker as the second party. In this work agreement, the worker or laborer must work in accordance with the provisions stipulated by the first party and under his control and power, then the employer must provide workers/laborers with an appropriate wage [5].

The relationship between employers and workers/laborers does not always go as expected. Sometimes, a dispute arises between the worker/laborer and the employer about wage issues or something that concerns the work environment so as to create a sense of discomfort at work. This is possible because humans as social creatures in interaction have similarities and differences in interests and views between one another, so that during the implementation of work relations between employers and workers or laborers it is possible to terminate employment or turnover.

Turnover is the desire of employees to leave the company because of the decisions of the employees themselves, many reasons that cause this turnover can occur include the desire to get a better job or a better position than the previous company, not comfortable working, uncomfortable in the work environment, can not or unable to work, unsuitable for work, want to find a better job, even for the family reasons. Turnover results in a lack of productivity levels in a company, because the company will suffer other losses and there will be additional costs incurred in recruiting and training new employees. However, employees who want to quit the company must meet the procedures established by the company. If employees do not meet the criteria or violate existing procedures, they will get sanctions. One company that provides sanctions or penalties related to employees who resign before the end of the contract period is Bank Mandiri.

PT. Bank Mandiri (Persero), Tbk is one of the State-Owned Enterprises (SOEs) which is engaged in banking products and services in accordance with the provisions in the legislation. Bank Mandiri was established on October 2, 1998, as part of a banking restructuring program implemented by the Indonesian government. Bank Mandiri’s experience is inseparable from the long journey of 4 state-owned banks, including: Indonesia’s Export-Import Bank which was established in 1824 and has been active in banking activities since 1870, Bank Dagang Negara, Bank Bumi Daya which started from De Nationale Hadelsbank NV activities until became the State Commercial Bank in 1959 and the Indonesian Development Bank began with the joining of the State Industrial Bank (BIN) which had developed economic sectors in Indonesia since 1951. In July 1999, the 4 state banks namely Bank Bumi Daya, Negara Dagang Bank, The Indonesian Import Export Bank and the Indonesian Development Bank, merged into Bank Mandiri [6].

Bank Mandiri is one company that gives authority to impose a sanction system, which has 4 bound stages, namely Class 3 months, On the Job Training (OJT) 3 months, PKWT (Specific Time Work Agreement) for 6 months, and Office Bonds for 3 year. With compensation or fines that are different and will go down each year, starting from 200 million, 150 million to 100 million.

In fact, there are still workers who want to resign from the company before the contract period ends. One of them is PT. Bank Mandiri (Persero), Tbk Head Office of Palangka Raya, Central Kalimantan. The main factor that resulted in the lack of employee performance at Bank Mandiri was a result of a fairly high turnover rate. One of them is that employees who
work in the Marketing section feel unable to achieve the targets set by the company. The inability of employees to achieve targets set by the company can be caused by work stress.

1.2 Formulation of the problem

1. Does PT. Bank Mandiri (Persero), Tbk give the authority to impose sanctions on workers who resign before the end of the contract period?
2. What about legal efforts that can be done by PT. Bank Mandiri (Persero), Tbk to get their rights related to workers who resign before the end of the contract period?

2 Method

2.1 Types of research

The author uses a type of empirical legal research that is sociological legal research and can also be referred to as field research. It is studying the applicable law and what happens in reality in society [7].

2.2 Nature of Research

The nature of this research includes analytical descriptive research that is the research intended to describe the applicable laws and regulations that are associated with legal theories and the practice of implementing positive law regarding the above problems.

2.3 Research sites

The location of the study was conducted at PT. Bank Mandiri (Persero), Tbk Head Office of Palangka Raya, Central Kalimantan.

2.4 Data source

In this legal research the researcher uses several data sources, namely:
  a. Primary data
  b. Secondary Data
     1. Primary Legal Materials
     2. Secondary Legal Materials
     3. Tertiary Legal Materials

3 Results and Discussion

3.1 Authority to Impose Sanctions on Workers Who Resign Before the End of the Contract Period

A Specific Time Work Agreement (PKWT) is a work relationship that is made based on a certain period of time or the completion of a particular job. Law No. 13 of 2003 concerning
Manpower, stipulates that PKWT based on a certain time period can be held for a maximum of 2 years and may only be extended once for a maximum period of 1 year[8].

The maximum contract period of PKWT is 3 years. However, both parties namely the employer and the worker concerned can agree on the PKWT renewal after a grace period of 30 days from the end of the agreement. New PKWT may only be made once for a maximum period of 2 years.

If the worker resigns before the end of the contract period, then the worker is required to pay compensation to the employer in accordance with the provisions governing Article 62 of Law No. 13 of 2003 concerning Manpower which reads: “If one of the parties terminates the employment relationship before the end of the period specified in the work agreement for a certain period of time, or the termination of the employment relationship is not due to the provisions referred to in Article 61 paragraph (1), the party ending the employment relationship obliged to pay compensation in the amount of workers' wages until the deadline for the expiration of the work agreement.

Before deciding to resign, workers must first understand, study, and know the contents of the employment agreement in the company. The workers should understand whether the employment agreement a Specific Time Work Agreement (PKWT) or an Indefinite Time Work Agreement (PKWTT). If the type of agreement is PKWT, it cannot require a trial period for work, so if a PKWT contains these conditions, then the required probation period becomes null and void, if one of the parties terminates the employment relationship before the end of the period specified in PKWT, the party who terminates the employment relationship is required to pay compensation to the other party in the amount of the worker's wages until the deadline for the termination of the work agreement and the agreement with the PKWT model also does not recognize severance pay. However, unlike the PKWTT agreement, it can require a trial period of work in a maximum period of three months. During the trial period employers should not pay workers below the applicable minimum wage and the end party has the right to receive severance pay. Likewise, the company is not obliged to provide compensation. They must ensure in the employment agreement, whether there are provisions regarding the imposition of sanctions if resignation occurs in a certain period of time or not [9].

This is the same as existing regulations at Bank Mandiri, the procedure for submission of resignation must be done 30 (thirty) days beforehand to the Human Resource Department (HRD), this is in accordance with the provisions of Law No.13 of 2003 concerning Manpower. If no later than 14 (fourteen) days before the date of resignation (the last date of employment), the employer must provide an answer to the request for resignation. If the employer does not provide an answer within the 14 (fourteen) days specified, the employer is deemed to have approved the resignation according to Article 26 paragraph (3) and (4) of the Minister of Manpower and Transmigration 78/2001. Whereas for Manager, Officer employees at Bank Mandiri were conducted 3 months earlier, because this has become a regulatory requirement at Bank Mandiri Palangkaraya, this was conveyed by Budhy Nugraha Sutisna as Human Capital and General Affair Officer of PT. Bank Mandiri (Persero), Tbk Palangka Raya, Central Kalimantan [10].

Specific reasons why PT. Bank Mandiri (Persero), Tbk provides sanctions for workers who resign before the end of the contract period is to make all workers are not easy to resign from their jobs. With a variety of reasons, one of which is not comfortable working, uncomfortable in the work environment, unable or unable to work, unsuitable for work, wanting to find a better job, even family reasons. But PT. Bank Mandiri (Persero), Tbk also always provides support, support, and even gives concessions to new workers who have no
progress for 1 month to 3 months at work, but entering in the 4th to the 6th months there must be an increase in work and separated from assistance [10].

Unlike the workers engaged in the Sales Marketing Card Officer of PT. Bank Mandiri (Persero), Tbk in the third month does not require the employee to close the sales turnover and the company still provides opportunities and encouragement to the employees of the Sales Marketing Card Officer to know, recognize and learn well how to market products to be promoted to candidates customer or customer[11].

Therefore, it can be seen from the explanation above that PT. Bank Mandiri (Persero), Tbk has imposed sanctions on workers to achieve the company's Vision and Mission which has been a guideline for all members working at Bank Mandiri, so as to create a sense of peace, comfort while working in the company. It is also one way to prevent high turnover rates, high turnover rates will have very negative impacts on companies, such as creating instability and uncertainty on labor conditions and increasing human resource costs.

3.2 Legal Measures that Can Be Done by Bank Mandiri to Obtain Their Rights Related to Workers who resign Before the End of the Contract Period

In a corporate environment, resignation is a common thing. This resignation is something that is not expected by the company, because it can create losses that will be experienced by the company itself, especially if the workers who resign are workers who do have good performance for the company. The company always strives to provide the best welfare for its employees to remain in the company where they work. Substitution of employees caused by resignation will complicate the company because it relates to the implementation of work programs that have been determined.

Basically, there are various reasons for someone to submit resignation, the most important and most often found in the work environment so that it can cause employees to resign or stop working that is felt never appreciated by their superiors, Workload that is not directly proportional to the amount of salary that is accepted, the company promotes the wrong people, the working atmosphere becomes unpleasant [12].

Because of that, prevention efforts to anticipate that no resignations are made by workers, among others, to be open to each other, what is meant to be open to each other is to build communication between employers and workers, this is the most important thing in a job at the company, the second reason is to invite to feel mutual ownership, one of which can be the main motivation for a worker of course the trust that has been given in carrying out his work, the third gives more rewards for the best employees, by giving rewards to the best workers it will make the workers themselves feel proud and feel valued by their superiors for the work that has been given so far.

Based on the results of interviews conducted by researchers, PT. Bank Mandiri (Persero), Tbk. Central Palangka Raya, Central Kalimantan has never extended the problem until the legal turmoil and if indeed, the problem can still be resolved by the company. Even companies have explained to new workers about the rules that apply in PT. Bank Mandiri (Persero), Tbk has a system of imposing sanctions with different fines for each work. If if there is a problem that can harm the company, then Bank Mandiri only wants the responsibility of the workers in accordance with the work agreement agreed at the beginning and the company will immediately recruit new workers who really want to work well with the company [10].

PT. Bank Mandiri (Persero), Tbk has imposed sanctions not only on workers who wish to resign before the contract period expires, but also imposes sanctions on workers who violate
existing company regulations. For example workers embezzled company money, sexually harassed other workers, and others.

According to Article 62 of Law No. 13 of 2003 concerning Employment, the imposition of sanctions for workers who resign before the contract period expires can be subject to sanctions, ie workers who terminate employment, are required to pay compensation because they are considered to have harmed the company and will be subject to fines varying according to their work.

Whereas the imposition of sanctions imposed on workers who violate employee discipline rules can be subject to termination of employment relationship (FLE) given by the company to workers. The company can lay off if the employee violates the work agreement, company regulations or the Collective Labor Agreement (PKB), but before laying off, the company is obliged to give warning letters 3 (three) times in a row, this is in accordance with the provisions of Article 161 paragraph (1) Law No. 13 of 2003 concerning Manpower which reads:

“In the event that a worker/laborer violates the provisions stipulated in a work agreement, company regulations or collective labor agreements, the employer may terminate the employment relationship to the worker/laborer concerned, given a first, second, and warning letter. Third in a row.”

The company can also determine appropriate sanctions depending on the type of violation. For certain violations, the company can issue SP 3 (warning letter three) directly or directly do the dismissal process. All of these things are regulated in work agreements, company regulations, because each company has different rules.

Not only will the sanction of Termination of Employment (PHK) be sanctioned by giving a warning letter, but workers who violate company regulations will also be subject to other sanctions in accordance with company regulations such as transfer, move an employee to a position and duties that are lower and different from his previous job. Movements can be done within the company, or sent to other areas where a company has many branches.

The second sanction is a demotion, demotion or demotion also often done by companies to employees who are considered to violate company policy. This reduction is usually done after the company has carefully reviewed it and has strong evidence that the employee must indeed be demoted.

The third sanction is revocation of allowance. The application of this type of sanction is carried out by the company if the employee receives the allowance in violation of the rules that have been jointly determined. Revocation of benefits means that an employee no longer receives supporting facilities from the company such as a car, house, etc. because the employee has not fulfilled his obligations or made a mistake by using his authority.

Other sanctions are forced to resign, employees are forced to resign by signing a resignation letter. Usually, companies do this to avoid payment of layoff compensation and the good name of employees who make mistakes will be maintained, so they can look for work elsewhere. This sanction can be called a win-win solution between the company and its employees.

Based on the explanation above, it can be seen that there are not all the same sanctions imposed by companies on workers. Imposition of sanctions can be seen if the employee makes mistakes, violations, and even to the detriment of the company will be subject to sanctions or fines in accordance with what has become company regulations and applicable laws and regulations.
Based on the results of research that the author has done by interviewing one of the staff who have worked for 1 year at Bank Mandiri in Palangkaraya, Central Kalimantan as a Sales Marketing Card Officer named Nurul Septiyani Eka Putri, workers object to the existence of sanctions and fines that have been determined by Bank Mandiri, but over time workers feel that with the existence of these regulations workers will not violate, comply with, and will carry out existing regulations as well as possible [11].

4 Conclusion

Based on the data obtained, it can be concluded:
1. The company PT. Bank Mandiri (Persero), Central Tbk Palangka Raya, Central Kalimantan is given the authority to impose sanctions on workers who resign before the end of the contract period, in accordance with the provisions in Article 62 of Law No. 13 of 2003 concerning Manpower which allows workers to resign themselves before the contract period must pay compensation in accordance with fines that have been determined in each part of the work so that all the workers do not easily resign from their work. In order to achieve the company's Vision and Mission which has been a guideline for all members who work at Bank Mandiri, so as to create a sense of peace, comfort while working in the company, and in accordance with Directors' Decree No. KEP.DIR. 029/2001 dated 25 September 2001 concerning Disciplinary Regulations of PT. Bank Mandiri (Persero), Tbk.

2. Legal remedies that can be done by employers to get their rights, related to workers who resign before the end of the contract period at PT. Bank Mandiri (Persero), Tbk. Central Palangka Raya, Central Kalimantan has never extended the problem until the legal turmoil and if indeed the problem can still be resolved by the company. The impact of civil and criminal law issues received by Bank Mandiri through the legal process is not significant, because the Bank has carried out a mitigation process carried out by the Legal Unit which is under Risk Management & Compliance. Even, the company has already explained to new workers about the rules that apply at PT. Bank Mandiri (Persero), Tbk that it has a system of imposing sanctions with different fines for each work. If there is a problem that can harm the company, Bank Mandiri only wants the responsibility of the workers in accordance with the work agreement agreed at the beginning and the company will immediately recruit new workers who really want to work well with the company.

References


[10] Interview with Budhy Nugraha Sutisna, as Human Capital and General Affairs Office, 12 October 2019, in Semarang.

[11] Interview with Nurul Septiyani Eka Putri, as Sales Marketing Card Officer, on October 12, 2019, in Semarang.

Protection of Indigenous Legal Rights towards Traditional Knowledge Used by Foreign Parties According to International Law Perspective

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

Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751, 2

Abstract. Traditional Knowledge (TK) is a knowledge that indigenous people have over the results of interactions with their territories. Nowadays, TK is considered as a commodity for foreign parties, such as companies, for product development that can reduce research operations and costs. Oftentimes, the rights of indigenous peoples to TK are ignored for the commercial interests of the company. Internationally, regulations to accommodate TK has not yet been established, but the rights of indigenous peoples have been regulated in several legal instruments. This research showed that the rights of indigenous peoples to TK has been accommodated in international legal instruments such as the International Covenant on Civil and Political Rights, United Nations Declaration on the Rights of Indigenous Peoples, Convention on Biological Diversity, and Nagoya Protocol. Base on the provisions of the CBD and the Nagoya Protocol, that all parties, foreign parties, who make use of traditional knowledge held by indigenous peoples must take the steps of Prior-informed consent, establish a Mutual Agreement Term (MTA), and establish access and benefit sharing (ABS) so that the benefits of using traditional knowledge can be returned to indigenous peoples for social, economic, cultural and general welfare.

Keywords: Rights of Indigenous Peoples, Traditional Knowledge, Utilization, International Law

1 Introduction

Indigenous peoples live in areas not far from their daily needs. Indigenous peoples in integration with their territories create close relations with their environment. This close relationship gives birth to the results of empirical experience from local communities in adapting to the environment and natural resource management. The results of this relationship can be called traditional knowledge.[1] This traditional knowledge has various benefits, one of which is for the treatment and cure of various diseases.[1]

This traditional knowledge information is very useful for the public.[2] The value of the use of traditional knowledge has become recognized by various parties, among others, scientists and policy makers, and is a growing subject of national and international law.[3] Because of the usefulness of this traditional knowledge information, traditional knowledge is often misused, for example using without permission by parties outside indigenous peoples,[4] such as foreign parties. This abuse is called biopiracy which means illegal commercial use of
biological resources and/or related traditional knowledge, or patents of fake inventions based on that knowledge, without compensation.[1]

Some biopiracy cases conducted by foreign parties are recorded in several countries, such as the Basmati Rice Case (India v. United States),[5] Shiseido Case (Indonesia v. Japan),[6] The case of Ayahuasca (Brazil v. United States),[7] and others. Some of these cases reflect abuse in the form of claims for inventions based on traditional knowledge with commercial intentions.

One of the causes of this biopiracy is the advancement of global technological knowledge. Based on research in 1985, the economic value of the sale of medicines that contain components of genetic resources or traditional knowledge, which are usually first used by indigenous peoples, is estimated at US $43 billion.[8] According to Kate and Laird who conducted a study of the commercial use of biodiversity that intersected genetic resources and traditional knowledge in 1999, products derived from genetic resources were valued at between US $500 billion to US $800 billion.[9] This figure is based on statistics from the pharmaceutical industry sector, botanical medicines, agricultural products (including agricultural seeds), horticultural products, biotechnology, and personal care products and cosmetics.

Utilization of traditional knowledge is economically beneficial for the industry, but on the other hand, it is detrimental to the interests of local communities and host countries.[8] The rights of indigenous peoples are a matter that has been ruled out for the economic interests of industrial players,[11] as in the case above. Erstling argues that “... that communities should have the right to use of their own Traditional Knowledge pursuant to their own customs and policies.”[12] According to him, indigenous people must have the right to use their own traditional knowledge in accordance with their habits and policies, free from fraud or misuse by other parties.

Internationally, discussions regarding the protection of traditional knowledge have been discussed decades ago. The international community has difficulty meeting agreements for traditional knowledge due to its diverse and dynamic nature.[13] These issues are currently under discussion at the Intergovernmental Committee of the World Intellectual Property Organization (WIPO) which is considering agreements that protect traditional knowledge of indigenous peoples, traditional cultural expressions, and genetic resources.[2]

Moving on from these discussions then resulted in several important international agreements related to the legal protection of indigenous peoples’ rights to traditional knowledge,[11] particularly on instruments that move from the realm of human rights law to international environmental law.

Various legal problems arise from this problem, starting from the regulation of the protection of the rights of indigenous peoples to traditional knowledge both on an international and national scale still has limitations in its regulation, as well as its implementation. Even when foreign parties make use of this knowledge. This study discusses the protection of the rights of indigenous peoples to traditional knowledge utilized by foreign parties from the perspective of International Law.
2 Method

The method used in this research is normative judicial approach, often referred to as library law research. The research specifications used are descriptive analytical and qualitative data analysis, statistical procedures and other forms of calculation.

3 Results and Discussion

There are three main reasons why traditional knowledge needs to be protected.[9] First, to improve the lives of traditional knowledge holders. Traditional knowledge is very valuable for indigenous peoples who depend on traditional knowledge for their health, livelihood and general welfare.[14] Second, to protect traditional knowledge from misuse. Put simply, the misuse of traditional knowledge arises when in use, it does not ask permission in advance for commercial purposes. Third, economic benefits. Some traditional medicines are used as input in biomedical research, showing that these drugs can be a source of income not only as drugs but also as sources of chemicals that form the basis of pharmaceuticals. Indeed, indigenous peoples have been responsible for the discovery, development and preservation of extraordinary medicinal plants, herbal formulations that provide health, agricultural and forest products, handicrafts that are traded internationally and produce great economic value, but not for that community.[9]

Until now, international law has not yet regulated specific arrangements for traditional knowledge, but has accommodated regulations on the interests of indigenous peoples in general. The absence of an international agreement that explicitly regulates the protection of traditional knowledge does not mean that there is no protection at all. Attention to the legal protection of indigenous peoples’ rights to traditional knowledge has led to the establishment of several international legal instruments that recognize and protect the rights of indigenous peoples to enjoy their cultural heritage, including traditional knowledge.[11] Indigenous peoples themselves have repeatedly claimed that they have a fundamental right to traditional knowledge because it is needed for the survival of their culture, and this principle is increasingly recognized in international law.[3] International law, at least, has governed this issue in three international legal regimes, namely as follows:

3.1 Human Rights Legal Regime

There are several provisions in these legal instruments, but the provisions are interconnected and mutually supportive of one another. Some of these instruments are Article 27 (1) and (2) Universal Declaration of Human Rights 1948 or Universal Declaration of Human Rights 1948 (UDHR), Article 15 paragraph (1) International Covenant on Economic, Social and Cultural Rights 1966 or International Covenant Economic, Social and Cultural Rights 1966 (ICESCR) and Article 27 International Covenant on Civil and Political Rights 1966 or International Covenant on Civil and Political Rights 1966 (ICCPR).

This declaration and the Covenant are the arrangements for each human being as an individual. The above legal instruments do not explicitly regulate that indigenous peoples are protected from traditional knowledge. Apparently, Article 27 (2) UDHR and 15 (1) (c) ICESCR indicate copyright in accommodation. This view is also reinforced through the UDHR and ICESCR travaux préparatoires, the rights listed are clearly bound to an individual
author or inventor and cannot be held by a group.[15] Based on this, the UDHR and ICESCR protect the intellectual property rights law of individuals and do not protect the rights of indigenous peoples to traditional knowledge.

In addition, the provisions in Article 27 of the ICCPR are deemed relevant enough to protect the rights of indigenous peoples to traditional knowledge, this provision states that, in essence, people belonging to such minority groups may not be denied their rights in the community, together with other members of their groups, to enjoy their own culture.

Although indigenous peoples insist they do not consider themselves to be a minority,[16] the provisions of this article can be applied to them as indigenous peoples and are strengthened through The Human Rights Committee in General Comment No. 3 states that:

“... the Committee observes that culture manifests itself in many forms, including certain ways of life related to the use of land resources, especially in the case of indigenous peoples. That right can include traditional activities such as fishing or hunting and the right to live in reserves protected by law.”[17]

Then the term ‘culture’ in Article 27 of the ICCPR is very broad in meaning, but according to the conceptual approach by Stavenhagen, ‘culture’ can be interpreted, one of which, namely:

“Culture as a way of life, the total amount of material and spiritual activities and products of certain social groups that distinguish it from other similar groups. Culture is also seen as a coherent independent system of values, and a symbol and set of practices that reproduce certain cultural groups from time to time and that provide individuals with the signs and meanings needed for social behavior and relationships in everyday life.”[18]

Thus, the Human Rights Law regime with regard to the rights of indigenous peoples to traditional knowledge. At a glance, these instruments require parties outside indigenous peoples, such as foreigners, to respect the cultural life of indigenous peoples in using traditional knowledge. Although these instruments do not directly regulate indigenous peoples, these provisions can be a very basic consideration for the establishment of regulations for protecting indigenous peoples’ rights to traditional knowledge in particular.

3.2 Ad Hoc Regime on Indigenous Peoples


Regarding traditional knowledge, ILO Convention No. 169 does not directly regulate traditional knowledge. According to Article 23 of ILO Convention No. 169 in essence outlines a number of provisions covering various traditional activities by indigenous peoples which are important factors in the preservation of their culture. Some provisions in Article 13 and 15 of ILO Convention No. 169 can also be considered,[15] however again, ILO Convention No. 169 recognize the rights of indigenous peoples, but do not explicitly regulate indigenous peoples’ rights to traditional knowledge.
In addition to ILO Convention No. 169, Article 31 of the UNDRIP which states that, “Indigenous people have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions ....” Indigenous peoples can establish various arrangements relating to the use, distribution and access to traditional knowledge. Foreign parties are required to request Prior Information Based Approval (PADIA) from indigenous peoples before acquiring and utilizing traditional knowledge.[19]

The provisions of the UNDRIP can certainly be a legal umbrella for indigenous peoples when their traditional knowledge is used unilaterally or without their permission by foreign parties, however, in terms of the shape of this instrument, it has weaknesses. The subject of the Declaration has not developed enough, or there is no consensus on the content of the principles (norms) or rules for them to be realized in the agreement.[20] In addition, the Declaration is actually a non-legally binding instrument (instrument that is not legally binding). Through these instruments, it can be concluded that the provisions in UNDRIP exceed the obligations stated in ILO Convention No. 169, for example is UNDRIP establishing obligations for the existence of PADIA in the use of traditional knowledge.

### 3.3 International Environmental Law Regime

Indigenous peoples play an important role in the development of the environment. Indigenous peoples’ activities are seen as activities that have the potential to support nature conservation. All indigenous peoples share spiritual, cultural, social and economic relations with their traditional lands. Traditional laws, customs and practices reflect the attachment to land and the responsibility to preserve traditional land for future generations to use.[21] In interacting with their environment, indigenous people develop traditional knowledge as ways to survive. Several times international agreements in the field of environmental law allude to the right of indigenous peoples to traditional knowledge.

One of them is Article 8 (J) of the Convention on Biological Diversity (CBD) which requires 3 obligations of the parties of the parties to it. Article 8 (j) places three obligations of the Parties to the CBD. First, state parties must “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles”. Part of this provision clearly includes a call to respect indigenous peoples. In addition, States parties must promote ‘... wider applications with the approval and involvement of the holders of such knowledge, innovations and practices ...’ because of their relevance for the conservation and sustainable use of biodiversity. In addition to these reasons, this provision is also often understood to include the interest of indigenous peoples to generate income from marketing their knowledge or products produced.[15]

Second, this provision also emphasizes “approval and involvement of the holders of such knowledge, innovations and practices”. As these words clearly indicate by referring to ‘approval and involvement’ and ‘right holder’, Article 8 (j) views a kind of ownership position of traditional knowledge holders. The term ‘rights’ in this context refers to a more general concept of the rights of indigenous and local communities than existing rights under intellectual property rights that apply in a technical sense. Furthermore, agreement and involvement as mentioned in the provision certainly means that indigenous peoples can reject the broader application of their knowledge.[15]

Third, Article 8 (j) of the CBD further outlines these aspects in calling for encouragement to, “... the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices”. It is widely understood that this kind of benefit sharing must be
based on an agreement concluded before the disclosure of knowledge based on information provided by potential users in their interests, potential uses and commercial perspectives. [21]

Furthermore, the CBD also stipulates that access to traditional knowledge innovations and local community practices must be subject to the Preliminary Information Based Agreement (PADIA) of the traditional knowledge holders. PADIA is an implication of state control mechanisms in access to genetic resources and traditional knowledge contained in Article 15 paragraph 5 of the CBD as ‘prior informed consent’.

In addition to PADIA, in Article 1, 15, and 19 the CBD emphasized that bioprospection activities must be subject to fair and equitable access and benefit sharing or access and distribution of benefits that are fair and balanced (ABS). The economic benefits that can be derived from traditional knowledge of indigenous peoples lead to the idea that monetary compensation will function as an incentive to conserve natural resources and to share indigenous people’s knowledge with external actors, [22] for example foreigners.

Although the CBD has stipulated Article 8 (j) to protect indigenous peoples over traditional knowledge, the CBD does not have an indication to resolve complex technical questions and distributions derived from vague terms such as for example, what is not ‘fair’ or ‘balanced’ in terms of profit sharing. [7]

After the CBD, the Nagoya Protocol on Access to Genetic Resources and the Fair and Balanced Profit Sharing Arising from Utilization of the Convention on Biodiversity or the 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 2010 (Nagoya Protocol) The Nagoya Protocol broadens the text of the CBD by detailing obligations in relation to the distribution of benefits and access to genetic resources and traditional knowledge associated with these resources.

The Nagoya Protocol emphasizes the protection of the rights of indigenous peoples to traditional knowledge in Article 5 paragraphs 5 and 7 of the Nagoya Protocol which in essence emphasizes that there must be a sharing of benefits, on the basis of using fair and balanced traditional knowledge, and based on mutual agreement and emphasizes access to traditional knowledge must obtained PADIA beforehand. Specifically for profit sharing, this protocol specifies the implementation of benefit sharing determined by Mutually Agreed Terms (MAT), such as conditions, types, time and procedures or mechanisms for the distribution of profits. [23] Benefits arising from the use of traditional knowledge can be in the form of monetary or non-monetary benefits.

Based on the provisions of the CBD and the Nagoya Protocol, it can be concluded that all parties, including foreign parties, who make use of traditional knowledge held by indigenous peoples must take PADIA steps, establish MAT so that their actions are permitted and not, and finally establish ABS so the benefits derived from the use of traditional knowledge can be recovered for social, economic, cultural and general welfare.

4 Conclusion

The legal protection of indigenous peoples’ rights to traditional knowledge has been regulated internationally in several international legal regimes, which at least consist of, Human Rights Law (Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil Rights and Politics), Ad Hoc Law on Indigenous Peoples (International Labor Organization Convention
No. 169 on Indigenous Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples) and International Environmental Law (Convention on Biological Diversity and Protocol Nagoya on Access to Genetic Resources and the Equitable and Balanced Profit Sharing Arising from Their Utilization of the Convention on Biological Diversity). Various instruments of this legal regime require all parties to fulfill, maintain, and respect the rights of indigenous peoples. With regard to traditional knowledge, the use of foreign parties must be based on several things that must be agreed with indigenous peoples such as the Preliminary Information Agreement (PADIA) and the Agreement on Access and Distribution of Benefits.

References


[12] F. Lenzerini, *Traditional Knowledge, Biogenetic Resources, Genetic Engineering and*


The Urgency of Smart City Regulations to Accelerate Sustainable Development in Indonesia

Anggita Doramia Lumbanraja1*
{anggitalumbanraja@live.undip.ac.id*}
Fakultas Hukum, Universitas Diponegoro, Jl. Prof. H. Soedarto, S.H., Semarang, Indonesia 502751

Abstract. To achieve Sustainable Development Goals, Indonesia can apply the concept of smart city as a solution to the shifting primarily rural to a primarily urban population. However, until now, Indonesia has not had any legal regulations that specifically regulate Smart City. This study examines the urgency of the legal basis governing smart cities in Indonesia in accelerating sustainable development in Indonesia. Researchers found that the absence of legal regulations hampered the development of smart cities in Indonesia. Legal regulations legitimize smart cities as a policy that must be obeyed, measured and directed. So, if there is a change of leadership both at the central and regional levels, the Smart Cities policy will continue. This is even more urgent when Indonesia, as dominated civil law system country, has substantial strength to legally bind smart city regulations as a legal basis for policy-making.

Keywords: Smart City; Indonesia Regulations; Sustainable Development.

1 Introduction

Indonesia is one of many countries that signed the Sustainable Development Goals (SDGs) Declaration. SDGs are a global action plan to end poverty, reduce inequality, and protect the environment. The SDGs contain 17 Objectives and 169 Targets which are expected to be achieved by 2030 [1]. Smart city could be a solution in achieving Sustainable Development Goals, especially at point 11 (eleven) of SDG. To be able to apply the Smart Cities Concept, there are 8 (eight) factors that need attention, i.e.: management and organization, technology, governance, policy context, people and communities, economy, built infrastructure, and natural environment [2].

Smart City is an urban system that uses information and communication technology (ICT) as capital for infrastructure and makes public services more interactive, more accessible and more efficient. Smart City give concern on the environment issues, culture and historical elements, and where its infrastructure is equipped with the most sophisticated technology solutions to facilitate the interaction of citizens with urban elements [3]. The smart cities aim is to improve the lives of citizens and manage city resources and provide better public services, improve governance, and create more resilient critical infrastructure. [4].

The shift in the social pattern in Indonesia from primarily rural to a primarily urban population [2], causing the needs of human in societies increased and more complex. Innovation and transformation are needed to meet the needs of societies. Indonesia has implemented smart cities concepts to seventy-five cities. They are twenty-four cities in the first phase and fifty cities in the second phase. They are part of the Indonesia Movement of
100 Smart Cities that was initiated by the Ministry of Communication and Information of the Republic of Indonesia in 2017 and 2018 [5].

However, the challenging problem that has to be faced by Indonesia is the continuality of the smart cities concept in various cities constrained by the absence of legal regulations. The absence of legal regulations makes the concept of smart city unclear in its implementation and is not measurable in terms of its policies. It is difficult to implement sustainable development within the framework of the concept of smart city if there is no legal regulation.

This study examines the urgency of the existence of legal regulation on smart cities in Indonesia in accelerating sustainable development in Indonesia.

2 Material and Method

This research uses Doctrinal methodology (Research in Law) with Literature Study. The author collect expository materials and secondary data material from legislation, journals, textbooks, reports, conventions, and statutes related to Smart Cities and Sustainable Development Goals (SDGs).

3 Results and Discussion

Human development in Indonesia has been growing increasingly as seen in Figure 1. Based on data from the Indonesian Central Statistics Agency, in 2019, the Human Development Index (HDI) of Indonesia will reach 71.92. This figure increased by 0.53 points or grew by 0.74 % compared to 2018. Achievement of human development is measured by taking into account three essential aspects which are long life indicator and healthy living indicator, knowledge indicator, and a decent standard of living indicator. HDI is an indicator that is used to see the development progress in the long run. There are two aspects as the highlight points to see the progress of human development. They are speed and achievement status [6]. Measurement through the Human Development Index becomes essential because it is one of the indicators of the Sustainable Development Goals, especially at the third point, the fourth point, and the eighth point. HDI is also a benchmark of development in Indonesia for the quality of human welfare in Indonesia.
According to UNDP data reports released in 2019, Indonesia is included in the High Human Development groups and took a position in 111th place in the World HGI Rank in 2018. Based on table 1, among the Southeast Asia countries, Indonesia took in the 6th place below Singapore, Brunei Darussalam, Malaysia, Thailand and the Philippines.

Table 1. UNDP Human Development Report 2019 [7].

<table>
<thead>
<tr>
<th>No</th>
<th>Countries</th>
<th>HDI Value (2018)</th>
<th>World HDI Rank</th>
<th>Human Development Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Singapore</td>
<td>0.935</td>
<td>9</td>
<td>Very High Human Development</td>
</tr>
<tr>
<td>2</td>
<td>Brunei Darussalam</td>
<td>0.845</td>
<td>43</td>
<td>Very High Human Development</td>
</tr>
<tr>
<td>3</td>
<td>Malaysia</td>
<td>0.804</td>
<td>61</td>
<td>Very High Human Development</td>
</tr>
<tr>
<td>4</td>
<td>Thailand</td>
<td>0.765</td>
<td>77</td>
<td>High Human Development</td>
</tr>
<tr>
<td>5</td>
<td>Philippines</td>
<td>0.712</td>
<td>106</td>
<td>High Human Development</td>
</tr>
<tr>
<td>6</td>
<td>Indonesia</td>
<td>0.707</td>
<td>111</td>
<td>High Human Development</td>
</tr>
<tr>
<td>7</td>
<td>Vietnam</td>
<td>0.693</td>
<td>118</td>
<td>Medium Human Development</td>
</tr>
<tr>
<td>8</td>
<td>Timor-Leste</td>
<td>0.626</td>
<td>131</td>
<td>Medium Human Development</td>
</tr>
<tr>
<td>9</td>
<td>Lao People’s Democratic Republic</td>
<td>0.604</td>
<td>140</td>
<td>Medium Human Development</td>
</tr>
<tr>
<td>10</td>
<td>Myanmar</td>
<td>0.584</td>
<td>145</td>
<td>Medium Human Development</td>
</tr>
<tr>
<td>11</td>
<td>Cambodia</td>
<td>0.581</td>
<td>146</td>
<td>Medium Human Development</td>
</tr>
</tbody>
</table>

HDI ranking has a linkage with the ranking of smart cities in the world. This is because the HDI value is one of the indicators of Smart City assessment. The IMD (the Institute for Management Development) World Competitiveness Center through the IMD-SUTD Smart City Index (SCI) assesses people's perceptions about problems related to the structure and application of technology available to them in their city. These cities are distributed into four groups based on the value of the UN Human Development Index (HDI). The ranking for each
city is calculated from the city performance relative to other cities in the HDI group. The 102 top smart cities in the world based on the IMD World Competitiveness Center assessment data released in 2019, there are three cities in Indonesia ranked in these 102 top smart city ranking. They are Makassar, Jakarta and Medan. Indonesia is one of the five countries that ranked in the 102 top smart cities in the world based on table 2.

<table>
<thead>
<tr>
<th>No</th>
<th>City</th>
<th>Country</th>
<th>World Ranking</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Singapore</td>
<td>Singapore</td>
<td>1</td>
<td>AAA</td>
</tr>
<tr>
<td>2</td>
<td>Ho Chi Minh City</td>
<td>Vietnam</td>
<td>65</td>
<td>CCC</td>
</tr>
<tr>
<td>3</td>
<td>Hanoi</td>
<td>Vietnam</td>
<td>66</td>
<td>CCC</td>
</tr>
<tr>
<td>4</td>
<td>Kuala Lumpur</td>
<td>Malaysia</td>
<td>70</td>
<td>CCC</td>
</tr>
<tr>
<td>5</td>
<td>Makassar</td>
<td>Indonesia</td>
<td>80</td>
<td>CC</td>
</tr>
<tr>
<td>6</td>
<td>Jakarta</td>
<td>Indonesia</td>
<td>81</td>
<td>CC</td>
</tr>
<tr>
<td>7</td>
<td>Medan</td>
<td>Indonesia</td>
<td>82</td>
<td>CC</td>
</tr>
<tr>
<td>8</td>
<td>Manila</td>
<td>Phillipine</td>
<td>94</td>
<td>C</td>
</tr>
</tbody>
</table>

Indonesia, as dominated by civil law systems country, has a strong modal in stimulating the implementation of smart cities. Based on research conducted by Zakaria, monetary policy is relatively more effective in influencing output in civil-law countries than in common-law countries [9]. Indonesia, as a civil law system country, was able to survive the global economic crisis in 2008 compared to Singapore, Malaysia and Thailand. This is influenced by the policy responses and the overall political economy situation [10]. The character of a civil law system is dominated by the strength of the legally binding code of society where the legal system is in dire need of regulation [11], compared to the common law system which focuses on judge-made law [12].

Up to now, Indonesia does not yet have a legal basis for applying the concept of smart cities in Indonesia. This has become an obstacle for the implementation of the 100 national smart cities Movement. The design of the Smart City has only been legitimized as a medium long-term macro policy in the National Medium-Term Development Plan 2020-2024 prepared by the Ministry of National Development Planning/National Development Planning Agency of the Republic of Indonesia in 2019. Where the concept of smart city is now one of the urban development goals where Reliable utilization ICT in urban services as an important aspect. smart city is one of the policy targets in the 2020-2024 Medium-Term Long Plan with a Target Transformation Digital towards Indonesia Digital [13]. Meanwhile, Local Governments in Indonesia that have applied smart cities in its cities have stated smart city policies in their respective Regional Medium-Term Development Plans.

Indonesia needs to make Smart Regulations [14]. Smart Regulation may be consist of Laws of Data Protection [15], Laws of Smart Cities by including six things regulated in them, namely: Smart Living, Smart Economy, Smart People, Smart Governance, Smart Mobility and Smart Environment [16]. From the Smart City Act, it can breakdown to six government regulations governing each of these points.
Table 3. Lists of Regulation Recommendation regarding Smart City Issue

<table>
<thead>
<tr>
<th>Type of Regulation</th>
<th>Laws</th>
<th>Government Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Regulation</td>
<td>Laws of Smart Cities</td>
<td>Indonesia Government Regulations of Smart Living</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia Government Regulations of Smart Economy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia Government Regulations of Smart People</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia Government Regulations of Smart Governance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia Government Regulations of Smart Mobility</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia Government Regulations of Smart Environment</td>
</tr>
<tr>
<td></td>
<td>Laws of Data Protection Regulation (Transfer Personal Data)</td>
<td>Indonesia Government Regulations of Security and Privacy</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Indonesia Government Regulations of Transparency and modalities</td>
</tr>
</tbody>
</table>

Table 3 illustrates the draft regulatory framework needed to legitimize the implementation of smart cities in Indonesia. The making of these laws and regulations is essential because there are many obstacles that arise in Indonesia nowadays without any statutory regulations that regulate explicitly about Smart City. Substitution of leadership both at the Central and local government, can lead to discontinuity in the implementation of smart city policies. Differences in the vision of each leader must be adjusted according to the provisions of the legislation established.

Currently, there are several regions in Indonesia that are experiencing difficulties in implementing smart cities due to the change of regional leaders. The smart city concept has begun to be abandoned, such as the Qlue application that is no longer used by the local government. This has happened in Jakarta and Bandung, which have already had different governors.

Indonesia Medium-Term Development Plan 2020-2024, that stated smart cities in its policies, must be followed up with the issuance of these laws and regulations. Another urgency that arises is the plan to relocate the New Capital City to be built in the concept of smart city. To facilitate policy-makers from the central government to the local government, the existence of these laws and regulations is very urgent to be published.

4 Conclusion

Indonesia is one of the countries that has predicate of high human development in the HDI indexation conducted by UNDP. In the ranking conducted by the IMD in the 2019 IMD-SUTD Smart City Index (SCI) there are three cities in Indonesia that are included in the world's top 102. This is because Indonesia has a policy system that supports development itself. The other hand, Indonesia has not had any smart city regulation. To implement sustainability-based policies, the 2020-2024 Medium-Term Development Plan is followed up with the issuance of laws and regulations on Smart City. This becomes important when
Indonesia has a plan to move its capital and develop it in the concept of smart city. There are two types of laws and regulations that can stimulate sustainable development acceleration, i.e.: Laws of Smart Cities and Laws of Data Protection Regulation (Transfer Personal Data), Indonesia Government Regulations of Smart Living, Indonesia Government Regulations of Smart Economy, Indonesia Government Regulations of Smart People, Indonesia Government Regulations of Smart Governance, Indonesia Government Regulations of Smart Mobility, Indonesia Government Regulations of Smart Environment, Indonesia Government Regulations of Security and Privacy, Indonesia Government Regulations of Transparency and modalities.

Acknowledgements. We are grateful to the Faculty of Law, Universitas Diponegoro, Semarang-Indonesia which fully funded this research.
References


Proceedings of the 1st International Conference on Science and Technology in Administration and Management Information

18-19 July 2019, Jakarta, Indonesia

ICSTIAMI 2019

Copyright © 2021 EAI, European Alliance for Innovation

www.eai.eu

www.ic.stiami.ac.id.

EAI Computing and Communication in Emerging Regions - CCER

The EAI Computing and Communication in Emerging Regions Series have already published proceedings from more than 20 conferences of various scopes. In line with EAI’s values of equality and openness, their mission is to give greater visibility to research and innovation from emerging regions and share the knowledge worldwide. The audience for the proceedings consists of researchers, industry professionals, graduate students as well as practitioners in various fields. CCER harnesses the Open Access platform to simultaneously guarantee free exposure and distribution, under the Creative Commons license. In addition to being available in European Union Digital Library, the proceedings are disseminated to an even wider audience by being indexed in ProQuest, CNKI, Google Scholar and EBSCO.

European Alliance for Innovation

EAI is a non-profit organization with free membership and the largest open professional society for advancing research careers through community collaboration and fair recognition. Members benefit from finding feedback and mentorship for their work and they are guaranteed to be evaluated fairly, transparently, and objectively through community.

ISSN: 2593-7650

http://eudl.eu/series/CCER | www.eai.eu