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GLOBAL DISCOURSES ON JUSTICE, HUMAN RIGHTS, & LEGAL CERTAINTY

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Journal of Law & Legal Reform

Journal of Law and Legal Reform is a double blind peer-reviewed journal, published by Postgraduate Program (Master of Laws Program) Faculty of Law Universitas Negeri Semarang. The Journal exclusively published in English both printed and online version, and publish four times each year, every January, April, July, October. The Journal publishes article (Research and Review Article) concerning to legal studies. The journal is intended to be a scientific legal journal that publishes a high quality of law research and works. In order to guarantee wider reach on a global scale, this journal opens opportunities for anyone, researchers, academics, practitioners, and students from all over the world to publish their best manuscripts in this journal. The name of the journal—Law and Legal Reform—to give the impression that this journal brings the spirit of legal change with all its aspects.

EDITORIAL TEAM

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Journal of Law & Legal Reform

EDITORIAL

Issues of justice and legal certainty are closely related to human rights. This has become an interesting study in various forums both national and international. Recent developments regarding various legal regulations, however, there are still many facts that justice has not yet been fulfilled as it should be. This edition raises the theme "*Global Discourses on Justice, Human Rights and Legal Certainty*" with the aim of providing a comprehensive and complete picture of this issue both in the national context in Indonesia and globally. **This edition contains the works of authors from Indonesia and Egypt.** The authors' affiliations consist of: Arab Federation of Engineering Arbitration Egypt, Semarang State University, LBH Justitia, Council of Law, Human Rights and Politics of the Regional Board of Aisyiyah Kebumen, IAIN Pekalongan, Law Independent Law Office, Mohamad Dodi Prihartanto SH and Partners Law Office, LBH ADIL, Legal Aid Center UIN Walisongo Branch Kebumen, and various other agencies.

In particular, we would like to express our deepest gratitude to all those who contributed to publishing this edition of the journal. We convey an invaluable thank you to all of the board of reviewers for their hard work and kindness in maintaining the quality of the writing in this edition. We also thank all the teams involved in this edition. The last but not the least, great thankfulness to all Authors and contributors at this edition for their best papers.

Regards
Dr. Indah Sri Utari, S.H., M.Hum
Editor in Chief

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RESEARCH ARTICLE

JURIDICAL ANALYSIS OF EMPLOYMENT RELATIONSHIP (EMPLOYEES-EMPLOYERS) IN THE AQUACULTURE SECTOR

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ABSTRACT

The employment relationship (employee-employer) is often one of the relationships that often creates legal problems, be it in the aspects of payroll, employment status, or termination of employment relations. This study is to describe and analyze the work relationship and obligations of the parties at PT. Esa Putlii Prakarsa Utama, as well as to find out the factors inhibiting the implementation of work relations at PT. Esa Putlii Prakarsa Utama. The method used in this research is sociological juridical by analyzing various legal regulations as well as examining behaviors and direct relationships based on understanding the law in terms of social symptoms. This study shows that the working relationship at PT. Esa Putlii Prakarsa Utama occurs because of an indefinite work agreement (PWKT). However, the entrepreneur's actions take action against the law because he has violated Article 60 paragraph (2) of Law Number 13 of 2003 concerning Manpower where employers pay wages below the minimum wage during the probationary period of work, this is null and void by law. Then regarding the rights and obligations of the parties, in principle, the obligations of workers are rights that must be accepted by employers, and vice versa, the obligations of employers are rights that must be accepted by workers. The rights and obligations of the parties can be found in labor laws, company regulations, and collective labor agreements.

Keywords*: Work Relations,*

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INTRODUCTION

Indonesia is a country that is located between two continents and two oceans, namely the Asian continent and the Australian continent, as well as the Atlantic Ocean and the Indian Ocean. Thus, because Indonesia is located between the two oceans, Indonesia automatically also has a deep sea and a sea between islands which is commonly called the strait. Indonesia, which is in a position that is flanked by two oceans, also causes the oceans or waters in Indonesia to have various abundant natural resources, one of which is very abundant fish and various types (Supriyadi & Alimudin, 2011).

In addition, fish farming is also related to production, where one of the work units is processing. This is regulated in Article 3 of the Regulation of the Minister of Marine Affairs and Fisheries Number Per. 12 / MEN / 2007 which states that the business in the field of fish cultivation is carried out in the fisheries business which includes preproduction, production, processing, and marketing (Supriyadi & Alimudin, 2011: 138).

For employers, losing a worker or laborer is not a problem because there are still thousands of workers looking for work. Based on Article 1 number 15 of Law Number 13 of 2003 concerning Manpower, the working relationship between employers and workers and is made based on a work agreement which has elements of work, wages and orders that are different from the meaning of a work agreement (Pratomo & Saputra, 2012; Panjawa & Soebagyo, 2014; Chalid & Yusuf, 2014; Wihastuti & Rahmatullah, 2018).

In Article 1601 (a) of the Civil Code, it is stated that an agreement with one party, the worker, binds himself to be under the orders of the other party, the employer, for a certain period of time does work for a fee (Asyhadie, 2015).

Some previous research emphasized and highlighted that the freedom to contract, which is the 'spirit' and 'breath' of a contract or agreement, implicitly provides guidance that the parties are assumed to have an equal position in the contract. Thus, it is hoped that a fair and balanced contract will emerge for the parties. However, in practice there are still many found standard contract models (standard contracts) which tend to be considered one-sided, unbalanced, and unfair (Utami, 2015; Shalihah, 2017; Suyanto, 2015; Purnomo, 2014; Asuan 2019; Mahila, 2017).

PT. Esa Putlii Prakarsa Utama is a company that produces fishery products located in the Mallawa Village, Mallusetasi District, Barru Regency, South Sulawesi. PT. Esa Putlii Prakarsa Utama is an aquaculture company which until now has made a very significant contribution and provides tremendous opportunities and benefits from the production of fry and *nener*. PT. Esa Putlii Prakarsa Utama is one of the largest shrimp production centers in Indonesia.

Indonesia's ability to face global shrimp trade competition is an opportunity as well as a challenge that cultivation companies need to pay close attention to.

The Vision of the Company is a leading modern and integrated aquaculture industry company in Indonesia. Modern companies are: *1.* Companies that are supported by professional employees, *2.* Producing quality products, *3.* Implementing the Good Corporate Governance system (Transparency, Accountability, Responsibility, Independency, and togetherness), *4.* Upholding accuracy of delivery, *5.* Oriented optimal profit, and *6.* Technological innovation and environmental harmony.

The company has a Mission as follows; *1.* Running an integrated aquaculture industry based on modern company management. *2.* Prioritizing strong commercial principles with employee professionalism and continuing to innovate for profit optimization, *3.* Building mutually beneficial partnerships and close coordination with plasma as a leading company in aquaculture development, and *4.* Developing all employees to achieve optimal performance and to be one of the competitive advantages and the main pride of a company with high ethical standards with honesty and integrity as well as a proud character.

The author sees some interesting things to study about how the work relationship that occurs at PT. Esa Putlii Prakarsa Utama whether it is in accordance with the labor law, in this case the workers of PT. Esa Putlii Prakarsa Utama as a permanent worker, but regarding the provision of wages lower than the applicable minimum wage. Therefore, this paper is intended to analyze how the rights and obligations of the parties at PT. Esa Putlii Prakarsa Utama. What are the rights received by workers as well as rights received by employers and what are the factors inhibiting work relations at PT. Esa Putlii Prakarsa Utama? In this case, the problem is the factors experienced by workers and employers both internally and externally.

METHOD

The type of research used by researchers is qualitative legal research using the sociological juridical approach (Djunaidi & Fauzan, 2012). Sociological Juridical Approach is a research conducted on the real situation of society or the community environment with the aim of finding facts (fact finding), which then leads to identification (problem identification) and ultimately leads to problem solving. using descriptive qualitative research methods. Qualitative research is research that will produce descriptive data regarding spoken and written words and observed behavior of the people studied. Research focus, the basis of a focus is a problem that comes from the experience of the researcher or through knowledge that comes from the experience of the researcher. Through

experiences obtained through scientific literature or other literature. The research location was conducted at PT. Esa Putlii Prakarsa Utama, having its address at Jl. Poros Makassar-Parepare KM. 138, Jalang Village, Mallawa Village, Mallusetasi District, Barru Regency, Mallawa, Mallusetasi, Jalang Barru, South Sulawesi. Sources of data include primary and secondary data taken by interviewing techniques and literature study. The data analysis technique used is sociological legal research. This research was conducted by examining legal materials as well as identifying various regulations related to employment relationships. The analysis regarding the problems raised in this research is carried out by analyzing the problems that exist in the field, namely the work relationship between workers and employers in the fisheries sector (a study at PT. Esa Putlii Prakarsa Utama, South Sulawesi) and will then be reviewed in relation to the prevailing laws and regulations. After the data analysis is complete, the results will be presented descriptively, namely by telling and describing what it is in accordance with the problem under study. From these results, it is then drawn as a conclusion which is the answer to the problems raised in this study.

GENERAL DESCRIPTION OF PT. ESA PUTLII PRAKARSA UTAMA

PT. ESAPRATAMA (PT. Esa Putlii Prakarsa Utama) is a company that produces fishery products located in the Jalang area, Mallawa Village, Mallusetasi District, Barru Regency, South Sulawesi. This company was founded by Mr Drs. H. Eddy Baramuli and his family where at that time he as a politician was very optimistic in observing the potential of the aquaculture sector which was quite prospective and became the prima donna, especially shrimp and milkfish as superior products of South Sulawesi.

During its development, this company continues to experience significant progress and increase in production, especially in increasing its capacity (capacity building). PT. ESAPRATAMA is a company that was the forerunner of the following companies:

1) In 1984 it was named PT. Ebar Jaya;
2) In 1986 it was named PT. Sea Angel;
3) In 1988 it was named PT. Ocean Pearl;
4) In 1998 until now it was named PT. ESAPRATAMA (PT. Esaputlii Prakarsa Utama).

PT. ESAPRATAMA (PT. Esaputlii Prakarsa Utama), is a aquaculture company which until now has provided a very significant contribution as well as providing tremendous opportunities and benefits from the quality of quality fry

and milkfish (*nener*) production in Indonesia. PT. ESAPRATAMA is one of the largest shrimps and *nener* production centers in Indonesia. Indonesia's ability to face global shrimp trade competition is an opportunity as well as a challenge that cultivation companies need to pay close attention to. With the increasing achievement of shrimp production, it is hoped that in the future Indonesia will become the largest shrimp producing country in Asia. Of course, this can be achieved through optimization and utilization of natural resources wisely and sustainably.

In the development and corporate strategy of PT. ESAPRATAMA continuously strives to increase strength in the aquaculture sector and prioritizes efficiency through innovative management systems and the use of modern technology in order to ensure the success of cultivators and provide a range of quality products. Even consistently implementing environmentally friendly farming practices throughout the operational process.

Shrimp as one of the aquaculture commodities is Indonesia's leading export. Thus, shrimp has a strategic position in supporting the national economy through foreign exchange earnings and at the same time improving welfare, cultivation companies and the community.

As a company that advances aquaculture industry companies, of course, it continues to foster cooperation with cultivators and produce superior quality products to make the company a leading marine product producer in Indonesia. The company is also has spirit to realize as a leading integrated and modern aquaculture industry company in Indonesia. Modern companies that applied by the Company as:

1. Companies supported by Professional Employees;
2. Producing quality products;
3. Implementing the Good Corporate Governance System (Transparency, Accountability, Responsibility, Independency and Togetherness);
4. Upholding Accuracy of Delivery;
5. Optimal Profit Oriented;
6. Technology Innovation and Environmental Harmony.

The Mission of the Company, are:

1. Running an integrated aquaculture industry based on modern company management;
2. Prioritizing strong commercial principles with employee professionalism and continuing to innovate for profit optimization;
3. Building mutually beneficial partnerships and close coordination with plasma as a leading company in aquaculture development;
4. Developing all employees to achieve optimal performance and become one of the competitive advantages and the main pride of the company with high ethical standards with honesty and integrity as well as a proud character.

EMPLOYMENT RELATIONSHIP BETWEEN EMPLOYEES AND EMPLOYERS AT PT. ESA PUTLII PRAKARSA UTAMA

Lalu Husni in his book entitled "*Indonesian Employment Law (Hukum Ketenagakerjaan Indonesia)*" which is called "employment relationship is the relationship between workers and employers that occurs after the existence of a work agreement" (Husni, 2003: 39). A work agreement according to Article 1 point (14) of the Manpower Act is an agreement between a worker and an entrepreneur which contains the working conditions, rights, and obligations of the parties.

The terms or conditions of a work agreement are also contained in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Manpower which states that a work agreement is made on the following basis:

a) Both side agreement;
b) Ability or ability to take legal actions;
c) The agreed work does not conflict with public order, morality, and the prevailing laws and regulations

There are 2 (two) types of work agreements, namely, the type of work agreement for a certain period of time and the type of work agreement for an unspecified time. Fixed Term Work Agreement is a work agreement between a worker and an entrepreneur to establish a working relationship based on a certain time or based on a certain type of work. The definition of an unspecified time work agreement (PKWTT) is a work agreement between a worker and an entrepreneur to establish a permanent working relationship. PKWTT can be made in writing or orally and is not required to be approved by the relevant Manpower agency. In the event that PKWTT can be carried out a probation period of 3 (three) months as stipulated in article 60 of the Manpower Law.

At the time of doing research saw PT. Esa Putlii Prakarsa Utama is a company running in the aquaculture sector, where all workers are permanent workers or workers whose work agreement is an indefinite work agreement. According to Mr. Mustakim Sila as General Affair, PT. Esa Putlii Prakarsa Utama, “To become a permanent worker at PT. EsaPutlii Prakarsa Utama must go through 3 (three) stages, namely submitting a curriculum vitae (CV) or personal data and Job Application, interview test, and work trial for 3 (three) months, after all these stages pass the company issues a signed permanent employee appointment decree by workers" (Personal Interview, November 2020).

The provisional conclusion from the results of the interview with Mr. Mustakim on probation for work in accordance with Article 60 paragraph (1) of Law No. 13 of 2003 concerning Manpower and work relations were born out of an indefinite work agreement (PKWTT). Furthermore, according to Jamaludin,

"there are 2 (two) types of work agreements, namely PKWTT and PKWT. For PKWT, it must be made in writing, if it is made orally, the work agreement is changed to PKWTT. PKWTT has a probationary period of work for a maximum of 3 months and wages cannot be lower than at the minimum wage. for the 2016 minimum wage, namely Rp. 2,250,000" (Personal Interview, November 2020).

In conclusion, there are 2 (two) types of work agreements, namely PKWTT and PKWT, then regarding during the probation period workers are not allowed to receive wages lower than the minimum wage, and the minimum wage of Barru Regency in 2016 according to Mr. Jamaludin is Rp. 2,250,000. Regarding what work agreement some workers use during job training, the wages received during job training are below the minimum wage, among others.

In the same context, based on interview from Titi Lestari, she said, "I just made a job application and continued to participate in the trial work, then I signed a statement letter submitted by the company, and I also did not get a copy of the work agreement. During the probation period I also received Rp. 1,000,000" (Personal Interview, November 2020). Moreover, according to Muh. Darwis "... I also signed the statement letter just like Titi and I also didn't get a copy of the work agreement. Only I get a work determination letter that says my wage for the trial work is Rp. 1,000,000" (Personal Interview, November 2020). Another informant, Ardi said, "I submitted a job application then interviewed, after that the probation period was asked to sign the submitted statement, but I also couldn't get a copy of the work agreement, only I got a SK but mine was lost. My wages during the probationary period until now are only Rp. 1,000. 000" (Personal Interview, November 2020).

Analysis, Article 60 paragraph (2) of Law Number 13 of 2003 concerning Manpower, "During the probation period as referred to in paragraph (1). Employers are prohibited from paying wages, below the applicable minimum wage. Then see the work agreement made is a written agreement, this is due to the signing by the worker to agree on what was ordered by the company, then the type of work agreement that occurs at PT. Esa Putlii Prakarsa Utama. The agreement used is the Indefinite Time Work Agreement because of a probationary period. However, it is very clear that the company violates Article 60 paragraph (2): "*during the probation period as referred to in paragraph (1), the entrepreneur is prohibited from paying wages below the applicable minimum wage.*"

The behavior of the entrepreneur/company is contrary to statutory provisions because he has paid a wage below the minimum wage during the probationary period of less than Rp. 2,250,000. so that the work agreement that is done should be null and void. However, in the criminal provisions and administrative sanctions in the Manpower Law, there is no mention of sanctions for those who violate Article 60 of the Manpower Law. This is beneficial for

employers in carrying out work agreements (Pratomo & Saputra, 2012; Panjawa & Soebagyo, 2014; Chalid & Yusuf, 2014; Wihastuti & Rahmatullah, 2018)

The conclusion regarding the work relationship that occurs above is that PT. Esa Putlii Implements an Indefinite Time Work Agreement, this is due to the existence of a probationary period for the company, but still has not implemented what is ordered by Article 60 of the Manpower Law, and the weakness of Article 60 of the Manpower Act itself is the absence of application of sanctions for those who violate them.

RIGHTS AND OBLIGATIONS OF EMPLOYEES AND EMPLOYERS AT PT. ESA PUTLII PRAKARSA UTAMA

The obligations of the parties to an agreement are generally called performance. In terms of this achievement, Soebekti emphasized that a party who gets the rights from the agreement also receives obligations which are the goodness of the rights that are obtained, and vice versa, a party who assumes the obligations also receives rights which are considered as obligations imposed on him (Subekti, 1984). According to Soepomo's faith, the main obligation of a worker is to do work according to the entrepreneur's instructions, and to pay compensation. Apart from workers 'obligations, there are workers' rights that must be obtained in the Manpower law.

Manpower Law which has the role of regulating employment relationship policies, in addition to its regulation through statutory regulations, it is also issued through the form of company regulations or collective working agreements, and work agreements. Basically, this legal provision is based on the principles of certainty, justice, benefits, balance of interests, deliberation, and equality in legal standing. These principles have values as the ideals of labor law in providing a foundation for protection and law enforcement in the field of manpower.

Rights and legal protection for workers derived from Law No.13 of 2003 concerning Manpower, including:

a. Rights and protection of occupational safety and health;
b. Rights and welfare protection (Jamsostek);
c. Rights and protection of freedom of association;
d. Covert or unilateral termination rights and protection;
e. Wage rights and protection;
f. Rights and protection of working time (including: overtime work);

g. The rights and protection of the interests of worship, childbirth, menstruation, annual leave, rest between working hours, weekly rest, and other protections that are normative in nature.

Legal protection originating from company regulations / work agreements and collective working agreements (working conditions that have not been regulated or quality improvement over minimum standards of legislation), include:

a. welfare facilities (cooperatives, clinics, housing, and family planning), canteens, recreation, sports, places of worship and child care);
b. Periodic salaries and fixed allowances, year-end bonuses and bonuses based on merit, protection determined based on collective labor agreements or company regulations, work agreements.

In the work agreement, because it is one of the specific forms of the agreement, what Soebekti stated above also applies. This means that what is the right of the worker will become the obligation of the entrepreneur, and conversely what is the right of the entrepreneur will become the obligation of the worker. Obligations of workers at PT. Esa Putlii Prakarsa Utama is stated in the statement letter submitted by the company during the interview test. The contents of the statement letter stated in the statement letter are;

a. We are able to work according to the working hours set by the company
b. We will comply with the leadership of the company and all company rules and regulations;
c. We will protect all company assets and assets;
d. We will work efficiently and effectively according to the work plan and cost plan of the company so that the company gets maximum results;
e. We will be honest, trustworthy and will not leak secrets / data from the company to outside parties or other unauthorized parties;
f. If we do not carry out the above and we have been notified in writing 3 (three) times, and we are still committing violations, indiscipline and others that are against the provisions and regulations of the company, we are willing to be terminated from the company and the company is exempt from our obligations. anything to us, except the salary payable (if any) while we are working.

It can be concluded from the contents of the statement letter above the obligations of workers at PT. Esa Putlii Prakarsa Utama, namely doing work in accordance with the instructions of employers and/or complying with company rules and regulations.

I. Obligation to Provide and Explain the Contents of Company Regulation Draft

Company regulations according to Article 1 point 20 of the Manpower Act, company regulations are regulations that are made in writing by an entrepreneur which contains working conditions and company rules. Then the obligation of employers to make company regulations is stated in Article 108 Number (1) "entrepreneurs who employ workers of at least 10 (ten people) are obliged to make company regulations that come into effect after being approved by the minister or appointed official.

Article 109 of the manpower law states "Company regulations are drawn up by and become the responsibility of the entrepreneur concerned. Regarding the obligation of employers to provide and explain the contents of the company regulation text, it is regulated in Article 114 of Law Number 13 of 2003 concerning Manpower.

Mr. Mustakim as General Affair explained about the company regulations, he said, "Regarding the workers' obligations to the company, it is stated in a statement letter signed by the workers and regarding company regulations a draft has been submitted, but never received a reply from the Manpower Office, occurred in the month of October 2016 PT. Esa Putlii Prakarsa Utama submitted a draft company regulation to the Manpower office, Barru district, but within 30 (thirty) days there was no reply from the Manpower office, and the company regulations had been given to workers through their respective superiors / head of leadership. respective fields of work" (Personal Interview, November 2020).

Meanwhile, according to the manpower office, Mr. Jamaludin, disagreements regarding company regulations at PT. Esa Putlii Prakarsa Utama, "PT. Esa Putlii Prakarsa Utama has never registered company regulations with us, even though we always admonish us every year to make company regulations immediately, but until now there has never been a company regulation that they have registered, We also every year provide guidance to PT. Esa Putlii Prakarsa Utama. "Ahmad Suhail said" I never got a copy of company regulations or an explanation of company regulations. "As for the results of an interview with Ahmad Imron, a worker of PT. Esa Putlii Prakarsa Utama, Larva Production section "I never got a copy of the company regulations, it's just that I work according to what is directed by my superiors." Analysis, Article 108 point (1) of the Manpower Law states that "entrepreneurs employing at least 10 (ten) workers / laborers are obliged to make company regulations which come into effect after being ratified by the minister or appointed official. Ratification of company regulations is contained in Article 112 numbers (1), (2), (3) and (4) the Manpower Act. Article 112 Number (1) states the ratification of company regulations by the Minister or the appointed official as referred to in Article 108

paragraph (1) must have been given within 30 (thirty) working days from the receipt of the company regulation manuscript. As for the criminal provisions for entrepreneurs who do not make company regulations and provide and explain the contents of the company regulation text as contained in article 188 of the labor law.

There are 2 (two) conclusions in this case, first, in this case PT. Esa Putlii Prakarsa Utama, if proven not to register company regulations nor provide and validate the contents of the company regulation text, PT. Esa Putlii Prakarsa Utama violated the criminal provisions of Article 188 of the labor law. The two manpower offices are not firm in taking a stand and have abused their authority, it is stated in the labor law that the manpower office is an official appointed as labor inspector, in this case the party who is injured is a worker because the application of legislation does not work properly.

Provisions in company regulations must not conflict with statutory provisions. This means that the provisions in company regulations must not be of low quality or quantity from the prevailing laws and regulations and if they are contradictory, then what applies are the provisions of the laws and regulations. The point is that the provisions in company regulations, compared to the Prevailing Laws, must not be detrimental to workers (Rusli, 2011: 140),

II. Obligation to Give Wages

In an employment relationship, the main obligation for entrepreneurs is to pay wages to their workers in a timely manner. (Article 88 paragraph (1) of Law Number 13 Year 2003 concerning Manpower. Minimum wages, the government, in this case the governor, shall take into account the recommendations of the Provincial Wage Council and/or regents/mayors, taking into account productivity and economic growth. proper wage protection, determination of minimum wages and imposition of fines on workers who commit violations due to their deliberate or negligent actions shall be regulated by government regulations (Article 97 of the Manpower Act).

Indonesia has implemented the minimum wage standard mechanism and formulated it into workforce regulations such as in Law Number 13 of 2003 about the workforce (Article 88-92) and the regulations from Ministry of Manpower and Transmigration Number 7 of 2013. the minimum monthly payment which consists of primary wage including the permanent subsidy. As a result, the minimum wage does not include temporary subsidy such as: attendance cost, meal and transport given based on their presence. This mechanism is in effect for the workers with less than one year experience. Unfortunately, both provisions

are not socialized well to workers and employers. Consequently, some misunderstandings have occurred including the inequality of workers (Sulistiyono, 2014: 73-74).

Then the application of the minimum wage at PT. Esa Putlii Prakarsa Utama, the results of an interview with Mr. Mustakim Sila's general affair regarding his wages said "the average minimum wage here can reach 3 (three) million per month, the wage system in this company is basic salary + fixed allowance / pension which is 50 % of basic salary + non-fixed allowances (food allowance, transportation allowance, etc.) as well as intensive money per semester, intensive money is money given to workers if the worker reaches or exceeds his work target.

The results of an interview with Mr. Jamaludin, the Manpower office regarding the minimum wage, He said “the minimum wage in Barru Regency itself is Rp. 2,250,000, the formula for the minimum wage, namely salary (basic wage) plus fixed allowance" (Personal Interview, November 2020). Then interview with workers about wages, Joni who works in the fry production division said, "My monthly salary is Rp. 1,200,000, I have worked for 2 (two) years” (Personal Interview, November 2020). Harlawati Dian who works in the LAB QC division said “my monthly salary is Rp. 2,250,000, I've worked for 10 months, 3 months of training” (Personal Interview, November 2020). Furthermore, Fatimah Rahmat who is one division with Harlawati Dian said, “my salary is 2,250,000, and I've worked for 1 year" (Personal Interview, November 2020).

Muh Yusuf, a worker in the personnel division, said "my monthly salary is Rp. 2,500,000 and I have been working for 4 years”. Following are the salaries of PT. Esa Putlii Prakarsa Utama unit I larvae production division in October 2016. Analysis, 3 months of training. "Fatimah Rahmat who is in the same division with Harlawati Dian said" my salary is 2,250,000, and I have worked for 1 year ". Muh Yusuf, a worker in the personnel division, said “my monthly salary is Rp. 2,500,000 and I have worked for 4 years”. Following are the salaries of PT. Esa Putlii Prakarsa Utama unit I larvae production division in October 2016. Analysis, 3 months of training. "Fatimah Rahmat who is in the same division with Harlawati Dian said" my salary is 2,250,000, and I have worked for 1 year ". Muh Yusuf, a worker in the personnel division, said "my monthly salary is Rp. 2,500,000 and I have worked for 4 years”. Following are the salaries of PT. Esa Putlii Prakarsa Utama unit I larvae production division in October 2016.

Table 1. List of Production Workers' Wages (in rupiah)

NO	NAMA KARYAWAN	PENDAPATAN				TOTAL	TUNJ. LAIN-LAIN		TOTAL GAJI + TUNJANGAN	POTONGAN		SISA GAJI
		GAJI	TUNJ . JABATAN	TUNJ. PRESTASI	TUNJ. KHUSUS	GAJI	DANA PENSIUN	TUNJ. MAKAN		PPh 21	UANG MAKAN	
		(RP)	(RP)	(RP)	(RP)	(RP)	(RP)	(RP)	(RP)	(Rp)	(Rp)	(RP)
I	**PRODUKSI LARVA UNIT I**											
1	Ir. Tuwuh	2,500,000	1,000,000	-	6,500,000	10,000,000	-	400,000	10,400,000	-	-	10,400,000
2	Abd. Rahman	2,000,000	500,000	500,000	-	3,000,000	250,000	400,000	3,650,000	-	400,000	3,250,000
3	Sabaruddin	1,750,000	-	350,000	-	2,100,000	250,000	400,000	2,750,000	-	-	2,750,000
4	Ahmad Imron, Spi	2,000,000	-	-	500,000	2,500,000	250,000	400,000	3,150,000	-	400,000	2,750,000
5	Eko Priyo Sulistio, S.Kel	1,275,000	-	325,000	-	1,600,000	250,000	400,000	2,250,000	-	-	2,250,000
6	Ir. Sukiman	2,000,000	500,000	350,000	-	2,850,000	250,000	400,000	3,500,000	-	400,000	3,100,000
7	Usran, Amd. Pi	1,250,000	-	350,000	-	1,600,000	250,000	400,000	2,250,000	-	400,000	1,850,000
8	Ismail, Amd.Pi	1,600,000	-	350,000	-	1,950,000	250,000	400,000	2,600,000	-	400,000	2,200,000
9	Mulyadi	1,000,000	-	250,000	-	1,250,000	250,000	400,000	1,900,000	-	400,000	1,500,000
10	A. Asdar	1,000,000	-	250,000	-	1,250,000	250,000	400,000	1,900,000	-	400,000	1,500,000
11	Hendra Rante	1,000,000	-	250,000	-	1,250,000	250,000	400,000	1,900,000	-	400,000	1,500,000
12	Jumaedi, Amd,Pi	1,200,000	-	300,000	-	1,500,000	250,000	400,000	2,150,000	-	400,000	1,750,000
13	Asriadi, Amd,Pi	1,200,000	-	300,000	-	1,500,000	250,000	400,000	2,150,000	-	400,000	1,750,000
14	Joni, Amd,Pi	1,200,000	-	300,000	-	1,500,000	250,000	400,000	2,150,000	-	400,000	1,750,000
15	Ibrahim , Amd,Pi	1,200,000	-	150,000	-	1,350,000	250,000	400,000	2,000,000	-	400,000	1,600,000
16	Ahmad Suhail, Amd,Pi	1,200,000	-	300,000	-	1,500,000	250,000	400,000	2,150,000	-	400,000	1,750,000
17	Jusrandi, A.Md.Pi	1,200,000	-	-	-	1,200,000	-	400,000	1,600,000	-	-	1,600,000
	JUMLAH I	**24,575,000**	**2,000,000**	**4,325,000**	**7,000,000**	**37,900,000**	**3,750,000**	**6,800,000**	**48,450,000**	**-**	**5,200,000**	**43,250,000**

Data from Table 1 can be analyzed that according to Article 1 point (1) Regulation of The Minister of Manpower and Transmigration Number 7 Of 2013 Concerning Minimum Wages, it is stated that the minimum wage is the lowest monthly wage consisting of the basic wage including fixed allowances which are determined by the governor as a safety net. Then the Government Regulation of the Republic of Indonesia No.78 of 2015 concerning wages article 1 point (1) states, wages are the rights of workers / laborers that are received and expressed in the form of money as compensation from employers or employers to workers and who are determined and paid. according to a work agreement, agreement, or statutory regulation, including allowances for workers and their families for a job and/or service that has been or will be performed. Article 5 paragraph (1) PP No. 78/2015 concerning wages, states that the wage as referred to in Article 4 paragraph (2) letter a consists of a wage component without allowances; basic wages and fixed allowances; basic wage, fixed allowance, and temporary allowance. Article 5 paragraph (3) PP No. 78/2015 states, in terms of the components of the basic wage, fixed allowances, and non-permanent allowances as referred to in paragraph (1) letter c, the amount of the basic wage is at least 75% (seventy five percent) of the amount of basic wage and fixed allowances. In this case the wage component applied by PT. Esa Putlii Prakarsa Utama are Basic Wages, Fixed Allowances and Variable Supports. Circular of the Minister of Manpower of the Republic of Indonesia No.

a. Basic Wage is the basic compensation paid to employees according to the level or type of work, the amount of which is determined based on an agreement.
b. Fixed allowance is a regular payment related to work that is regularly given to workers and their families and is paid in the same time unit as the payment of the basic wage, such as Wife's Allowance; Child Support; Housing Allowance; Death benefit; Regional allowances and others.
c. Non-permanent allowance is a payment that is directly or indirectly related to workers, which is given irregularly to workers and their families and is paid according to a time unit which is not the same as the time of payment of the basic wage.

Furthermore, from the results of interviews and Table 1 the basic wage of PT. Esa Putlii Prakarsa Utama consists of salary, job allowance, special allowance, meal allowance pension allowance. Meanwhile, the non-permanent allowance consists of achievement allowances. The wages given by the company are set on a monthly basis. there are still many workers who receive a lower base wage than the minimum wage. In this case the entrepreneur has violated the criminal provisions of Article 185 of the Manpower Law by imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000 (one hundred million rupiah) and at the most. a lot of Rp. 400,000,000 (four hundred million rupiah).

III. Obligation to Determine Working Time and Rest Time

Every employer is obliged to implement the working time provisions stipulated in the Manpower Act, except for certain business sectors or occupations. Regarding the working time of the interviews the author has conducted for PT. Esa Putlii Prakarsa on November 14, 2016 regarding the working time provisions that are applied there are several differences in working hours between one worker and another. John who works in the Production Division of Benur said, "I work 12 (twelve) hours every day". Then, Harlawati Dian who works in the division said QC said "I work 3 (three) hours per day." and Fatimah Rahmat, SKM who works in the QC Laboratory division said, "I work 8 (eight) hours a day checking the quality of fry and nener". Meanwhile, Muh. Yusron Syaro in the PERSONALIA division (office staff) said, "I work 8 (eight) hours of work per day". apart from that Muh. Dervish in the larvae production division said "I work 12 (twelve) hours of work per day, fully responsible for the production of fry in feeding, checking water, cleaning tubs and carrying out superior orders". Regarding working hours at PT. Esa Putlii Prakarsa Utama, Mr. Mustakim as General Affair said, "Basically the company PT. Esa Putlii Prakarsa Utama has its

own set of working hours because each division has different responsibilities. but still adhering to the Manpower Act, namely 8 hours of work per day and for overtime the company does not stipulate overtime provisions, but the company still appreciates the performance of its employees by providing incentive money per semester. "Then the interview about the right to get a day off / leave, the results of an interview with a worker named Joni on November 14, 2016, he said. "... We get 12 days annual leave."

Another worker also said the same thing about leave, Harlawati Dian said, "workers here each get an annual leave of 12 days." Employers are required to provide annual rest to workers on a regular basis. The right to rest is important in order to eliminate worker boredom in doing work. Annual leave of 12 working days. In addition, workers are also entitled to long leave for 2 (two) months after working continuously for 6 years at a company (Article 79 paragraph (2) of Law Number 13 of 2003 concerning Manpower. The obligation to implement the provisions of working hours.

a. 7 (seven) hours in 1 (one) day and 40 (forty) hours in 1 (one) week for 6 (six) working days in 1 (one) week or;
b. 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week.

The author's analysis, according to Article 77 paragraph (3) of Law Number 13 Year 2003 concerning Manpower, states that “the working time provisions as referred to in paragraph (2) do not apply to certain business sectors or occupations. PT. Esa Putlii Prakarsa Utama is a company engaged in the aquaculture business sector, especially fish and *nener*. Then Article 77 paragraph (4) provisions regarding working hours in certain business sectors or jobs as referred to in paragraph (3) shall be regulated by a ministerial decree. In this case the working time should be used is Article 3 of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia PER.11 / MN / VII / 2010 concerning Working and Resting Time in the Fishery Sector in certain Operational Areas, namely;

a. Companies in the fisheries sector, including supporting service companies that carry out activities in certain areas of operation, can select and determine one and / or several working hours according to the company's operational needs as follows: a. Work period of 3 (three) consecutive weeks, provided that after the worker has worked for 2 (two) consecutive weeks, 1 (one) day of rest and 4 (four) rest days after the worker has completed the work period; b. Work period of 4 (four) consecutive weeks of work, provided that after the worker has worked for 2 (two) consecutive weeks, 1 (one) day of rest and 5 (five) days of rest after the worker has completed the work period.

b. In the event that the company implements the work period as referred to in paragraph (1) letter a and letter b, the working time is no longer than 12 (twelve) hours a day excluding rest time for 1 (one) hour.
c. (2) Companies that use the working hours as referred to in paragraph (2) are obliged to pay overtime wages after 7 (seven) working hours with the following calculations: a. Normal working days: 1) for the first hour of overtime, the wages must be paid 11/2 (one and a half) times the hour's wages; 2) for each subsequent hour of overtime, 2 (two) times the hour's wages must be paid. B. Legal holidays: 1) for every hour within the limit of 7 (seven) hours, at least 2 (two) times the wages of an hour; 2) for the first working hour, the remaining 7 (seven) hours must be paid 3 (three) times the wages per hour; 3) for the second working hour after 7 (seven) hours and so on, the pay is 4 (four) times the wages per hour.

This is because fish farming is also related to production, where one of the work units is processing. This is regulated in Article 3 of the Regulation of the Minister of Marine Affairs and Fisheries Number Per. 12 / MEN / 2007 which states that the business in the field of fish cultivation is carried out in the fisheries business which includes preproduction, production, processing and marketing. The conclusion regarding working time and rest time is PT. Esa Putlii Prakarsa Utama has not implemented Working Hours in accordance with the Ministerial Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia PER.11/MN/VII/2010 concerning Working and Resting Hours in the Fishery Sector in certain Operational Areas.

IV. Obligation to Provide Welfare Facilities

According to Malayu SP Hasibuan welfare is a complete remuneration (material and non-material provided by the company based on policy). The goal is to maintain and improve the physical and mental condition of employees so that productivity increases (Hasibuan, 2003: 183).

An interview with Ahmad Imron regarding welfare facilities revealed that "we are here to get mess facilities, food allowances, transport fees, table tennis and a swimming pool for sports facilities, BPJS Employment, BPJS Health and many others." Then Ir. Tuwuh, as the representative for the General Manager regarding welfare facilities, said that "workers get welfare facilities in the form of economics in the form of pension money, food allowances, transport fees, BPJS Ketenagakerjaan and BPJS Kesehatan for workers' families, holiday allowances, bonuses and so on. For facilities in the form of places of worship, canteen, swimming pool, tennis table and others."

Article 99-101 of Law No.13 of 2003 concerning Manpower regulates Welfare Article 99 paragraphs (1) and (2):

1) Every worker and / or laborer and his family have the right to obtain workforce social security;
2) Manpower social security as referred to in paragraph (1) shall be implemented in accordance with the prevailing laws and regulations.

Regarding workforce social security, every worker and worker's family obtains a BPJS Ketenagakerjaan card for workers and BPJS Health for workers who already have a family. The principles contained in the BPJS are contained in Article 2 of Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies, namely humanity, benefits, and justice for all Indonesian people. Regarding the scope of the BPJS, there are BPJS Kesehatan and BPJS Ketenagakerjaan. The insurance program provided by the BPJS is listed in Article 6 paragraphs (1) and (2), BPJS Kesehatan Organizes a health insurance program and BPJS Ketenagakerjaan organizes Work Accident Security, Old Age Security, Pension Security and Death Security Programs.

It is highlighted that the work welfare facilities in PT. Esaputlii Prakarsa Utama has paid attention to the needs of workers in accordance with Article 100 Paragraph 2 of Law Number 13 Year 2003 concerning Manpower. PT. Esa Putlii Prakarsa Utama has provided facilities in the form of a sports venue, BPJS, residence (Mess), transport and food allowance, canteen and so on.

V. Obligation to Create a Bipartite Institution

Industrial relations disputes are differences of opinion that result in conflicts between employers or a combination of employers and workers or labor unions, due to disputes over rights, interests, termination of employment, and disputes between trade unions in only one company. In this case, companies employing 50 (fifty) workers or more are required to establish a bipartite cooperation institution (Article 106 of the Manpower Act).

The existence of Bipartite Institution is regulated in Law Number 13 of 2003 regarding the workforce and decision from the Ministry of Manpower and Transmigration Number Kep.255 / Men / 2003 about the Mechanism to Form and Structure of Membership of Bipartite Cooperation Institution. In Article 1 point 18, Law Number 13 of 2003 is explained the definition of bipartite cooperation institution as the communication and consultation forum regarding industrial relationship in a particular company whose membership consists of the employer and registered workers / labors under the responsible institution. Furthered in Article 106 Clause (1) of Law Number 13 of 2003, every company

employing more than fifty workers / labors is required to establish a bipartite cooperation institution (Sulistiyono, 2014: 75).

At the time the author was doing the research, PT. Esa Putlii Prakarsa Utama Employs more than 50 (fifty) workers / or laborers based on the data on the number of workers previously obtained. PT. Esa Putlii Prakarsa Utama, in this case, does not yet have a Bipartite Cooperation Institution and there is no labor union in the company. Tuwuh said: "This company does not have a bipartite institution, and its workers do not even join a trade union, because there are rare unions from aquaculture. "

Conclusion by interviewing Mr. Ir. Tuwuh, the company does not have a labor union and a bipartite cooperation institution. Jamaludin SE, the Manpower Office, said "PT. Esa Putlii Prakarsa Utama does not have a bipartite cooperation institution, regarding the provision of sanctions for you as a law student, you will definitely know what you should be. Every company that employs 50 (fifty) workers and / or laborers or more is obliged to form a bipartite cooperation institution. When interviewing the workers that the author mentioned earlier, they cannot convey what makes them uncomfortable working. and Article 160 paragraph (1) and paragraph (2) of this Law and its implementing regulations. " The Manpower office should have given administrative sanctions to PT. Esa Putlii Prakarsa Utama but the Manpower office here is only silent. The administrative sanctions mentioned in Article 190 paragraph (2) are in the form of;

a. Warning;
b. Written warning;
c. business restrictions;
d. freezing of business activities;
e. Cancellation of approval;
f. Cancellation of registration;
g. Temporary cessation of part or all of the means of production;
h. Revocation of license.

INHIBITING FACTORS FOR EMPLOYMENT RELATIONS AT PT. ESA PUTLII PRAKARSA UTAMA

From the description of the work relationship and the rights and obligations of the parties above, as for the obstacles that impose work relations at PT. Esa Putlii Prakarsa Utama. Results of interviews with workers and deputy general manager of PT. Esa Putlii Prakarsa Utama; Ahmad Imron said, "the obstacle of the work relationship between workers and employers, the unavailability of facilities to discuss existing problems regarding employment." Harlawati Dian said a different opinion "until now there have been no obstacles regarding the work

relationship." interviews with the workers above there are no facilities to express opinions, so the problems that occur depend on each individual worker. Tuwuh said the inhibiting factor of work relations "the inhibiting factor of work relations is because the working hours in this company, in the aquaculture sector, especially fry and *nener*, cannot be equated with the working hours of workers in textile factories or with others. Because we need to pay attention to the quality of fry and *nener* on a regular basis, and we must take full responsibility for the job description of each employee."

From the interview with Ir. Tuwuh, the deputy general manager, it can be concluded that the working hours of aquaculture cannot be equated with work in general, a large burden of responsibility in pre-production, production, enlargement and marketing of fry and *nener* is in the hands of the workers. interview with Jamaludin, The manpower office said the solution to barriers to working relations between workers and employers. "There are 2 (two) solutions regarding the inhibiting factors of working relations between workers and employers, first the application of the Manpower law comprehensively, namely implementing what is stated in Law Number 13 of 2003 concerning Manpower. And the availability of facilities and infrastructure, namely the company performs its obligations to workers in accordance with the company's capabilities PT. Esa Putlii Prakarsa Utama, namely regarding facilities for expressing workers' opinions.

According to Jamaludin, the Manpower office of the new district, the factors inhibiting work relations are caused by 2 (two) factors, namely:

1. Internal factors:
    a. The relationship between workers and workers
    b. relationships between workers and entrepreneurs
    c. minimum wages
    d. facilities and infrastructure
    e. medical facility
2. External Factors: Weather, Natural Disasters, and Company Location
    a. the inhibiting factor of work relations among workers, in this case workers are influenced by their social environment, where the nature of the workers cannot work professionally, meaning that workers cannot carry out what is ordered by;
    b. companies or entrepreneurs. The inhibiting factor of the work relationship between workers and employers, in this case sometimes workers and employers are not able to understand each other;
    c. minimal wages, in this case workers who have heavier job descriptions get lower wages than others, sometimes even workers complain that the wages earned are lower than the applicable minimum wage;

d. facilities and infrastructure, means of expressing opinions are not available, in this case a discussion forum regarding disputes over rights and interests;
e. Health facilities, the company does not provide health facilities within the company.

The solutions provided by Mr. Jamaludin, the Manpower Office of the new district, were;

1. Comprehensive application of manpower law, namely workers and employers exercising their rights and obligations in accordance with the prevailing laws and regulations;
2. The availability of facilities and infrastructure, namely the company / entrepreneur providing the facilities needed by workers, and workers and employers using the facilities provided by the government, or they can consult with the Manpower office.

CONCLUSION

PT. Esa Putlii Prakarsa Utama in carrying out a work relationship using an unspecified type of work agreement, in the case of an unspecified time work agreement the company holds a probation period for 3 months and the wage cannot be lower than the applicable minimum wage (Article 90 paragraph (1) Labor Law). According to the manpower office, the minimum wage for Barru Regency is Rp. 2,250,000. In this case PT. Esa Putlii Prakarsa Utama has not implemented the applicable minimum wage in Barru Regency, South Sulawesi. Rights and obligations of the parties at PT. Esa Putlii Prakarsa Utama, basically the obligations of workers are the rights of employers. Likewise, the employer's obligation is the right of the worker. However, PT. Esa Putlii Prakarsa Utama has not fulfilled the obligations as stipulated in the Manpower Law, including still paying wages lower than the minimum wage, not carrying out the obligation to provide and explain company regulations to workers, not implementing working time in accordance with the RI Minister of Manpower and Transmigration NO. 11 / MN / VII / 2010 regarding work and rest time in the fisheries sector, and has not yet created a bipartite cooperation institution. Inhibiting factors for work relations at PT. Esa Putlii Prakarsa Utama, there are 2 (two) factors; internal factors and external factors. The internal factor is that it occurs because of disputes between workers and employers. In addition, workers are still not law literate, causing bad intentions by employers. Meanwhile, external factors are weather conditions, natural disasters and company location. In terms of weather factors, especially changes in unstable water temperature play an important role in the development of "fry" and "*nener*", in this case workers must reach the target according to the wishes of the employer/company.

REFERENCES

Asuan, A. (2019). Perlindungan Hukum Terhadap Pekerja Berstatus Perjanjian Kerja Waktu Tertentu (PKWT) Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Solusi*, *17*(1), 23-31.

Asyhadie, Z. (2015). *Hukum Ketenagakerjaan Bidang Hubungan Kerja*. Jakarta: Rajagrafindo Persada.

Chalid, N., & Yusuf, Y. (2014). Pengaruh tingkat kemiskinan, tingkat pengangguran, upah minimum kabupaten/kota dan laju pertumbuhan ekonomi terhadap indeks pembangunan manusia di Provinsi Riau. *Jurnal ekonomi*, *22*(2), 1-12.

Ghony, M. D., & Almanshur, F. (2012). *Metode Penelitian Kualitatif*. Yogyakarta: Ar-ruzz Media

Hasibuan, M. S. P. (2003). *Manajemen Sumber Daya Manusia*, *Edisi Revisi.* Jakarta: Bumi Aksara.

Mahila, S. (2017). Perlindungan Hukum Hak Pekerja Outsourcing Pasca Putusan Mahkamah Konstitusi. *Jurnal Lex Specialis*, (16), 48-55.

Panjawa, J. L., & Soebagiyo, D. (2014). Efek peningkatan upah minimum terhadap tingkat pengangguran. *Jurnal Ekonomi & Studi Pembangunan*, *15*(1), 48-54.

Pratomo, D. S., & Saputra, P. M. A. (2012). Kebijakan upah minimum untuk perekonomian yang berkeadilan: Tinjauan UUD 1945. *Journal of Indonesian Applied Economics*, *5*(2), 269-285. http://dx.doi.org/10.21776/ub/JIAE/2016/005.02.6

Purnomo, H. (2014). Problematik Yuridis Perjanjian Kerja Waktu Tertentu Antara Pekerja Asing Dengan Perusahaan d Indonesia Yang Hanya Menggunakan Bahasa Asing (Analisis Terhadap Putusan Mahkamah Agung Nomor 595/K/Pdt.Sus/2010). *Jurnal Novum*, *1*(2), 40-51.

Shalihah, F. (2017). Perjanjian Kerja Waktu Tertentu (PKWT) dalam Hubungan Kerja Menurut Hukum Ketenagakerjaan Indonesia dalam Perspektif Ham. *UIR Law Review*, *1*(2), 149-160.

Sonata, D. L. (2014). Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum. *Fiat Justisia Jurnal Ilmu Hukum.* 8(1), 15-35.

Subekti, S. (1984). *Aneka Perjanjian, Cetakan Kedua*. Bandung: Bina Aksara.

Sulistiyono, T. (2014). Analysis for Overwhelming Issues in The Decision and Implementation Of Minimum Wage Standard In Indonesia. *South East Asia Journal of Contemporary Business, Economics and Law*, 4(3), 72-29. https://seajbel.com/wp-content/uploads/2014/06/KLL4331-Tri-Sulistiyono-A-SOLUTION-FOR-OVERWHELMING.pdf

Supriadi, H., & Alimuddin, A. (2011). *Hukum Perikanan di Indonesia*. Jakarta: Sinar Grafika.

Suyanto, S. (2015). Konstruksi Hukum Perubahan Perjanjian Kerja Waktu Tidak Tertentu Menjadi Perjanjian Kerja Waktu Tertentu. *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik*, *4*(1).

Utami, T. K. (2015). Peran Serikat Pekerja Dalam Penyelesaian Perselisihan Pemutusan Hubungan Kerja. *Jurnal Wawasan Yuridika*, *28*(1), 675-686.

Wahyudi, H. S. & Sukmasari, M. P. (2014). Teknologi dan Kehidupan Masyarakat. *Jurnal Analisa Sosiologi,* 3(1), 13-24.

Wihastuti, L., & Rahmatullah, H. (2018). Upah minimum provinsi (UMP) dan penyerapan tenaga kerja di Pulau Jawa. *Jurnal Gama Societa*, *1*(1), 96-102.

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RESEARCH ARTICLE

SUBJECTIVE WELL BEING WITH ANTISOCIAL BEHAVIOR IN ADOLESCENTS CASE OF BABALAN VILLAGE WEDUNG DEMAK (A CRIMINOLOGICAL PERSPECTIVE)

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ABSTRACT

This research aims to determine the relationship between subjective well being with antisocial behavior towards adolescents who live in Babalan Wedung Demak village. The hypothesis proposed is that there is a negative relationship between the welfare of the subject with antisocial behavior is the higher or positive well being of the subjective, the lower the antisocial behavior of adolescents who live in the village Babalan Wedung Demak or vice versa. The subjects of the study were teenagers residing in Babalan Wedung Demak village. Sampling technique in this research by using random sampling. The measuring instrument used is the scale of subjective well being and the scale of antisocial behavior residing in Babalan Wedung Demak area. The data in the analysis using Product Moment Pearson correlation. Based on the analysis of Product Moment Pearson obtained rxy = -0.252 with significance 0.008 (p <0.01) means there is a negative relationship between the subjective well being with antisocial behavior is the higher or positive well being of the subjective then the lower antisocial behavior of adolescents residing in the village Babalan Wedung Demak. The lower or

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negative the well being of the subjective, the higher the antisocial behavior in adolescents who live in Babalan Wedung Demak village. Based on the results of the analysis is also known variable well being subjective have empirical average subjective scores on the scale of well being of the subject 34.51 and while the hypothetic score of 32.5. This shows that the subjective well being in this study has a moderate average.

Keywords*: Subjective Well Being; Antisocial Behavior; Adolescents; Criminology*

INTRODUCTION

Humans need help from others to meet their daily needs. There is a bond of interdependence between one individual and another, which means that human survival takes place in a mutually supportive bond. For this reason, humans are required to be able to work together, respect each other, and be tolerant in social life. Behaviors that influence each other from one individual to another produce a social behavior that will color the interaction patterns of each individual.

There are so many behaviors shown by individuals in the socialization process. Both behavior in accordance with social norms and behavior that is not in accordance with social norms. One example of behavior that is not in accordance with social norms is killing behavior.

Antisocial behavior described as unwanted behavior by individuals as a result of personality disorders and is the opposite of prosocial behavior (Jeffery, 2005). Meanwhile, antisocial behavior disorder is a behavior disorder characterized by antisocial and irresponsible behavior and a lack of remorse for their mistakes (Fery, 2010).

People with antisocial or personality disorders are the most dramatic people clinicians encounter in their practice. Individuals who are antisocial are usually characterized by a history of refusing to comply with social norms, they commit actions that most people find unacceptable, such as stealing from their own friends and family. They also tend to be irresponsible, impulsive, and liars (Duran & Barlow, 2007).

Furthermore, Hare (2008) describes individuals who have antisocial behavior as people who have absolutely no conscience and empathy, they arbitrarily take whatever they want and do whatever they like, violate social norms and expectations without the slightest bit of guilt or remorse. So that someone who behaves antisocial cannot see the difference between the truth and lies he says in order to achieve his goal.

Permana, Sopyan, Kusmayadi & Fatah (2015) explained that antisocial attitudes can occur due to several factors, namely:

a) Disappointment with the social system
b) Failure in the socialization process experienced by someone

c) Inability to fully understand the system of values and norms that apply in society.

Idianto (2013) mentioning the forms of antisocial attitudes based on the causes, including the following:

a) Antisocial attitudes that arise due to individual deviations.
b) Antisocial attitudes that arise due to situational deviations.
c) Antisocial attitudes that arise due to biological deviations.
d) Sociocultural antisocial attitudes.

Dush & Amanto (2005) further emphasized that well-being is a relatively stable attribute, which reflects to what extent an individual experiences positive affect and a pleasant outlook on life. A person is said to have high subjective well-being if he experiences life satisfaction and experiences joy more frequently and does not experience unpleasant emotions such as sadness and anger too often.

Diener, Lucas & Oishi (in Imelda, 2008) states that subjective well-being is a broad concept, including the emotions of pleasant experiences, low levels of negative moods, and high life satisfaction. A person is said to have high subjective well-being if they feel satisfied with their living conditions, often feel positive emotions and rarely feel negative emotions. The term subjective well-being is defined as a person's cognitive and affective evaluation of his life. This evaluation includes an emotional assessment of the various events experienced, along with a cognitive assessment of life satisfaction and fulfillment.

Diener & Scollon (2009) argued that subjective well-being is related to how a person feels and thinks about his life. Neither cognition nor current or past emotions. Meanwhile, according to Rismawati (2010) subjective well-being, which refers to how individuals evaluate their lives. Subjective well-being is a person's high assessment of their happiness and life satisfaction, so they tend to act like they are happier and more satisfied. When people accept themselves in a more positive way, they will appear to people with a certain level of confidence and optimism. So that it can cause positive reactions from other people and it will increase their self-esteem again. In the end, this subjective welfare cycle tends to produce an understanding that life has meaning and purpose. Diener (2014) explained that subjective well-being is how a person evaluates his life.

METHOD

The data collection method in this study used a scale method consisting of two scales, namely, the scale of antisocial behavior (22) and the scale of subjective welfare (26). This study uses the Product Moment correlation technique as a technique of item difference test and to determine the reliability coefficient, using the Alpha Cronbach technique. Data analysis in this study used the product moment technique with the help of a computer program through SPSS (Statistical Product and Service Solutions) version 21.0.

RESULTS

The hypothesis to be tested is that there is a relationship between antisocial behavior and subjective well-being in adolescents who live in the village of Babalan Wedung Demak. This study uses the Product Moment correlation technique to test the hypothesis. Hypothesis test between antisocial behavior and subjective welfare obtained r_{xy} = -. 252 with a significance of 0.008 (p <0.01).

The results of these calculations indicate that there is a very significant negative relationship between antisocial behavior and subjective well-being. Thus, the hypothesis proposed by the researcher is accepted, because the hypothesis proposed by the researcher is that there is a relationship between antisocial behavior and subjective well-being, namely the higher or positive the antisocial behavior, the lower the subjective welfare of adolescents who live in the village of Babalan Wedung Demak the lower or the negative antisocial behavior, the higher the subjective welfare of adolescents who live in the village of Babalan Wedung Demak.

DISCUSSION

The purpose of this study was to determine the relationship between subjective welfare and antisocial behavior towards antisocial adolescents in the village of Babalan Wedung Demak. Data analysis was performed using the SPSS (Statistical Products and Service Solutions) program for Windows Release version 21.0.

Based on the results of Product Moment analysis, it is obtained r_{xy}= -0.252 with a significance of 0.008 (p <0.01), this indicates that the proposed hypothesis is accepted, because it shows that there is a very significant negative relationship between subjective health and antisocial behavior, while the hypothesis proposed by the researcher is a negative relationship or correlation. Thus the hypothesis proposed by the researcher is accepted, because the hypothesis proposed by the researcher is a negative correlation or negative relationship, namely the higher or positive antisocial behavior, the lower the subjective welfare of antisocial adolescents in the village of Babalan Wedung Demak. The lower or negative the antisocial behavior, the higher subjective welfare of antisocial adolescents in the village of Babalan Wedung Demak.

The results of this study reinforce the explanation of Marianti, Anies, & Abdurachim (2015) that Blood lead levels have a linear relationship or affect the antisocial behavior variable with F value of 28.930 with sig = 0.00. Princess (2016) conducted research on emotional intelligence variables and social support variables that are associated with subjective welfare variables, in this study resulted in an R2 score of 0.667 by including the interaction of emotional intelligence variables and social support variables (as moderator variables), so it was proven that social support variables were appropriate as moderator

variables. and able to improve the relationship between emotional intelligence variables with subjective welfare variables.

Previous research from Kastutik & Setyowati (2014) who researched about Antisocial behavior of adolescents in terms of parenting style at SMP Negeri 4 Bojonegoro got the results of the analysis with an F value of 4.570 and a significance value of 0.012, this indicates that there are differences in adolescent antisocial behavior in terms of parenting style at SMP Negeri 4 Bojonegoro. Results of the product moment analysis conducted by Utami (2012) showed that there is a correlation between religiosity and subjective welfare in students in their personal life (r = 0.167; p <0.05). This shows that the higher the religiosity, the higher the subjective welfare, the lower the religiosity, the lower the subjective welfare in their personal life.

Results of data analysis from research conducted by Rahmania & Suminar (2012) obtained the correlation value (r) between perceptions of parental control behavior and delinquency behavior tendencies of adolescents of -0,000 with a significance (p) of 0.000. The results of the data analysis show that there is a negative relationship between perceptions of parental control and the tendency of delinquency behavior in adolescents who have ever involved in a brawl.

Data analysis was performed using the one-way ANOVA technique with the F results obtained, namely 1.573 with a price of p = 0.203 (p> 0.203). These results indicate that there is no difference between the subjective welfare of type II sufferers (DM) based on education level, meaning that the high or low level of education of type II DM sufferers does not contribute to their subjective well-being (Safarina, Mawarpury, & Sari, 2014).

CONCLUSION

Based on the results of data analysis and discussion, it can be concluded that antisocial behavior and subjective well-being is obtained $_{xy}$ = -. 252 with a significance of 0.008 (p <0.01). The results of the analysis indicate that there is a very significant negative relationship between antisocial behavior and subjective well-being. Thus, the hypothesis proposed by the researcher is accepted, because the hypothesis proposed by the researcher is a negative correlation or negative relationship, namely the higher or positive the antisocial behavior, the lower the subjective welfare of adolescents who live in the village of Babalan Wedung Demak. The lower or the negative antisocial behavior, the higher the subjective welfare of the adolescents who live in the village of Babalan Wedung Demak.

REFERENCES

Adi, N., & Supriyono, M. (2012). Relationship between Family Support and Peer Interaction with Antisocial Behavior in Adolescents at SMA Gita Bahari Semarang. *Psychodynamics*, 7,1.

Azwar, S. (2013). *Psychologist scale compilation*. Yogyakarta: Learning Library.

Azwar, S. (2013). *Compilation of psychological scales*. Yogyakarta: Learning Library.

Compton, W. (2005). Introduction to Positive Psychology. *Psychology*, 2, (3).

Devina, N. (2012). *Social Psychology*. Jakarta: Erlangga.

Diener, D., & Lucas, L. (2009). *Subjective Well Being The Science Of Happines And Life Satisfaction*. New York: Oxford University Press.

Diener, D., & Scollon, S. (2003). Subjective well being is desirable, but not the summun bonum. Paper delivered at the University of Minnesota interdisciplinary Workshop on Well Being. *Psychology*, 2, (5).

Duran, MV, & Barlow, H. (2007). Abnormal psychological essence. Yogyakarta: Student Library.

Fery, S. (2010, February Wednesday). Antisoial Personality Disorder. *Antisoial Personality Disorder*, pp. 10, 1.

Hare, R. (2008). *Development and Personality of People*. Jakarta: Arcan.

Hefferon, K., & Boniwell, I. (2011) P*ositive Psychology Theory, Reasearch and Applications*. New York: Mc Graw Hill.

Here, SV, & Priyanto, PH (2014). Subjective Well Being in Adolescents in terms of Environmental Awareness. *Psychodimensia*, 13. 1.

Here, SV, & Priyanto, PH (2014). Subjective Well-Being in Adolescents in terms of Environmental Awareness. *Psychodimensia*, 13(1), 10-21.

Idianto, M. (2013). *Specialization Group of Social Sciences*. Jakarta: Erlangga.

Imelda, NA, & FN, O. (2008). The relationship of gratitude and subjective well being on the poor. *Psychology*, 14, (1).

Jeffery, N. (2005). *Abnormal Psychology*. Jakarta: Erlangga.

K. M, DC, & R, PA (2005). Consequences of relationship status and quality for subjective well-being. *Journal of Social and Personal Relationship*, 22(6).

Kastutik, & Setyowati, RN (2014). Differences in Antisocial Behavior of Adolescents Judging from Parents' Parenting Patterns at SMP Negeri 4 Bojonegoro. *Moral and citizenship studies*, 2(1), 174-189.

Lykken, & Tellegen. (1999). *Subjective Well Being The Science Of Happines and a Proposal For A National index*. New York: Oxford University Express.

M, PT, & H, S. (2009). The Subjective Wellbeing of Transgender Commercial Sex Workers (CSWs). *Psychodynamics*, II(2).

Marianti, A., Anies, & Abdurachim, H. r. (2015). Increase in Blood Lead Levels and the Emergence of Antisocial Behavior of Brass Craftsmen. *Public Health Journal*, 11(1), 144-154.

Nolen, N. (2007). Antisocial Personality, *Psychology of dynamics*, 1(2).

Permana, A., Sopyan, A., Kusmayadi, G.-G., & Fatah, RA (2015, May Thursday). Papers Antisocial and Free Association. A*ntisocial and Free Sex Papers*, pp. 7, 1.

Permana, A., Sopyan, A., Kusmayadi, G.-G., & Fatah, RA (2015, May Thursday). Antisocial Behavior and promiscuity. *antisocial behavior and promiscuity*, pp. 7,2.

Puspitasari, I., Adi, H., & Supriyono, M. (2014). Relationship between family support and peer-to-peer interaction with anti-social behavior in adolescents at SMA Gita Bahari Semarang. *Social Health*, 3(1).

Putri, DR (2016). The Role of Social Support and Emotional Intelligence on Subjective Wellbeing in Early Adolescents. *Indigenous Journal*, 1(1), 12-22, ISSN: 0854-2880.

Radlis. (2016, July 13). Central Java Tribune. Retrieved March 24, 2017, from Tribun Jateng: http://jateng.tribunnews.com/2016/07/13/kronologi-penangkap-penggorok-leher-driver-gojek-di-tanah-mas

Radlis. (2016, February 13). Central Java Tribune. Retrieved March 7, 2016, from TRIBUNNEWS.COM: http://www.tribunnews.com/video/2016/02/13/kepala-dusun-bobol-30-rumah-kosong

Rahmania, AM, & Suminar, DR (2012). The Relationship Between Perception of Parental Control and the Tendency of Delinquency Behavior in Adolescents Who Have Been Involved in Brawls. *Journal of Educational and Developmental Psychology*, 1(3).

Reksoatmodjo, TN. (2009). *Statistics for psychology and education*. Bandung: Refika Aditama.

Rismawati. (2010). *Mental Health Task (subjective well being)*. Jakarta: Gunadarma.

Rizqia, R. (2008). *Relationship Between Self-Efficacy and Subjective Well Being in Policemen with Multiple Role*. Yogyakarta: UGM Psychology Faculty.

Rizqia, R. (2008). *The relationship between self-efficacy and subjective well-being in policewomen plays a dual role*. Yogyakarta: Faculty of Psychology UGM.

Safarina, NA, Mawarpury, M., & Sari, K. (2014). Subjective Wellbeing of Patients with Type II Diabetes Mellitus Based on Education Level. *Journal of Integrative Psychology*, 2(1), 62-70.

Simanullang, DS, & Daulay, W. (2010). Antisocial behavior of teenagers in private high schools like Madiun. *Psychologydinamic*, 5(1).

Sri, S. (2009). *Sociology 1 class X SMA / MA*. Jakarta: Books of the Ministry of National Education.

Sugiyono. (2014). *Qualitative quantitative research methods and R&D*. Bandung: Alfabeta.

Tuti, S. (2010, February Wednesday). Antisocial Behavior. *Antisocial Behavior*, pp. 12, 2.

Utami, M.S. (2012). Religiosity, Religious Coping, and Subjective Wellbeing. *Journal of Psychology*, 39(1), 46-66.

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RESEARCH ARTICLE

SUBJECTIVE WELL BEING WITH ANTISOCIAL BEHAVIOR IN ADOLESCENTS CASE OF BABALAN VILLAGE WEDUNG DEMAK (A CRIMINOLOGICAL PERSPECTIVE)

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ABSTRACT

The purpose of this research is to find the right forms of advocacy against Child Victims of Sexual Crime and Efforts to Overcome Sexual Crime in a Child Protection Perspective. The method in this research is the Participant Research Method (the Method of the Participant Observer), which is to fully involve oneself in Advocacy and Efforts to Overcome Sexual Crimes against Children. This research with through an empirical juridical approach by conducting research approaches regarding matters that are juridical (law) and with a fact of facts that occur regarding matters of an empirical nature. The results in this study are forms Advocacy and Efforts to Overcome Sexual Crime in a Child Protection Perspective, in accordance with the Law on Child Protection, namely advocacy in the form of litigation (legal assistance / through judicial channels) and non-litigation (assistance outside the court route), efforts to combat sexual crimes by means of preventive (prevention), repressive (action); persuasive (by persuading or directing the community to comply with the prevailing values and norms) this is done by means of socialization and direction, coercive is control that is harsh or

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firm in nature (for example the imposition of a sentence by a judge) and rehabilitative (social rehabilitation).

Keywords*: Sexual Crime, Child Protection, Advocacy, Legal Protection*

INTRODUCTION

Children are creatures of play. With all their tenderness, cuteness, and cuteness, they are still vulnerable to distraction and harm. He was not born into this world in vain. God has provided her with a set of rights, thoughts, and conscience for her future. Children are God's mandate for us. We have a responsibility to protect and help so that later the provisions God has given him can be used to his destination.

Legal protection for children is all efforts to protect the various freedoms and human rights of children (fundamental rights and freedoms of children) and various interests related to the welfare of children. Legal protection for children is functioned to protect children so that they can carry out their rights and obligations properly.

The mandate for implementing child protection in the 1945 Constitution, is stated in (Amendment II, 18 August 2000), Article 28B paragraph 2 which reads: "Every child has the right to live, grow and develop and has the right to protection from violence and discrimination", Article 28 C (2) also states that "Every child has the right to develop himself through the fulfillment of his basic needs". Article 34 (Amendment IV, 10 August 2002) which reads: (1) The poor and neglected children are cared for by the state; and (2) The state develops a social security system for all the people and empowers the weak and underprivileged people according to human dignity (Aprilianda, 2017; Arief, 2005).

These two verses provide assurance that the implementation of child protection is an obligatory thing to achieve the conditions of society as aspired to in the Preamble of the 1945 Constitution.

One of the characteristics of the state is "*a degree of civilization*", namely the level of civilization of the State which is manifested in national development, while national development for Indonesia is a reflection of the will to continuously improve the welfare and prosperity of the Indonesian people in a just and equitable manner, as well as develop community life and state administration. which is advanced and democratic based on Pancasila, as a form of practicing all the principles of Pancasila in harmony and as a whole (Kusumaatmadja, 2000: 13).

In the field of criminal politics, one form of the development of a state civilization is taken by anticipating and overcoming all potential / forms of violence and crime. A crucial issue that is urgent to get a comprehensive handling is sexual crimes against children. Based on facts and events in the existing society,

it shows that there is a need for a more comprehensive and integrated effort to combat sexual crimes against children. Until now, efforts to protect child victims of sexual crimes have focused more on how to respond and provide services when children become victims. Efforts to prevent and fulfill the rights of victims (education rights, social rights, economy, security) have not received significant attention (Hakim, 2012; Harahap, 2016; Hidayati, 2014).

Article 28 B of the 1945 Constitution "Every child has the right to live, grow and develop and have the right to protection from violence and discrimination. Even though our constitution guarantees the protection of children from violence, violence against children, especially sexual violence / crime is still rife. According to KEMEN PPPA, NAHAR, since January - 31 July 2020 there were 4,116 cases of violence against children in Indonesia, the most data experienced were children with sexual violence.

One of the steps of the Indonesian government in providing protection for victims of sexual crimes is to ratify the International Convention on the Rights of the Child, namely the Ratification of the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, Concerning Ratification of the Convention On The Rights Of The Child).

Although there are legal instruments in providing protection for children in Indonesia, sexual crimes against children are still on the rise. Implementation of the International Convention on the Rights of the Child Ratification, namely the Formation of the Child Protection Law, namely Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. The Second Amendment to the Child Protection Law into Law No. 17 of 2016.

Broadly speaking, the Convention on the Rights of the Child can be categorized as follows, first the affirmation of children's rights, secondly the protection of children by the state, and the third role of various parties (government, society and the private sector) in ensuring respect for children's rights.

Some previous research emphasized and highlighted that one of legal provisions regarding children's rights in the Convention on the Rights of the Child is concerning Protection Rights, namely protection of children from discrimination, acts of violence and neglect for children who do not have a family, and for children who are refugees. Protection rights from discrimination, including (1) protection of children with disabilities to obtain education, special care and training, and (2) rights of children from minority groups and indigenous people in the life of the state community. Protection from exploitation, including (1) protection from personal life disturbances, (2) protection from involvement in work that threatens the health, education and development of children, (3) protection from drug and drug abuse, protection from attempts at abuse, sexuality, prostitution, and pornography, (4) protection of efforts to sell, smuggle and kidnap children (Noor, Suhadi, & Rizqia, 2019; Rizky, Fitriani, Sudibyo,

Husnasari, & Maulana, 2019; Wahyuningsih, 2016; Lubis 2017; Huraira, et al, 2015; Erdianti & Al-Fatih, 2019; Djanggih, 2018; Arifin, Rodiyah, & Putri, 2020).

As a step to provide comprehensive protection for children's rights, a form of legitimacy is being pursued through the drafting of the Child Protection Law. At the moment the Child Protection Law has been signed by the government and the DPR and is just waiting to be promulgated. Some of the materials stipulated in the Child Protection Law include (1) the issue of fulfilling children's rights and obligations, (2) the responsibility of the state, government, community, family, and parents towards children, (3) child guardianship, (4) custody, (5) adoption of children, (6) protection of children in the health, religion, education and social sectors, and (7) provisions of child penalties. The Child Protection Law also regulates the problem of children who are in conflict with the law, children from minority groups, children from victims of economic and sexual exploitation, children who are trafficked (Restia & Arifin, 2020; Adfina, 2017; Mulyadi, 2018; Pertiwi, 2020).

Efforts to prevent sexual crimes against children are as important as efforts to treat and cure. Prevention means all efforts to prevent violations of children's rights which include freedom, freedom from sexual violence, civil rights, political rights, economic rights, social and cultural rights (Sumirat, 2017; Noor, Suhadi, & Rizqia, 2019). Strengthening the public and government apparatus' insight into children's rights in the civil, political, economic, social and cultural fields will determine the quality of child protection. When sexual violence/crimes are interpreted as an expression of outrage, then all efforts to prevent sexual violence/crimes against children can be interpreted as steps to build civilization (Mufrohim, 2019; Rahman, 2019; Marlina, 2019).

Given the importance of children's existence for the sustainability of social life, nation and state, the government is required to be more focused, comprehensive, synergistic, and serious in making efforts to protect children. With a more comprehensive and integrated protection effort, it is hoped that children's rights will be better protected, without having to be tainted by various forms of violence, mistreatment and exploitation. Growth and development, the future, and the welfare of children will be more secure.

The objectives of this research are to carry out advocacy for child victims of sexual violence, to protect children's rights in daily social life interactions through more comprehensive and synergistic protection efforts, so that children's growth and development and future can be more secure The realization of a strong nation in the future will be largely determined by how much we do to protect children today.

METHOD

The method in this research is the Participant Research Method (the Method of the Participant Observer), namely the researcher directly involves himself fully in Advocacy for Child Victims of Sexual Crime and Efforts to Overcome Sexual Crime. The legal research used in this research process is juridical normative empirical, which is carried out through a literature study that examines (especially) secondary data in the form of laws and regulations, court decisions, agreements, contracts, or other legal documents, as well as research results, assessment results, interviews, focus group discussions, experiences as practitioners/ companions of child victims of sexual crimes and other references.

ADVOCACY FOR CHILDREN: HOW WE PROTECT THE SEXUAL VIOLENCE VICTIMS?

Advocacy in the form of litigation (legal assistance/through judicial channels) and non-litigation (assistance outside the court route), efforts to overcome sexual crimes by means of preventive (prevention), repressive (action); persuasive (by persuading or directing the community to comply with the prevailing values and norms) this is done by means of socialization and direction, coercive is control that is harsh or firm in nature (for example the imposition of a sentence by a judge) and rehabilitative (social rehabilitation).

Efforts to Combat Sexual Crimes in the Perspective of Child Protection in accordance with the Law on Child Protection, namely preventive measures are needed so that sexual crimes against children do not occur. Without denying the importance of the efforts that have been done/taken at this time, it is predicted that the prevention of violence or sexual crimes against children will not bring maximum results if the factors that are the background or cover the occurrence of violence or sexual crimes against children are not eliminated/addressed. first.

Arif Gosita argues that in the effort to prevent crime, the word prevention can mean, among other things, to make positive changes. There are several reasons why it is necessary to pay greater attention to prevention before crime and other irregularities are committed, as follows:

1. Preventive measures are better than repressive and corrective measures. Prevention efforts do not always require a complex and bureaucratic organization that can lead to bureaucracy that is detrimental to the abuse of power / authority. Prevention efforts are more economical than repressive and rehabilitation efforts. Serving a larger number of people does not require as much energy as a repressive or rehabilitative effort. Prevention efforts can also be carried out individually and do not always require expertise, such as in repressive or rehabilitation efforts.

2. Prevention efforts need not have negative consequences such as stigmatization, isolation, suffering in various forms, violations of human rights, hostility and hatred.
3. Prevention efforts can strengthen unity and harmony and increase a sense of responsibility towards fellow community members. Thus, prevention efforts can help people develop a better state and society. Because of securing and seeking stability in society, which is necessary for the implementation of national development to achieve a just and prosperous society. Efforts to prevent crime and other irregularities can be an attempt to create a person's mental, physical, and social well-being (Gosita, 1993: 7-8).

Efforts to eliminate violence against children using criminal law are not the only way to tackle violence. Efforts through criminal law are only one of the ultimate efforts (*ultimum remedium*), when the building of a nonviolent-oriented social, economic, ethical, and religious system is still breached by acts of violence.

Violence and crimes against children are phenomena that always appear and bring victims in everyday social life. However, if we look closely, up to now, the discussion and regulations on child protection have focused more on children who are dealing with the law in the context of children as perpetrators of criminal acts.

Children as victims of crime have not received adequate space for discussion and protection regulations. In such situations, the establishment of child protection regulations in the context of prevention, handling, and recovery due to violence which can provide a systematic basis for work and coordination between stakeholders is urgently needed. The integration of performance among stakeholders will determine the level of success of child protection efforts.

It is not enough for child protection efforts to rely solely on repressive measures by taking action against the perpetrators, or rehabilitative efforts for the perpetrators and children who are victims. Violence and crime as forms of social pathology do require proper diagnosis and treatment. Just as in the world of health, prevention is as important as healing and healing; can be applied in child protection efforts.

The limitations of the capacity of the criminal law in tackling crimes have been expressed by many legal experts, which from the opinions of these experts can be identified because of the limited capacity of the criminal law in tackling crimes as follows:

a) the causes for such a complex crime are beyond the scope of criminal law.
b) Criminal law is only a sub-system (a small part) of the means of social control which is impossible to solve the problem of crime as a very complex human and social problem (as a socio-psychological, socio-political, socio-economic, socio-cultural problem, and so on).

c) The use of criminal law in tackling crime is only a "*curatoren am symptom*". Therefore, criminal law is only a symptomic treatment and not a causative treatment.
d) Criminal sanctions are remedies that contain contradictory / paradoxical characteristics and contain negative elements and side effects.
e) The criminal system is fragmentary and individual/personal, not structural/functional.
f) Limitations of the types of criminal sanctions in the rigid and imperative system of criminal sanctions formulation
g) The functioning of criminal law requires supporting facilities that are more varied and more demanding.

The essence of crime is to call for order (*tot de orde reopen*). Crime has two main objectives, namely: to influence behavior and resolve conflicts (Hulsman in Marlina, 2009: 158). The use of penal measures (criminal sanctions) in regulating society (through legislation) is part of a policy step. Given the limitations and weaknesses of criminal law, from a policy point of view, the use or intervention of penalties should be more careful, careful, thrifty, selective, and limitative. In other words, penal means do not always have to be used in every legislative product (Arief, 2005: 74-75).

The Integral/systemic approaches in the prevention of crime that are currently often put forward in UN congresses include:

1. Crime prevention and criminal justice should not be seen as isolated problems and handled by simplistic and fragmentary methods but should be seen as more complex problems and handled with broad and comprehensive policies/actions.
2. Prevention of crime must be based on the elimination of the causes and conditions as such must constitute a fundamental strategy in the effort to prevent crime (the basic crime prevention strategy).
3. The main causes of crime in many countries are social inequality, racial and national discrimination, low living standards, unemployment, and illiteracy (ignorance) among large sections of the population.
4. Prevention of crime and criminal justice should be considered in relation to economic development, political systems, socio-cultural values and changes in society, as well as in relation to the new world / international economic order (Arief, 2005: 178).

If we want to describe or prevent crime, we must pay attention to and understand the victim of a crime. Crime is a result of interaction because of the interrelation of existing phenomena and those that influence each other. The role of the victim in social interaction affects the occurrence of crime. The suffering of victims is the result of interactions between criminals and victims, witnesses, law enforcement agencies and other communities. In efforts to tackle crime, we must

look for which phenomena are important and need to be taken into account in the occurrence of crime.

The effort to prevent crime is a joint effort and must be started as early as possible in every member of society and every social class. Every member of society has a responsibility in overcoming crime problems and their problems. In implementing effective crime prevention, it is necessary to take an inventory and understand the constraining factors and their support. This is important to create a certain climate and conditions so that those who are involved in prevention efforts do not become discouraged.

Those who are responsible for preventing crime, directly or indirectly, include:

1. rulers who directly or indirectly supervise crimes, those who determine policies that every citizen has the opportunity and ability to legally fulfill physical, mental, and social expectations.
2. Prospective perpetrators are expected to be able to refrain from committing a crime on their own will and interests or because of the behavior of others (greed, negligence, other people's suggestions / suggestions). For example, trying to obtain something legally. Do not use power in certain fields to get something for the benefit of yourself or others.
3. criminals who are expected not to repeat the same crime or other forms for the common interest. It is hoped that they can work together to develop themselves and are willing to be mentored by the agency in charge of providing guidance.
4. potential victims of crime who are expected to be able to control themselves not to involve themselves in a crime directly or indirectly for their own or other people's interests. It is also expected not to become a victim by being vigilant and not giving other people the opportunity to commit crimes against him.
5. victims of crimes who are expected to try not to become victims anymore, do not retaliate or give false testimonies.
6. Members of the public who witness a crime taking place are expected to participate in preventing the crime from occurring. The passive attitude of witnesses can be an incentive for criminals to carry out their intentions.
7. Private or government agencies or organizations that are intended to help prevent both before and after a crime occurs. These agencies or organizations have an important role because of their ability to influence other agencies and society positively or negatively to take part in being responsible for crime prevention efforts (social institutions, schools, police, courts, orphanages).
8. Family in a broad or narrow sense, which can be said to have the strongest relationship with the person concerned. Attention to the family in prevention should not be ignored because the positive and negative effects of family ties can affect a person who is a criminal. The development of positive family ties

can help a lot in efforts to prevent crime or become victims of crime (Gosita, 1993: 114 - 117).

CHILD PROTECTION FROM SEXUAL VIOLENCES: SOME CONTEMPORARY AND CONTROVERSIAL ISSUES

In fact, it is too narrow to define violence against children only in the form of physical, psychological, sexual, and economic violence which is committed in the sense of violence perpetrated by individuals. Basically, there are various forms of violence against children which can be broadly grouped as follows:

1. Individual or group violence: this violence is committed by an individual, several people, or a group of people who are physically, psychologically, sexually and or economically inflicted on the child.
2. Social violence: this violence occurs because of the injustice of values that are socially enforced in the child's environment. Example girls are not recommended for high level schools.
3. Structural violence: this violence occurs because of regulations or policies of the state, government, government or private institutions, especially those exercising public authority. Many structural policies are *criminogenous* and *victimogenous* to children. For example: Child victims of crime are examined as witnesses in an adult court room, not provided braile-letter National Examination questions for blind students, etc.

In the sixth UN congress in 1980 in Venezuela and the seventh UN congress in 1985 in Milan, in essence it was stated that development is criminogenic if it is not planned rationally, is imbalanced or unbalanced, ignores cultural and moral values, and does not include an integral (comprehensive) community protection strategy. JE Sahetapi said that one of the factors in the incidence of crime is the lack of goodness of the law, in addition to the inconsistent implementation of laws and attitudes or actions of law enforcers. Wolf Middendorf stated that the overall effectiveness of criminal justice depends on 3 interrelated factors, namely the existence of good legislation, quick and certain enforcement.

There are several principles of child protection related to neglect, power and exploitation, namely:

a) Protection
b) Joint ventures
c) Common interest
d) Educational elements

Wrong treatment is a form of problem faced by children, which occurs in the family, community, school, and playground. Especially for incidents in the family environment, this case is not widely revealed because there is still an opinion that mistreatment of children is a domestic matter. Article 59 of Law no. 23 of 2002 concerning Child Protection has emphasized that mistreatment of

children is a public matter, with the following arrangements: "The government and other state institutions are obliged and responsible for providing special protection to child victims of mistreatment".

According to Hendra Akhdhiat and Rosleny Marliani, there are several categories of mistreatment which include:

1. Physical abuse
   According to Power and Jacklish, physical abuse is presumed to exist when a child is intentionally physically abused or placed in a condition that may be physically hurt. Physical abuse can also result in mental disorders, so clinical and medical approaches alone are often not sufficient.
2. Mental abuse
   Quoting Innocenti's opinion, mental abuse / emotional abuse is any act that is intentionally or unintentionally committed by another person, which makes an individual sick or disturbed, or gets an unpleasant feeling. For example, verbal abuse (verbal attacks, verbal abuse), sarcasm, harassment, and physical violence.
3. Sexual abuse
   According to Innocenti, in many countries, the term sexual mistreatment includes: "any sexual activity with someone who is not legally competent to give consent or has refused consent". For example: incest, encouragement, and coercion to commit illegal sexual acts, exploitation of children for pornography and prostitution (Akhdhiat & Marliani, 2011: 170 - 171).

Apart from the three categories of mistreatment, there is one more form of mistreatment, which the researcher categorizes as "Socially wrong treatment": for example: restricting/prohibiting children from associating with certain ethnicities, social strata, etc. which are irrelevant to the risk of growth and development and maturity. social child. Children are mono-dualists, as personal and social creatures. Children must be given a good social space so that later they are able to carry out their social roles in community life. The importance of social maturity will be felt especially in the life of a multicultural society. Indonesian society which is based on diversity always wants tolerance and social brotherhood.

Based on a philosophical approach, mentally and socially, fostering, education, and developing children's behavior are the responsibility of parents, society and the State. Parents and society need to provide clear information about the child's mental, educational, and socio-economic condition (Stewart Asquit in Marlina, 2009: 159).

Based on various international documents on child protection, the need for child protection can cover various aspects, including:

1. protection of the rights and freedoms of children
2. protection of children in the judicial process
3. protection of children in matters of detention and deprivation of liberty

4. protection of child welfare (in the family environment, education and social environment)
5. protection of children from all forms of exploitation (slavery, child trafficking, prostitution, exploitation, trafficking/abuse of drugs, exploiting children in committing crimes, and so on
6. protection of street children
7. protection of children from the consequences of war / armed conflict
8. protection of children against acts of violence (Arief 2005: 178)
9. protection of children in natural disasters, social disasters and displacement

The implementation of child protection must meet the following requirements:

1) is the development of truth, justice and child welfare
2) must have a foundation of philosophy, ethics and law
3) done in a positive rational
4) can be accounted for
5) useful for the concerned
6) prioritizing the perspective of regulated interests, not the perspective of regulating interests
7) not accidental and complementary, but must be done consistently
8) have an operational plan
9) emphasizes the elements of management
10) implementing a restorative justice response (restorative in nature)
11) is not a place and opportunity for people to seek personal/group gain
12) children are given the opportunity to participate in accordance with the situation and conditions,
13) based on the correct image of the human child
14) problem oriented and not target oriented
15) is not a criminogenous factor and is not a victimogen factor (Gosita, 1999: 264-266).

Child protection is related to several things that need protection, namely:

1. Extent of the scope of protection
   a. The main protections include, among others: food and clothing, housing, education, health, law
   b. Includes physical and spiritual things
   c. It also concerns the classification of primary and secondary needs which results in priority fulfillment
2. Guaranteed implementation of protection
   a. Naturally, to achieve maximum results, it is necessary to guarantee the implementation of this protection activity, which can be known, felt by the parties involved in the protection activity.
   b. It is better if this guarantee is stated in a written regulation either in the form of law or regional regulation, which is simple in formulation but can be accounted for and is distributed evenly in the community.

c. Arrangements must be adapted to the conditions and situation in Indonesia without neglecting the means of protection undertaken by other countries, which should be considered and imitated (critical imitation) (Arif Gosita in Gultom 2008: 36)

Since the 1980s, America and Britain have developed child abuse prevention programs through various media, films, theater, poetry, books, comics, role plays, group discussions, and others. This was done because of concerns about the increasing number of mistreatment of children at that time. On average, children who are victims of mistreatment experience psychological disorders. They look gloomy, closed, seldom adapt and socialize, lack concentration, and their academic achievement decreases (Hefler, 1976).

In Malaysia, a Suspected Child Abuse and Neglect (SCAN) was formed which functions to prevent child abuse through the education of parents, perpetrators, the general public, and related elements. This agency is in charge of detecting, investigating, regulating, and documenting all mistreatment, which then forms a network structure and work operations. This institution also involves elements of society, including parents, community members, research institutions, professional institutions, non-governmental organizations, the police, and hospitals (Akhdhiat & Marliani, 2011: 174).

According to Laurence Gray, measurable policies and programs are needed that can advance child protection in facing conditions of risk of violence, exploitation or neglect of children's rights. For the Indonesian context, Gray said education has a major role in not only developing a better life for children, but also presenting more maximum involvement of parents in children's growth and development. Read more Gray said: "…. education has a key role not only in increasing the life options of the child, but also in involving parents more fully in the development of their children. It highlights that programs require commitment on the part of government, and fundamental shift in thinking that places positive outcomes for children as a central tenet in social and economic policy.

Strengthening civil society begins with earnestly pursuing an open public space that can be used to fully engage aspirational potentials in society, as well as continuously criticizing the imbalances that occur. The formation of independent democratic individuals who are capable of social reasoning and actively involved in decision-making processes in society is important. Here, civil society is defined as areas of social life that are organized and characterized, among others: voluntary, self-generating, self-supporting, and independent.

The public have basic rights to the government. These community rights are as follows (Yuwono, et al, 2005: 63):

1. the right to know (right to know) government policies, decisions made by the government, and the reasons for implementing certain policies and decisions
2. the right to be informed, which includes the right to be given an open explanation of certain problems that become public debates

3. right to be heard and to be listened to

Ideally, a regulation must be in accordance with the conditions and needs of the people who will be subject to these regulations so that there is no unrest and dissatisfaction. As a government administrator, the government is required to understand and understand the situation of society; but further than that is to consider the support and demands that exist in the community. Therefore, before the government proposes a draft regulation, the government has a very important function to be able to study the situation and conditions appropriately (Sunggono, 1994: 12-13).

Philip von Mehren and Tim Sawers said that if the development of laws and regulations and development will affect knowledge of social change, laws and regulations need to be positioned as an important variable influencing the process of social change. If legislation is solely the result of a social change, the analysis of legal development loses all normative implications for the policy-making process. Legal analysis ultimately becomes a descriptive act (Seidman, et al 2001: 11). The structure and services must be developed including:

1. *Primary Preventive Services*
   This service is aimed at the community as a whole by strengthening the community's ability to care for and keep their children safe. Activities directly have an impact on changing attitudes and social behavior through advocacy and awareness raising campaigns, strengthening parental skills, promoting alternative forms of discipline without violence and increasing public awareness about the negative effects of violence against children.
2. *Secondary preventive services or early intervention services*
   This service is aimed at children and families who are identified as vulnerable or at risk of abuse or neglect. For example, families who are divorced or experiencing separate lives, families who need mediation or counseling to overcome drug or alcohol use habits, families experiencing violence or families experiencing mental health problems so that they have difficulty in caring for their children. To overcome this, it is necessary to affirm the government's obligations and the responsibility of the community.
3. *Child protection problem handling services*
   This service is aimed at children who have experienced violence, exploitation, neglect and mistreatment, children who are in conflict with the law. This condition requires ongoing interventions such as counseling, advice, monitoring, and the state's obligation to intervene in the case through supervision, family support services such as educational programs for parents, counseling for families and family members, healing therapy programs, and / or providing housing. temporary protection for children who are victims or providing alternative care through an official decision by the court.

4. *Social Recovery and Reintegration Services*
   Rehabilitation, namely the district government's efforts to ensure that every child who is a victim of violence, mistreatment, exploitation and neglect gets rehabilitation support that includes rescue (rescue), health, education, psycho-social, economic, social and legal. Reintegration, which is in the form of post-rehabilitation support for children victims of violence, mistreatment, exploitation and neglect to provide guarantees that children can be accepted / reunited with their families and their environment and guaranteed growth and development in the future

Juridically normative, although efforts to overcome the problem of violence against children have been regulated, the existing regulations still provide partial regulation. The complexity of the problem of violence against children requires comprehensive efforts.

Regulations on the implementation of child protection are needed to ensure the implementation of effective, systematic, integrated and sustainable efforts needed to build the capacity of government institutions and the people of Kebumen district in:

1. abuse, exploitation and neglect of children;
2. recognize risky situations and intervene early in the emergence of various forms of violence, mistreatment, exploitation and neglect of children; and
3. respond appropriately and quickly to child protection issues that arise, including in the provision of physical and psychological recovery services as well as social reintegration in an environment that supports children's health and safeguards children's self-respect and dignity.

INDONESIAN NATIONAL POLICIES FOR CHILD PROTECTION: PROBLEMS AND CHALLENGES IN THE MULTI PERSPECTIVES

In theological perspective, children are a mandate from God. In terms of constitutionality, children are a continuation of the survival of a nation. Children have an existence and an important position as heirs and actors of the future development of the nation and state. When the quality of a nation has deteriorated in various dimensions, it is often said that the nation concerned has lost one generation. Such a nation; vulnerable to various forms of colonialism, whether colonialism in the physical, economic, social, or even ideological sense. The sacred and important position of the child can be one of the bases for cultivating the seriousness of our efforts in providing protection to children; so that possible crimes and mistreatment of children in the future can be anticipated and prevented.

Law No. 23 of 2002 regarding Child Protection is considered a sufficiently adequate rule in realizing Indonesia's commitment to protecting children's rights. However, that must be rememberedand it is reaffirmed that the commitment to protect, fulfill and respect children's rights must be implemented in a concrete program. So the state as the bearer of the obligations with the bureaucratic mechanism it has together with the family and the community must be able to ensure that this can be carried out properly.

Law Number 23 of 2002 concerning Child Protection mandates the obligation to fulfill and protect children's rights as documented in the UN Convention on the Rights of the Child (KHA). This shows that children have strategic values as the buds of the nation and the next generation of development.

Its strategic role and special characteristics and characteristics are a manifestation of guaranteeing the continuity of the existence of the nation and state in the future. In the General Assembly of the United Nations on November 20, 1959, the Declaration of the Rights of the Child was ratified which contained 10 principles of children's rights, as follows:

1. Children have the right to enjoy all their rights in accordance with the provisions contained in the declaration of children's rights, without exception, their rights must be guaranteed regardless of ethnicity, skin color, sex, language, religion, political views, nationality, social rank, rich and poor, birth. or other status, both in himself and in his family.
2. Children have the right to special protection and must have the opportunity guaranteed by law and other means, in order to enable them to develop themselves physically, psychologically, morally, spiritually and socially in a healthy, normal situation in accordance with their freedom and dignity. Putting that goal into law, the best interests of the child must be the main consideration.
3. Children from birth have the right to name and nationality
4. Children have the right and must be socially guaranteed to grow and develop in a healthy manner. For that, both before and after birth, there must be special care and protection for the child and the mother. Children have the right to adequate nutrition, housing, recreation and health services.
5. Children with physical, mental and social disabilities due to certain conditions must receive education, care and special treatment.
6. In order for a child's personality to grow optimally and harmoniously, he needs love and understanding. As much as possible he should be raised under the care and responsibility of his own parents, and in any case should be endeavored to be in an atmosphere full of love, physical health and spirituality. Children under five years old are not allowed to be separated from their mother. Community and government authorities are obliged to provide special care to children who do not have a family and to children who cannot afford it. It is hoped that the government and

other parties provide financial assistance for children who come from large families.

7. Children have the right to free compulsory education only at the very least which can increase their general knowledge, and which allows them, on the basis of equal opportunities to develop their abilities, personal opinions and feelings of moral and social responsibility, so that they can become useful members of society. The interests of the child must be guided by those responsible for the education and guidance of the child concerned: first of all this responsibility lies with their parents. Children must have free opportunities for play and recreation which are directed towards educational purposes, the community and the competent government must endeavor to improve the exercise of this right.
8. Under no circumstances should the child take precedence in receiving protection and assistance
9. Children must be protected from all forms of neglect, violence, exploitation. It must not be the subject of trade. Children may not work before a certain age, they may not be involved in work that is detrimental to their health and education, or which can affect the development of their body, spirit and character.
10. Children must be protected from acts that lead to social, religious and other forms of discrimination. They must be raised in a spirit of understanding, tolerance and friendship between nations, peace and brotherhood with the full awareness that their talents and talents are dedicated to their fellow humans.

Arief Gosita said that there are several bases for implementing child protection, as follows:

1. Philosophical basis; Pancasila is the basis of activities in various fields of family, community, state and national life, as well as the philosophical basis of child protection
2. Ethical basis; the implementation of child protection must be in accordance with the relevant professional ethics, to prevent deviant behavior in the exercise of authority, power, strength in the implementation of child protection.
3. Juridical basis, the implementation of child protection must be based on the 1945 Constitution and various other applicable laws and regulations. The application of this juridical basis must be integrative, namely the integrated application of laws and regulations from various related fields of law.

Pancasila and the objectives of the State contained in the Preamble of the 1945 Constitution Amendment Paragraph 4 is the philosophical foundation of every statutory regulation in Indonesia. The values of Pancasila are the *lichtstern* or guiding star for every legal rule in our country. Every material in the content of

statutory regulations, including the Regional Regulations on the Implementation of Child Protection that we will compile, must refer to Pancasila and be oriented towards the realization of the state's goals as set out in the Preamble to the 1945 Constitution Amendment Paragraph 4.

To realize the achievement of upholding and fulfilling the rights of its citizens, the government is obliged to provide protection and a sense of security to all citizens as outlined in a policy both at the national and regional levels. The government is responsible for taking actions both legally, politically, economically and socially to prevent, suppress, reduce and eliminate all forms of violence in the form of policies that apply at the national and regional levels.

Concern for the welfare of children means the seriousness of efforts to support the fulfillment of things that are needed by children to survive and grow and develop optimally, such as meeting basic needs, quality of care in a family environment, quality educational opportunities, and opportunities to learn to be part of the process. in its society.

Concern for child protection means serious efforts to ensure that every child is protected from the threat of various forms of violence, mistreatment, exploitation, and neglect which not only adversely affect children's safety and physical health, but also mental, moral, and social health.

Child victims of violence and crime must receive maximum protection and recovery so that they can regain their enthusiasm for life. Children with all forms of inherent vulnerability need protection and strengthening of their rights so that later they can grow and develop as a generation that is strong and with integrity. It is hoped that the emergence of a younger generation who are not only physically mature, but more than that a generation that is mature in physical, mental, spiritual, and social aspects. Therefore, prudent treatment of children is something that absolutely must be carried out by all stakeholders.

The definition of victims according to United Nations MU Resolution 40/34 of 1985, is people - both individually and collectively, who suffer losses due to actions (not doing) that violate the criminal law in force in a country, including regulations that prohibit abuse of power. Victims include people who have been victims of acts (not doing) which, although not yet a violation of the applicable national criminal law, are already violations according to internationally recognized human rights norms. Harm according to the resolution includes physical or mental injury, emotional suffering, economic loss,

Rhona KM Smith said that perfectly, the entire international human rights instrument is precisely at the "heart" of children's rights. Age and psychological and mental maturity factors often make him marginalized in policy making. Even policies concerning themselves alone, the children's community is alienated from their greatest interests (El Muhtaj, 2009: 225-232).

According to Stephen Schafer, seen from the victim interaction factor in the process of violence / crime, violence that befell children qualifies as biologically weak victim, namely crimes caused by the victim's biological condition that is still

weak so that it has the potential to become victims of crime. In terms of the aspect, the responsibility lies with the community or local government because they cannot provide protection to helpless victims (Mulyadi, 2007: 125).

If the phenomenon of various forms of violence continues to befall children, it is not impossible when they reach adulthood, they will become the biggest contributor to crime in a country. On the other hand, if they get affection and treatment right from their youth, then at least their pathological and psycho-social grip is not so strong in influencing them to do evil. This is what is called children in need of special protection, vulnerable children, namely children who are in a marginal climate who are very vulnerable to being mistreated. Borrowing the term Maman Natawijaya, a condition full of violence in the name of adult capitalism worshipers (El Muhtaj, 2009: 225-232).

In UN General Assembly Resolution Number 44/25 dated November 20, 1989, it is stated that there are 4 points of recognition of the international community for the rights of children, namely (1) the right to survival of children (survival rights); (2) protection rights; (3) development rights; (4) the right to participate (participation rights).

Children need to get proper, planned, programmed attention and treatment, and demand seriousness and synergy from all elements of the nation and state. The wrong treatment we take in raising and honing children's potential can have fatal consequences for the child itself, which in the end, all of us will reap losses in various aspects. Not all good intentions to protect children can bring good results, without being accompanied by a good method and implementation of child protection.

In the life of the Indonesian nation which is based on Pancasila, the importance of child protection has been included in the principles of Pancasila and in the objectives of the State written in the Preamble to the 1945 Constitution Paragraph 4. The objectives of the Indonesian State, as stated in the Preamble of the 1945 Constitution, paragraph 4 states: ... to protect the whole nation and all the blood of Indonesia, and to promote public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice…"

We must raise and treat Indonesian children in the framework of divinity, humanity, unity, wisdom, deliberation, and social justice. Children have the constitutional right to be educated, protected, to gain welfare, and to have peace in their lives. Children must receive protection and justice in all aspects of their life.

According to Friedmann there are four functions of the State as follows (Hakim, 2012: 116):

1. As a provider, the State is responsible for and guarantees a minimum standard of living as a whole and provides other social security;
2. As a regulator, the State establishes the rules of state life;

3. As an entrepreneur, the State runs the economic sector through state / regional owned enterprises and creates a conducive atmosphere for the development of business fields;
4. As umpire; The state establishes fair standards for parties engaged in the economic sector, especially between the state sector and the private sector or between certain business fields.

Quoting the opinion of Clemens Bartollas, the purpose and basis of child protection cannot be separated from the main goal of realizing child welfare which is basically an integral part of social welfare. This does not necessarily mean that the welfare or interests of children are under the interests of society, but it must be seen that prioritizing the welfare and interests of children is essentially part of the effort to create social welfare (Marlina, 2009; 158).

Bahder Johan Nasution said that; the understanding of the concept of justice must be translated in relation to Pancasila, then linked to the interests of the Indonesian nation as a nation that must experience justice. Therefore, in relation to legal arrangements according to Pancasila justice, these regulations are carried out through regulations that protect the nation, namely protecting humans passively (negatively) by preventing arbitrary actions, and actively (positively) by creating humane social conditions that are humane. enabling the social process to take place fairly, so that in a fair manner, humans get ample opportunity to develop all of their human potential as a whole. Protection in this case means that the sense of justice that exists in the conscience of Indonesian people must be fulfilled. In this sense, the concept of justice according to the view of the Indonesian people is defined as a virtue or truth.

Such understanding starts from the view of the concept of justice which is based on the precepts of the One and Only Godhead with just and civilized human principles. The one and only divine precepts are the basis for leading the ideals of the State, which give souls to the efforts to organize what is right, just and good, while the just and civilized human principles are the continuation of the actions and practices of life from the basics that lead earlier. The basis of just and civilized humanity must follow, in series with the first. Its location cannot be separated because it must be seen as a continuation into the life practice of ideals and deeds towards God Almighty. This concept of justice not only becomes the legal basis for the life of the nation, but also serves as a guideline for the implementation and objectives to be achieved by law.

Based on Roscoe Pound's argument which states that Law is a tool of social engineering, a legal product should be created to direct society towards a better life order. In the issue of child protection, legal regulations are urgently needed that can become an instrument for community development that is aware of children's rights. With protection, it is hoped that children will be protected and eliminated from all forms of neglect, violence and exploitation, so that children can grow and develop fairly in accordance with their rights and responsibilities,

so that they become young people with character and integrity as holders of social capital and national development capital.

Hendra Akhadhiat and Rosleny Marliani said that law is the government's social control. This means that the law is made by those who are authorized to rule with the aim of holding a harmonious life together. In its function as a means of social control, law states normative life conditions as outlined in the form of legislation, litigation, and adjudication. The goals to be achieved are the creation of justice and/or legal certainty, benefits, and a peaceful life (Akhadhiat & Marliani, 2011: 170).

CONCLUSION

Sexual violence, as a form of social behavior deviance, greatly affects the psyche of the child. The psychological trauma that accompanies it is so deep that it requires special treatment. Sexual violence cases are often an iceberg phenomenon, namely cases that appear to the surface are often just the spark, and those that are not monitored or underreported are more than what appear on the surface (reported). Considering that this is a very taboo issue and is often considered a family disgrace, so it is often covered up. The rate of violence against children is still high and evenly distributed in almost every region. The government must have a high commitment and more concrete steps in providing protection to children. For prevention efforts, the government is obliged to conduct intensive and extensive socialization and strengthening of public understanding of children's rights, providing access to information to the public about factors that influence violence against children, types of violence against children, and their impact on children and society. Services for children who are victims of violence must comply with the Minimum Service Standards for Integrated Services for Women and Children Victims of Violence which include: (a) Service for complaints/reports of victims of violence against children; (b) Health services for children who are victims of violence. Social Rehabilitation for children who are victims of child abuse victims of violence; and (c) Law enforcement and assistance for children who are victims of violence. Repatriation and social reintegration of children who are victims of violence. The government is responsible for organizing programs to build critical awareness about prevention, handling/services for victims of violence, and rehabilitation that reach all levels of society.

REFERENCES

Adfina, F. (2017). Peran Unit PPA Sat Reskrim Polres Sukoharjo dalam Menangani Viktimisasi Berganda Terhadap Anak Korban Tindak Pidana Date Rape. *Indonesian Journal of Police Studies*, *1*(8).

Akhdhiat, A., & Marliani, R. (2011). *Psikologi Hukum*. Bandung: CV Pustaka Setia.

Aprilianda, N. (2017). Perlindungan anak korban kekerasan seksual melalui pendekatan keadilan restoratif. *Arena hukum*, *10*(2), 309-332.

Arief, B. N. (2005). *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana.* Bandung: Citra Aditya Bhakti.

Arifin, R., Rodiyah, R., & Putri, F. R. A. (2020). The Legal and Social Aspect for Underage Marriage Women's Education Rights in the Perspective of Human Rights: Contemporary Issues and Problems. *Sawwa: Jurnal Studi Gender*, *15*(2), 219-240.

Djanggih, H. (2018). Konsepsi Perlindungan Hukum Bagi Anak Sebagai Korban Kejahatan Siber Melalui Pendekatan Penal Dan Non Penal. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, *30*(2), 316-330.

El Muhtaj, M. (2009). *Dimensi–Dimensi HAM, Mengurai Hak Ekonomi, Sosial dan Budaya.* Jakarta: Rajawali Press.

Erdianti, R. N., & Al-Fatih, S. (2019). Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia. *Journal of Indonesian Legal Studies*, *4*(1), 119.

Gosita, A. (1993). *Masalah Korban Kejahatan*. Jakarta: Akademika Presindo.

Gosita, A. (2019). Aspek hukum perlindungan anak dan konvensi hak-hak anak. *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, *6*(2), 264 – 266.

Gultom, M. (2008). *Perlindungan Anak.* Bandung: Refika Aditama.

Hakim, L. (2012). *Filosofi Kewenangan Organ Lembaga Daerah.* Malang: Setara Press.

Harahap, I. S. (2016). Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual dalam Perspektif Hukum Progresif. *Jurnal Media Hukum*, *23*(1), 37-47.

Hidayati, N. (2014). Perlindungan Anak terhadap Kejahatan Kekerasan Seksual (Pedofilia). *Ragam Jurnal Pengembangan Humaniora*, *14*(1), 68-73.

Huraira, D., Rohmah, N., Rifanda, N., Novitasari, K., Diena, U., & Nuqul, F. L. (2015). Kekerasan seksual pada anak: Telaah relasi pelaku korban dan kerentanan pada anak. *Psikoislamika*, *12*(2), 5-10.

Kusumaatmadja, M. (2000). *Hukum, Masyarakat, dan Permbinaan Hukum Nasional: Suatu uraian Tentang Landasan Pikiran, Pola dan Mekanisme Pembaharuan Hukum di Indonesia.* Bandung: CV Putra A Bardin.

Lubis, E. Z. (2017). Upaya Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual. *JUPIIS: Jurnal Pendidikan Ilmu-Ilmu Sosial*, *9*(2), 141-150.

Marlina, M. (2009). *Peradilan Pidana Anak di Indonesia, Pengembangan Konsep Diversi dan Restorative Justice*. Bandung*:* Refika Aditama.

Marlina, T. (2019). Pelaksanaan Pendampingan Psikososial Sebagai Perlindungan Khusus Terhadap Anak Korban Kejahatan Seksual (Studi di Dinas Sosial Pemberdayaan Perempuan dan Perlindungan Anak Kab. Kuningan)". *Syntax Literate; Jurnal Ilmiah Indonesia*, *4*(8), 154-169.

Mufrohim, O. (2019). Implementasi Diversi dalam SPPA: Kajian terhadap Efektifitas Peradilan Pidana Anak dalam Dimensi Restorative Justice sebagai Upaya Penanggulangan Penuhnya LPKA (Studi di POLRESTABES Semarang). *Thesis.* Universitas Negeri Semarang.

Mulyadi, D. (2018). Perlindungan Hukum Bagi Anak Korban Perkosaan Dalam Peradilan Anak. *Jurnal Ilmiah Galuh Justisi*, *6*(2), 170-183.

Mulyadi, L. (2007). *Kapita Selekta Hukum Pidana Kriminologi dan Viktimologi.* Jakarta: Ghalia Indonesia.

Nasution, B. J. (2011). *Negara Hukum dan HAM.* Bandung: Mandar Maju.

Noor, A. R., Suhadi, S., & Rizqia, G. P. (2019). Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Yang Dilakukan Oleh Anak Di Kota Balikpapan. *LEX SUPREMA Jurnal Ilmu Hukum*, *1*(1), 32-49.

Pertiwi, R. (2020). Hak Restitusi Anak Korban Kejahatan Seksual. *Pancasila and Law Review*, *1*(1), 29-37.

Rahman, N. (2021). Kebijakan Perlindungan Anak Korban Kejahatan Seksual di Cirebon. *Jurnal Hukum & Pembangunan*, *50*(3), 619-632.

Restia, V., & Arifin, R. (2020). Perlindungan hukum bagi anak sebagai korban kekerasan dalam rumah tangga. *Nurani Hukum*, *2*(1), 23-31.

Rizky, M. N., Fitriani, R. I., Sudibyo, M. W., Husnasari, F. A., & Maulana, F. (2019). Perlindungan Hukum Terhadap Anak Korban Eksploitasi Seksual Komersial Melalui Media Sosial. *Media Iuris*, *2*(2), 197-216.

Sumirat, I. R. (2017). Perlindungan Hukum terhadap Perempuan dan Anak Korban Kejahatan Perdagangan Manusia. *Jurnal Studi Gender dan Anak*, *3*(01), 19-30.

Wahyuningsih, S. E. (2016). Perlindungan Hukum Terhadap Anak Sebagai korban Tindak Pidana kesusilaan dalam Hukum Pidana Positif Saat Ini. *Jurnal Pembaharuan Hukum*, *3*(2), 172-180.

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RESEARCH ARTICLE

HOW ARE BUSINESS ACTORS RESPONSIBLE FOR CONSUMER LOSSES IN DEFAULT CASES?

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ABSTRACT

Consumer protection is an integral part of healthy business activities. Default is one of the parties to the agreement which constitutes negligence to meet the conditions set forth in an agreement. This research aims to find out the form of responsibility of businesses for consumer losses due to default and a form of consumer protection for consumer losses due to default. The method of this research is empirical legal research method or empirical juridical, which is where this empirical law research discusses how the law can operate in society (*ius operatum*). The results of the study explained that the Consumer Protection Act No. 8 of 1999 already has provided good protection to consumers. This is evident from its wide material coverage and provides maximum protection for consumers. One of them is by regulating the responsibility of businesses to losses experienced by consumers from the sale or transaction. The conclusion of this study shows that the responsibility of businesses for consumer losses due to default under Law No. 8 of 1999 on Consumer Protection can be done by continuing/canceling the agreement and indemnifying losses incurred as a result of the default. It is in accordance with the positive law that applies in Indonesia,

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namely that a consumer if harmed in consuming goods or services, can sue the party that caused the loss. With the qualification of a default lawsuit or an act against the law.

Keywords*: Responsibility; Consumer Losses; Default*

INTRODUCTION

Consumer protection is an integral part of healthy business activities. The absence of balanced protections leads consumers to be in a weak position. Moreover, if the product produced by the manufacturer is a limited type of product, the manufacturer may abuse its monopolistic position. This of course will be detrimental to consumers. In performing a legal agreement, of course, the binding parties must pay attention to Article 1320 of the Civil Code. If the agreement that has been made is not carried out with the agreement agreed by one of the parties, the act can be said to be a default. Defaults can occur intentionally or unintentionally. Parties who accidentally commit this default, can occur because they are unable to fulfill the achievement or also because they are forced not to perform the achievement (Miru, 2007: 74).

Many cases have occurred especially in terms of default. For example, in the transaction of buying and selling electronic goods that are damaged after the goods are received by the buyer or victim. Such electronic items cannot be used or damaged and there are hidden defects. The sale and purchase transaction originated from an agreement made by the seller orally through the existing communication media, in order for the agreement that has been done by the seller and the buyer can be carried out properly, both parties must fulfill their respective obligations.

The seller is obliged to deliver the goods that have been purchased by the buyer and the buyer is obliged to pay the amount of money that has been previously promised to the seller, if in the agreement agreed by the seller and the buyer, the seller is not obliged to perform his obligations in full, then the seller has committed a default of the sale and purchase agreement. So that the problem, businesses have been able to be said to meet the elements of default which among others are hard to implement the promised, but not as promised (Kilikily, 2017: 129-30).

Legal protection is to give protection to the human rights of others who are harmed and those protections are given to the community so that they can enjoy all the rights afforded by the law. Legal responsibility is intended as an attachment to the provisions of the law (Nurmansyah, 2020: 1231-1239). Therefore, this research is intended to analyze (1) the form of responsibility of businesses for consumer losses due to default and (2) the form of consumer protection for consumer losses due to default. This research aims to find out the

form of responsibility of businesses for consumer losses due to default and a form of consumer protection for consumer losses due to default.

METHOD

This type of research in this journal, the author uses the method of empirical legal research method or empirical juridical, which is where this empirical law research discusses how the law can operate in society (*ius operatum*). This empirical research examines the law in its legal process in its interactions, the law in its application and the influence of the law in people's lives (Sunggono, 2015: 42).

FORM OF RESPONSIBILITY FOR CONSUMER LOSSES DUE TO DEFAULT

Agreements on trade secrets are vital. This is demonstrated by how important trade secrets are which are also very expensive corporate assets, because it can be a powerful tool to compete with competitors (Gerungan, 2016). Article 1 of Law No. 8 of the Consumer Protection states that consumers are every user of goods and/or services available in the community, whether for the benefit of themselves, family, others or other living beings and not for trading. While in the legal dictionary, the understanding of consumers is the party that uses or utilizes both goods or services, for the benefit of themselves or the interests of others.

The understanding of business actors in Article 1 number (3) of Law No. 8 of 1999 on Consumer Protection explains that business actors are every individual or business entity, whether in the form of legal entities or non-legal entities established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to conduct business activities in various economic fields (Erlinawati & Nugrahaningsih, 2017: 27-40). In general, the principles of liability in law can be distinguished as follows:

1. Liability based on fault
   The principle of *liability based on fault* is a fairly common principle in both criminal law and civil law. This principle states a new person can be held legally liable if there is an element of wrongdoing he or she committed.
2. Presumption of liability
   This principle says the defendant is always held accountable until he can prove his innocence. Therefore, the burden of proof is on the defendant.
3. Presumption of nonliability
   The scope of consumer transactions in this principle is very limited and such restrictions are usually in common sense justifiable.

4. Strict liability
   This principle states mis-action as a determining factor. However, there are exceptions that allow to be exempt from this principle. For example, force majeure. This forceful situation is a situation that occurs outside the control of the parties concerned, as happened in natural disasters. In general, the principle of absolute responsibility in consumer protection law is used to ensnare businesses (manufacturers) who market products that harm consumers.
5. Limitation of liability
   This principle is strongly favored by manufacturers to be listed as an exclusion clause of liability in the standard agreements it makes. This principle of responsibility is very detrimental to consumers if determined unilaterally by businesses (Kristiyanti, 2011: 92-97).

In the Consumer Protection Law itself, regulates the accountability of businesses in general, as stated in Article 19, namely:

(1) Businesses are responsible for indemnifying consumers for damage, pollution, and/or losses resulting from consuming goods and/or services produced or traded.
(2) Indemnification as referred to in Paragraph (1) may be in the form of money or replacement of goods and/or services of similar or equivalent value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations.
(3) Indemnification is carried out within 7 (seven) days after the date of the transaction.
(4) The award of compensation as referred to in Paragraphs (1) and (2) does not eliminate the possibility of criminal charges based on further evidence of an element of wrong doing.
(5) The provisions as referred to in Paragraphs (1) and (2) shall not apply if the business person can prove that the error is the fault of the consumer (Riung, 2015).

Based on the content of article 19 Paragraph (1) above, it can be known that the responsibilities of business actors include:

1. Indemnification liability for damages.
2. Indemnification liability for pollution.
3. Indemnification liability for consumer losses (Miru & Yodo, 2007: 17).

This period of reimbursement is carried out within a maximum of 7 (seven) days after the date of the transaction. In the default of trade transactions, the principle of absolute responsibility (strict liability) plays an important role and applies because this businesses principle must be responsible for consumer losses without having to prove the validity of it. Provisions on indemnification have been stipulated in Article 1243 and Article 1246 of the Civil Code, while in Article 24 of the Consumer Protection Law states that businesses that sell goods or services to other businesses are liable for claims for damages or consumer

claims if other businesses do not make changes to the goods of the business actors and Article 24 Paragraph (2) states that businesses can be free from responsibility if other businesses make changes to the goods of the business actors (Afrilia & Sulistyaningrum, 2017: 78).

Liability obtained by consumers should be charged by businesses because the business actors who cause a loss due to errors or negligence caused by the business actors. Violations committed by businesses, giving the fact that the actual implementation of the law obtained through the Consumer Protection Act. In Article 4 which is one of the articles governing the comfort rights of consumers. Irregularities in the implementation of the law pa da Consumer Protection Law is also contained in Article 7 which is explained that businesses require to provide information description of goods or services offered correctly, honestly, and also in accordance with the condition of a goods or services sold by the businessman (Pande, 2019: 19).

Sanctions against businesses that commit default are regulated in the Civil Code as well as in consumer protection law No. 8 of 1999. In the Civil Code, parties who do not carry out the contents of the agreement will be penalized. As a result of negligence or negligence by the debtor, threatened with several sanctions or penalties, there are 4 (four) kinds of sanctions, namely:

a. Pay the losses suffered by creditors or called compensation.
b. Cancellation of the agreement or also called the breaking of the agreement.
c. Risk switching.
d. Pay the costs of the case if it comes to being litigated in front of a judge (Sudjana, 2019: 387).

FORM OF CONSUMER PROTECTION FOR CONSUMER LOSSES DUE TO DEFAULT

Basically, legal protection of consumers in a trade transaction is manifested in 2 (two) forms of regulation, namely legal protection in the form of certain laws (laws, government regulations) of a general nature and legal protection based on agreements specifically made by the parties, manifested in the form of substance or the contents of agreements between consumers and businesses such as provisions on indemnity, the period of claim submission, dispute resolution and so on (Sukarmi, 2007: 170).

In the Consumer Protection Law, consumer rights are stipulated in Article 4 which states that the rights of consumers, on the other hand the obligations of businesses are stipulated in Article 7, related to the act of default in the above cases in Article 7 letter g of the Consumer Protection Law which states that the obligations of businesses to provide compensation, compensation, and/or services received or utilized are not in accordance with the agreement. Some cases of default that occur are more dominated by the non-conformance of goods

ordered with the goods received, it is expressly prohibited by the Consumer Protection Act Article 8 Paragraph (1) letter f which states that businesses are prohibited from producing or trading not in accordance with the promise stated in the label, ticket, description, advertising or promotion of the sale of such goods and /or services. The provisions of legal protection obtained by consumers are stipulated in Article 49 Paragraph (3) PP 82 of 2012 which states that businesses must give a deadline to consumers to return goods sent if they do not comply with the agreement or there are hidden defects (Putri, 2019: 4).

In principle, the provisions governing the protection of the law against consumers in aspects of civil law, stipulated in Article 1320 of the Civil Code, Article 1320 of the Civil Code stipulate that for the validity of the agreement is required four conditions, namely:

a. The agreed word of those who bind themselves *(toestemming van dengenen die zich verbiden).*
b. Ability to make an alliance *(de bekwaamheid om een verbintes aan te gaan).*
c. A certain thing (*een bepaald onderwerp*).
d. A halal reason (*een geloofde oorzaak*).

Article 1234 of the Civil Code distinguishes achievements over:

a. Give something.
b. Do something.
c. Not doing anything (Badrulzaman, 2011: 37).

There are various parties that do not fulfill their achievements even though they have previously agreed to be implemented. The various defaults are as follows:

a. Defaults are not fulfilling.
b. Default is a late fulfillment of achievements.
c. Defaults are imperfect in fulfilling achievements.
d. Default to do something that by agreement should not be done.

Default is the debtor's failure to fulfill its obligations in accordance with the agreed agreement. To determine when a person should perform his obligations from the content of the agreement he has made. In agreements it is usually stipulated when a person must carry out his obligations, such as handing over an item or doing something. If the debtor does not do what he promised, then he has committed a default. Defaults that are often done by businesses are many businesses to override the rights of consumers.

Consumer rights are stipulated in Article 4 of the Consumer Protection Act which states that:

a. The right to comfort, security and safety in consuming goods and/or services.
b. The right to choose goods and/or services and obtain such goods and/or services in accordance with the exchange rate and conditions and guarantees promised.

c. Right to correct, clear and honest information regarding the conditions and warranties of goods and/or services.
d. The right to be heard his opinions and complaints over the goods and/or services used.
e. The right to appropriate advocacy, protection and efforts to resolve consumer protection disputes.
f. The right to coaching and consumer education.
g. Right to be treated or served properly and honestly and non-discriminatoryly.
h. The right to compensation, indemnification/ reimbursement, if the goods and/or services received are not in accordance with the agreement or not as appropriate.
i. Rights stipulated in other statutory provisions.

Of the nine consumer rights above there are some rights that are often waived by businesses such as the right to obtain complete information about the goods ordered and the right to obtain compensation for goods ordered whether the goods are damaged, defective or goods are not received by consumers (Purba & Silalahi, 2019: 1072-1081).

Consumers have been guaranteed rights, obligations and restrictions from both consumers and businesses. But in practice there is no denying that there are still many violations and usually the victims are consumers and this is an unwise act committed by the perpetrator. For such acts that are classified as defaults must be sanctioned so that businesses no longer do so (Hartono, 2016: 140).

Consumer Protection Law Article 16 Paragraph (2) explains that businesses in offering goods and/or services through orders, prohibited not to keep the promise of a service and/or achievements, it can be concluded that the non-fulfillment of consumer rights by these businesses is already an act that violates Article 16 of Law No. 8 of 1999 on Consumer Protection. Violation of Article 16 Paragraph (2) actually originated from an agreement arising from an agreement between businesses and consumers. The agreement that occurs comes from the agreement of the parties so that by not complying with the existing agreement by one of the parties in this case by the business actors, then the business actors can be asked for a settlement both within the scope of civil law and according to the Consumer Protection Law because businesses are considered to have committed criminal acts of consumer protection.

In the Consumer Protection Law No. 8 of 1999, especially Article 62 Paragraph (1) mentioned about criminal sanctions that can be given to businesses that violate Article 16 Paragraph (2). Provision of Article 62 Paragraph (1) of Law No. 8 of 1999 in the form of a maximum prison sentence of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiahs) (Lestari, 2019: 56).

From the results of the description, the buyer as a consumer is entitled to get legal protection for the act of default from the business actor, because the

buyer (consumer) with the seller has been bound in the letter of the binding agreement, but the fact that the seller did not do the contents of the agreement, so that the actions of these businesses, who resent the promise or do not keep the promise can be categorized as a default. According to Article 19 of the Consumer Protection Act if the consumer suffers losses as a result of consuming goods and or services produced by businesses, has the right to claim civil liability to the businessman for the losses incurred (Sidabalok, 2006: 80).

CONCLUSION

This research concluded and highlighted that the responsibility of businesses for consumer losses due to default under Law No. 8 of 1999 concerning Consumer Protection can be done by continuing/canceling the agreement and indemnifying losses incurred as a result of the default. It is in accordance with the positive law that applies in Indonesia, namely that a consumer if harmed in consuming goods or services, can sue the party that caused the loss. With the qualification of a default lawsuit or an act against the law. Because of the losses suffered by consumers, it is nothing but the implementation of achievements by entrepreneurs. Legal protection of consumers for consumer losses due to default that can be done by compensating, indemnifying and/or services received or utilized is not in accordance with the agreement. Therefore, it is suggested that in the Consumer Protection Law, there is no more specific Article discussing the system of responsibility of business actors because the type of responsibility of business actors consists of various types, so it is necessary to reform the law in protecting consumers. For consumers are advised to be more careful in buying and selling and transacting because the agreement of the parties is only based on trust and consumers are expected to better understand their rights as consumers so that there is a default, consumers can take advantage of their rights in accordance with the laws and regulations.

REFERENCES

Afrilia, D., & Sulistyaningrum, H. P. (2017). Implementasi Prinsip Strict Liability (Prinsip Tanggung Jawab Mutlak) Dalam Penyelesaian Sengketa Konsumen. *Simbur Cahaya*, *24*(3), 4949-4960.

Ariati, N. K., & Suarbha, I. W. (2016). Perlindungan Hukum Terhadap Konsumen Dalam Melakukan Transaksi Online. *Kertha Semaya: Journal Ilmu Hukum*, *5*(1).

Badrulzaman, M. D. (2011). *Kitab Undang-Undang Hukum Perdata Buku III tentang Hukum Perikatan Dengan Penjelasan*. Bandung: Alumni.

Erlinawati, M., & Nugrahaningsih, W. (2017). Implementasi Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Bisnis Online. *Serambi Hukum*, *11*(01), 27-40.

Gerungan, A. E. (2016). Perlindungan Hukum terhadap Rahasia Dagang Ditinjau dari Aspek Hukum Perdata dan Pidana di Indonesia oleh: Anastasia E. Gerungan. *Jurnal Hukum Unsrat*, *22*(5).

Hartanto, H. (2017). Perlidungan Hak Konsumen terhadap Pelaku Usaha yang Dinyatakan Pailit. *ADHAPER: Jurnal Hukum Acara Perdata*, *2*(2), 315-328.

Kilikily, J. S. (2017). *Tinjauan Yuridis Upaya Penyelesaian Wanprestasi Perjanjian Jual Beli melalui Internet.* Jurnal Gloria Yuris, 5(2).

Kristiyanti, C. T. S. (2011). *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika.

Lestari, A. A. A. (2016). Perjanjian baku dalam jual beli kredit sepeda motor ditinjau dari undang-undang nomor 8 tahun 1999. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, *5*(2), 337-352.

Miru, A. (2007). *Hukum Kontrak dan Perancangan Kontrak*. Jakarta: PT. Raja Grafindo Persada.

Miru, A., & Yodo, S. (2007). *Hukum Perlindungan Konsumen*. Jakarta: PT. Raja Grafindo Persada.

Nurmansyah, A., & Sukranatha, A. A. K. (2020). Tanggung Jawab Pelaku Usaha Terhadap Kerugian Konsumen dalam Jual Beli Kendaraan Bermotor (Studi PT. Herointinusa). *Kertha Semaya: Journal Ilmu Hukum*, *8*(8), 1231-1239.

Pande, N. P. J. (2017). Perlindungan Konsumen Terhadap Produk Kosmetik Impor Yang Tidak Terdaftar Di BBPOM Denpasar. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, *6*(1), 13-22.

Purba, O., & Silalahi, R. (2019). Perlindungan Konsumen Terhadap Wansprestasi Pelaku Usaha. *Jurnal Darma Agung*, *27*(3), 1072-1081.

Riung, C. M. (2015). Tanggung Jawab Pelaku USAha Terhadap Kerugian Konsumen Dalam Transaksi Melalui E-commerce. *Lex Privatum*, *3*(2).

Sidabalok, J. (2006). *Hukum Perlindungan Konsumen Di Indonesia*. Bandung: Citra Aditya Bahkti.

Sudjana, S. (2019). Akibat Hukum Wanprestasi dan Tanggung Jawab Para Pihak dalam Transaksi Anjak Piutang. *Veritas et Justitia*, *5*(2), 374-398.

Sukarmi, S. (2007). *Cyber Law Kontrak Elektronik dalam Bayang-Bayang Pelaku Usaha*. Jakarta: Pustaka Sutra.

Sunggono, B. (2015). *Metode Penelitian Hukum*. Jakarta: Rajawali Pres.

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RESEARCH ARTICLE

SETTLEMENT OF AUCTION DISPUTES OVER LAND AND BUILDING COLLATERAL OBJECTS

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ABSTRACT

The implementation of the auction still faced many obstacles and lawsuits that lead to auction disputes against the object of the Guarantee Rights. The purpose of making this article is to find out how land and building guarantee auction disputes occur for the object of the Mortgage and how to resolve it. The qualitative approach method is descriptive analytical namely describing systematically factually and accurately regarding the settlement of auction disputes in accordance with the legislation, then the legal facts are analyzed. The research revealed and showed that the conduct of auctions often results in disputes. The auction will affect the parties involved as auctioneer, namely the Bank as the creditor, the State Wealth and Auction Service Office (KPKNL), and the National Land Office. This of course will also affect public confidence in legal certainty in the implementation of the auction. The auction in this case the KPKNL, uses the basis of the Execution Parate, as well as through the fiat court. Parate execution based on Article 6 of the Mortgage Law which is supported Regulation of the Minister of Finance concerning Technical Guidelines for Implementation of Tenders, is expected to be implemented properly so that legal certainty can be achieved. Apart from that, settlement of an auction dispute for the object of the Mortgage Rights is carried out by selling under hand, this is

based on Article 20 paragraph (2) UUHT Number 4 of 1996, "The right to sell on one's own power" the object of the Mortgage.

Keywords: *disputes, auction, mortgage*

INTRODUCTION

Economic development as part of national development is one of the efforts to create a just, fair and prosperous society based on Pancasila and the 1945 Constitution. To maintain the sustainability of this development, the role of the government and the private sector is needed. In this case, the role of the private sector represented by the community either individually or as a legal entity requires a lot of funds to be able to implement it. The basis of high needs and the unmet economy means that many people make loans through banking services.

The distribution of loans from banks to the public, both individuals and legal entities as mandated in Law Number 10 of 1998, is an amendment to Law Number 7 of 1992 concerning Banking, described in Article 1 point 11, "Credit is provision of money or an equivalent claim, based on a loan agreement between the bank and another party which requires the borrower to pay off the debt after a certain period of time with interest" (Jumhana, 2021: 413).

People who make loans or as owners of debts are called debtors, while banks that provide loans or owners of receivables are called creditors. Every credit that has been approved and agreed upon between the creditor and the debtor must be stated in the credit agreement in writing and signed by both parties. Credit agreements made in writing in the procedure for making them must refer to the agreement law regulated in the Civil Code, in particular Article 1313 of the Civil Code which states that an agreement is an act in which one or more people bind themselves to one or more people. Besides the existence of a credit agreement as the main agreement, the debtor also delivers collateral which is used as collateral at the bank. Collateral submitted to the bank as evidence of the debtor's good faith to cooperate with the bank and to ensure legal certainty.

To ensure legal certainty for banking institutions (creditors), the guarantee institution was created, namely Law No. 4 of 1996 regarding the land rights and objects related to land or better known as the UUHT. With the existence of this law, it is hoped that its implementation in practice will provide a stronger position and ensure greater legal certainty regarding the rights of creditors. What is called the Mortgage Rights according to the UUHT in article 1 paragraph 1 is "The guarantee imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Principles, along with other objects which are an integral part of the land, for the settlement of certain debts, which give the position which gives priority to certain creditors over other creditors".

The debtor as an indebted party if he does not perform the obligations as mutually agreed upon in the credit agreement, it can be said that the debtor has committed "default". Consequently, the debtor defaults, then the collateral object can be transferred or sold through a public auction to pay off the receivables of the Mortgage holder by preceding the preferred creditor. However, for the execution of the object of the credit guarantee, there are many obstacles, not always accepting the execution of the object of the credit guarantee. The debtor who feels aggrieved by the execution can take up the fight. This resistance effort will be realized by the debtor in a lawsuit in the District Court.

Therefore, this research is intended to analyze on how does a land and building guarantee auction dispute happen? And how to settle land and building collateral auction disputes for the Object of the Mortgage Rights?

METHOD

The qualitative approach method is descriptive analytical namely describing systematically factually and accurately regarding the settlement of auction disputes in accordance with the legislation, then the legal facts are analyzed (Fajar & Ahmad, 2010: 183). This type of doctrinal legal research, namely research that originates from the applicable laws or legal regulations and doctrines. The focus of research is a problem that originates from the experience and knowledge of researchers obtained through scientific literature or other literature. Where is the focus of research as contained in the formulation of the problem, namely regarding the occurrence of auction disputes and their resolutions. Sources of data were obtained through literature study to obtain primary legal material, namely the main legal material in the study (legislation), namely the 1945 Constitution, Law No. 10 of 1998 is an amendment of Law No. 7 of 1992 concerning Banking, Law No. 4 of 1996 concerning Mortgage Rights and other laws and regulations, including court decisions (Marzuki, 2010: 146-155). Furthermore, secondary law (expert opinion), namely legal materials to explain primary legal materials from books or journals, tertiary legal materials serve to explain primary legal materials and secondary legal materials (dictionaries, encyclopedias, internet and others). Data collection techniques and procedures are carried out through document study, namely based on written legal documents (legislation). The validity of the data using source triangulation by checking steps, comparing the information obtained, and conducting analysis through different sources. Technique Data analysis was carried out in a qualitative normative manner, namely starting from the statutory norms through interpretation.

THE OCCURRENCE OF A LAND AND BUILDING COLLATERAL OBJECT AUCTION DISPUTES

As one of the efforts to reduce credit risk, the provision of bank credit requires collateral to be used as collateral. The function of providing guarantees is to provide rights and powers to the bank to get repayment with these collateral, if the debtor defaults on not paying back his debt at the time specified in the agreement.

Collateral that is often used is in the form of land and / or buildings that have proof in the form of a certificate and are bound by Mortgage Rights as regulated in Law No. 4 of 1996 concerning Mortgage Rights. In dealing with non-performing loans, various efforts have been made by banks to recover money from debtors, namely through regular collection efforts or through other efforts. The recovery process carried out by the bank is very difficult because in general the debtors faced are debtors who are bankrupt, have bad intentions, have died, even the debtor has run away (skip), so that the installment payments to the bank are not fulfilled. To deal with this, the bank usually uses a parate executie auction mechanism.

In auction, what often happens is that the bank always faces a counterclaim from debtors who do not want their collateral to be auctioned off. The lawsuit was based on the fact that the bank conducted an auction without prior approval from the debtor, even though the agreement deed already contained a clause if the debtor in default of the bank would take the necessary actions to return the bank's assets, including the auction effort. This is what often becomes a dispute between banks and their debtors, where the debtor feels that the auction action against the object of collateral is an action against the law.

The factors causing the debtor not to carry out payment obligations are as follows:

1. The debtor's economic condition
   In general, those who borrow money from banking institutions are middle to lower class. They are generally small and medium entrepreneurs. So that in developing its business it always depends on the prevailing market prices.
2. The debtor's willingness to pay his debts is low.
   The character or nature of the debtor is very important, this is the key to the potential for non-performing loans if the debtor has a bad character. The accuracy of the bank during the initial verification / survey in the field is needed.
3. Collateral value is less than the amount of principal and interest payable.
   At the time of the assessment of the guarantee by the bank, that the collateral object owned by the debtor is deemed sufficient and feasible. However, in practice it turns out that when the collateral is sold, it is not sufficient to pay

off debts. The credit received by the debtor is not in accordance with the original purpose of the loan/side streaming.

From the factors above, basically the debtor does not want collateral or other items to be auctioned by the State Receivables and Auction Service Office (KPKNL). They still want the collateral not to be sold and they still hope that the payment of their debts can be extended. Even though the banks or non-bank financial institutions have made *subpoenaes* several times to the debtors, they still do not make any achievements on time. If the debtor continues to ignore this matter, the banking institution will submit the matter to the State Receivables and Auction Service Office (KPKNL).

According to Article 29 of the Minister of Finance Regulation Number 135 /PMK.01/2006, the Office of State Assets and Auction Services (KPKNL) states that the KPKNL is a vertical agency of the Directorate General of State Assets which is under and directly responsible to the Head of the Regional Office. The task of the State Wealth and Auction Service Office (KPKNL) according to Article 30 of the Minister of Finance Regulation Number 135/PMK.01/2006 is to provide services in the field of State assets, assessment of State receivables, based on applicable laws and regulations. The parties related to the auction of collateral objects are:

1. Debtor, namely a person who has borrowed money from a creditor but does not carry out his obligations as agreed.
2. Creditors are banks or other institutions that have provided money or capital to customers.
3. State Receivables and Auction Affairs Agency (BUPLN).
4. The party or buyer of collateral is a person or entity that has bought or won in the auction of collateral.

Legal basis of the auction is carried out based on Article 6 of the UUHT as follows:

1. Law No.4 of 1996 concerning Mortgage Rights to Land and Objects Related to Land (UUHT)
2. Law No. 05 of 1960 concerning Basic Agrarian Regulations (UUPA)
3. RI Minister of Finance Regulation No.118 / PMK.07 / 2005 concerning Auction Hall
4. Regulation of the Minister of Finance of the Republic of Indonesia Number 40 / PMK.07 / 2006 concerning Guidelines for Auction Implementation.

Execution of Mortgages based on Law No. 4/1996, collateral can be executed in 3 ways, namely:

1. Execution parate, Article 6 and Article 11 (C) of the Mortgage Law
   a. Article 6 of the Mortgage Rights Act says Parate execution for the sake of law
   b. Article 11 (C) of the Mortgage Rights Act because the parate of execution was agreed.

Parate execution is an execution without litigation and without an executorial title. In law, granting authority for execution parates is based on legal doctrine which, among other things, states that an agreement that is certain or does not contain disputes, such as fixed loans, should be carried out independently by interested parties without court intervention (Sutedi, 2012: 130). The first Mortgage Holder has the right to sell the object of the Mortgage on his own power through a public auction and collect his receivables from the sale proceeds. The creditor has the authority to carry out direct execution of objects that become collateral without the intermediary of a judge.

According to the general explanation Number 9 of the Mortgage Rights Law, one of the characteristics of a strong Mortgage is easy and sure to carry out the execution:

a. For this reason, the Mortgage Rights in this Law regulates the Execution Parate institution as referred to in Article 224 HIR, Article 256 RBG;
b. In connection with that, the mortgage certificate is affixed with the words: "For the sake of Justice based on the one and only Godhead", as the foundation of executorial power, which is as strong as a court which has permanent legal force.

   Thus, the institutionalization of execution parates in this Law, apart from being regulated in Article 6, is also affirmed in the General Elucidation.

2. Execution by Court

   The Mortgage Rights Law provides for the possibility of carrying out execution through a judicial process. The judicial process takes time and costs. So, in practice what is done is execution through a lawsuit. If a lawsuit occurs in court, the object of collateral will be auctioned off in public and the proceeds will be used to pay off the debtor's debt.
3. Guarantee sales on an underhand basis

   Article 20 of the Mortgage Rights Law item (3). Underhand sales are sales made not through a public auction. Underhand sales will be more profitable for both parties because usually if there is a sale through an auction, the price may go down and the debtor and creditor may suffer losses.

In the implementation of the auction, especially the execution auction, the potential for lawsuits is very high. The lawsuit/rebuttal is separately submitted before the auction and after the auction. The claim before the auction is intended by the plaintiff to delay the auction. And the post-auction claims/rebuttals have very various motives behind it (Khalim, 2014). Lawsuits generally arise when someone is unsatisfied. As a rule of law/rechtstaat, every citizen who feels his rights have been violated, has the right to file a lawsuit/rebuttal to the court as a channel for his violated rights. There are requests for auction postponement and/or resistance submitted by debtors and/or guarantors and/or other third parties during the ongoing guarantee execution process, where requests for postponement and/or resistance submitted by such parties may cause postponement of the guarantee auction.

The plaintiff is a person/legal entity whose interest in the form of ownership of the auction object has been harmed by the auction, for example:

1. The debtor who is the subject of the case is related to the auction price that is too low, the auction of bad credit is carried out before the due date of the credit agreement, the procedures for implementing the auction are not correct, for example, the auction notification is not timely, the announcement is not in accordance with the procedure and so on. other;
2. The third party owner of the goods is either directly involved in the signing of the credit agreement or purely as guarantor of the debt, the subject of which is basically the same as the debtor, namely the auction price is too low / if the collateral is auctioned off, the auction of bad credit is carried out before it falls credit agreement due date;
3. Heirs related to inheritance issues, an illegal guarantee process;
4. One of the parties in the marriage, related to the issue of joint assets, an illegal guarantee process;
5. The auction buyer is related to the auction buyer's right to be able to control the goods that have been purchased / emptied.
6. The defendants include creditor banks, PUPN, auction offices, auction buyers, debtors who pledge goods, and other parties related to legal actions contained in the tender requirements documents, among others, the land office that issues certificates, notaries who make the binding. Guarantee (Sianturi, 2013: 244-245).

After the object of the Mortgage has been auctioned and has been purchased by the winner of the auction, it turns out that the debtor who gives the Mortgage does not want to vacate the object/parcel of the Mortgage that has been sold, then vacating the object of the Mortgage can be done in the following manner:

a. Persuasively, that is, by making an approach between the old owner or occupant and the new owner as the winner of the auction, then by providing compensation in the form of compensation, vacating fees, etc. or if it is in a leased condition, by extending or renewing the lease.
b. The auction winner as the new owner of the Mortgage object has the right to submit a vacant application to the Chairman of the local District Court, and then upon the existence of the request, the Head of the District Court makes a Decision Letter ordering the Clerk of the Secretary or the bailiff of the District Court to vacate the object of the Mortgage by way of forced and if necessary the evacuation can be carried out with the assistance of other forces (police if necessary military assistance).

In several guarantees law in Indonesia, there are provisions which stipulate that a document has the same executorial power as a judge in a civil case which has permanent legal force. However, in reality, the judge or the District Court did not treat it that way. The word "*equal* to" in this Law is deemed by the District Court judge to be "*the same as*" if it has passed a court decision or order (Sutedi, 2012: 132).

In the auction, many daily events such as limit price fixing, suspension and cancellation of the auction indicate that law enforcement on the execution of Mortgage Rights has not provided legal certainty. From the auction problems, the lawsuit submitted to the judiciary was based on a lawsuit against the law against the auction.

An auction action is contested on the basis of an illegal act because it fulfills the elements as explained by Sianturi (2013), as follows:

a. The act is against the law
b. Error (*schuld*)
c. Loss (*scade*)
d. There is a causal relationship (*oorzakelijk verband*) between losses and illegal actions that occur in the auction.

One of the needs for auction legal institutions is to fulfill or implement judicial decisions or dispute resolution institutions based on laws in the context of law enforcement. Auction creates the value of an item that is the object of a dispute in a judicial decision or collateral that is the object of a dispute based on law, such as the settlement of bad credit by the District Court or PUPN or a creditor bank. Power is given based on law, not voluntarily by the owner of the goods, so that claims often arise from the owner of the goods, both by the debtor who owns the goods and by third parties who own the goods. The law only allows parties whose rights have been impaired by the act of buying and selling an auction which is carried out through the auction office, can defend their rights / interests by submitting a lawsuit to the court, with the hope that the court will give law to the dispute it faces. Judges at the trial constrict concrete events, which at the same time mean formulating concrete events, qualifying concrete events and constituting or giving law or punishment (Mertokusumo, 1996: 74).

SETTLEMENT OF LAND AND BUILDING AUCTION DISPUTES FOR THE OBJECT OF THE MORTGAGE RIGHTS

In general, not every implementation of collateral auction runs as it should be, but in doing so it experiences various obstacles. The obstacles in implementing collateral for the object of the Mortgage are as follows:

1. There is no auction enthusiast;
2. The auction of collateral is intended so that the public can buy the collateral, so that by auctioning the object, the debtor can pay off all debts owed to the creditor. However, often there are no auction enthusiasts. The low or no interest in buying this auction is due to:
    a. Collateral is not good (less strategic location, owned by third parties);
    b. It is very difficult for control of post-auction objects to be emptied;

   c. The culture in the community to buy auction items is taboo, because they feel uncomfortable with the owner of the collateral, so that it has a negative impact on land use; and
   d. Collateral is in the form of *girik*, not a certificate
3. Collateral belonging to third parties
   In principle, the collateral that will be guaranteed by the debtor is his property, but it does not rule out that the collateral belongs to a third party. This third party has authorized the installation of guarantees. In conducting the auction, this third party prevents the auction of collateral objects, on the grounds that the debtor has never authorized the debtor to pledge the land. If a power of attorney occurs, then the power of attorney shall be carried out by means of *bedrog, dwaling, dwang* and *unduemflunce*.
4. Collateral has not been registered
   In principle, collateral at a banking institution must be registered for collateral. However, in reality many credits are extended to customers without registration. The registration of guarantees of mortgage rights is carried out by the National Land Agency.
5. The selling value of the collateral object is smaller than the amount owed by the debtor
6. Lack of good faith from the debtor
7. The promise of the debtor who gave the Mortgage Rights to empty the object of the Mortgage at the time of execution of the Mortgage was not obeyed.
8. The buyer of the execution auction under the sole power of the first Mortgage Holder receives the minutes of auction from the State Auction Office but does not receive the title to the land that has been purchased from the auction. As a result, the National Land Agency refuses to change the name of the original owner of the Mortgage Giver to the name of the auction buyer. In such a case, the auction buyer submits an application to the Head of the State Auction Office (which conducts the auction) asking him to be given a certificate regarding the reasons for not submitting the certificate, only then the auction buyer with evidence of submitting an application for a name reversal to the competent Land Agency.
   a. Quote of the auction minutes concerned.
   b. Ownership Certificate for apartment units or Rights to land and buildings that are auctioned if the land parcel concerned has been registered. Or in the event that the certificate is not submitted to the buyer of the auction, the execution of a statement from the Head of the Auction Office regarding the reasons for not submitting the certificate.
   c. Proof of identity of the auction buyer.
   d. Proof of payment of the purchase price.

To overcome obstacles and auction disputes, the efforts made by the bank are as follows:

1. Provide subpoena to debtors continuously with the aim that debtors can carry out their achievements.
2. The auction of collateral is still carried out.
3. Awareness to customers.
4. Carry out continuous collection against customers.
4. The creditor (bank) will give warnings to the debtor on his credit (summons). This effort was made before taking further legal action. This warrant is very important to confirm that the debtor has actually committed default.
5. The bank submits the matter to the prosecutor's office, under the Junior Attorney General for Civil and Administrative Affairs. Because here the prosecutor does not have the power to decide, in this case the prosecutor only acts like a lawyer for the bank to warn and collect bank receivables from debtors. This is specifically intended for government agencies or banks.
6. By deliberation. A deliberative settlement between creditors and debtors is a method of settlement based on a sense of kinship. The settlement in this way is an attempt by the government bank so that the bad credit can be used properly by the debtor. The deliberative resolution of the problem also depends on the nature of credit congestion, meaning that bad credit is due to deliberate or unintentional factors. If the bank assesses that the credit congestion is caused by unintentional things, usually the bank provides or determines policy steps that can ease the burden on the debtor with the intention that the congestion can be resolved by the debtor, after being given a policy that is pursued through this deliberation. The policy steps taken by the bank in resolving a case by deliberation include:
   a) Providing extension of the credit maturity period.
   b) Giving installment interest relief.
   c) Providing additional credit assistance, for loans with substandard collectiveness, with the hope that the collectability will run smoothly.
7. Advise the debtor to sell the collateral themselves. In doing this, if necessary, the bank can assist the debtor by finding potential buyers in such a way that the money from the sale of the collateral is still deposited with the bank to be calculated with the debtor's loan as repayment.
8. Make the sale of the collateral in public based on the power to sell. In this case, the bank may request assistance from the State Auction Office to sell collateral through a public auction, and the proceeds from the sale of the collateral will be calculated for the settlement of receivables from the bank.

Attempts made by the bank (creditor) within 21 months are declared non-performing as follows:

1. Through the State Receivables Affairs Committee (PUPN)
   The settlement of bad credit at private banks is settled through court channels. As specifically for bad credit at state banks, so far, the collection process has been carried out through the State Receivables Affairs Committee (PUPN), which was formed by Law Number 49 Prp 1960, and the State

Receivables and Auction Business Entity (BUPLN), which was formed by Presidential Decree Number 21 of 1991. PUPN is tasked with settling state receivables that have been submitted to it by government agencies or state agencies. Thus, for state-owned banks to resolve their bad debts, they must be done through the State Receivables Affairs Committee (PUPN), in which by the handover of bad debts to the agency legally, the authority over the right to collect is transferred to it.

2. Settlement through court channels
   Efforts taken in this regard is by filing a lawsuit to the District Court on the basis of default. It is just that the process of resolving civil cases at the District Court until there is a permanent and definite court decision (*in kracht van gewisde*) usually goes through 3 (three) levels of justice, namely:
   a. The District Court as the court of first instance.
   b. The High Court as the court of appeal and,
   c. Supreme Court

   Whereas the guarantee agreement is an *accesoir* of the main agreement, namely the credit agreement. If the debtor is negligent in paying off his loan and if the reprimand is by asking for assistance from the district court, then such warning is called a *sommatie* or summons (Sutedi, 2012: 212). If the debtor has received a warning and then pays the loan in full, the loan execution is no longer needed, on the other hand, if the debtor has been reprimanded, the debtor still does not want to pay the loan, then the creditor or bank starts to execute the guarantee.
3. Settlement through the Commercial Court
   Settlement through the Commercial Court is an alternative that can be used by creditors against debtors as long as they meet certain requirements stipulated by Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Basically, the process of requesting a bankruptcy statement based on the Bankruptcy Law consists of stages. The steps stipulated in the Bankruptcy Law Number 37 of 2004, regarding the proceedings at the Commercial Court, take a long time. Whereas the decision making is at the first level, where the judge can only decide on the bankruptcy case within 60 days. The time taken from the commercial court to the cassation is 120 days, and not to mention if the parties are not satisfied who want to file a reconsideration, it takes time.
4. Settlement through a Forced Agency
   Particularly for debtors who have bad intentions and have debts of at least 1,000,000,000 (one billion rupiah), the agency may be subject to force. This is in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2000 concerning Forced Institutions. Corporate coercion is indirect coercion by placing a debtor with a bad bond into a state detention center determined by the court to force the person concerned to fulfill his obligations.

According to the author, in the practice of auction dispute resolution, the effective method and carried out by the Mortgage holder if it is linked to the prevailing laws and regulations, are:

a. The first way, namely through the sale of the object of the Mortgage which is done under the hand.
b. The second way, namely "The right to sell on their own power" the object of the Mortgage.

CONCLUSION

This research highlighted and finally concluded that the occurrence of disputes is because the debtor is in default so that the bank as the creditor based on the Mortgage Law Number 4 of 1996 submits a request for auction execution to the State Wealth and Auction Service Office. For the implementation of the KPKNL auction based on the Parate for execution of Article 6 of the Mortgage Rights Law. UUHT No. 4 of 1996, "The right to sell on one's own power" the object of the Mortgage.

REFERENCES

Burgerlijk Wetboek Stb,1847 Nomor 23 (terjemahan R. Soebekti dan Tjitrosudibio, *Kitab Undang-undang Hukum Perdata*, PT. Pradnya Paramita, Jakarta, 2003)

Fajar, M., & Ahmad, Y. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris,* Cetakan III. Yogyakarta: Penerbit Pustaka Pelajar.

Guntoro, J., Kontesa, E., & Sauni, H. (2020). Tinjauan Yuridis Pendaftaran Hak Tanggungan Dalam Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik. *Bengkoelen Justice: Jurnal Ilmu Hukum*, *10*(2), 212-225.

Het Herziene Indonesisch. Reglement (HIR/RIB Reglemen Indonesia yang diperbaharui) *Stb, 1941 Nomor 4*

Jayanti, O., & Darmawan, A. (2018). Pelaksanaan Lelang Tanah Jaminan yang Terikat Hak Tanggungan. *Kanun Jurnal Ilmu Hukum*, *20*(3), 457-472.

Jumhana, M. (2012). *Hukum Perbankan di Indonesia*. Bandung: Penerbit Cipta Aditya.

Khalim, A. (2014). *Perbuatan Melawan Hukum dalam Gugatan Pelaksanaan Lelang di KPKNL*, 14 April 2014.

Marzuki, P. M. (2010). *Penelitian Hukum.* Jakarta: Kencana Prenada Media Grup.

Mertokusumo, S. (1996). *Penemuan Hukum Sebuah Pengantar*. Yogykarta: Penerbit Liberti.

Peraturan Menteri Keuangan Nomor 106/PMK.06/2013 tentang *Perubahan Atas Peraturan Menteri Keuangan Nomor 93/PMK/06/2010 tentang Petunjuk Pelaksanaan Lelang*

Peraturan Menteri Keuangan Nomor 158/PMK.06/2013 tentang *Pejabat Lelang Kelas I*

Peraturan Menteri Keuangan Nomor 159/PMK.06/2013 tentang *Pejabat Lelang Kelas II*

Peraturan Menteri Keuangan Nomor 160/PMK.06/2013 tentang *Balai Lelang.*

Reglement Buitengewesten (RBG Hukum Acara untuk Daerah Luar Jawa dan Madura) Stb. 1927 Nomor 227

Salim, H.S. (2004). *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak.* Jakarta: Sinar Grafika.

Sianturi, P. T. (2013). *Perlindungan Hukum Terhadap Pembeli BarangJaminan Tidak Bergerak Melalui Lelang.* Bandung: CV. Mandar Maju.

Sudjana, S. (2019). Pembatasan Perlindungan Kekayaan Intelektual (Hak Cipta) dalam Perspektif Hak Asasi Manusia. *Jurnal HAM*, *10*(1), 69-83.

Sutedi, A. (2012). *Hukum Hak Tanggungan*, Cetakan Kedua. Jakarta: Penerbit Sinar Grafika.

Undang-undang Nomor 10 Tahun 1998 tentang *Perubahan Atas Undang-undang Nomor 7 Tahun 1992 tentang Perbankan* (Lembaran Negara Republik Indonesia Tahun 1998 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 3790)

Undang-undang Nomor 4 Tahun 1996 tentang *Hak Tanggungan Atas Tanah Beserta Benda-benda Yang Berkaitan dengan Tanah* (Lembaran Negara Republik Indonesia Tahun 1996 Nomor 42, Tambahan Lembaran Negara Republik Indonesia Nomor 3632)

Vendu Instructie (Instruksi Lelang Stbl. 1908 Nomor 190)

Vendu Reglement (Peraturan Lelang Stbl. 1908 Nomor 189)

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RESEARCH ARTICLE

STATE AUTHORITY IN APPOINTING ASN: COMPARISON OF ISSUES BETWEEN KPK EMPLOYEES AND HONORARY TEACHERS

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ABSTRACT

Government Regulation No. 41 of 2020 on the Transfer of Employees of the Corruption Eradication Commission into Civil Servants unilaterally makes KPK employees as ASN. In fact, not all KPK employees are willing to be ASN and there is public rejection of the policy. On the other hand, there are honorary teacher want to be appointed as ASN. Until now there is no certainty of transfer of honorary teacher status to ASN. Although there has been policy related to the appointment of honorary teachers to become ASN, but the policy is different from the policy transferring status of KPK employees to ASN. This study aims to find the motives of the state to transferring KPK employee status into ASN and find policy differences in the appointment of ASN between KPK employees and honorary teachers. This research showed that the transfer of KPK employee status to ASN has pros and cons motives. The pro motive is that the transfer of KPK employee status to ASN aims to have (1) KPK employees well coordinated; and (2) the need for ASN support to KPK as part of KPK strengthening. The counter motive sees the transfer of KPK employee status to ASN as an effort to control KPK and strengthen the independence of KPK employees or

weaken KPK. Meanwhile, ASN appointment policy inequality between KPK employees and honorary teachers has not been in accordance with the principles of equality right and economic equality.

Keywords: *State Authorities; ASN; KPK; Honorary Teacher*

INTRODUCTION

Appointment of the State Civil Administration (ASN) is basically the domain or power of the state. Countries can appoint ASN according to their needs, at any time, and in institutions, as well as in any profession. The withdrawal of state power in the appointment of ASN sometimes creates imbalances. It is not surprising that state power through state policy in the appointment of ASN cause pros and cons. The state policy in appointing ASN or changing the status of an employee of the Corruption Eradication Commission (KPK) to ASN can rationally be said to be inequality. The inequality at least be seen from the issues circulating in the public. The State through the government with existing legal instruments will transfer the status of KPK employees to ASN.

Government Regulation No. 41 of 2020 on Transfer of Corruption Eradication Commission Employees to State Civil Administration Employees unilaterally makes KPK employees as ASN. In fact, at the issue level, there are KPK employees who are not willing to be made ASN. Many people have refused to change the status of KPK employees to ASN. Interestingly, the response of the government stated that KPK employees who were not willing to become civil servants could resign. This position clearly indicates the government's domination of KPK employees and the public who reject it. The state in this case shows its power in the appointment of ASN. It seems that the state does not care about public issues related to the refusal of KPK employees to become ASN. Furthermore, the state seems to impose it will transfer the status of KPK employees to ASN (Harianja, 2020; Ricardo, 2019).

On the other hand, there are other professions that want to be appointed as ASN. Honorary teachers or non-permanent teachers (*Guru Tidak Tetap,* GTT) or other names, based on issues circulating in the public space, want to be appointed as civil servants. The reasons are very diverse, one of the reasons is wanting an increase in welfare. However, the fact is that until now there is no certainty about the transfer of the status of honorary teachers to ASN. The certainty referred to is certainty as occurs in the transfer of the status of KPK employees. Although there have been policies related to the appointment of honorary teachers to become ASN teachers. However, this policy is different from the policy regarding the transfer of the status of KPK employees to ASN. In this

context, based on the issue , there is an imbalance in the appointment or transfer of status as ASN (Hikam, 2020; Liputan6.com, 2021).

The imbalance is that there are pros and cons in changing the status of KPK employees to ASN, but the state still insists on the transfer of status to ASN. On the other hand, many honorary teachers want an appointment or transfer of status as ASN, the state in this case has not provided policies such as KPK employees. There is a policy for the appointment of teachers through government employees with a work agreement or PPPK. This imbalance raises a big question. What is the state's motive in changing the status of KPK employees to ASN? Why is the state policy in the appointment of ASN between KPK employees and honorary teachers different? This research aims to find the state's motives for transferring the status of KPK employees to ASN and to find differences in the policy of appointing ASN between KPK employees and honorary teachers.

METHOD

This research uses a qualitative research approach. A qualitative research approach is research conducted by photographing social phenomena in society and then narrating it by analyzing and drawing conclusions. This study portrays a phenomenon that occurs in society, which is related to the appointment or transfer of the status of KPK employees to ASN. The researcher also analysing the issue of honorary teachers' desire to be appointed as civil servants. Researchers then compared both with the comparison treatment by the state. The results of photographing social phenomena and the results of these comparisons then drawn to conclusions in response to big questions written by researchers (Hardani et al., 2020).

This type of research conducted by researchers used a type of doctrinal research with a normative juridical type. This type of juridical normative research is conducting studies related to legal products or legislation and then analyzed using theory and various literature sources (Sonata, 2014). This study analyzes the laws and regulations related to the transfer of the status of KPK employees to ASN. This study also analyzes regulations or legal foundations in the form of laws and regulations relating to the appointment of honorary teachers to become civil servants.

THE STATE'S MOTIVE IN CHANGING THE STATUS OF KPK EMPLOYEES TO ASN

Changing the status of KPK employees to ASN actually causes pros and cons in the public. The pros and cons of issues occurring in the media and social media. There are many wild allegations that have developed in the public

regarding the transfer of the status of KPK employees to ASN. One of the widely circulated public allegations that the transfer of status was none other than to weaken the KPK. The reason is also circulating, that the existence of KPK employees to become ASN will be easier to control by the state. This is because management of ASN under the Ministry of State Apparatus Utilization and Bureaucratic Reform (KemenPAN-RB) and National Civil Service Agency (BKN). Actually, there are two more institutions related to ASN, the State Civil Administration Commission (KASN) and the National Institute of Public Administration (LAN). However, the duties and functions of KASN are more to the supervision of ASN. Then the duties and functions of LAN are more to learning and development institutions for the state apparatus. The Ministry of PAN-RB and BKN are ministries and implementing agencies for policies related to ASN. These ministries and institutions are agencies/institutions under the government. It is not surprising that many KPK employees eventually chose to resign because they did not want to become ASN (Dialeksis, 2020; Risalah, 2020).

The attitude of the state towards the issue of pros and cons, especially the contra of transferring the status of KPK employees to ASN, is still at the normative level. The state, through the government, has the opinion that the KPK is an executive so that it needs to be supported by ASN. In addition, the transfer as ASN is carried out so that it can be more integrated and coordinated so that it is not wild (Alfian, 2019; Kamil, 2021). The state's attitude that seems normative and has not answered the allegations of weakening the KPK certainly provides wilder speculations in public. Although the evidence related to the weakening of the Commission as a result of transferring the status of employees can be seen after the completion running in a few years. State responses that seem normative basically make the public even more wondering. What is the state's real motive for transferring the status of KPK employees to ASN? Is it true that only normative motive as has been mentioned? Or is there another motive that the state wants to aim for in relation to the transfer of the status of KPK employees to ASN?

This question is certainly difficult to answer because motives are actions that have not occurred or desires that have not yet been realized. But based on the outstanding issues and policies that have been issued by the state, at least a hint can be found associated with a pattern appointment employees of the Commission into ASN. In fact, there are two issues circulating regarding the transfer of KPK employees to ASN. The first issue is an issue that is pro towards the transfer of the status of KPK employees to ASN, while the second issue is a contra issue. The pro issue states that the transfer of the status of KPK employees to ASN is so that it can be well coordinated so that it is not illegal. In addition, the transfer of the status of KPK employees as ASN is also so that there is support for the KPK from ASN, remembering that the KPK is an executive. There is a contra issue that states is an attempt to control the KPK through transferring KPK employees to ASN. The next contra issue is the transfer of KPK employees to ASN

is nothing but to assert the independence of KPK employees. Even more, the transfer of the status of KPK employees to ASN is part of the weakening of the KPK (Alfian, 2019; Dialeksis, 2020; Kamil, 2021; Risalah, 2020).

Table 1. Motive Pros and Cons Based on Circulating Issues Regarding the Transfer of Status of KPK Employees to ASN

No.	Motive Pro	Motive Cons
1	KPK employees are well coordinated (not wild)	Controlling the KPK
2	The need for ASN support to the KPK	Negating the independence of KPK employees / weakening the KPK

Based on the pros and cons, it can be seen which motive is actually appropriate. Motives that are pro or motive that are contra to the transfer of the status of KPK employees as ASN. Of course, these two motives have several possibilities. Either both are true, it can be either wrong, or it can be both wrong. The researcher will test the pros and cons of the motives one by one. The researcher first examines the motives of the pro.

I. Pro motive for the transfer of KPK employee status to ASN

The motive for the pro-change of the status of the KPK to ASN, as mentioned earlier, has two motives. First, KPK employees are well coordinated. Second, the need for ASN support to the KPK. Researchers analyzed further related to the pro motive for the transfer of the status of KPK employees to ASN.

1) KPK Well Coordinated

This pro motive is a motive issued by the government as the executor of state power and also the policy maker, in this case the House of Representatives (DPR) and the President/Government. They are argued that KPK employees must be coordinated so as not to run wild. These opinions are actually in line with the policies issued by the state, in this case the government. Policies issued by the government through Government Regulation No. 41 of 2020, which implies strengthening the KPK through the word support in the preamble to consider is a goal.

The policy is real, but the intention of strengthening is an issue because there is no evidence that the transfer of the status of KPK employees to ASN strengthens the KPK. The same is true with regard to coordination. The purpose of the coordination conveyed by the government is certainly an issue because once again, there is no evidence that there is coordination due to the transfer of the status of KPK employees to ASN.

2) The Need for ASN Support to the KPK

This motive seems normative because it is stated in the preamble to consider Government Regulation No. 41 of 2020. This motive was motivated by the pretext that the KPK is part of a clump of branches of executive power. Article 1 paragraph (3) of Law (No) 19 of 2019 regarding the Second Amendment to Law (No) 30 of 2002 on Corruption Eradication Commission states that Corruption Eradication Commission is the agency states power executive who carry out the task of prevention and eradication of Criminal Corruption in accordance with the Act's. This provision is re-explained in Article 3 which states that the Corruption Eradication Commission is a state institution within the executive power carrying out its duties and powers is independent and free from the influence of any power. The consequence of this is KPK employee arrangements are adjusted to the executive branch of the institution or agency. Including the position or status of KPK employees.

In fact, the transfer of the status of KPK employees has been drafted in the regulations governing the KPK. Article 24 paragraph (2) of Law No 19 of 2019 on the Second Amendment to Law No 30 of 2002 on the Corruption Eradication Commission states that the Corruption Eradication Commission employees are members of the professional corps of civil servants of the Republic of Indonesia in accordance with the provisions of the regulation. This paragraph explicitly states that KPK employees are ASN. This means that KPK employees have indeed been designed to become civil servants. In Law No 19 of 2019 on the Second Amendment to Law No 30 of 2002 on the Corruption Eradication Commission, there is no mention of the reasons why KPK employees must have ASN status. There are two reasons implied in the law why KPK employees must be ASN.

First, in the preamble letter c of Law No 19 of 2019 regarding the Second Amendment to Law No 30 of 2002 on the Corruption Eradication Commission stated that the implementation of the tasks the Corruption Eradication Commission needs to be continuously improved through prevention and eradication strategy of criminal corruption that is comprehensive and synergistic without ignoring the respect of the right to basic human accordance with the provisions of regulation law. According this provision, it can be implicitly interpreted that the transfer of the status of KPK employees to ASN is part of the enhancement of the KPK's duties. Second, according at Article 1 number (3), Article 3, and Article 24 paragraph (2) in the law implicitly states that the KPK is an executive office so that KPK employees have the status of ASN.

Regulations related to KPK employees are Government Regulation No 41 of 2020 and Law No 19 of 2019 on the Second Amendment to Law Number 30 of 2002 on the Corruption Eradication Commission implicitly means that the transfer of the status of KPK employees to ASN is to support the performance of the KPK. However, the question is, has the KPK employees not been ASN status so far, the KPK's performance has not improved? The next question is, is there any

guarantee that the transfer of the status of KPK employees to ASN will definitely or automatically improve the KPK's performance? These questions will be answered over time. If after transfer the status of KPK employees to ASN, there is no increase in the performance of the KPK from the aspect of KPK employees, then the policy of transfer the status of KPK employees to ASN can be said have not been successful.

The pro motive analysis is the result of a study on the issue of the status transfer of KPK employees to ASN. This issue is derived from issues circulating in the public, especially the media. Apart from being based on issues, there is also an analysis from the aspect of legislation. The next motive is the contra motive related to the transfer of the status of KPK employees to ASN. Researchers also analyzed counter motives based on issues circulating in the public. The researcher analyzed two counter motives.

II. Counter motive for the transfer of KPK employee status to ASN

The motive against the transfer of the status of KPK employees to ASN is divided into two motives. First, controlling the KPK. Second, negating the independence of KPK employees or weakening the KPK. Researchers succeeded in analyzing the contra motive based on a comparative study with employees in state institutions with ASN status. The following are the results of the analysis conducted by the researcher.

1) Controlling the KPK

Many former KPK leaders, anti-corruption activists and non-governmental organizations have expressed this contra motive. This motif is a motif that differs from the first pro motif. The first pro motive states that the transfer of the status of KPK employees to ASN is to coordinate KPK employees so that they are not wild and in accordance with the regulation. The word coordination can be interpreted to actually strengthen or solidarity. The first pro motive seems to be refuted by the first contra motive. That the transfer of the status of KPK employees to ASN is not for strengthening coordination but rather for controlling the KPK. The rational reason for the opinion that there is a contra motive that changing the status of KPK employees to ASN will cause KPK employees to be controlled by the government. This is because ASN is an civil servant under government, in this case the Ministry of PAN-RB and BKN. It is not surprising that the counter motive argue that KPK employees who become ASN can be controlled by their superiors. This reason is rational because of the duties and functions of the PAN-RB and BKN Ministries. It does not rule out that the two agencies/institutions can control KPK employees who have ASN status. At

least by doing a rotation or a *tour of duty* and a *tour of area* (Akhmad, 2019; Radarcirebon.com, 2020).

However, the opinion related to KPK employees with ASN status can be controlled by the government is also not necessarily correct. This example can be seen in institutions / agencies that are not part of the executive power as the House of Representatives (DPR), the People's Consultative Assembly (MPR), the Regional Representative Council (DPD), the Constitutional Court (MK), the Supreme Court (MA), The Judicial Commission (KY), and the Supreme Audit Agency (BPK). These institutions have employees who come from ASN. These institutions have many ASN as their employees, and this has been happening for decades. But until now there is no statement that ASN who is an employee in these institutions controls the institution or the government controls the institution. Interestingly, the recruitment of ASN in these institutions continues and there are no problems related to institutional control.

It means that statements related to the transfer of the status of KPK employees to ASN can be controlled is a temporary perception or suspicion from the public. Evidence of the existence of the KPK being controlled is of course not available, until this article created. There has been no implementation of transferring the status of KPK employees to ASN and it has not been proven that the KPK is controlled. This clearly indicates that there has been a war on issues between pro motives and contra motives. The issue of coordination and the Commission controlled being played in public through statement and media. The public was asked to judge the issue related to the war. This condition actually benefit the public, because the public can see the direct and immediate evaluation of how role KPK employees after becoming ASN, coordinated or controlled.

The public can also prove directly whose issue is right. Evidence made by the public can be seen over time after a change in the status of a KPK employee to ASN. The public can prove the issue of coordination that is really happening or the issue of being controlled by the Corruption Eradication Commission (KPK). Here the public can draw conclusions about who is right and who is wrong. These circulating issues can also arouse public sensitivity to participate in the supervision of state institutions, especially in this case the KPK. Community involvement and obtaining evidence by the community can be used as material for bottom-up policy formulation.

2) Negating KPK employee independence or weakening the KPK

This motive is actually a motive that is very opposite to the pro motive in the second motive. The second pro motive states that the transfer of the status of KPK employees to ASN is part of the support. However, the opposing parties are the opposite, that the transfer of the status of KPK employees to ASN is part of the weakening of the KPK. This motive is clearly an issue from the community that is conveyed to the wider community. That there are efforts to weaken the KPK by transferring the status of KPK employees to ASN. Why is this an issue? Because

there is no evidence of weakening at the KPK. As mentioned earlier, many civil servants are employees of state institutions such as the DPR, MPR, DPD, MK, MA, KY, and BPK. However, there has been no statement or evidence that ASN who are employees of these state institutions have weakened their institutions.

Why is that? Because the weakening depends on the authority possessed by the institution. If there is a weakening of authority, then the institution will automatically weaken it. Meanwhile, those who exercise authority are members or leaders in the institution. In the DPR, MPR and DPD those who exercise the main authority are members of the DPR, MPR and DPD. In the Corruption Eradication Commission, the KPK leadership is exercising authority. The main decision maker is the KPK leadership. So, weakening in the KPK can occur if there is a weakening of the authority of the KPK leadership. This means that the weakening of the KPK that was expressed by the public regarding the transfer of the status of KPK employees to ASN until now can be said to be still an issue.

POLICY DIFFERENCES IN THE APPOINTMENT OF ASN BETWEEN KPK EMPLOYEES AND HONORARY TEACHERS

Transferring status of KPK employees to ASN, of course, there are various kinds of motives from the state. But what is certain is that the appointment or transfer of status has a legal regulation is Government Regulation No 41 of 2020. This means that it is certain that many KPK employees will change their status as ASN. This condition is different from the appointment of honorary teachers. Until now, there has been no similar policy regarding the appointment or transfer of honorary teacher status to ASN. The fate of honorary teachers to become ASN with schemes such as KPK employees is not certain. Honorary teachers who want to become ASN can follow the recruitment scheme for Civil Servant Candidates (CPNS) as in general. Indeed, there are issues and policies related to the appointment of honorary teachers to become government employees with a work agreement (PPPK). As for the policies that are like those of the KPK employees, it seems that until now there has not been any (Hikam, 2020).

The policy for the appointment of honorary teachers as PPPK is contained in:

1) Law Number 5 of 2014 on State Civil Administration ;
2) Government Regulation Number 49 of 2018 on Government Employee with Work Agreements Management;
3) Presidential Regulation Number 38 of 2020 on Types of Positions Can Fill by Government Employees with a Work Agreement;
4) Presidential Regulation Number 98 of 2020 on Salary and Allowances for Government Employees with a Work Agreement; and

5) Regulation of the National Civil Service Agency Number 1 of 2019 on Technical Guidelines for the Procurement of Government Employees with a Work Agreement.

These policies are the legal basis for the appointment of PPPK. Indeed PPPK is part of ASN in accordance with Law Number 5 of 2014 on State Civil Administration or the ASN Law. Article 1 point (1) of the ASN Law states that the State Civil Administration is a profession for civil servants and government employees with a work agreement who works for government agencies. This means that there are two types of ASN there are Civil Servants (PNS) and Government Employees with Work Agreements (PPPK). Regarding PPPK, Article 2 paragraph (1) of Government Regulation Number 49 of 2018 on Government Employee with a Work Agreement Management states that the ASN Position that can be filled by PPPK includes: (1) JF; and (2) JPT.

JF according to Article 1 number (8) Government Regulation No. 49 of 2018 is the position of Functional is a group of office which contains the function and tasks associated with the service function based on the expertise and skills specific. JPT in Article 1 number (6) Government Regulation No. 49 of 2018 is a High Leadership Position is a group of high positions in government agencies. Then where are the teacher positions that can be filled by honorary teachers? Article 4 Presidential Regulation Number 38 of 2020 on Types of Positions Can Filled by Government Employees with a Work Agreement or Presidential Regulation No. 38 of 2020 states that the JF Criteria that can be filled by PPPK are as follows:

a. Positions that competence is not available or limited in the civil service;
b. Positions are needed to accelerate the increase in the capacity of the organization;
c. Positions are needed to accelerate the achievement of objectives of strategic national;
d. Positions that require certification of technical of organization of the profession;
e. not the position in the field of secret state, defense, security, management apparatus of the state, secretarial country, management of source power of nature, the management of the financial state, and relationships outside of the country; and
f. not the position which according to the provisions of law, rule government and regulation of president shall be filled by civil servants.

Then in the attachment to Presidential Regulation No. 38 of 2020, which contains a list of functional positions that can be filled in by government employees with a work agreement, one of which is a teacher. This means that teachers in this case are included in a Functional Position or JF and can become PPPK. The policy or legal basis regulates the appointment of honorary teachers to become ASN with the type of PPPK. Regarding the appointment of honorary teachers to civil servants with the type of civil servants, it seems that

they have to follow the CPNS selection with certain requirements. This condition is different from the policy of changing the status of KPK employees to ASN. KPK employees who become ASN are civil servants. If he is not willing to become a civil servant to become a PPPK if he meets the requirements. This is stated in the Corruption Eradication Commission Regulation Number 1 of 2021 on Procedures for Transferring Corruption Eradication Commission Employees to State Civil Service Employees, hereinafter referred to as Commission Regulation No. 1 of 2021.

Article 5 paragraph (6) Commission Regulation No. 1 of 2021 states that Corruption Eradication Commission employees who are not willing to become civil servants as referred to in paragraph (2) letter a can change to become PPPK with positions adjusted to the provisions of laws and regulations. Article 16 states that Corruption Eradication Commission employees who are not willing to become civil servants as referred to in Article 5 paragraph (6) are transferred to PPPK after fulfilling the requirements of Article 5 paragraph (2) letters b to f with Structural Position, Functional Position or Executive Position as stated in Attachments II to V which constitute an inseparable part of this Commission Regulation.

This policy is certainly different from the appointment of honorary teachers as PPPK. The transfer of the status of a KPK employee can become a PNS or PPPK. As for the appointment of honorary teachers to become PPPK. If honorary teachers want to become civil servants, they can participate in the CPNS selection. In this condition, of course there are differences in policies in the appointment of ASN between KPK employees and honorary teachers? It seems that it is easier for KPK employees to change their status to become ASN in the PNS or PPPK types, while honorary teachers become PPPK. The question is what causes these differences in policies? Are KPK employees more privileged and have a service to the state? So that it seems special related to the status change to ASN, especially PNS? Are not honorary teachers also contributed to the state, especially in realizing one of the goals of the Indonesian state to intellectual life of the nation?

The state through the government should provide an explanation to the public regarding these policy differences. The government must provide rational reasons why the fate of honorary teachers is not the same as KPK employees who are converted to ASN with two choices of PNS or PPPK. What are the factors that cause honorary teachers not to have the same foundation as the Corruption Eradication Commission in the appointment of ASN? Is it the budget factor, formation factor, or there are other factors. The government must explain clearly to public so that it is known to the wider community, especially honorary teachers. The public is of course waiting for reasons from the government to issue a different policy related to changing the status of employees to ASN. Do not let the state appear to discriminate against various professions. The attitude of discrimination is certainly contrary to the 5th Precept of the Pancasila is Social

Justice for All Indonesians. If the state discriminates against various professions, it will undermine the order of the nation and state.

The difference in policy analysis uses the political theory of law and the theory of justice. The political theory of law is basically a legal policy issued by the state in order to realize the goals of the state. The objectives of the state as set out in the Preamble the 1945 Constitution, there are four of them, namely (1) protecting the entire Indonesian nation and all Indonesian bloodshed; (2) promote public welfare; (3) educating the nation's life; and (4) participate in implementing world order (Mahfud MD, 2009). So, the legal politics related to the policy of transferring the status of KPK employees to ASN and the policy of appointing honorary teachers to ASN are policies issued by the state in order to realize the state's goals. The question is what is the purpose of the policy? Have the policies related to the transfer of the status of KPK employees to ASN and the policy of appointing honorary teachers to ASN have led to realizing the goals of the country in accordance with the Preamble 1945 Constitution?

Here, it shows that there are questions related to the policy of changing the status of KPK employees to ASN and the policy of hiring honorary teachers to ASN in terms of legal politics. The state through the government must provide an explanation regarding the policies issued, especially the explanation based on the objectives of the country. This is so that there are no questions in the public space and the policy can get a positive response in the wider community.

Then the policy of changing the status of KPK employees to ASN and the policy of appointing honorary teachers to ASN is seen from the theory of justice. One of the theories of justice is the theory of justice from John Rawls. John Rawls argues that in the theory of justice, there are three important things, there are (1) social contract; (2) fairness*;* and (3) economic and social. First, the social contract is related to the agreement of the parties. Justice in the view of John Rawls is difficult to achieve if there is no agreement. The social contract aims to realize the agreement by accommodating all the interests involved in the social contract. The social contract provides guarantees for the parties who make an agreement based on reason and mind or morals. Second, fairness in this case has a contractual nature. Fairness can be realized by the existence of rationality, freedom and democracy. Third, economic and social. Justice must also be seen from an economic and social perspective. Economic and social causes injustice. Therefore, it is necessary to realize economic and social justice in order to realize true justice. Then John Rawls also provides principles in justice. There are two principles that must be realized in justice. First, Equal Right which relates to human rights or the existence of equal rights. Justice can be realized by prioritizing human rights and equal rights. Second, Economic Equality which provides the principle that justice can be realized if there is economic equality. Human rights or equality of rights must be realized together with economic equality (Anggara, 2013; Dwisvimiar, 2011).

The question is whether the policy of training the status of KPK employees to become ASN and the policy of appointing honorary teachers to become ASN reflects justice based on justice according to John Rawls. If measured from the two principles of justice according to John Rawls are equality right and economic equality, the policy of transferring the status of KPK employees to ASN and the policy of appointing honorary teachers to ASN can be said to have not fulfilled equality right and economic equality. This is because in terms of equality rights, a policy transfer into the ASN Commission employee status and teacher hiring policy honorary be ASN has not equally happen equality. Should, if it is said to be equality right, then the policy of changing the status of KPK employees to ASN and the policy of appointing honorary teachers to ASN are carried out with the same policy based on equal rights. Then related to economic equality is also different. The policy of changing the status of KPK employees to ASN has higher economic rights when compared to the policy of hiring honorary teachers to become ASN. This is because of the policy of changing the status of KPK employees to ASN, KPK employees can choose to become PNS or PPPK. As for the policy of appointing honorary teachers to become civil servants, honorary teachers can only become PPPK. If an honorary teacher is going to become a civil servant, then it must follow the general civil servant appointment policy.

CONCLUSION

Changing the status of KPK employees to ASN in the level of issues in the public can be classified into two motives. The first is the motive that is pro towards the transfer of the status of KPK employees to ASN. The two motives were contradictory to the transfer of the status of KPK employees to ASN. The pro motive argued that changing the status of KPK employees to ASN is nothing but so that (1) KPK employees are well coordinated (not wild); and (2) the need for ASN support to the KPK and as part of strengthening the KPK. The motives that contra see the transfer of the status of KPK employees to ASN are (1) controlling the KPK; and negating the independence of KPK employees or weakening the KPK. The motive is displayed in the public space as an issue. But what is certain is the policy of changing the status of KPK employees to ASN. This condition is different from the policy for the appointment of honorary teachers as civil servants. Honorary teachers can be appointed as ASN with the status as PPPK. Meanwhile, KPK employees can choose to become ASN as PNS or PPPK. This policy difference, if analyzed based on legal political theory, certainly raises questions. Then when viewed from the theory of justice according to John Rawls, the policy of changing the status of KPK employees to ASN and the policy of appointing honorary teachers to ASN are not in accordance with the principles of equality right and economic equality.

REFERENCES

Akhmad, HT (2019). *The Status of KPK Employees Becomes ASN, This Is Said Menpan-RB* . Okezone.Com. https://nasional.okezone.com/read/2019/09/17/337/2106004/status-pegawai-kpk-jadi-asn-ini-kata-menpan-rb

Alfian, A. (2019). *KPK Employee Becomes ASN, Wiranto: He is not a illegal organization* . Rmol.Id. https://politik.rmol.id/read/2019/09/20/403548/pegawai-kpk-jadi-asn-wiranto-dia-bukan- Organizations-liar

Anggara, S. (2013). John Rawls's Theory of Justice: A Critique of Liberal Democracy. *JISPO*, *1*, 1–11.

Dialectical. (2020). *Transfer of KPK Employees to ASN, Laode Syarif: Affirms the Form of Weakening* . Dialeksis.Com. https://dialeksis.com/Nasional/pengalih-pegawai-kpk-jadi-asn-laode-syarif-pertegas-bentuk-pelemahan/

Dwisvimiar, I. (2011). Justice in the Perspective of Legal Philosophy. *Journal of Legal Dynamics*, *11* (3), 522–531.

Hardani, Auliya, NH, Andriani, H., Fardani, RA, Ustiawaty, J., Utami, EF, Sukmana, DJ, & Istiqomah, RR (2020). *Book of Qualitative & Quantitative Research Methods (March Issue*). Science Library.

Harianja, AJ (2020). *KPK Employees Become ASN, ICW: Corruption Case Handling Will Be Disturbed*. Idntimes.Com. https://www.idntimes.com/news/indonesia/axel-harianja/pegawai-kpk-jadi-asn-icw-panganan-perkara-korupsi-akan-terganggu/1

Hikam, HA Al. (2020). *Starting from next year, teachers can only become PPPKs, not civil servants*. Detik Finance. https://finance.detik.com/berita-ekonomi-bisnis/d-5313514/mulai-tahun-depan-guru-cuma-bisa-jadi-pppk-bukan-pns

Kamil, I. (2021). *PAN-RB Ministry Supports KPK in Strengthening Functional Position* . Kompas.Com. https://nasional.kompas.com/read/2021/02/12/11414871/kementerian-pan-rb-dukung-kpk-dalam-penguatan-jabat-functional?page=all

Liputan6.com. (2021). *Honorary Teachers Ask to Be Appointed as Civil Servants without*. Liputan6.Com. https://www.liputan6.com/bisnis/read/4456189/guru-honorer-minta-diangkat-jadi-pns-tanpa-sertifikasi

Mahfud MD, M. (2009). *Political Law in Indonesia*. Rajagrafindo Persada.

Minutes, DF (2020). *Abraham Samad Reveals Three Consequences*. Republika.Co.Id. https://republika.co.id/berita/qestyn430/abraham-samad- disclosed-tiga- consequences-employees-kpk-so-asn

Radarcirebon.com. (2020). *IPW Encourages the Status of KPK Employees to Become ASN*. Radarcirebon.Com. https://www.radarcirebon.com/2020/08/08/ipw-dorong-agar-status-pegawai-kpk-menjadi-asn/

Ricardo, R. (2019). *Menpan RB: If You Don't Want to Be ASN, KPK Employees Please Resign*. Ceknricek.Com. https://ceknricek.com/a/menpan-rb-jika-tak-ingin-jadi-asn-pegawai-kpk-silakan-mundur/13276

Sonata, DL (2014). Normative and Empirical Legal Research Methods: Typical Characteristics of Legal Research Methods. *Fiat Justisia Journal of Legal Studie* , *8* (1), 15–35.

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RESEARCH ARTICLE

INDONESIAN ANTI-CORRUPTION LAW ENFORCEMENT: CURRENT PROBLEMS AND CHALLENGES

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ABSTRACT

Corruption needs to be prevented and tackled not only because of its foul, but also economically cause financial losses to the state and is a violation of the rights of the social and economic community. This research is intended to analyze the law enforcement on some corruption cases in Indonesia. The results showed that the number of corruptions is still increase caused by factors such as lack of understanding of the law enforcement officers on duties and responsibilities, lack of morality of apparatus, as well as the lack of a functioning supervisory institutions. In completing a corruption case, should be implemented sincerely, careful meticulous in making the concept of charges and match with the formulation of the offense and the principles of the criminal before the case was transferred to the court. It should also improve the quality and improve the mental attitude of law enforcement officers.

Keywords: *Anti-Corruption; Corruption Eradication; Law Enforcement*

INTRODUCTION

Corruption in Indonesia has entered into an acute area or it can be said that it is at a very nadir point. Corruption is not only carried out jointly but has been carried out systemically by the parties in the hope of enriching themselves and others. The corruption cases are a form of resistance to the law committed by a part of the community or a small number of certain members of society who take refuge behind power or authority for their personal interests by harming state finances.

The powerlessness of law enforcement officers in this case makesit is increasingly clear that corruption must be stopped immediately. Restoring trust in law enforcement officers must be carried out immediately. A strong sense of desire for law enforcers must be stimulated.

The existence of this extraordinary corruption certainly hinders the sustainability of development in Indonesia. Corruption as an extraordinary crime behavior threatens the ideals of the state which requires a more serious legal action, how corruption has hit Indonesian society everywhere and has entered all circles, as if there is no fear, shame, or sin for them. who commits a criminal act of corruptions.

To combat the corruption crime is very necessarylaw enforcers who are concerned with eradicating it. Therefore, based on the mandate of Law No. 30 of 2002, the Corruption Eradication Commission (KPK) is expected to be able to eradicate the criminal act of corruption, therefore there is a need for strengthening to carry out its duties not to weaken or criminalize the role and function of the KPK.

In the order of life as a state, the law regulates and is needed in almost all aspects of the behavior of social life. This is because the law, among other things, comes from the will of community behavior. Various problems that occur in society and in state life such as in Indonesia, should be related to the existence of law. Basically, because Indonesia is a country based on law (*rechts-staaat*) and not a country based on power (*machtstaat*) alone. When a case occurs involving the social, cultural, economic, education, religion, and political dimensions, it is inevitable that the existence of law is questioned and even sued by the community. In Indonesia, the criminal act of corruption, which is detrimental to state finances and can torment the people, is carried out by means of the modus operandi of enriching oneself or others by abusing one's position on the trust of the state that has lasted since the state was founded.

The state often faces financial crises, is also heavily indebted, to international financial institutions, state losses as a result of heinous acts of corruption that never compromise the state's money.

Indeed, the issue of corruption has become an inseparable part of history from the journey of the Indonesian nation in filling the era of the proclamation of independence. The erosion of state finances for the benefit of certain individuals

or groups has occurred since Indonesia was proclaimed a sovereign state. Incidents of corruption seem to have become part of a deviant cultural behavior in many government and state bureaucratic institutions, as well as detrimental to the state and a sense of welfare justice for the people.

As a state based on law (*rechtstaat*), the Indonesian people need just legal protection, so that the people feel prosperity and prosperity, which is part of the goals and interests of humans who live in society, nation and state. According to Thomas Aquinas, the law which is based on *iustum* (justice), is an absolute product of reason. Regarding justice, Aquinas differentiates into three categories: (i). Distributive justice (distributive justice) which refers to the principle that the same is given equally, to those who are not given the same who are not. This is called geometric equality. (ii). *Iustitia commutativa* (commutative justice or exchange), refers to justice based on arithmetic principles, namely adjustments that must be made in the event of an act that is not in accordance with the law. (iii). *Iustitia legalis* (legal justice), which refers to obedience to the law.

Corruption in Indonesia is not committed by the public in the middle and lower level, but it is carried out by the middle to upper class society or it can even be said by people who are already overweight and highly educated. The question is why do they want to do this? Behaviors and lifestyles cannot be avoided but what is there is how to maintain the continuity of these behaviors and lifestyles so that they always run without stopping.

Committing the corruption crime, is now using a different format from the corruption crime in the past. Now this is done neatly by formatting from upstream to downstream and involving all parties, the government, in this case the technical ministry, the DPR as the supervisor and budget approver, the company that runs the project also has a very strategic role to regulate project activities so that the desire to win and run the project without getting hindered.

Currently, the misappropriation of state funds is carried out by State officials and those who are not state officials continue to increase even though the reform era has rolled out. Corruption, both at present and in the future data, remains a serious threat that can endanger the life of the nation and state, so that corruption should be an extraordinary crime.

Within the framework and scope of the reforms that have taken place in this country, people are increasingly made aware of the important role of law as a means of protection (social defense) in regulating the life of society, nation, and state in various aspects of life such as politics and economics. The role of law as a protector is reflected in neglecting the function of law as a means of social control, social change (social engineering) and law as a means of integration. For the Indonesian nation constitutionally, law functions as a means of upholding a democratic life, upholding a socially just life and upholding a humane life (Budiharjo, 2001; Pond, 1996).

The public's guidance to eradicate corruption is a reflection of the problem of law enforcement in this country, because corruption is a form of illegal act that harms the state and society. Corruption that occurs everywhere is an indication of the weakness of the legal function as a means of control, a means of change and an integrated means.

Hard efforts to eradicate corruption, collusion and nepotism (KKN) both in the fields of general government and development have not been followed by real and serious steps by the government, including law enforcement officials in implementing the State of Indonesia highly upholds legal protection for every citizens so that strength is needed over the facilities and infrastructure needed to support development in the legal field. In an effort to achieve the success of development in the field of law, it is necessary to support the improvement of facilities and infrastructure as well as an increase in the empowerment of the law enforcement apparatus, the strengthening, position and role of law enforcement agencies which are directly related to the law enforcement process.

Therefore, development planning must also include planning for community protection against law violations. The Indonesian nation is currently hit by a crisis of confidence in every segment of the life of the nation and state in the social, political, economic, trade, financial and industrial fields. A crisis of confidence occurs in economic institutions, government institutions, including the executive, judiciary and legislative bodies, financial institutions, banks and non-banks as well as party institutions, this is because a good, clean and free government from corruption has not been created.

Poerwadarminta states that corruption is a bad act such as embezzlement of money, receipts, bribes and so on. Syed Husein Alatas as quoted by Martiman Prodjoamidjojo explained that four types of corruption in practice have the characteristics of (1) always involving more than one person, (2) generally carried out in full secrecy, (3) involving elements of obligation and mutual benefit, and (4) with various kinds of reason protect behind the legal justification.

The material formulation of Law Number 31 of 1999 concerning Eradication of Corruption is carried out as a preventive effort to anticipate criminal acts of corruption which are increasingly difficult to prevent and eradicate. For cases of corruption that are difficult to prove, according to the provisions of Article 27 of Law Number 31 of 1999, the regulation allows for a Joint Team to be formed coordinated by the Attorney General which has the task and authority to investigate and prosecute corruption crimes. However, based on the judicial review submitted to the Supreme Court, this authority is no longer the authorization of the Attorney General.

Currently there is a Corruption Eradication Commission which has very broad duties and powers to investigate and prosecute acts of corruption, however, in theoretical and practical discourse, these laws and regulations have a function as an instrument (tool/means) in law enforcement efforts. This shows

that the tools/means or instruments to prevent, cope with, and take action against perpetrators of criminal acts of corruption are available. The urge to eradicate corruption has echoed, but in reality, the resolution of criminal acts of corruption, especially those that have attracted public attention, has had unsatisfactory results. The performance of the prosecutor's office in enforcing the law on corruption is considered by the public to be not optimal and maximized as demanded by the community. Based on these, the criminal law rules contain rules that determine the actions that cannot be carried out accompanied by threats in the form of punishment (sorrow) and determine the conditions for which the punishment can be imposed. The public nature of criminal law has a consequence that the criminal law is national in nature. Thus, Indonesian criminal law is enforced throughout the territory of the Indonesian state.

Whereas the material of criminal law which is full of humanitarian values results in criminal law often being described as a double-edged sword. On the one hand, criminal law aims to uphold human values, but on the other hand, criminal law enforcement actually imposes sanctions on misery for humans who violate it.

METHOD

Whereas this research method is carried out with two approaches, namely the normative juridical approach and the sociological juridical approach or socio legal research (non-doctrinal), to evaluate the relationship between normative and empirical aspects, to study/research (a combination) between normative juridical and sociological juridical. Type of this research is descriptive analysis in order to provide an overview of real facts accompanied by accurate analysis of laws and regulations that can be used as material for analysis or analysis related to the authorities and functions of the Police, Attorney General's Office and the Corruption Eradication Commission (KPK).

CORRUPTION CRIME: THE GROWTH OF CRIMES

Law, as a set of regulations (orders and prohibitions) that govern the order of a society, must be obeyed by all communities involved in the life of society, nation and state. In the law, there are prohibitions or orders that guide every person or legal subject to carry them out. Obedience is the main standard that will determine the image of the law in society, including for the implementer and for the law enforcer itself. Thus, the law will continue to maintain order in human relations where they are, so that security and order are maintained, in accordance with the objectives. very essential law, namely justice.

Law is directed entirely as a means to support development. Whereas what should have been development was only a means of enhancing human dignity. So, it is clear that by law we will create or make welfare for the community. Laws are made by the state and are not merely toolssocial engineering, but more than that, namely upholding justice and protecting human dignity. Not a few human rights have been entrusted to the law to be guarded or protected, because without any protection from this law, there will be many actions that have the character of being violated.

If a country has positioned itself as a rule of law (*rechtsstaat*), then the consequence is that the product of legislation becomes the benchmark for rule of game in the middle of people's lives, where the content of the norms in it will mention about prohibitions, orders, compliance and binding sanctions. This means that make the law a commander who cannot be defeated by any situation and condition.

If the law is abandoned, not only will its image fall and be tarnished, but its future will also be bleak and lose its credibility. Reference to this law is not intended to fulfill the needs of the authorities in behaving but is related to the macro interests of the life of the nation and the state, short and long term interests, including normative interests in associating with the international community which has entered the era of globalization.

If, the state issues laws and regulations, for example, related to "prevention and eradication of corruption crimes", as a form of legal product, of course the problems that should be considered or anticipated are not only short-term problems, but also related to welfare, as well as safeguarding state assets in a period of time. relatively long term. The law contains norms for protecting the interests of the people such as justice, freedom of choice, fair treatment, humane treatment, the right to welfare and decent work, including those with law enforcement. If the organizer of power implements the duties outlined by this law according to the will of the law,

It is the duty of the rulers to supervise that people must carry out their work in a position that is attained in accordance with their abilities, including in carrying out, enforcing legal problems as a regulatory system. The formulation of the definition of corruption can contribute to positive legal formulation, which illustrates that corruption Regarding moral aspects, bad character and condition, abuse of position in government apparatus institutions, abuse of power due to giving, economic and political factors as well as the placement of families, groups or groups into the service under office power, are part of the modus operandi of the criminal act of corruption.

According to Baharuddin Lopa, there are eleven causes of corruption, namely:

1) Moral depravity;
2) Weaknesses of the system;
3) Vulnerability of socio-economic conditions;

4) Indecisiveness in law enforcement;
5) the frequency of officials requesting donations from entrepreneurs;
6) Extortion;
7) Lack of understanding of the criminal act of corruption;
8) Government implementation and development that is completely closed;
9) There is still need to improve the control mechanism by the DPR;
10) The existing legislation is still weak; and
11. Combination of a number of factors (causes) (Lopa, 1997).

Efforts to eradicate corruption are influenced by the weak commitment of the power holders or the government and political elites to seriously fight corruption. Rule of law positively structured well to govern the whole country". A less comprehensive strategy to eradicate corruption, namely paying more attention to repressive actions, has also influenced it. Moreover, if the repressive actions taken are half-hearted, it will certainly not be effective in fighting corruption. Repressive actions that are firm and consistent need to be accompanied by preventive measures, improve the government management system, increase supervision, improve public service standards, transparency and openness of government administration, and public accountability as part of the development of good governance.

She every implementation of his duties in the government apparatus which is corrupt is marked by acts of bribery, extortion, nepotism and embezzlement. So that the eradication of criminal acts of corruption needs to be carried out with strong political will by the power holders through strong legal instruments, as well as to provide answers that the law has an interest in the rights and obligations of the legal community.

From a philosophical point of view, according to Roscoue Pound, the benefits of the classification of legal interests are (1) law as an instrument of social interest, (2) helping to make ambiguous premises clear, and (3) making legislators (legislators) become be aware of the principles and values involved in each specific issue. Law as protection of human interests is different from other norms. Because the law contains orders and / or prohibitions, and divides rights and obligations.

In terms of appreciating legal interests, it will produce conceptual legal products for legal interests that are related to the objectives of the law that are formally realized and are a concrete form of legal function.

Sudikno Mertokusumo, regarding the objectives and functions of law emphasized that: "in function as protection of the interests of human law has a goal to be achieved. The main purpose of law is to create an orderly social order, to create order and balance, by achieving order in society, it is hoped that human interests will be protected" (Mertokusumo, 1999).

In achieving this goal, the law has the duty to divide rights and obligations among individuals in society to divide authority and regulate how to solve legal problems and maintain legal certainty. An orderly society is an orderly behavior

and obeys the various laws and regulations that live and develop in society. Orderliness is a condition in which people live in an orderly manner, which means the balance of a state of society, which has the same rights and obligations without discrimination. The main legal duties are:

1) dividing rights and obligations among individuals in society;
2) share authority;
3) regulate how to solve legal problems; and
4) maintain legal certainty;

For solving the collapse of the law in eradicating criminal acts of corruption, it is necessary to have a concept of a legal product in the form of statutory regulations as needed. Activities of institutions that have the authority can take a legal system approach in order to make efforts and actions to eradicate corruption crimes.

Law is directed entirely as a means to support development. Whereas what should have been development was only a means of enhancing human dignity. So, it is clear that by law we will create or make welfare for the community. But how will prosperity be realized through development in all sectors because the law is violated by the perpetrators of corruption.

Development (order/system) of law in essence builds the entire system of national life, in essence, "law" is indeed a part (subsystem). from the socio-philosophical, socio-political, socio-economic, and socio-cultural systems. However, after the legal system/order that starts from socio-philosophical, socio-political, socio-economic and socio-cultural values is structured or formed democratically, the entire national life order in the social, political, economic, cultural and so on. it is stated in the legal system/order. So, the legal system that is formed/compiled basically means "the system of order (norms and values) of national life in the political, social, economic, cultural, and so on."

Among the three components of the legal system, the substance component gives birth to legislation regulating the authority of law enforcement institutions in eradicating corruption crimes, as well as a positive (formal) legal basis that provides formulations on corruption, legal actions, and legal sanctions against perpetrators of corruption. On the formulation of the criminal act of corruption, the state can carry out legal processes and efforts against perpetrators of criminal acts of corruption.

LAW ENFORCEMENT IN CORRUPTION CASES IN INDONESIA

Challenges in the dynamics of legal events that occur, especially in Indonesia, are challenges for the state in its position as a rule of law. Conceptual dynamism, application and enforcement of the law are elements of the legal system that are

continuously addressed, in order to create a legal position in a state of law and benefit the interests of society, nation and state.

there is a law that is responsive, the validity of the law is based on substantive justice and rules are subject to principles, and wisdom. Discretion is implemented in order to achieve goals. Coercion is more visible in the form of positive alternatives such as positive incentives or a system of independent obligations. The morality that appears is the "morality of cooperation", while legal and political aspirations are in a unified state. Injustice is assessed in terms of size and substantive losses and is seen as a growing problem of legitimacy. Opportunities for integration are expanded through the integration of legal aid and social assistance.

Soerjono Soekanto that in order for the law to function in society, it is necessary to have harmony between four factors, namely first, there is a systematic synchronization between legal principles or regulations both vertically and horizontally so that they do not conflict with one another; second, law enforcers have clear guidelines regarding their authority in carrying out their duties, as well as the quality of the officers' personalities to implement and obey the enacted regulations; third, the degree of community legal compliance with the law greatly affects the implementation of the law. The degree of legal compliance depends on the law-making process. Fourth, facilities or means of supporting the implementation of the law must be physically adequate.

It is undeniable that legal norms are the means used by society to direct the behavior of community members when they interact with one another. When it is mentioned here about "directing behavior", of course the question in us, "directing where"?

These norms direct human behavior as a priority in society itself. It is society that determines these directions and therefore we can see these norms as a reflection of the will of society. The will of society to direct the behavior of members of society is carried out by making a choice between the behavior which is approved and which is not approved which then becomes the norm in that society. Therefore, the legal norm is a requirement of judgments.

All living humans always want to be protected from their rights and obligations as intelligent living beings. Equity of law in all fields is a basic need that immediately gets a solution, so that each sector has protection. One form of protection provided by law is if it is enforced by law enforcement officials. The definition of law enforcement can be formulated as an effort to carry out the law properly, to monitor its implementation so that there is no violation, and if there is a violation of the law then restore the violated law so that it is re-enforced.

Satjitpto Rahardjo formulated law enforcement as a process to bring legal desires into reality. Satjipto Rahardjo revealed that there are three things involved in the law enforcement process:

1. elements of legislators
2. elements of law enforcement officers

3. environmental elements that include citizens and social persons.

Law enforcement on corruption cases in Indonesia is still a homework for the Indonesian nation so that it can be accepted in its own country, “perpetrators of corruption and legal mafia”, a sentence that becomes a polemic for the nation's children in upholding the law, in their own country as has been revealed in the 1945 Constitution. Observe Loebby Loqman's thoughts, that in the practice of law enforcement in terms of eradicating criminal acts of corruption it affects the operation of the Integrated Criminal Justice System as regulated by KUHAP, so that if the system is integrated it will close the possibility of weakening in law enforcement.

Furthermore, eradicating criminal acts of corruption in Indonesia, requires a firm commitment to law enforcement, so that these crimes do not continue to develop. Police, prosecutors, judges, advocates, and the community must be committed to fighting and eradicating corruption in Indonesia. In Indonesia, the existence of the KPK is a form of constitutional law politics in order to eradicate "Corruption Crime" which is considered an extra ordinary crime.

"*Crime*", according to Bambang Purnomo, (to use the term "criminal act"), is an act which is prohibited by the rules of the criminal law and punishable by any person who violates the prohibition ". The formulation contains the sentence "criminal law rule", intended to fulfill legal conditions in Indonesia which are still familiar with the life of written and unwritten law.

Tasks and the authority of the KPK according to Law Number 30 of 2002 Articles 6 and 7, Commission of Corruption Eradication has the task of:

a. Coordination with agencies authorized to eradicate corruption.
b. Supervision of agencies authorized to eradicate criminal acts of corruption
c. Carry out investigations, investigations, and prosecutions of acts corruption crime.
d. Take steps to prevent criminal acts of corruption.
e. Monitor the implementation of state governments.

The mandate of the law makes the KPK a super body (super-body). All legal proceedings and legal remedies, since the investigations and prosecutions were carried out by the KPK. Corruption suspects are tried in a special corruption court (Corruption Court), not by a general court. Law Number 30 of 2002 gives the KPK the authority to take over cases of criminal acts of corruption that are currently being handled by other law enforcement agencies (police investigators and the prosecutor's office), if up to the specified limit the cases handled have not been resolved.

KPK is given the authority by law to take legal action of expropriation in a process of legal action against the perpetrator of a criminal act of corruption. Conditions for Taking Over Investigation and Prosecution Process according to Law Number 30 of 2002 Article 9, namely: Takeover of investigations and prosecutions as referred to in Article 8, is carried out by the Corruption Eradication Commission for the following reasons:

a. Public reports regarding criminal acts of corruption are not followed up.
b. The process of handling corruption crimes drags on or is delayed without justifiable reasons.
c. Handling of corruption is aimed at protecting the real perpetrators of corruption.
d. The handling of criminal acts of corruption contains elements of corruption.
e. Obstacles in handling criminal acts of corruption are due to interference from the executive, judiciary, or legislative.

In other circumstances, according to the consideration of the police or the prosecutor's office, handling corruption is difficult to carry out properly from being accountable. In carrying out its duties and functions, the KPK has the authority to carry out investigations, investigations and prosecutions against perpetrators of corruption. This authority is the same as that of Police Investigators and Public Prosecutors. That is why these three institutions have a relationship of authority in the eradication of corruption in Indonesia.

In accordance with the criminal justice system, the task of investigating and investigating corruption is carried out by police investigators. In Indonesia, since the beginning of the reform era, the condition of law enforcement, especially regarding criminal acts of corruption, has been considered an emergency act against corruption. That is why the KPK institution was formed.

Even though there is a KPK, it does not mean that police investigators are no longer entitled to investigate corruption cases. Investigating corruption is one of the duties of the police in the context of law enforcement. In Police Law Number 2 of 2002 concerning the Indonesian National Police, Article 14 paragraph (1) g, states that the police are tasked with conducting investigations and investigations of all criminal acts in accordance with the criminal procedure law and other laws and regulations. Corruption is a criminal act so that legal action can be taken by police investigators.

There is no special division of authority between police investigators and the KPK. However, the two institutions can take legal action against the perpetrators of criminal acts of corruption, based on reports that have been received regarding the allegation of corruption. To date, there is no legal provision that does not authorize police investigators to deal with corruption crimes. Big or small, related to a suspected corruption crime, police investigators are obliged to take legal action. Thus, the existence of the KPK is not an obstacle to police work. However, based on the provisions of the law substantially, the Corruption Eradication Commission can carry out a functional relationship with authority, such as legal actions for coordination, supervision,

The two law enforcement institutions, the police and the prosecutor's office based on the law, can and or have the opportunity to combine their functions of authority to work together in eradicating corruption crimes, including coordination, supervision and exchange of intelligence information about corruption crimes that have occurred and sharing data on progress of cases

handled. The two institutions can also synchronize the data obtained in relation to corruption cases so that each institution can complement each other if there is a lack of data.

The team of investigators and investigators at the KPK are currently from the police. This is because the police institution has qualified and well-trained investigative and investigative capabilities as well as professionals. Police investigators who are seconded to the KPK are fulfilled based on needs. The KPK submitted a request to the Police to assist its members to assist the KPK based on the number of needs. After that administrative selection is carried out by the KPK, then a potential, competency and health test is carried out and then ends with an interview. The same procedure also applies to personnel who come from the prosecutor's office.

At the time of carrying out an investigation and investigation of a corruption case, the police investigator has full authority to carry out the investigation. For this reason, as long as Polri investigators are professional and proportional, the KPK cannot take other actions apart from the police investigator. In the law, the KPK can take other actions if, among others, there are complaints from the public regarding the investigation process. Complaints can be caused because the handling of the case is too long-winded and unclear, resulting in allegations of disproportionate agreements between the investigator and the suspect. Or there are allegations of manipulation of case investigations so that the main actors of corruption are spared punishment.

Apart from the police, the KPK also has a relationship with the prosecutor's office. This relationship is because the KPK also has the authority to carry out prosecutions. The task of the prosecution has been the domain of the prosecutor's office. The Prosecutor's Law No. 16 of 2004, article 30 paragraph (1) a, states that the prosecutor's office has the duty and authority to carry out prosecution in the criminal field. Of course, as an institution that also has the authority to carry out prosecutions, the KPK needs personnel from the prosecutor's office to carry out the prosecution.

To recruit prosecutors from the prosecutor's office, the KPK submitted a request for the need for public prosecutors to the Attorney General. After the request is approved by the prosecutor's office, an internal selection will be carried out by the KPK for these people. Through such a mechanism, we get the best public prosecutors to eradicate corruption within the KPK.

The consequences of the issuance of Law Number 30 of 2002 concerningThe KPK is the establishment of a Special Corruption Crime Court (Tipikor Court) which is in the environment of the general court. The Corruption Court has the duty and authority to examine and decide on criminal acts of corruption whose prosecution has been filed by the Corruption Eradication Commission. Its existence is to adjudicate criminal acts of corruption, namely, the District Court and the Corruption Court. The difference lies in the agency that filed a criminal action against corruption, namely the KPK, or the Attorney

General's Office. Meanwhile, the criminal act of corruption under the authority of the two courts is the same, namely the criminal act of corruption as regulated in Law No. 20 of 2001 concerning the Eradication of Corruption Crime. Substantially and structurally, law enforcement in Indonesia requires legal empowerment in accordance with the functions and objectives desired by the law (Mahendra, 2003).

The term "corruption" comes from the Latin *corruptio* or *corruptus*. Furthermore, it is stated that the *corruptio* comes from the word *corrumpe*, which is ancient Latin. It is from Latin that it is translated into European languages, such as in English it becomes corruption, corrupt; in French there is corruption; and in Dutch it becomes corruptive (*korruptie*). In the Indonesian Encyclopedia, it is stated that corruption comes from the word corruption which means bribery, and *corrumpore* which means destructive. Corruption is thus a symptom where officials in government agencies abuse their authority, resulting in bribery, counterfeiting, and other bad things. Literally, the word corruption can mean crime, ruthlessness, bribery, immorality, corruption, and dishonesty. bad actions such as embezzlement of money, receiving bribes and so on; actions which in fact can lead to bad conditions.

Thus, the definition of corruption is so broad and is also strengthened by the many problems that arise as a result of these actions and result in low social morality in society. Whereas one of the objectives of law is the existence of order or being fulfilled by the existence of rules of order, the provisions related to this order in terms or norms that state their position in society as legal norms. With the existence of such norms, the position that is most emphasized is legal norms, although other norms are no less important in people's lives (Purnomo, 1983).

To create a social order, the state establishes and ratifies laws and regulations to regulate society. These regulations have legal sanctions that are compelling. This means that if the rule is violated, the violator can be punished. The type of punishment that will be imposed on the offender will depend on the type of rule being violated. In principle, each regulation contains a coercive nature, meaning people who do not want to submit to and are subject to sanctions for the violation.

The law used as a means of renewal can be in the form of law or jurisprudence or a combination of both. In Indonesia, the most prominent thing is legislation. Jurisprudence also plays a role, but to a lesser extent. It is different in countries that adhere to common law and precedential systems, of course the role of jurisprudence will be much more important (Rasjidi, 2004: 79).

Political parties are not used as a tool to fight for the interests of the people at large, but instead become an arena for exploiting personal wealth and ambition. Even though the criminal act of corruption is a very serious problem, because the criminal act of corruption can endanger the stability and security of the State and society, endanger social, political and economic development of society, it can even damage democratic values and national morality because it

can have an impact on the culture of corruption. the. So, it must be realized that the uncontrolled increase in criminal acts of corruption will have an impact not only limited to losses to the State and the national economy but also on the life of the nation and state.

Violation of the law in the criminal act of corruption is a violation of social rights and economic rights of society, so that the criminal act of corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. One of the factors of the occurrence of corruption in Indonesia according to Abdullah Hehamahua, based on studies and experiences there are at least eight causes, namely as follows:

1) Wrong State Administration System
2) Low compensation for civil servants
3) The Greedy Official
4) Law Enforcement Doesn't Work
5) Because law enforcement does not work where law enforcement officers can be paid starting from the police, prosecutors, judges and lawyers, the sentences imposed on corruptors are very light so that they do not have a deterrent effect on corruptors.
6) Ineffective Surveillance
7) No Leadership Exemplary
8) Community Culture that is conducive to corruption, collusion, and nepotism

According to the 1945 Amendment to Article 1 paragraph (3): Indonesia is a rule of law country. As befits a constitutional state, the interests of the public must receive protection from the government, as stated in Paragraph IV of the 1945 Constitution. Such protection is the rights of citizens which are regulated and spelled out in various laws and regulations. Citizens have the right to live in safety, peace, tranquility, and avoid various crimes. Whenever a crime occurs, law enforcement officials must immediately act according to their authority. With the actions taken by law enforcement officials, it is hoped that crimes will not become more widespread. When law enforcement is not good as it is today, crime will develop, corruption is increasingly rampant, bribery cases occur everywhere.

For instance, the offender of narcotic crime can only be controlled from the correctional institution. Finally, however good the existing laws and regulations ultimately depend on the law enforcement apparatus. In the process of law enforcement against corruption crimes, there is a fact that selective logging law enforcement practices exist. Not only is this contrary to the principle of law that all citizens have the right to be treated equally before the law, but it is also treated unequally. As for the reason for the law enforcement of the police and prosecutors, not only because corruption cases are often seen as cases that bring 'blessings', especially for lawyers, but also because of the existence of the Corruption Crime Law and the Corruption Eradication Commission Law.

Dualism in the eradication of corruption crimes as stipulated in the Corruption Crime Law and the Corruption Eradication Commission Law.

The reasons and facts that selective logging and unequal treatment before can be put forward as follows:

1) The practice of law enforcement in selective cutting of defendants or suspects occurs when both the police, prosecutors, and community forces, as a civil society movement, allow criminals not only to roam freely and even become candidates for regional head, but also after obtaining a judge's decision even though they can be returned to certain public positions. This usually happens when a defendant, suspect or convict can be used as a source of money because they are able to pay law enforcement officers who abuse their authority.
2) The treatment of law enforcers is unequal or selective due to the nature of the Corruption Eradication Commission Law which deliberately includes the grouping of law enforcement processes into two categories. The first category is corruption which causes state losses of less than Rp. 1 billion to be processed by the Police and Prosecutors. In this model of corruption crime enforcement, the public gives the impression that law enforcement officials, both at the central and regional levels, have flexible space to postpone investigations and investigations. As a result, the perpetrators of this model of corruption crimes show not only the absence of legal certainty in their prosecution but with this delay inviting dissatisfaction for the public. Meanwhile, the second category of corruption is an act of someone who has caused state losses over IDR 1 billion, whose legal process authority is through the KPK. In cases handled by the Corruption Eradication Commission (KPK), the impact was enough to cause frightening shocks for the accused, suspect and convicted. The KPK is much more assertive and is seen as the most trusted law enforcement agency in the country.

In criminal law theory, legal sanctions imposed on criminals are not only seen as laws that cause physical and psychological suffering and are limited by freedom of civil and political rights, but it is also hoped that the perpetrators of crimes will feel deterred so that they do not want to commit again.

Defendants in corruption cases are only sentenced to probation or even acquittal or release, so that with this verdict, corruption defendants no longer need to serve a sentence in prison. The eradication of corruption in Indonesia is experiencing a setback. Generally, they were sentenced to one year in prison with a probation period of two years. Total That there is a tendency for judges to sentence a corruption defendant in accordance with the minimum penalty limit stipulated in the Corruption Criminal Act.

CONCLUSION

Whereas criminal acts of corruption are generally related to power because with that power the authorities can abuse their power for personal, family and crony interests. Corruption always develops in the public sector with clear evidence that it is with this power that public officials can pressure or blackmail justice seekers or those who need services from the government. Corruption in Indonesia has been classified as a crime that destroys, not only the State's finances and the country's economic potential, but also has destroyed the pillars of socio-culture, morals, politics and the legal system and national security. At present, efforts to eradicate corruption crimes through fair law enforcement still require a tough struggle. Because the crime of corruption is an extra ordinary crime, which is different from ordinary crimes, the efforts that must be made require an integrated and extraordinary system as well. As an extra ordinary crime to eradicate corruption, it requires extraordinary political power so that the President as head of state becomes an important figure in mobilizing and coordinating the roles of the Police, Prosecutors, Corruption Court, and KPK to become a powerful force, so that the practice of corruption, collusion and nepotism is like bribery, price inflations, gratuities, and other misuse of authority are carried out by unscrupulous civil servants or state officials.

REFERENCES

Arief, B. N. (2000). *Pokok-Pokok Pemikiran Supremasi Hukum*. Semarang: Undip.

Atmasasmita, R. (1982). *Strategi Pembinaan Pelanggar Hukum dalam Konteks Penegakan Hukum di Indonesia.* Bandung: Alumni.

Badan Pemeriksa Keuangan dan Pembangunan. (1999). *Strategi Pemberantasan Korupsi Nasional.* Jakarta: BPKP.

Budiharjo, A. (2001). *Perilaku Menyimpang Budaya Korupsi*. Jakarta: Grafindo Press.

Ermansjah, D. (2001). *Memberantas Korupsi Bersama* KPK. Jakarta: Sinar Grafika.

Gunawan, G. (1994). *Peran Kejaksaan Dalam Penegakan Hukum dan Stabilitas Politik.* Jakarta: Sinar Grafika.

Hamzah, A. (2006). *Pemberantasan Korupsi*. Jakarta: Raja Grafindo.

Harahap, Y. (2002). *Pembahasan Permasalahan dan Penerapan KUHP.* Jakarta: Sinar Grafika.

Indonesia Jaksa Agung RI. (2007). "Kekuatan, Kelemahan, Kendala dan Peluang Penegakan Hukum dalam Pemberantasan Korupsid Indonesia." *Paper*

presented on Seminar Aspek Pidana Pada Kebijakan. Universitas Borobudur.
Lopa, B. (1997). *Masalah Korupsi dan Pemecahannya*. Jakarta: Kipas Putih Aksara.
Mahendra, O. (2003). *Merajut Benang Yang Kusut*. Jakarta: Pancur Siwah.
Mertokusumo, S. (1999). *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty.
Poernomo, B. (1983). *Asas-Asas Hukum Pidana*. Jakarta: Ghalia Indonesia.
Pond, R. (1996). *An Introduction to the Philosophy of Law*. Jakarta: Bhatara Niaga Media.
Prabowo, I (1998). *Memerangi Korupsi dengan Pendekatan Sosiologis*. Surabaya: Dharmawangsa Media Press.
Rahardjo, S. (1983). *Masalah Penegakan Hukum*. Bandung: Sinar Baru.
Rahardjo, S. (2000). *Ilmu Hukum.* Bandung: Citra Aditya.
Rasyidi, L. (1988). *Dasar-dasar Filsafat Hukum*. Bandung: Alumni.
Santiago, F. (2006). *Memerangi Korupsi*. Jakarta: Cintya Press.
Santiago, F. (2007). *Pidato Orasi Ilmiah Pengukuhan Guru Besar*. Jakarta: Universitas Borobudur.
Thania, R. (2004). *Dasar-dasar Filsafat dan Teori Hukum.*Bandung: Citra Aditya.

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RESEARCH ARTICLE

INDONESIAN ANTI-CORRUPTION LAW ENFORCEMENT: CURRENT PROBLEMS AND CHALLENGES

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ABSTRACT

After having been freed from correctional institutions, there were many former terrorism prisoners who got difficulties or challenges to find a job and interact with the society. This research aims to identifying and analyzing the radicalism reality of the former terrorism prisoners in Indonesia and deradicalization efforts conducted by Lingkar Perdamaian Foundation toward the former terrorism prisoners. This study used juridical-sociologic approach and applied qualitative research. The result of this research showed that the former terrorism prisoners gained enormous potential to redo their crime. Several factors that led them to be steadily radical were ineffective guidance attempts undertaken by correctional institutions, no suitable places to stay after they were freed from the correctional institutions and strong stigma possessed by society which caused the former terrorism prisoners to rejoin their previous radical community. The deradicalization efforts conducted by Lingkar Perdamaian Foundation were helping, empowering, training and boosting the former terrorism prisoners to be better people and serving new community for them in order that they would not rejoin their previous radical groups. The conclusion drawn from this research is that the reality of the former terrorism prisoners in Indonesia after they are freed from the correctional institutions is steadily radical. The deradicalization efforts

done by Lingkar Perdamaian Foundation are serving trust, life autonomy, room for interaction and socialization with broader society in order that the former prisoners are kept away from negative stigma of former terrorists.

Keywords: *Deradicalization; Terrorism; Non-Penal*

INTRODUCTION

Terrorism is an extraordinary crime that requires extra ordinary measures (Masyhar, 2008: 125). The degree of extraordinaryness is one of the reasons for the issuance of Government Regulation in Lieu of Law (Perppu) Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism (hereinafter referred to as Perppu Terrorism) which has been ratified as Law Number 15 of 2003 and is complemented by a Government Regulation. In lieu of Law (Perppu) Number 2 of 2002 which has also been ratified into Law Number 16 of 2003 concerning the Eradication of Criminal Acts of Terrorism during the Bali Bombing Incident on October 12, 2002.

Various attempts have been made by the government to prevent and overcome this crime of terrorism. However, the arrest and conviction of terrorists alone is not sufficient to prevent similar crimes from recurring. According to Ali Masyhar about reducing the spread of terror, where terrorism cannot be eradicated solely by relying on penal measures, namely through the criminal law approach, but must be accompanied by non-penal efforts that will cut terrorism cells from their source, therefore it is time for this country. focus on efforts to counter terrorism through various channels. The state should not only focus on penal efforts (Masyhar, 2016).

As explained by Azil Masykur in his writing "Deradicalization of Terrorists", the correctional institution (Lapas), which is currently the only institution where the resocialization of terrorists is questioned about its effectiveness. Many parties think that this institution is no longer able to carry out deradicalization efforts against terrorists, terrorism convicts are not sorry and have a desire to return to society but are becoming more professional and radical. Therefore, a non-penal effort is needed in the hope that it can unravel the root of the problem of terrorism crime. Former terrorism convicts who have left prison can actually lead to new terrorism cases if they are not properly nurtured (Maskur, 2017).

After leaving prison, many former terrorism convicts find it difficult to find work and return to society. On the other hand, they also have families, children and wives to support. If no one cares, it is not impossible that former prisoners will return to commit acts of terrorism again. These ex-convicts did not just start from scratch, but even from a minus. Because, their access after leaving the correctional facility is limited,the social environment which then isolates and

marginalizes the families of terrorism convicts is also a new problem. Therefore, several former terrorism convicts initiated by Ali Fauzi, former Jemaah Islamiyah (JI) bomb, weapons and war tactics instructor who is also the younger brother of Bali bomb convicts Ali Ghufron, Amrozi, and Ali Imron collaborated with the National Counterterrorism Agency (BNPT) established the Lingkar Perdamaian Foundation whose members are all former combatants (war experts) and former convicts of terrorism with focuses on improving the social relations of former perpetrators of criminal acts of terrorism in order to prevent their re-entry into their network or community and to prevent the same crimes from being repeated. Therefore, based on the description above, the writer is interested in conducting research and takes the title of "Non-Penal Efforts to Deradicalize Former Terrorism Prisoners at the Lingkar Perdamaian Foundation."

Based on the above background, there are several problems that will be studied, namely: (1) What is the reality of the radicalism of former terrorism convicts in Indonesia ?; (2) How are the efforts made by the Lingkar Perdamaian Foundation to deradicalise former terrorism convicts? The objectives to be achieved are as follows: (1) Identifying and analyzing the reality of the radicalism of former terrorism convicts in Indonesia ?; (2) Obtain an overview and analyze the efforts made by the Lingkar Perdamaian Foundation to deradicalise former terrorism convicts.

METHOD

This research method uses a qualitative approach with the type of sociological juridical research. The data used are primary data as primary data and secondary data as complementary data. The data collection techniques were carried out by observation, literature study, and interviews with the Chairman of the Lingkar Perdamaian Foundation, members of the Lingkar Perdamaian Foundation, and Deputy Chair of the Semarang City Religious Harmony Forum. The validity of the data in this study used the triangulation technique. The author made a comparison of the data obtained, namely primary data in the field which was compared with secondary data. Thus, the authors compare the interview data with document data and literature study, so that the truth of the data obtained can be trusted and convincing.

THE REALITY OF THE CONDITION OF THE RADICALISM OF FORMER TERRORISM PRISONERS IN INDONESIA

The spread of the phenomenon of terrorism in Indonesia is clearly detrimental to the Indonesian nation as a whole. The acts of terrorism that occur have forced the government, in this case the law enforcers, to make policies in order to carry out

extra security, so that acts of terrorism are not repeated in the future. Therefore, the rule of law should be upheld in Indonesia, especially when it comes to acts of terrorism which have a very destructive impact on human survival. Perpetrators of criminal acts of terrorism must follow the criminal justice process in its entirety, starting from the investigation and investigating process at the Police level, to prosecution at the Prosecutor's level (Septian, 2010: 109).

In terms of arresting and overcoming terrorism crimes, law enforcement officers deserve appreciation because they have exposed and sentenced many criminal sentences to terrorists who are proven guilty before a court who are then placed in a Penitentiary. Based on data from the Directorate General of Corrections which can be accessed on the official page of the Directorate General of Correctional Services database system, terrorism convicts as of January 2018 totaled 243 people spread across 24 regional offices. The largest distribution of terrorist convicts is on the island of Java, namely 184 terrorist convicts in 6 regional offices (Banten, DKI Jakarta, West Java, Central Java, East Java and DI Yogyakarta), while the remaining 59 terrorist convicts are spread across 18 regional offices.

However, the arrest of terrorism convicts alone is not enough to make the radicalism inherent in terrorists disappear. In fact, there are indications or the possibility that terrorist inmates spread radical ideas to prisons and could influence other inmates. Because imprisonment does not necessarily make them aware or deterred, on the contrary, prison becomes a place to learn more deeply about the ideology they believe in and does not close the possibility of spreading their ideology to other prisoners.

One of the problems of prisons that is in the spotlight is that prisons have a big role in the narrative of militant radical movements in the modern era. Prisons are a vulnerable place for radicalization. Radicalization is the process by which "*ordinary*" prisoners are recruited and involved in extreme groups in prisons or the process in which prisoners who are already involved in extreme groups become more radical and spread this understanding to other prisoners (Neuman, 2010: 7).

The correctional institution (Lapas), which is currently the only institution where terrorists resocialize, is questioned for its effectiveness. Many parties think that this institution is no longer able to carry out deradicalization efforts against terrorists, terrorism convicts are not sorry and have a desire to return to society but are becoming more professional and radical.

As reported by the International Crisis Group (ICG) in a study entitled Deradicalization and Indonesian Prisons, there was an interesting case in the Kerobokan Bali Prison where the main perpetrators of the Bali Bombing, namely Amrozi, Imam Samudra and Mukhlash were able to influence other prisoners and the guards. One of the prisoners who was successfully influenced is Ahmed (not his real name), a Hindu convict who was convicted of bombing and drugs in 2001. The trio bomber's initial interactions with other inmates usually took place when

they were accompanying the mosque, including Ahmed, who claimed to be sympathetic. with the attitude of Amrozi (International Crisis Group, 2007).

In addition, Noor Huda Ismail (Director of the Prasasti Perdamaian Foundation) in one of his writings said that radicalization is an impact of imprisonment itself, both for terrorism convicts and other convicts. Huda added that Aman Abdurrahman, a hard-liner, had succeeded in recruiting at least 3 prisoners who previously did not have the tendency to fight jihad in Sukamiskin prison, Bandung. This experience indicates that anyone can be a target of radicalization (Ismail, 2010).

This hypothesis is of course inseparable from the fact that acts of terror in Indonesia are often carried out by old names who have received the title 'convicts of terrorism cases'. An example is the act of terrorism that occurred in Bandung on Monday 27 February 2017 or known as the Panci bombing which became the public spotlight not only in connection with the Panci bombing, but related to the Panci bomb perpetrator, namely Yayat Cahdiat who turned out to be a former terrorist convict who was sentenced to three years at the Tangerang Penitentiary which was released in 2015.

In addition, the incident of the terror attack in Thamrin on January 14, 2016. The suicide bombing followed by a shootout was commanded by Afif alias Sunakim, a recidivist who was sentenced to 7 years in prison for participating in a terrorist militia training in Jalin Jantho, Aceh, in 2010. which was carried out by Afif due to the influence of the ideology of Bahrun Naim and Aman Abdurrahman. Both of them are old people, aka kingpins in the terror network, who had dealt with Densus 88 when they were both still in prison. Another example, the 2016 suicide bombing at the Surakarta Police Headquarters by Nur Rohman and the Oukimene Church bombing, Samarinda, East Kalimantan with the perpetrator Juhanda alias Jo bin Muhammada Aceng Kurnia, both of whom have also been convicted of terrorism.

Since the Bali bombing in 2002, the Indonesian police have detained and tried around 700 suspected terrorists, most of them being tried for being found guilty and involved one hundred percent in terrorism cases. Of the 270 inmates released after serving their sentences, 28 were again arrested or shot dead during police operations. This 10 percent figure could actually continue to increase if we included a large group of terrorism-related recidivists whose first crimes were related to terrorism, 8 of whom were recruited while they were in prison (IPAC Report, 2013).

From the series of terrorism events, it indicates that former terrorism convicts have great potential to repeat their actions. According to the records of the National Counterterrorism Agency (BNPT), at least 15% of the 600 free terror convicts have returned to becoming terrorists with increased qualifications. Of course, this is closely related to the success of the deradicalization program carried out by BNPT and the Ministry of Law and human rights against terrorism convicts (Firdaus, 2016: 430).

According to Ali Fauzi Manzi, Director of the Lingkar Perdamaian Foundation and a former Jemaah Islamiyah (JI) bomb, weapons and war tactics instructor who is also the younger brother of Bali bomb convicts Ali Ghufron, Amrozi, and Ali Imron, in an interview conducted by the author said that:

> Prison is a powerful academy for terrorism convicts. A terrorism convict when in prison meets other inmates (even more senior than him), it is likely that they will gain knowledge and skills, so that the radical actions they take are more effective in achieving their goals.The recruitment process is easier in prisons, it can be said that training in prisons has not been effective as a breaker in the chain of terrorism in Indonesia (Personal Interview, with Ali Fauzi Manzi, February 4, 2018, at 07.00 WIB).

Information that is directly proportional to the author also got from an interview with Machmudi Hariono alias Yusuf Adirama, a former terrorist convict who was arrested by the Special Anti-terror Detachment 88 while at his rented house, Jln Sri Rejeki, Semarang, in 2003 because of ownership.20 rounds of ammunition belonging to Abu Tholut alias Mustofa used for the Bali I bombing operations, according to the former terrorist convict:

> The phenomenon of the spread of radical understanding in the correctional institutions (Lapas) is inseparable from the condition of the prison itself, where when I was in prison there were no restrictions on terrorism convicts, meaning that friends of terrorism convicts were free to gather with other inmates, for example during congregational prayers, or other activities. . Prisons are places that are vulnerable to radicalization. Ordinary prisoners can even be recruited and involved in extreme groups in prison or prisoners who are already involved in extreme groups become more radical and spread their radical understanding to other prisoners (Personal Interview Machmudi Hariono, February 8 2018 at 18.30 WIB).

According to the author's analysis, the punishment of the perpetrators of terrorism is an important study in maintaining security stability in the future. Therefore, the correctional institution which is currently a place of resocialization for terrorists has a strategic role in guiding terrorist convicts not to repeat their actions. Terrorism is not a matter of who the perpetrators, groups and networks are, more than that terrorism is an act that has roots in beliefs, doctrines, and ideologies. Therefore, when terrorism convicts are in prison, guidance is different from other prisoners because the motives of terrorism are different from those of other criminal acts.

Various attempts have been made by the government to tackle the occurrence of criminal acts of terrorism, one of which is by using a de-radicalization strategy which has six approaches, namely rehabilitation, re-education, resocialization, national insight development, moderate religious development and entrepreneurship. Likewise, from the institutional side that deals with deradicalization, in Indonesia the National Counterterrorism Agency (BNPT) has been established as an institution that specifically designs and coordinates deradicalization activities.

However, it must be admitted, the implementation of deradicalization of terrorism convicts in prisons (Lapas) is still facing various problems. Based on the information obtained by the author during an interview with former terrorism convict Yusuf Adirama, that:

> "... a lot of friends who left the prison joined the old community, returned to the radical movement, in that prison did not change their minds at all about the understanding of jihad. Unless it is the awareness of the prisoner himself, but rarely or even impossible. Nearly 90% of friends leaving prison still share the same ideology, belief and understanding. Guidance carried out internally is the same as coaching other inmates such as leaving to mosques, Islamic boarding schools in Ramadhan, routine recitation activities, bringing religious teachers from outside, *tarawih, tadarus* and so on. But for training such as workshops and skills training that teach other skills to prisoners have not been carried out effectively and hit the spot, only recently have NGOs entered prisons to teach skills" (Personal Interview with Yusuf Adirama, dated February 8 2018 at 18.30 WIB).

According to the author's analysis, prisons should have a special program for terrorism convicts that are differentiated from other prisoners, the quality and quantity of correctional officers, especially those who foster terrorism convicts, is also an important factor in the success of developing terrorism convicts in prisons. Machmudi Hariono alias Yusuf Adirama, who was interviewed directly by the writer, has also been involved in deradicalization efforts. Yusuf, who is also a member of the Lingkar Perdamaian Foundation, often visits prisons where jihadists are detained and invites them to return to normal life. In fact, he has also provided cooking and culinary skills.

However, according to Yusuf, former terrorism convicts who were involved returned to the old community and committed acts of terrorism again, it was not entirely due to mistakes in training inside the prison, because when outside prison there was no place for terrorism convicts to gather, there was no place for former terrorism convicts inviting discussion, dialogue, preaching, and doing activities, they have difficulty finding work, and are confused about what activities to do, even though they also need to support their family. Life outside prisons is not like

inside prisons where there is clear guidance and a forum for inmates. For this reason, former convicts of terrorism have finally chosen the elevated path to Syria or return to the old community which is happy to accept them back.

> "Most of the friends who leave prison have difficulty finding work and are not accepted in the community, on the other hand, the invitation from friends of radical groups to return to join is carried out intensively and intensively, if they do not rejoin, they are considered *'thogut'*, apostasy, and anti-Islam. So, after leaving the prison, many of the Napiters then rejoined the bombing action or went to Syria. Those friends prefer to return to the old group that is sure to accept them back" (Personal Interview with Machmudi Hariono, February 8 2018 at 18.30 WIB).

From the various descriptions that have been explained above and from the results of the interviews conducted by the author, it can be explained that the radical conditions of former terrorism convicts who have left prison can be caused by several factors which can be divided as follows:

1) Factors from within prisons, including:
   a) The handling of terrorism convicts in prisons is the same as other criminal acts such as robbery, theft, murder and so on, so that guidance is not yet effective. They took action that was driven more by ideology to establish a state. So, in prisons there must also be a special deradicalization program to understand thoughts that are considered extreme. These radical thoughts cannot be minimized while in prison because their training is the same as other prisoners. So, it is very likely that when terrorism convicts leave prison, they will take action again, even more radically.
   b) Prisons in Indonesia that are overcrowded and overcrowded are not ready to face terrorism convicts who tend to have extreme ideologies. This has hampered efforts to prevent radical teachings. Prisons are used as places to give birth to new jihadists.
   c) The guards in the correctional institutions are less able to identify "high-risk" prisoners who can recruit other people to become Jihadist. The problem is the access to information they receive is very limited and there is a lack of training for wardens in prisons. The prison guards do not have a good understanding of religion and radicalism, so they are unable to invite religious discussions and provide ideological guidance to terrorism convicts. Based on Ali Fauzi Manzi's statement, that:

      > "One of the prisons that is quite successful in carrying out the deradicalization program is the Porong prison located in Sidoarjo Regency, East Java. This success is due to the presence of a warden who has a good understanding of religion and has

> charisma so that prisoners, especially terror convicts such as Umar Patek, are willing to participate in coaching programs well" (Personal Interview with Ali Fauzi Manzi, February 4, 2018, at 07.00 WIB).

Prison officers or wardens have a very strategic and influential role in carrying out de-radicalization, so that if the wardens have good quality and understanding, of course they can coordinate terrorism convicts so that they want to follow the guidance program in the prison.

2) Factors from outside prisons, including:
   a) The Deradicalization Program does not have a complete framework and involves various parties. So, what is done is still partially and often sectorally by each party. Based on the results of interviews conducted by the author with Syarif Hidayatullah, Deputy Chairperson of the Semarang City FKUB as well as a member of the Center for Police Science Research (PRIK), University of Indonesia said that:

   > "One of the weaknesses of the deradicalization program is that the guidance carried out especially by the BNPT for terrorism convicts is more focused on ceremonial activities, such as holding seminars or gathering large numbers of people. Activities that can be covered and reported, but do not have complete and substantive elements. The deradicalization that is needed is to work together with all parties, including civil society" (Personal Interview with Syarif Hidayatullah, Deputy Chairperson of the FKUB Semarang City on January 31, 2018 at 08.30 WIB).

   According to the authors, eliminating and preventing radicalism is very serious. Whether dealing with those who are radicalized and then arrested and jailed, they must use special treatment for people in their environment. All parties including prisons, BNPT, police and Densus (*Special Force*) have their respective roles but work together to create a complete unit in the deradicalization program.
   b) In some cases, many former terrorism convicts have finally returned to radical groups. This is due to the strong stigma in society that makes them unacceptable like other citizens. At the same time, the government also does not carry out monitoring and assistance. Even former terrorism convicts when they are released from prison experience several obstacles. This fact is revealed for example in terms of making ID cards, SIM or passports. When stigma and exclusion occur in society, the old community comes to help them former convicts of terrorism, meeting their needs as a way to be willing to join in and carry out acts of terrorism again.
   c) There is no place for ex-convicts of terrorism when they leave prison and when the community and government ignore them, there is an old

community that is ready to accommodate them again with the various luxuries it has to offer.

Of the various factors that the authors have described above and from a series of facts, terrorism incidents that occurred in Indonesia were often carried out by old names who had received the title 'convicts of terrorism cases'. This indicates that former terrorism convicts have great potential to repeat their actions.

The role of the state should not stop when the prisoners leave prison. In the context of terrorism crimes, every prisoner must be monitored, of course through cooperation with parties who have the authority so that it does not reduce the sense of security as a citizen. Actually, there have been efforts that have led to the de-radicalization of terrorism convicts, but it has not become a standard, systematic, and comprehensive program in correctional institutions in Indonesia. Therefore, it is considered that this has not shown the expected results. In fact, what happened was that some prisoners rejected the deradicalization program in prisons, so that according to Taufik Andrie, Lapas became a School of Radicalism. Besides that, it also gave birth to many recidivism cases of terrorism (Andrie, 2011).

If these things are related to the operation of the criminal justice system, then the problem is not just punishing the perpetrators of terrorism, but also providing room for deradicalization of terrorism criminals. A person commits a crime repetition due to several factors such as the ineffectiveness of one of the subsystems of one of the criminal justice systems in Indonesia.

Criminal law enforcement carried out through the criminal justice system is to achieve certain goals. The objectives of the criminal justice system include short-term goals, medium-term goals and long-term goals. The short-term objective of the criminal justice system is to socialize (re-popularize) the perpetrators of criminal acts, the medium term is to prevent crime and in the long term, the ultimate goal is to achieve social welfare in the broadest sense (Ali, 2007: 218).

According to the author's analysis, if it is related to the condition of former terrorism convicts after leaving prisons who have difficulty resocializing and are not accepted due to community stigmatization which ultimately causes them to return to the old community and commit acts of terrorism again, it shows that the objectives of the criminal justice system have not been fully fulfilled. done. This means that if the objectives of the criminal justice system cannot be implemented, there needs to be a change, improvement and coordination between components in the criminal justice system through legal substance, legal structure and legal culture.

EFFORTS TO DERADICALIZE FORMER TERRORISM PRISONERS AT THE LINGKAR PERDAMAIAN FOUNDATION

Terrorism is a unique crime, because the motives and factors that cause this crime to be committed are very different from the motives of other criminal acts. Salahuddin Wahid stated that terrorism can be carried out with various motivations, namely for religious reasons, ideological reasons, reasons to free oneself from injustice, and because of interests (Masyhar, 2019: 50).

Causative factor terrorism is not single, it is even interrelated. Radicalism emerges with various causes, including underdevelopment in education, political changes, poverty, or the low level of a person's cultural and social civilization, which will trigger radicalism which can lead to terrorism (Bakti, 2016: 49). Therefore, the handling of terrorism must not be single, it must have many aspects, perspectives, and methodologies. One of them is through the Lingkar Perdamaian Foundation. This is also explained by Ali Fauzi in an interview with the author as follows:

> "The roots of terrorism are not singular and even interrelated, therefore the handling of terrorism must not be single, it must have many aspects, perspectives, and methodologies. When it comes to extremism and terrorism only left to the police, BNPT, and Densus they will not be able to. This effort must involve all elements, religious leaders, youth, clerics, all should be embraced, all are invited to tackle acts of terrorism. The establishment of the Lingkar Perdamaian Foundation, also departed from the concerns of former terrorism convicts. They need help starting from scratch again after being released from prison. Because, it is not easy for them to reintegrate into life with the community" (Personal Interview with Ali Fauzi Manzi, February 4, 2018, at 07.00 WIB).

According to the author's analysis, as explained in the previous description, there are several factors that cause terrorism convicts to remain radical and even more radical, including in addition to ineffective prison development, incompetent prison officers, no place after they leave prison, and community stigma. which has been described in the previous explanation. Therefore, one way to reduce or reduce radicalism among former terrorism convicts is to accept it back with open arms.

Based on the information that the author got from an interview with the Former Terrorism Criminal Officer Machmudi Hariono alias Yusuf Adirama stated that:

> "The world outside prison is a prison in a heavier scope than in prison. Friends of former Napiter when they were released from prison did experience several obstacles. This fact is revealed, for example in terms of making ID cards, driving licenses or making passports. Besides the other main obstacles, such as the unfriendly attitude of the community. In fact, the stigma of being a terrorist still exists even though it has been out of prison for years, for example when there is news of a suicide bombing or an act of terror that occurs, ex-convicts who have started a normal life will return to being disturbed and suspected of having a relationship with the perpetrator, a stigma that never disappeared until now. Besides that, there is an invitation from the old community to be willing to join again" (Personal Interview with Machmudi Hariono, February 8 2018 at 18.30 WIB).

According to the author's analysis, former terrorism convicts who have left prison can actually lead to new terrorism cases if they are not properly nurtured. Because after leaving prison, many former terrorism convicts experience unpleasant conditions such as social isolation, psychological anxiety, economic difficulties and others as explained in the results of the interview above.

Therefore, several former terrorism convicts initiated by Ali Fauzi Manzi, former Jemaah Islamiyah (JI) bomb, weapons and war tactics instructor who is also the younger brother of Bali bomb convicts Ali Ghufron, Amrozi, and Ali Imron collaborated with the National Counterterrorism Agency BNPT) established a Lingkar Perdamaian Foundation which could be a point of reference for former terrorism convicts to get back into society.

The Lingkar Perdamaian Foundation helps former terrorism convicts, empowers, trains and encourages and provides a new community for former terrorism convicts so that they do not return to the old community, with a vision of caring for ukhuwah and knitting peace. Ali Fauzi Manzi, director of the Lingkar Perdamaian Foundation and a former member of the Moro Islamic Liberation Front/MILF terrorist group, said that the process of deradicalisation was not easy. Changing beliefs takes time, just like when they enter an extremist organization, so removing it requires a long stage. Ali often meets members of terrorists who are serving prison sentences or not. According to Ali Fauzi, there is no standard time required in the deradicalization process. The deradicalisation process can take years or months, depending on the psychological condition and also the science concerned. In the interview conducted by the author Ali Fauzi said:

> "…From experience, being recruited and joining a terror group requires a long period of time. I once learned to assemble bombs and war operations to Mindanau, Philippines. returned to Indonesia and

> was later appointed as Chief Instructor for Bomb Assembly of the East Java Jama'ah Islamiyah Wakalah. In 2000 he left JI, and joined Kompak (Crisis Management Committee) and was arrested in 2004. While in prison, there was inner turmoil. I did not expect, in such a condition of people's anger, I would still be treated humanely, especially by the police. While in prison I often had discussions with terrorist members on my personal awareness. From the results of the discussion, I took the understanding that the approach to members of Jemaah Islamiyah (JI) or ISIS was with the same pattern. As long as they are open and able to discuss. So the process of deradicalization takes a long time, just like the process for the first time they recognized radicalism" (Personal Interview with Ali Fauzi Manzi, February 4, 2018, at 07.00 WIB)

Coaching outside prisons, in this case the deradicalization effort carried out at the Lingkar Perdamaian Foundation, is an ongoing program directed at ex-convicts, families, networks, and individuals or groups that have the potential to become radicalized. This coaching is felt to be comprehensive with a better target expansion. For example, it is also targeted at the families of the former terrorists because the potential in the families of the former terrorists is very high. It is realized that terrorists are no longer merely utilizing networks through recruitment as before but prefer to use family networks.

The facts regarding the recruitment through the exit route can be seen in the case of Umar Jundulhaq (19 years) the son of the suicide bomber in Bali, Imam Samudera, who was killed in a battle in the city of Deir ez-Zur, Syria on October 14 2015. Umar is one of 50 Indonesian citizens who died in the fighting in Syria as of October 2015. Earlier news broke that one of Abu Jibril's sons, Muhammad Ridwan Abdurrahman, was killed in Syria on March 26, 2015. Abu Jibril's name was mentioned in the suicide bombing at the hotel. JW Marriot and Ritz Carlton Jakarta in 2009. One of his sons, Muhammad Jibril Abdurrahman alias Ricky Ardan, was sentenced to five years in prison for being convicted of a crime of terrorism. This fact shows how a radical terrorist family continues to recycle through the cultivation of ideology from the smallest environment, namely the family (Bakti, 2016: 196).

The effort made by the Lingkar Perdamaian Foundation is to give trust to former terrorism convicts to determine for themselves a "new path" for the life of the former terrorist convict in the future. A path that opens the dynamic of thinking, creates a non-violent mindset and thinks critically and reflective (and evaluative) on what they (former terrorist convicts) have been doing so far. The approach to these former terrorists, not always with religion, can be through sports, economics, or culinary.

The point is they have a new life after prison. There is an independent life, there is a space for interaction and socialization with the wider community. They

are protected from the stigma of being a former terrorist. They are citizens of society who are empowered and have the courage to leave violence.

The strategy used by the Lingkar Perdamaian Foundation in recruiting members so that ex-convicts are willing to join is with using a principle that has been practiced by convicts of terrorism, namely "a person has a character with his friend, so pay attention to who he is friends with". Therefore, when terrorism convicts are still in prison, the Lingkar Perdamaian Foundationhas taken a humanist approach, for example by helping to meet their needs, what they need, visiting and supporting their families, children and wives, when they leave the prison they are picked up and escorted to his wife's house. So, through a humanist approach, they will automatically come to the Lingkar Perdamaian Foundation and tell the various conditions and problems they are facing.

This is as said by the Director of the Lingkar Perdamaian Foundation, Ali Fauzi:

> "The approach we use to recruit Napiter friends is using the principles that were taught when they joined the extremist group, namely, *Al-Mar'u 'ala dini khalilihi, falyanzhur ahadukum man yukhalilu*, that someone is dependent on the religion of his friend. Therefore, let one of you pay attention to who he is friends with. Therefore, when we are in prison we have taken a humanist approach. What they need we help, if in prison we fulfill it, outside we also fulfill it like our wife and children we help, and when we get out of prison we pick them up, we take them to their wife's house. The term is like we take heart, then they will come alone" (Personal Interview with Ali Fauzi Manzi, 4 February 2018, 07.00 WIB).

According to the author's analysis, the approach strategy taken by the Lingkar Perdamaian Foundation can be an alternative for prisons or BNPT to deal with terrorism convicts so that they are willing to be open and not close themselves. According to the author, the humanitarian approach taken by the Lingkar Perdamaian Foundation includes an economic approach because by helping to meet the needs of prisoners' families who are still in prison, meaning that the Lingkar Perdamaian Foundation also uses an economic approach to them.

Until now, there are about 38 former terrorism convicts and ex-combatants from the Lingkar Perdamaian Foundation, mostly from the areas of Lamongan, Tuban, Bojonegoro, Surabaya and Semarang, 78 TPA Plus students, and 7 teachers at the TPA. For the names of members of ex-convicts who joined the Lingkar Perdamaian Foundation, the author has difficulty obtaining data, due to several factors, one of which is that some ex-convicts still have 'trauma'. They wanted to join the peace process with the government but didn't want the old community to know about it. Because it will reduce his reputation or create antipathy from his friends.

This is as stated in the statement given by the Chairman of the Lingkar Perdamaian Foundation, Ali Fauzi, that:

> "Deciding to join the Republic of Indonesia to become agents of peace and leave the old community requires courage, because they will always be threatened by the old community, considered to be *'thoghuts'* and 'stooges' of the government" (Personal Interview with Ali Fauzi Manzi, 4 February 2018, 07.00 WIB).

Therefore the names of the members of the Lingkar Perdamaian Foundation are not published, only a few names that have long since left the community such as Anis Yusuf alias Haris, an Indonesian who knows personally the world terrorist leader Osama bin Laden, Iqbal Hussein Thoyib, a bomb planner for the National Police Headquarters and a provider of weapons to kill police, Sumarno, Ali Fauzi's neighbor in Lamongan, who once went to prison for hiding thousands of firearms, as well as Machmudi Hariono alias Yusuf who hid 1 ton of explosives on Jln. Sri Rejeki Semarang.

The programs at the Lingkar Perdamaian Foundation can be divided into 2 (two), namely:

1. Short-term programs, including:
   a. Empowerment, the main and first short-term program is empowerment. In this case, once ex-convicts leave prison, the Lingkar Perdamaian Foundation empowers and trains work, finding workplaces/entrusting work. Because ex-convicts also have families, children and wives to support, once they leave prison they need a job.
   b. Providing material assistance and compensation, a program of providing material assistance and compensation, for the children of prisoners who are still in prison, their wives and children are temporarily financed by the Lingkar Perdamaian Foundation, such as the provision of basic food packages and a set of school equipment.
   c. Prison visits, prison visit programs or prison safaris conducted by the Lingkar Perdamaian Foundation to campaign for peace to terrorism convicts. The approach taken by Ali Fauzi is a humanitarian approach, and not always about religion. Terrorism convicts are embraced and invited to carry out relaxed dialogues, carry out activities such as football matches, which were held some time ago at Porong prison, iftar together, and so on. This is considered to be more effective in embracing terrorism convicts.
2. Long-term Programs, Long-term programs include:
   a. Mental support, a form of activity such as gathering with fellow ex-convicts, conducting studies and dialogues related to matters that are still being debated among former terrorists. This mental support basically

includes the study of understanding Islam *rahmatan lil alamin* and changing extreme views.

b. Skill training, training to equip the abilities of ex-terrorists such as entrepreneurial training, journalism training, management, business innovation, accounting, to the ability to open new branches and recruit their own colleagues, other ex-convicts.
c. TPA Plus, this program is a training program for children and wives of terrorism convicts. The TPA which was inaugurated by BNPT in conjunction with the Baitul Muttaqin Mosque which is still one complex with the Lingkar Perdamaian Foundation. In addition to empowering children of terrorism, the TPA also empowers the wives of terrorism convicts to become *ustadzah* at the TPA and sells snacks for children.
d. Resocialization assistance, a form of this program that is by holding activities related to the surrounding community. The aim of this program is that former terrorism convicts are accustomed to interacting with the surrounding community and not closing themselves off, as well as for the community to accept former terrorism convicts and eliminate the negative stigma against them.

Of the several programs launched at the Lingkar Perdamaian Foundation, not all programs have been implemented, the main reason that all programs have not been implemented is because the Lingkar Perdamaian Foundation was only established and inaugurated on March 29, 2017, it has only been 1 (one) year of running its programs. The programs that have been implemented include:

1. Empowerment, an empowerment program to help former terrorism convicts find and find jobs that have been carried out several times, including:
   a. Sumarno, former terrorism convict who was arrested for hiding thousands of firearms for training of terrorist militias, is now the Secretary of the Lingkar Perdamaian Foundation and opened a motorcycle repair shop in Tenggulun village with funding from the Lingkar Perdamaian Foundation.
   b. Toni Saronggalo, one of the former terrorism convicts who just left the Lamongan Class IIA prison on December 27, 2017. Toni Saronggalo received a chicken feather lathe to support his business, namely as a mobile chicken trader. The chicken feather lathe was handed over directly to the Head of the Lamongan Police, AKBP Feby DP Hutagalung, to Toni Sarunggalo on January 23, 2018 witnessed by the chairman of Lingkar Perdamaian Foundation, Ali Fauzi Manzi.
   c. Machmudi Hariono alias Yusuf Adirama, a former terrorist convict who succeeded in opening a culinary business for Dapoer Bistik Solo, and now employs several former combatants and former convicts of terrorism.
2. Providing material assistance and compensation, the program of providing material assistance and compensation was carried out on September 17, 2017 with assistance from the Ministry of Social Affairs which provided

assistance from the Family Hope Program (PKH) to 24 families of former terrorism convicts consisting of 17 families of former terrorism convicts from Lamongan, 2 family from Tuban, 2 families from Bojonegoro, 1 family from Malang and 1 family from Madiun. Providing PKH assistance of Rp. 1,890,000.

3. Prison visits, prison visit programs or prison safaris conducted by Lingkar Perdamaian Foundation have been carried out 2 (two) times including:
   a. On June 21, 2017 at Porong Prison, he met several former terrorism convicts such as Umar Patek and Ismail. The series of activities included a relaxed dialogue and iftar with terrorist convicts.
   b. On August 15, 2017 at the Lamongan prison, apart from having a casual dialogue, he also held a futsal competition between terrorism convicts in prison and former terrorism convicts from the Lingkar Perdamaian Foundation.
4. Skill training, training to strengthen young people's economic skills in the form of journalism training was carried out on January 28, 2018 at the Tanjungkodok Hotel in Lamongan with 75 participants.
5. TPA Plus, the Al-Qur'an Education Park, currently has approximately 78 students, consisting of the children of the families of terrorism convicts and local residents. TPA starts from 2pm to 5pm. One of those who joined was *ustadzah* Zuhrotun Nisa ', who was the wife of Ali Imron who was convicted in the Bali bombing case 1, ustdazah Eli Hidayah, ustadzah Umi Sholihah and so on.
6. Resocialization assistance, carried out on the anniversary of the Independence of the Republic of Indonesia on 17 August 2017, with a series of flag ceremony activities with residents around Tenggulun village located in the courtyard of the Baitul Muttaqin mosque complex, Contests, and Healthy Walks,

In carrying out efforts to deradicalize the Lingkar Perdamaian Foundation, several obstacles and obstacles are also faced including:

1. Internal barriers, obstacles that come from within each member. Such as the difficulty of equating perspectives and changing the ideology that was originally believed by former Terrorism Prisoner (Napiter). It is difficult to change the thinking of former terrorists and combatants that the correct way of preaching is not through acts of terror and attacks on the police, and jihad in Islam is not always synonymous with bombing.
2. External Barriers, Lack of Funds for development programs. Because the Lingkar Perdamaian Foundation is an NGO (Non-Governmental Organization), an organization founded by individuals or groups of people who voluntarily provide services to the general public without aiming to gain profit from its activities. The main principle of NGOs is to be selfish and voluntary. So, the funds to run the program are purely the efforts of the Lingkar Perdamaian Foundation itself. Ali Fauzi Manzi, director of the Lingkar Perdamaian Foundation, said that the Lingkar Perdamaian Foundation has CV

Construction which is managed by Zulia Mahendra, the son of Amrozi, who was sentenced to death in the Bali bombing 1. CV who is in the village of Tenggulun and operates around Drajat and Sedayu Lawas, as a financial foster mother of Lingkar Perdamaian Foundation.

However, to overcome these obstacles, Ali Fauzi and his colleagues at the Lingkar Perdamaian Foundation continued to strive to keep the program running. One way to do this is to collaborate with various related parties, such as collaborating with the PPIM (Center for Islamic and Community Studies) Syarif Hidayatullah State Islamic University Jakarta, AIDA (Alliance of Indonesia Peace) and NGOs that are concerned with radicalization. The form of cooperation is cooperation in coaching, activities, and collaborative programs. In addition, the Lingkar Perdamaian Foundation also synergizes with the police and collaborates with several prisons such as Lamongan and Porong prisons.

From the results of the research conducted by the author, the deradicalization efforts carried out by the Lingkar Perdamaian Foundation provided many benefits, not only to members but also to the surrounding community living in Tenggulun village. Several people interviewed by the author during their visit to the Foundation revealed that the existence of the Lingkar Perdamaian Foundation changed the impression that the village of Tenggulun, which was once known as a terrorist den, has become a village producing agents of peace, besides that local residents are also often invited to participate in activities organized by the Lingkar Perdamaian Foundation. For peace, some residents even get basic food assistance, and their children also learn at TPA Plus which was established in the Foundation complex.

The author also conducted an interview with the wife of terrorism convict Ali Imron, namely Ustadzah Zuhrotun Nisa 'who is also a teacher at the TPA Plus. According to Ustadzah Zuhrotun Nisa 'with the existence of TPA plus him in the first placeFeeling afraid of being discriminated against in the community, being able to return to a normal life and socializing with the surrounding community, teaching at the TPA, and selling some snacks for children there.

According to the author's analysis, the efforts to deradicalize former terrorism convicts by involving civil society, one of which was carried out by the Lingkar Perdamaian Foundation, was quite effective in preventing former terrorism convicts from joining the old community. Apart from because former terrorists have a forum to gather and convey aspirations about the complaints and obstacles they face, this foundation can help former terrorism convicts to start living again and help the process of resocialization and have a new, better community. So that former terrorism convicts can return to society, interact, do not close themselves off and be protected from the stigma of society.

CONCLUSION

This research concluded and highlighted that the reality former terrorism convicts in Indonesia after leaving prisons are still radical. The arrest and conviction of the perpetrators of terrorism alone are not enough to make the radicalism inherent in terrorists disappear. Many factors cause terrorism convicts to remain radical and even more radical, one of which is a strong stigma in society that makes them unacceptable like other societies. Former Napiter (Terrorism Prisoners) find it difficult to find work, even though they also need to continue their life. This encourages former terrorism convicts to return to the radical community who are happy to accept them back. In connection with these matters, the connection with the operation of the criminal justice system shows that the objectives of the criminal justice system have not been fully implemented. This means that if the objectives of the criminal justice system cannot be implemented, there needs to be a change. Furthermore, it also highlighted that the deradicalization effort carried out at the Lingkar Perdamaian Foundation is an ongoing program directed at ex-convicts and their families, and ex-combatants who have the potential to become radical. The Lingkar Perdamaian Foundation helps former terrorism convicts, empowers, trains and encourages and provides a new community for former terrorism convicts so that they do not return to radical groups, with a vision of "caring for *ukhuwah* and knitting peace". The effort made by the Lingkar Perdamaian Foundation is to give trust to former terrorism convicts. There is an independent life, a space for interaction and socialization with the wider community. They are protected from the stigma of being a former terrorist. The programs at the Lingkar Perdamaian Foundation can be divided into 2 (two), namely: (1) Short-term Programs and (2) Long-Term Programs. Of the several programs launched at the Peace Foundation, not all programs have been implemented. The programs that have been implemented include empowerment, provision of material assistance and compensation, prison visits, Skill training, TPA Plus, and resocialization assistance. The deradicalization efforts carried out by the Lingkar Perdamaian Foundation have provided many benefits, not only to members but also to the surrounding community who live in Tenggulun village.

REFERENCES

Ali, M. (2007). Sistem Peradilan Pidana Progresif; Alternatif dalam Penegakan Hukum Pidana. *Jurnal Hukum Ius Quia Iustum, 14*(2).210-229

Andrie, T. (2011). Kehidupan di balik Jeruji: Terorisme dan Kehidupan Penjara di Indonesia. *Institute for International Peace Building Position Paper*, *2*, 11-14.

Bakti, A. S. (2016). *Deradikalisasi Nusantara (Perang Semesta Berbasis Kearifan Lokal Melawan Radikalisasi dan Terorisme.* Jakarta: Daulat Press Kreatif.

Firdaus, I. (2017). *Penempatan Narapidana Teroris di Lembaga Pemasyarakatan (Putting Convicted Terrorists in Correctional Institution). Jurnal Penelitian Hukum DE JURE, XVII*(4), 429-443.

International Crisis Group. (2007). *Deradicalisation and Indonesian Prisons.* Asia Report No. 142, 19 November 2007.

IPAC Report. (2013). PRISON PROBLEMS: *Planned and Unplanned Releases of Convicted Extremists in Indonesia 2 September 2013.* Jakarta: Institute for Policy Analysis of Conflict (IPAC).

Ismail, N. H. (2010). Prison Radicalization and How It Happens: An Analysis into Root Causes of Terrorism. *The Jakarta Post Online,* retrieved from http://www.thejakartapost.com/news/2010/08/27/prison-radicalization-and-how-it-happens-an-analysis-root-causes-terrorism.html.

Maskur, M. A. (2017). "Deradikalisasi Pelaku Teror". *Online,* from http://fh.unnes.ac.id/index.php/gagasan-pakar/deradikalisasi-pelaku-teror/.

Masyhar, A. (2008). *Pergulatan Kebijakan Hukum Pidana dalam Ranah Tatanan Sosial.* Semarang: Universitas Negeri Semarang Press.

Masyhar, A. (2009). *Gaya Indonesia Memerangi Terorisme*. Bandung: Mandar Maju.

Masyhar, A. (2016). "Memangkas Penularan Teror". *Online,* retrieved from http://unnes.ac.id/pakar/memangkas-penularan-teror/.

Neumann, P.R. (2010). *Prisons and Terrorism Radicalisation and De-radicalisation in 15 Countries.* London: The International Centre for the Study of Radicalisation and Political Violence (ICSR)

Septian, F. (2012). Pelaksanaan Deradikalisasi Narapidana Terorisme di Lembaga Pemasyarakatan Kelas I Cipinang. *Jurnal Kriminologi Indonesia*, *7*(1), 108-133

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RESEARCH ARTICLE

A DISCOURSE OF CHEMICAL CASTRATION PUNISHMENT: HOW WE PROTECT OUR CHILDREN FROM THE RAPIST?

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ABSTRACT

The crime of rape against children is a serious problem that must be resolved by the government. The increase in cases of rape against children proves that the existing regulations have not provided a deterrent effect for the perpetrators. The state here has a role in dealing with victims of rape, the role of the state can be realized through the rehabilitation process as a step to restore the psychological condition of victims as a result of crimes that have occurred. In addition to rehabilitation, the state also issued regulations to prevent these crimes from recurring by issuing Law Number 17 of 2016. Several questions arise from the author that the issuance of this law can fulfil the rights of children as victims of rape and be able to prevent the crime of rape from recurring. The research indicated that the existence of Law Number 17 of 2016 does not guarantee protection for child victims of rape. The law focuses on the punishment of perpetrators not on the rehabilitation process that should be carried out by the state and the rights of children who are victims of rape have not been fulfilled.

Keywords: *Chemical Castration; Sexual Crime; Child Protection*

INTRODUCTION

Crime itself is a phenomenon that occurs in society and is as if it is something we commonly hear everyday, for example murder, theft, rape, raiding, gambling and so on. The perpetrators of crime themselves usually appear from those closest to us who we think are good and are unlikely to do things like that. Rape is one of the crimes that we hear a lot about these days, and the victims are countless, ranging from children to adults. Many ways were done by the perpetrators of this crime to deceive the victims, sometimes even with violence that resulted in the victim's life.

The government in responding to the many cases of rape and sexual abuse against children in 2016 was so fast and responsive, that it issued a government regulation in lieu of a law whose sanctions were much heavier than the previous regulations. The government issued Perppu Number 1 of 2016, the second amendment to Law Number 23 of 2002 which later changed to Law Number 17 of 2016. With the birth of this Law it is hoped that it will be able to narrow the space for perpetrators of sexual crimes against children, so think twice to carry out its action. Where in Law Number 17 of 2016 contains castration sanctions for perpetrators of sexual crimes against children.

The issue of castration sanctions for perpetrators of sexual crimes in Indonesia has recently become a hot topic to discuss, especially after the case of child rape in Mojokerto district, East Java, which was carried out by a welder with the initials MA with a total of nine victims (Kompas, 2020). In that case the perpetrator was sentenced to chemical castration and a prison sentence of 12 years and a fine of 100 million subsidiary to six months in prison by the judges of the Mojokerto District Court who had been strengthened by High Court of Surabaya. However, the application of chemical castration punishment for perpetrators of sexual crimes is not as easy as turning the palm of the hand, where in this case there are groups who are pro and contra. The group that agrees with the application of the castrated sanction thinks that the punishment has a deterrent effect on the perpetrator. Meanwhile, those from the contra group, especially human rights activists, considered this method less humane and not the right way to solve problems. However, the human rights committee also understands this that sexual crimes against children are a serious and extraordinary problem so that strong regulations are needed. However, the National Human Rights Commission reminds us that in imposing punishment, human rights must also be considered, both in terms of the objectives and methods of implementing these rules in order to achieve justice.

Several studies related to chemical castration both in Indonesia and several countries show that this discourse has many pros and cons. On the one hand, some think that this punishment is contrary to the basic concept of human rights, but on the other hand, some others argue that sexual crimes against children are a form of extraordinary crime, so chemical castration is the

right sanction as a form of protection for children and prevention of similar crimes (Ratkoceri, 107; Nour, 2020; Zhuang, 2018; Krismiyarsi, 2018; Puteri, et. al, 2020; Mardiya, 2017; Hasanah & Soponyono, 2018; Windari & Syahputra, 2020; Tunggal & Naibaho, 2020).

Law Number 17 of 2016 regarding the second amendment to Law No. 23 of 2002 already has a clear objective, is to prevent the fall of victims again. However, the role of the state in ensuring child victims of rape is still a conflict between the rights of the victims and the rights of the perpetrators. Where the rights of children who have been victims of rape and sexual crimes must receive special treatment from their family environment, playmates, place of residence, even the State should restore the psychological condition of the child. The state must be at the forefront as a bulwark of initial protection so that child victims of rape can return to have bright hopes and can realize the ideals of the nation.

METHOD

This research uses qualitative methods, qualitative research is research that intends to understand the phenomena experienced by research informants such as behavior, perceptions, motivation, actions, etc. holistically and by means of descriptions in the form of words and language. a special context that is natural and by utilizing various natural methods (Moleong, 2013: 6). This type of research uses juridical empirical which in other words is a type of sociological legal research and can also be referred to as field research. This research was carried out in various related institutions (Police, Attorney General's Office, Courts), Child Protection Institutions, and Human Rights Activists. The focus of this research is chemical castration as an effort to protect the rights of children who are victims of the crime of rape. The main data sources in qualitative research are words and actions, the rest is additional data (Lofland in Moleong 1988: 112). The respondent referred to in this study is a team involved in the problem of protecting children from the crime of rape. The data analysis technique uses an interactive model which is carried out by collecting data, reducing data, and presenting data.

CURRENT CAPTURE OF SEXUAL CRIMES IN INDONESIA: HOW THE CRIMINALS BE PUNISHED?

Protection for the children especially in the sexual crimes has been stipulated and clearly stated on Article 81 paragraph (7) on Indonesian Child Protection Law which regulate the imposition of additional penalties for perpetrators of sexual violence against children. The additional punishments were in the form of announcing the identity of the perpetrator, chemical castration, and installing

chips. Castration (*kebiri*) is a surgical procedure and or chemical use that aims to eliminate testicular function in males or ovarian function in females. Castration can be done on both animals and humans (Hello Sehat, 2020).

The regulation of castration in Indonesia emerged after its birth Law Number 17 of 2016, where the government feels the need to adjudicate changes to laws related to the rampant cases of sexual violence against children. With this regulation, it is hoped that it will be able to prevent sexual violence against children or as a preventive measure from the government. The regulation of castration itself is contained in Article 81 and Article 82 of the second amendment to Law Number 23 of 2002.

Until now, the implementation of castration still reaps pros and cons in society, there are those who support it but also others who oppose it because of human rights reasons. Based on the results of an interview with Police Commissioner Sulityowati, SH, at the Central Java Regional Police said: "The castration has not been passed because it is still in the process of being further discussed. In fact, if the punishment for castration is true, the police agree, because after all, the punishment for child crimes must be strictly enforced". It needs to be implemented immediately to provide a deterrent effect on perpetrators, given the record from the National Commission for the Protection of Children and Women in 2016 that the number of violence against women and children has increased. Monitoring results from the National Commission on Violence Against Women and Children show that there are 15 types of sexual violence experienced by women in Indonesia, namely rape, intimidation / attacks with sexual nuances including threats or attempted rape, sexual harassment, sexual exploitation, trafficking of women for sexual purposes, forced prostitution, slavery. sexual abuse, forced marriage, forced pregnancy, forced abortion, forced contraception/sterilization, sexual torture, inhuman and sexual punishment traditional practices of sexual nuances that endanger or discriminate against women, and sexual control including discriminatory rules based on morality and religion. Sexual violence has a specific impact on women.

Women victims of sexual violence are often silenced because they reveal that the violence they experience is considered a disgrace to themselves, their families and their communities. As a symbol of the sanctity of their community, women victims of sexual violence are often the ones to blame, accused of instigating the violence. Because of the people's perspective on the symbol of holiness, victims also often get the stigma from society that they are "damaged goods". As a result, the recovery of the victim is not only related to the criminalization of the perpetrator, but also very much depends on the acceptance and support of the family and the surrounding environment (Komnas Perlindungan Perempuan dan Anak, 2016).

The commission monitoring results found that in the last 4 years (2012-2015) an average of 3000 to 6500 cases of sexual violence occurred each year, in the personal/household and community sphere. In the sphere of household /

personal relationships, sexual violence increased to the second highest after physical violence, in the last 1 year. Both in the realm of household / personal relations and in the realm of the community, the highest type of sexual violence is rape (Catatan Tahunan Komnas Perempuan dan Anak, 2016). On the other hand, the narrow definition of rape in the Criminal Code and the bias of law enforcement officials in handling cases rape, causing women victims of rape to not get the legal protection they should. Results of a study by the Service Provider Forum (FPL), only 50% of reported rape cases have legal proceedings, and only 10% of these cases reach court decisions, another 40% stop halfway through. Seeing the above notes regarding the number of cases of sexual violence, it is necessary to arrange a proper and correct arrangement even though it is contrary to the rights of the perpetrators .Based on the results of an interview with Kompol Sulityowati SH, on May 29 2017 said: "Actually it is against the rights of the perpetrators (HAM) is clearly contradictory but back again to the actions they have committed is far more inhuman so in our opinion if it is applied it is fine but until now it has not been carried out and the police are still waiting for the results of the decision later".

Apart from the rights of the perpetrators who are rehabilitated or castration, we must also pay attention to the rights of children who are victims of the crime of rape because that is the main thing. For the problem, the perpetrator is deemed worthy of receiving a harsh punishment because it is in accordance with what they have done. Law, like polis, is a vehicle needed to direct humans to rational moral values. In this philosophical construction of rational moral beings, Aristotle compiled his theory of law. For her, law as a human guide to rational moral values, then it must be fair. Legal justice is identical to general justice where justice is characterized by a relationship between one another, not self-condemning, but also not prioritizing other parties, and the existence of equality. Here again appears what is the basis of Aristotle's theory, namely social-ethical feelings. It is not surprising, if his formulation of justice rests on the three essence of natural law which he considers to be the main principle of law. The principles in question are: *Hineste viver, alterum non leadere, sunum quique tribure* (Living respectfully, not disturbing others, and giving to everyone its share) (Raharjo, 2010: 45).

This principle of justice is the benchmark of what is right, good and right in life, and because it binds everyone, both society and the authorities. Law is a self-twin of justice, this is the most practical way to achieve a good, just and prosperous life. According to Aristotle, without a good socio-ethical concern for citizens, there is no hope of achieving the highest justice in the country even though those who govern wise people even with quality laws (Raharjo, 2010: 45).

Apart from relying on rules, to achieve justice requires a wise way, namely practical ratios. In the criminal justice system, there are legal and social aspects. The legal aspect focuses on operational legislation in an effort to tackle crime and aims to achieve legal certainty (Utari, 2012: 32).

Therefore, in the implementation of castration punishment, if it is seen from the understanding of the theory of justice, it is considered correct because at first it does not only look at one aspect or its own interests (the perpetrator) but also at the interests of others (the victim). In connection with the fulfillment of victims' rights carried out by the state, the state has a role towards child protection as stipulated in the 1945 constitution. Then also the protection specifically for the rights of children as part of human rights, is included in Article 28B paragraph (2) that "every child has the right to survive, grow and develop, and receive protection from violence and discrimination" (Djamil, 2013: 27). Protection of children's rights in Indonesia in Law No. 4/1979 on child welfare, which coincides with the stipulation of 1979 as the "international child year".

This child protection law is then complemented by including the principles of children's rights in Law no. 20/2003 concerning the national education system, Law No. 23/2006 concerning Population Administration, Law No. 23/2004 concerning the Elimination of Domestic Violence, Law No. 21 of 2007 concerning the eradication of criminal trafficking in persons, Presidential Decree No. 59 of 2002 concerning the National Action Plan for the Elimination of Commercial Sexual Exploitation of Children, Presidential Decree No. RI. 88 of 2002 concerning the National Action Plan for the Elimination of Trafficking in Women and Children (Djamil, 2003: 28).

Based on the convention on children's rights which was later adopted in Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection, there are four general principles of child protection which are the basis for every country in implementing child protection (Djamil, 20-13: 28-31), among others:

1. Principles of Non-Discrimination
2. Best Interest of The Child Principle
3. The principle of the right to life, survival and development (The Right to Life, Survival and Development)
4. The Principle of Appreciation for Children's Opinions (Respect for the views of The Child). This principle confirms that children have personality autonomy.

Therefore, he can not only be seen as a weak, accepting, and passive position, but in fact he is an autonomous person, who has experiences, desires, imaginations, obsessions, and aspirations that are not necessarily the same as adults. aimed at developing the maximum potential or certainty (Siahaan, 2009: 4), not limited to the government as an accomplice to the state but must also be done by parents of families and the community to be responsible for maintaining and maintaining these human rights (Pramukti & Primaharasya, 2015: 5). Based on the results of an interview with Police Commissioner Sulistyowati, SH, as the Head of Central Java Police PPA said: With the issuance of Law Number 17 of 2016, it is said that it has not fulfilled the rights of children as victims because it has not been carried out until now, but the rights of children as newspapers have

been regulated by the previous law, although not yet maximized. There needs to be a new law specifically related to the rehabilitation of child victims of rape, which has yet to exist".

On the basis of extracting data related to the rights of victims, Law Number 17 of 2016 does not regulate the rights of victims that must be fulfilled by the state but puts forward the process of convicting the perpetrators. Meanwhile, the rights of victims that must be fulfilled have been stated in previous statutory regulations, although they are not yet maximized.

CONCLUSION

This research emphasized and concluded that the application of castration in Law Number 17 of 2016 clearly has pros and cons related to human rights, where there is a right for a person to be a perfect being of God. In the Articles of Law Number 17 of 2016 which confirm the application of the sanction of castration in the context of human rights, it does not fulfil the basic rights of citizens and human rights, as citizens must be guaranteed their rights by the state. However, it is seen from the context of child protection that the rights of children also need protection to realize the best interests of the child. The implementation of castration rehabilitation is aimed at deterring perpetrators of sexual crimes against children, with the hope that after the implementation of this regulation it will be able to reduce the number of crimes and also fulfil the rights of children as victims of rape. However, this regulation does not regulate the rights of victims that must be fulfilled but instead focuses on the process of convicting the perpetrator.

REFERENCES

Ahmad, A. (2009). Menguak Teori Hukum dan Teori Peradilan. Jakarta: Prenada Media.

Arif, G. (2009). *Masalah Perlindungan Anak*. Bandung: Mandar Maju.

Djamil, M. N. (2013). *Anak Bukan Untuk Dihukum (Catatan Pembahasan UU Sistem Peradilan Pidana Anak (UU-SPPA)*. Jakarta: Sinar Grafika.

Hasanah, N. H., & Soponyono, E. (2018). Kebijakan Hukum Pidana Sanksi Kebiri Kimia dalam Perspektif HAM dan Hukum Pidana Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, *7*(3), 305-317.

Krismiyarsi, K. (2018). Study of Penal Policy on Chemical Castration Sanction on Child Sexual Crimes Cases in Indonesia. *IJCLS (Indonesian Journal of Criminal Law Studies)*, *3*(2), 121-132.

Mardiya, N. Q. A. (2017). Penerapan Hukuman Kebiri Kimia Bagi Pelaku Kekerasan Seksual. *Jurnal Konstitusi*, *14*(1), 213-233.

Marlina, M. (2012). *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice.* Bandung: Refika Aditama.

Moleong, L. J. (2004). *Metode Penelitian Kualitatif*. Bandung: Remaja Rosdakarya.

Mukhti, F., & Yulianto, A. (2010). Dualisme Penelitian Hukum Normatif dan Empiris. Yogyakarta: Pustaka Pelajar.

Nashriana, N. (2012). *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Jakarta: Rajawali Press.

Nour, A. (2020). Chemical Castration of the Sexual Offender versus Human Fundamental Rights and Freedoms. *Scholars International Journal of Law, Crime and Justice. Dubai: Scholars Middle East Publisher*, *3*(5), 144.

Puteri, D. S., Wahono, D. C., Firdaus, R. J., & Sukamdani, S. (2020). Chemical Castration from Criminal Law and Human Rights. *Cepalo*, *4*(1), 67-80.

Rachman, M. (1993). *Strategi dan Langkah Penelitian*. Semarang: IKIP Semarang Press.

Rahardjo, S. (2010). *Penegakan Hukum Prograsif.* Jakarta: Kompas.

Ratkoceri, V. (2017). Chemical Castration of Child Molesters–Right or Wrong?!. *European Journal of Social Science Education and Research*, *4*(5), 70-76.

Saleh, R. (1983). *Perbuatan Pidana dan Pertanggungjawaban*. Jakarta: Rineka Cipta.

Shidarta, D. D. (2006). *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia.* Jakarta: Gramedia Pustaka Utama.

Solehudin, M. (2003). *Sistem Sanksi dalam Hukum Pidana*. Jakarta: Raja Grafindo Persada

Susanto, I.S. 2011. *Kriminologi*. Yogyakarta: Genta Publishing.

Tunggal, S., & Naibaho, N. (2020). Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Terhadap Anak Dalam Perspektif Falsafah Pemidanaan. *Jurnal Hukum & Pembangunan*, *50*(2), 329-343.

Utari, I. S. (2012). *Aliran dan Teori dalam Kriminologi*. Yogyakarta: Thafa Media.

Windari, R., & Syahputra, A. (2020). Menakar Aspek Kemanfaatan dan Keadilan Pada Sanksi Kebiri Kimia Terhadap Pelaku Kekerasan Seksual Anak Di Indonesia. *Soumatera Law Review*, *3*(2), 247-264.

Zhuang, J. (2018). Chemical castration: international experience and Chinese path to control pedophilia crimes. *Advances in Applied Sociology*, *8*(08), 575.

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REVIEW ARTICLE

CONTEMPORARY VISION OF INTERNATIONAL RULES ON ELECTRONIC ARBITRATION IN DISPUTE RESOLUTION

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ABSTRACT

Electronic arbitration and the resulting electronic decisions are among the most important modern means of resolving disputes between the parties to the contractual relationship. Since the electronic arbitration decision rendered by the arbitrator or arbitration body is made electronically (either in writing or by signature), it requires the availability of the legal rules for its regulation. However, majority of the rules are in the legislation of the various countries of the world. It is obliged to lose party in this decision to implement judicial commitment or by alternative means dealt by the traditional legal systems. These aspects highlighted the need of focusing on the effectiveness of the electronic arbitration decision that is the subject of present study. The study focuses on global and intangible nature of electronic commerce, where there is no specific place. A special law is required to ensure the legal security sought by entrepreneurs.

Keywords: *Arbitration Disputes; Electronic Arbitration; International Rules*

INTRODUCTION

Mankind has witnessed changes in the modes of production, exchange, communication, way of life with the depth, comprehensiveness and speed since the introduction of modern life in information and communication technologies. These technologies have penetrated certain sectors such as the financial, banking, and the commercial sector to the extent that the methods and practices using them have been transformed. The institutions operating in these sectors are radical and presented as an example of global transformation. The transformation includes the structures and entity of these institutions that resulted in emergence of an organization with no specific site or traditional hierarchical structure or material entity. However, its existence and activity depend on the network of exchanges and communication relationships through which its activities and activities are carried out and its institutional entity is represented. The institutional entity has become a flexible entity that is not present physically, but communicates information and communication.

The information and communication revolution has greatly contributed to increase the size of the mainstream that encompassed the world economies and the way of life known as the globalization trend over the last quarter century. The effects of this wealth of information and communication are expected to continue and expand to include all sectors of activity, production, and exchange in societies.

In the e-commerce environment, it is natural for disputes to arise, as they do in the non-electronic world. These disputes often involve a foreign party to get engaged between parties not belonging to the same regional domain, raising many questions about the law applicable to the dispute, where it has not. Much is being accomplished in the area of collective response to jurisdictional and conflict-of-law issues in the electronic commerce environment. This issue is also related to the effectiveness and importance of using alternative dispute resolution methods, in particular arbitration, to resolve disputes related to electronic commerce.

The research problem stems from the recent and increasing use of the Internet system at the international and local levels. A lof of problems stem due to lack of technical capacity that a person has to use this method of procurement. In addition, there is insufficient knowledge of the mechanism and conditions regarding its use, particularly in the area of shopping and procurement accompanied by the modernity of the UAE legislature in the age of the enactment of the Electronic Signature and Electronic Transactions Act. This was free of stipulation of any conflict of laws resolution mechanism, along with the scarcity of judicial decisions in this area.

The importance of studying the subject of the physical rules of electronic commerce emerges from the effects of technological progress on the means of communication and information. The United Nations and the Internet community

to find international solutions to these problems, since traditional award rules are not sufficient to find appropriate solutions in a manner compatible with the technical nature of procurement via electronic communication networks. Perhaps the most important of these solutions is the adoption of the will standard; however, in its absence the physical rules of electronic commerce in international law are applied in addition to International Arbitration and Model Contracts.

The study is significant as a legal library in the Arab world considers this field and the lack of legislation in terms of all the problems arising due to the increased use of the Internet. The present study presents proposals to the UAE legislator through the creation of a legal system due to the recent legal organization of electronic signatures and electronic transactions in the United Arab Emirates. This is likely to keep abreast of developments and gain benefit from the experiences of some preceeding countries. The scope of study would be in the physical rules of electronic commerce considering their definition, characteristics, sources and evaluation at the organizational level.

The nature of the research requires the use of a number of accepted methods of scientific research and the adoption of several approaches, including the descriptive approach to describe the technical. Therefore, the analytical (deductive) method would be helpful in this study to discuss the technical problems related to the subject. This study is likely to play a significant role in the elaboration of the provisions and principles, including the mission of the Emirati legislator. The Emirati legislator elaborates legal texts in a consistent manner with appropriate solutions to the problems of conflict due to modern procurement methods. It is believed that internet system provides new means of communication that urge the Emirati society to deal through the World Wide Web and to cultivate trust between them in this interaction. The study is organized as follows; firstly, the physical rules of electronic commerce are defined, which is preceeded with explaining the network of internet sites.

PHYSICAL RULES OF ELECTRONIC COMMERCE

E-commerce contracts are more liberal than contracts concluded by traditional means because of the nature of global network contracts, which are characterized by a weak link between such contracts and one or more particular countries. In addition to the universality of the space or scope, the rules of attribution to define the law are applied in the event. It bodes well for the birth of new substantive rules in the legal system of electronic contracts by giving sufficient freedom to the merchants in the field of electronic commerce for construction of this legal system. Once they are free, internal systems have no other law governing their contracts other than the law determining ordinances for themselves as long as national laws alone are unable to organize them. The search for substantive rules of an international nature concerning the business of electronic commerce

outside national laws requires that it be defined in the first branch and distinct from what is suspected in the second branch.

DEFINING THE PHYSICAL RULES OF E-COMMERCE

Physical rules or rules of customary international trade law are generally defined as the law directly establishing a private and independent organization of each domestic law, for certain legal relations because of its international character. It is also known as a set of principles of systems and rules drawn from all the sources that feed the legal construction and functioning of the group of workers in international trade. It is clear from this definition that it focuses on substantive rules as the constituent rules of international trade law. For this they include, as a professor, the general principles of law, and transit systems. For countries and others, international economic relations can be completely governed by a specific set of rules, including transnational customs and general principles of law or arbitral jurisprudence. These general principles of law are not limited to what was mentioned in Article 38 (c) of the Statute of the International Court of Justice. It also includes principles created by general and established customs in international trade (Sadiq, 2007). Dr. Ahmed Abdel Karim Salama is familiar with the rules of Materialism as the set of rules that directly establish objective solutions to the problems of international commercial contracts. It separates it from the reference rules contained in national systems of private international law and from the definitions of the physical rules of electronic commerce. These rules consist of a set of customs and practices accepted and established in the virtual society, developed by the judiciary and users of the global network and the governments of countries in the field of communication and information technologies. The term "physical mathematics" for electronic commerce (E-Commerce Materials) is given to the set of rules that establish direct regulation, especially for legal relationships to distinguish them from the physical rules of commerce. International law, and substantive rules established by national legislators govern private international law relationships directly, because they differ from the supporting rules contained in national legal systems. These rules are better suited in their content and objectives towards electronic transactions.

I. Distinguishing Material Rules from Suspicions

Many questions have arisen to distinguish directly applicable rules, which can ensure uniformity and harmony in transactions across the global network, with the necessary application or rules of public policy.

A. Substantive Rules with the Necessary Application

The necessary implementing rules also called as police or security rules, rules of immediate application, or rules of public policy were initially established by the national legislator. These rules were responsible for controlling the internal links with the possibility of extending their rules to be applied to international private relations. Under the jurisprudence of private international law, saving recognized the certain national rules of an absolute and mandatory nature that must be applied. The application of these rules is irrespective of the relationship of the legal relationship with more than one legal system, despite its actual orientation in a foreign country. Its purpose is to protect society from economic and social risks.

Substantive rules include an objective that applies directly to the problem in dispute. The rules with necessary application are always applied; whereas, the physical rules are often applied in international trade, so that the boundary can be distinguished between physical rules and rules with necessary application through the following elements:

1) Nature of Relationship
   It is understood that the necessary rules of application apply irrespective of the nature of the relationship, whether national or international, having regard to the objectives it seeks to achieve. Sometimes, they are a necessary application, when applied absolutely without distinction between internal and international disputes. However, they are substantive rules when applied to private international relations, i.e. relations with a foreign element.[1] This is what the foreign trade laws of the former socialist countries were all about.
2) Priority of Application
   The rules of necessary application take precedence in application, whether over physical rules or rules of attribution, since the judge must first look for the rules of his law, to determine the extent of their applicability to the relationship. If he cannot find them, he turns to the substantive rules of his legal system, either directly or as a conflict of law.
3) In Terms of Sources
   The necessary implementing rules are distinguished by a legislative source, because they are rules of national origin and purpose. The status of the situation is mostly general; so that it neglects the international character once the relationship has entered into the scope of its validity. This means that it is of regional application, because it applies to any person in the territory of the country and cannot be applied outside that region. As for the substantive rules, it can be applied outside the region of the State, which means that they are transnational rules.

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1 Deby: the role of the rule of conflict in the settlement of international relations, these 1937 bets.

B. Substantive Rules of International Public Policy

Part of the case law has been to distinguish between two types of public policy rules, the first being the rules of the protection system and the second the rules of the general guidance system. The first is intended to protect the private interest or the economically weak party, such as the electronic consumer in consumer contracts, the worker in the employment contract, and the borrower in the loan contract. As for the second, it aims to protect the public interest, and includes special laws relating to credit regulation, trade, prices, investment, transport, the environment, and commerce.

The rules of a protective public policy are those which correspond to foreign law. It is proven that it contradicts the fundamental principles of the community in the judge's country. Therefore, it has an exceptional character or has a negative impact, similar to rules of the general directive. These rules are applied directly as soon as the national courts have jurisdiction to hear the dispute and there is a serious link between the dispute and the national legal order of the judge.

Professor A. Chappelle distinguishes between two types of rules in the general directive system. The first type comprises of substantive rules in a specific direction by encouraging and creating private self-regulation compatible with the growth of cross-border trade. While, the second type comprises police and security rules aimed at protecting the economic, social and political objectives. As for the jurisprudence of international trade law, it has been argued that the foundations are based on traders that are the third type of public order known as the general international system. It is defined as the group of rules closely related to international trade that meet all the requirements and needs by encouraging and creating private self-regulation compatible with the growth of trade between countries. It is a set of general rules which do not relate to the fundamental interests of a particular national community. Rather, it relates to the specific fundamental interests of the international community, as it comprises of set of rules common to the different legal systems and related to international relations.

II. Properties and Sources of Physical Rules

It is necessary to observe characteristics in the first branch and to devote the second branch to the search for its sources, after defining the physical rules of electronic commerce and distinguishing them from the rules of public policy and the necessary rules of direct application.

A. Physical grammatical characteristics

The electronic rules of the lax electronica, or what some call "substantive Internet law", have a set of characteristics that distinguish them from the rules of private international law and the law of international traders. Those rules are as follows;

1) Sectarian and specific rules

   The particular nature of the virtual community leading to the refusal to apply national legal rules as it was originally established to govern tangible material transactions. The sectarianism of those rules is embodied in its people and subject matter as it is directed to all the users of global network and service providers of digital sites. The sectarianism of these rules is also apparent with regard to the issues they regulate. While, there are detailed rules for each type of international trade, there are also more detailed provisions regulating gender in this type of trade. Similarly, Professor Kan pointed out that this law is in place to govern a small or large group of professionals, i.e. non-professionals. The substantive law is only affected by an offer. It is not being limited to a group of practitioners rather it extends to the countries of origin of these rules. The principles of the International Institute for the Unification of Private Law promulgated in 1994 that is concerned with international commercial contracts as it includes substantive rules focusing towards two absolute categories of debtors and debtors.

   As for the quality of the substantive rules of international trade, it indicates that these are rules designed to solve the problems arising from electronic commerce in general. These problems might include; advertising for goods and services, automated data processing, electronic banking, and electronic payment processing systems. It is believed that qualitative and sectarian characteristic is not limited to the persons and transactions provided in the framework of the material rules of electronic commerce. Rather, it goes beyond that of the body or institution that applies these rules when the so-called virtual justice that takes place through judges who have held their sessions via networks. These judges render their decisions to expel the subscriber, cancel his subscription to the Internet or block him, and suspend his use for a specified period of time. Therefore, this jurisdiction is characterized by the confidentiality of its rules, provisions and procedures to ensure compliance of dealers across the global network.

2) Automatic Rule of Origin

   It must be said that the automatic characteristic was the main feature of the law in its general sense. This is because the customs and norms prevailing among members of society were the basis for the emergence of such laws until modern countries relied on legislation to enact laws, along with the development of modern international trade and its tools. Conducting commercial activities through the global network has become a global medium in which traders, consumers and governments come together

without pre-established rules to regulate this medium. It is logical that these transactions lead to conflicts of interest and violation of rights between members of the new society. This directs towards the need of preventive and curative regulation without going through formal channels as is the case of positive law. Therefore, the first rules that have emerged in the field of electronic commerce are the norms and customs established and exchanged by electronic commerce merchants. These merchants have been respected with their conviction and their transactions on the Internet. There is no doubt that these norms and customs are automatic rules of origin and have not been adopted by the national legislative authorities of any country. The main advantages of this automatic function are as follows:

a) The application of what has been dealt with customs at e-commerce dealers is in line with the technical and technological nature of transactions on the global network. It is digital in nature, as the transmission of data and information takes place via digital media but not on paper.
b) The substantive rules of electronic commerce are in line with the expectations of the parties on the global network, as they are intended to lay the foundations of these rules with their practices and customs. These practices and customs are far from national laws that have not yet respected this model of transactions, which means that the application of these rules does not require the intervention of public authorities.
c) The automaticity of the birth of these substantive rules has made it flexible and sensitive towards any technical, economic or political effects that occur in the virtual space. This is because, these rules have come in response to the needs of the dealers in the global network reflected by the reality of the network.

B. Substantive Rules

The objective rule is generally defined as the rule that establishes provisions governing the essence of the legal relations that deal with its rule, and defines the rights and obligations under it. Therefore, this rule distinct from the procedural rule that is limited to clarifying the procedures that guarantee the implementation of substantive law and its application. It directly provides an objective solution to the basis of the conflict, along with several labels including common law of the virtual space, non-national law, transnational law, electronic law, and cross-border law. These laws are opposed by attribution rules, which require reference to the law. It is necessary for a country to extract an objective solution through the law referred to, which means that the physical rules are like the rules of national law that apply directly to the issue in dispute. However, the strength of the physical rules includes customs, usages, and practices that have engaged the dealers in electronic commerce and national legal rules in terms of

their objective nature. The national legal rule for its application is determined by the borders of the country that issued those rules, while the physical rules of electronic commerce are distinguished by transitional rules for countries as they do not originate from a specific national authority. There are no international rules governing disputes in electronic commerce, since the global network is not subject to the domination of any country, organization, regional authority, global authority or jurisdiction. This clarifies that the limits of physical electronic rules are crossed as the result of the nature of the transactions governed by those rules.

C. Direct Physical Rules

The substantive rules of online transactions are distinguished by a direct and objective approach because it provides objective solutions to the problem in dispute directly without deriving solutions by reference to another law. Therefore, it is completely different from the traditional conflict method, which is based on the idea of referring to the applicable law. Rather, it refers referred to the applicable domestic law that sets the final objective solution to the conflict.

D. Sources of Substantive Rules

Electronic commerce is characterized by the multiplicity and diversity of the rules governing it due to the recent birth of the electronic environment. This is because case law differed on the emergence of internationally unified substantive rules with respect to the internet and electronic commerce. These rules differed from the rules of private international law governing conflicting laws and distinctions based on public international law rules and national rules. Therefore, it is necessary to identify the sources of these rules which flow from its provisions and uniformity and harmony can be achieved for these substantive rules. In the light of divergent case law, living the first legal trend was to reject the idea that electronic physical rules (lax electronica) were independent of traditional physical rules (*lax mercatornica*), and that the former was only a part of its scope and an extension of it. The first team indicates the main international recommendations, including the work of international and regional governmental and non-governmental organizations, in addition to the contractual rules. The other team looked at the sources of the rules on electronic documents, unified international law, European common law, and non-binding law issued by international organizations. These rules depend on commercial practices and customs in this area, as its development is based on contractual rules. The model contracts are developed by international institutions and private activities with self-regulation, along with international customs and international contractual practices. As for the third party, it was concluded that the source of these rules comes from codified professional customs in addition to legal groups.

From the foregoing, it is clear that the second doctrinal trend neglected the role of international agreements or contracts between individuals who could be an official or unofficial source of the rules in question. On the other hand, it ignored the role of national electronic commerce organizations that contained many rules that correspond to the nature of this type of commerce.

INTERNATIONAL SOURCES

International trade has become more diversified, with a set of substantive rules for electronic commerce that has proved to be stand-alone solution to many problems related to electronic commerce and the internet community away from the national framework. They rely on international standards and customs that are an important tributary of these rules, except that Practical Reality. Practical Reality has proved that these rules alone cannot contain all the new developments in the new electronic reality, which has prompted many international, regional and professional organizations. The virtual community aims to establish new rules through the agreement, in the light of basic international recommendations and standards. In order to highlight these sources, the physical rules of electronic commerce of organizational origin and research on the physical rules of electronic commerce of automatic origin have been discussed.

I. Physical rules of E-Commerce with Organizational Origins

International agreements and treaties are among the most important sources of substantive rules on the grounds as they establish international nature to regulate legal relations, in which a foreign component is involved. It also involves international recommendations and model laws issued by basic international and regional organizations. The importance of substantive rules in this regard, depends on international legal conventions, along with the need for rules governing its problems and electronic commerce. These agreements and recommendations were an important tributary to the organization of some of the problems of electronic commerce despite the difficulties encountered in its application. The rules of electronic environment include:

A. International Conventions

An international agreement is defined as a written agreement between persons governed by private international law. It intends to provide specific legal effects in private international law, as international agreements have proliferated in the field of traditional international trade.

As far as the field of electronic commerce is concerned, international agreements dealing with electronic commerce issues is very limited corresponding to the absence of an international collective agreement regulating electronic commerce. Therefore, this limited number of agreements is not able to provide sufficient and effective solutions to deal with this large number of electronic commerce transactions. It is necessary to refer to certain agreements concluded in the field of traditional international trade that may be applicable to electronic commerce to address the question. The United Nations Agreement on Contracts for the International Sale of Goods of 1980 and their Trans border Circulation were adopted by the countries of the European Council in 1981. In addition to the European Union rules No. 44 / 2001 concerning jurisdiction, the recognition and enforcement of judgments in civil and commercial matters.

Finally, it is necessary to refer to the agreement published by the United Nations concerning the use of electronic letters in international contracts for the year 2005 A.D. it played a leading role in the development of substantive rules for electronic commerce by seeking to adopt unified rules to remove obstacles in international contracts. In particular, problems result from the questioning of the legal value of electronic communications in international contracts. Obstacles may arise in the application of certain international agreements related to commercial law, such as in the case of applying the United Nations agreement on the use of electronic letters in international contracts for the sale of goods. Where certain obstacles prevent the use of electronic letters, that agreement aimed at overcoming those obstacles by establishing international rules to achieve parity between electronic letters and their paper-based equivalents.

The agreement applies when electronic communications create or implement a contract between parties, whose head offices are located in different countries. It is important to note that it is sufficient to implement contract, leading to the application of the law of a contracting State. The application of the agreement to a contract takes place at work or the habitual place of residence in a different country. The agreement does not apply to an international contract, where it is not clear that whether the contract is present between two different countries or from the transactions between the two parties. The agreement permits the application of the internal law of the State intended to deal with within the limits of its internal system. The main purpose of internal system is to protect the legitimate expectations of the contracting parties, with no explicit reference to Article 6(5). The article states that the domain name or e-mail address of the party related to a particular country does not create a presumption about the place of business.

The contractual system and unilateral systems reject distinction by completely excluding it from the scope to avoid some of the rules of the agreement which are not appropriate for consumers. For instance, Article 10(2) assumes that the recipient receives the electronic letter as it enters the site that has been previously determined by the recipient. This means that the consumer

must see his email continuously and regularly. It should be noted that this agreement is an important source to create physical rules of e-commerce because its actions are carried out by direct application to the contractual relationship. This direct application clearly expresses the material approach to dispute resolution of e-commerce contracts, despite the physical application of the agreement. However, the agreement can be applied through the approach of two-way attribution rules in the law of challenged court.

It is observed that the possibility of concluding international agreements related to traditional international trade and electronic commerce through both of the above approaches reflects the possibility of the coexistence of the two approaches to resolve problems of electronic commerce contracts.

B. International Actions

There is scarcity of modern international agreements on the regulation of electronic commerce and electronic data exchange. Most international trade agreements do not meet the needs of electronic commerce. Moreover, the increase in the number of transactions through electronic data exchange and other means of communication is steady that have become an alternative to paper documents. Their acceptability of these modern means highlights the need to create a unified substantive legislative system that is compatible with electronic commerce data.

It should be noted that many collective actions, recommendations and guidelines have established model laws. These laws form the core of future agreements because of their practical value with a general commitment to comply with these international recommendations and model laws developed by well-established international organizations. Appropriate solutions to transactions are conducted on the Internet since it is an important source of substantive rules. The European Union has also published directives in this field, such as Directive 95/46 / EC on the protection of personal data, Directive 96/9 / EC on the legal protection of databases, and Directive No 99/93 / EC on the common framework for electronic signatures. Directive 2000/31 / EC on the legal aspects of information society services is often referred to as the e-commerce directive, as well as on the work of the European Commission on dispute settlement, in particular among consumers. Calligraphy, including Recommendation No 257/98 at 30 years of age 1998, on 25 May 2000 covered all consumer disputes of the financial and services sector in Europe. This facilitated information exchange and communication between businesses and consumers. This network offers its services through online mediation (online mediation) and disputes are settled via the Internet. Recommendation No 257/98 establishes guidelines to ensure the best possible protection of European consumers' transactions on the Internet; therefore, the projects aim to inform consumers about the existence of an online dispute resolution committee.

In addition, reference should be made to the 1980 Organization for Economic Co-operation and Development (OECD) recommendations on special protection and the flow of personal information across borders. According to Recommendation No 16, member states shall take all reasonable and appropriate measures to ensure the flow of personal data flows across borders. Finally, it is worth recalling some of the directives that preceded the emergence of electronic commerce and aimed at regulating the use of information technologies. The International Maritime Committee (IMC) argued that the rules on electronic bills of lading should be adopted to establish a mechanism to replace the traditional physical paper bill of lading with an electronic bond. Under this regulation, the parties agree on the possibility of sending the bill of lading as well as notifying the delivery of the goods by e-mail.

Finally, mention should be made of the UNCITRAL Model Law on International Commercial Arbitration, the Model Law on Procurement of Goods, Construction and Services, Electronic Commerce and Electronic Signature, and the Arab Model Law on Transactions and Electronic Commerce.

C. Basic Practices

The basic practices included in the field of electronic commerce are physical rules;

1) Standard contracts: Certain standard contracts in the field of electronic commerce have been drawn up to be compatible with new international trade, as in the French standard contract for electronic commerce between traders and consumers. The conditions were established in accordance with French law. The rules of the model contract are compatible with modern technology because it leads to the creation of special rules. The provisions of this model contract are organized in two parallel parts. The first part contains standard conditions that include the rules governing this contract, and the second part contains details and comments that provide a practical guide for the application of these standard condition. On 19 October 1994, the European Commission issued an important recommendation to economists and organizations working in the field of electronic commerce on regarding the usage of the model contract drawn up by the former with the help of comments made by the same committee.The United Nations Centre for Electronic Business and Enterprise Facilitation (underact) adopted recommendation 31 under the title of the Agreement on Electronic Commerce, which includes a model for a contractual approach to electronic commerce operations.
2) General conditions: Contracts necessary for the conduct of electronic commerce often deal with many conditions, which are defined by the competent technical or commercial authorities so that each user (network contractor) accepts these conditions. This is required before the start of the transaction on the web, as in thecommunication contracts. Under this contract, there is a connection between

a computer networks device set by the service connection that is imposed by the users of the resource. These conditions should be the common commitment to the rules of certain legal principles of conduct and business.

3) Information rental contracts: This contract is closely related to the Internet and constitutes a contract for the provision of services, provided by network service providers to network users. This contract is applied, when computer devices are made available to some of the technical capabilities, which leaves the user the freedom to use E-mail and have the information at his disposal, after reserving the required capacity of the site. It is important to note that these actions may be limited at any given time and paid for by the beneficiaries of these services to comply with the rules of conduct established in the field of electronic commerce.
4) Contracts for the creation of virtual stores, called some (participation contracts), contracts that the virtual store shares with the virtual shopping Centre, which brings together many merchants under the same title, and is thus closer to the traditional shopping Centre, which brings together many stores in a complex. Consequently, the co-owner of the store will be bound by the general conditions of the same virtual shopping Centre governing issues relating to the supervision and respect of the content of the virtual store.

D. Contractual Practices

The electronic contract, as one of the elements of electronic law, provides source of the substantive rules of electronic commerce. This is because electronic contract is able to create its own legal system and regulates the relations between the contracting parties in accordance with the principle of the contract. Certainly, the law of the chosen parties is considered to be retained by judicial arbitration as in the principle of non-enrichment without cause. The contract, in the first place and in accordance with the above principles, may establish a company governed by the law of the contract, where the parties to the contract may agree on the conditions to be applied. This freedom of individuals is an advanced stage of self-regulation; therefore, the governments must take steps to overcome legal and regulatory obstacles to recognize this freedom and comply with the promulgation of new regulations in this field. However, it is not possible to solve all legal problems. The resulting law does not prevent the use of any legal system of a state to fill the gap that guarantees the possibility of considering the law of the contract for the most emerging cases. This clearly shows that some of the conflict rules must be excluded, so that the parties agree to establish a legal relationship in accordance with the conditions stipulated in the contract. It is important to know that these practices have created rights and obligations for Internet service providers and network users.

Law No. 27 of 1994 on Egyptian Commercial Arbitration adopted this directive in article 39: (1). The arbitral tribunal shall apply to the dispute to pave the way for the freedom of the parties to determine the applicable law. These customary

rules are considered appropriate when the parties explicitly choose the contractual conditions that have been predetermined as essential rules applicable to the dispute.

The Code of Conduct is defined as a set of principles and judgments issued by professional and commercial organizations, national or international, that aim to regulate electronic commerce and ethical conduct rules on the World Wide Web. Some international organizations and institutions have developed rules of conduct for international trade in general and electronic commerce. The most important of these institutions and bodies are:

1) ICC: It was established under the International Chamber of Commerce (Unified Rules of Conduct for the Electronic Exchange of Commercial Data by Remote Transmission) in 1987 with a number of international organizations. The International Chamber of Commerce has also set up an e-commerce project with three working groups dealing with trade practice issues. ICC's motivation was to develop a self-regulatory framework for e-commerce and make it usable by the merchant community, by revising the guidelines on advertising and online shopping. These guidelines apply to all advertising and marketing activities on the Web to promote any type of goods, services, or ethical rules of conduct to be observed by advertisers and merchants to increase public credit for purchases. This ensures advertisers' free expression and minimize the risks. The ICC Guidelines on Electronic Requirements, which came into force in 2003, are used by parties to conduct their electronic transactions. This guide includes all the necessary means to organize contracts on the World Wide Web and initiate electronic transactions with the least legal risk. This guide was followed by the development and complementing of manuals, including the manual on online media activities.

UNITED NATIONS CENTRE FOR ELECTRONIC BUSINESS AND ENTERPRISE FACILITATION

In March 2001, the Centre adopted a recommendation entitled Model Code of Conduct for Electronic Commerce, which was seen as a means of facilitating electronic commerce transactions in support of the previous recommendation on electronic agreement. This recommendation invites States to promote and develop instruments for the self-regulation of electronic commerce, annexed to an example of these rules, namely the model codes of conduct established by the Dutch Electronic Commerce Program. The Institute has been working on a number of principles for international commercial contracts since 1994.

Stable habits, customs and practices of electronic commerce

It is necessary to distinguish between custom and commercial custom by defining each of them. Electronic commerce is defined as the behavior to be adopted by sellers, traders, or consumers of electronic commerce in a particular commercial problem of electronic commerce. The conduct becomes binding and its waiver entails a specific sanction, in which workers in the electronic commerce sector automatically contribute to the substantive rules of electronic law. Perhaps the most important of these rules, are what has established the professional community of habits and customs in the digital world of information and communication. This is characterized by the cooperative and sectarian nature of each type of transaction in this virtual world, as in the norms and customs in force. In the field of advertising and promotion of goods and services, it is important to preserve the intellectual property rights.

With regard to the application of electronic commerce practices and customs, many customs have been codified and others are in the process of being codified. This is done by including the practices and customs in standard contracts necessary to start electronic commerce.

ADNAN TURKMANI CONTROLS THE CONTRACT IN ISLAMIC JURISPRUDENCE

Electronic Contracting Council

The applicable law and the contract council may be effective if the contractors meet at the same place and may be judged in the absence of one of the contractors. According to most case law, the criterion for discrimination in procurement between those present and those absent is the existence of a time lag between the issuance of the acceptance and positive knowledge. The synchronization standard is the distinction between the two contractualization cases. There are two conditions for the formation of the Electronic Contract Board; the presence of the contractors in the chair of the default contract and the beginning of concerns about the formula. The period of validity of the Electronic Contract Board is determined according to the terms of the contract:

In an e-mail contract, usually the contract is concluded in writing directly between the two parties, i.e. communication between them is instantaneous. In such case, subcontracting procedure begins from the moment the positive result is published and the beginning of the negotiation, which continues until one or both parties leave the site. However, if the contract is indirect or not instantaneous, the Contract Council begins from the moment the viewer is informed of the offer, whether it is a product or a service, and continues until the expiry of the specified

period. However, no tradition can be consulted in this regard, due to the novelty of electronic contracts.

In the contract via the website, the Contract Council begins from the moment the contractor has entered the site and continues until the contractor leaves.

In the case of a contract award by conversation and viewing, the Contract Board begins with the issuance of positive results and continues until the end of the conversation.

KHALED MAMDOUH IBRAHIM IBID - ELECTRONIC ARBITRATION ON SECURITY IN E-COMMERCE HABABA[2]

The options of the Contract Board are as follows[3]:

1) A positive party has the right to withdraw its favor before it is combined with acceptance, unless otherwise indicated, he is obliged to stay.
2) The party who wishes to enter into a contract has the right to reflect on the matter before it and is not obliged to choose the contract directly (acceptance option).
3) The contract is considered by both parties as the right for each of them to withdraw one of the contracts without the consent of the other, as long as contact with the site assigned to the contract still exists (option of the Council). However, this is not possible in case of non-option; as the contract now gives the right of withdrawal to one of them. It is with the majority of scholars who say that the council has the opportunity to do so.

The jurisprudential trends differed in determining the timing of concluding the contract, and the jurisprudence in this aspect has four directions:

1) The theory of the declaration of acceptance, which considers that the moment of the conclusion of the contract, is the moment when the acceptor is declared.
2) The theory of export acceptance considers that the moment of conclusion of the contract is the moment when the acceptance is issued by the acceptor and that she is separated from it in such a way as to lose the possibility of going back. Moreover, measuring on the Internet, the contract starts the moment after clicking on the acceptance key, when the acceptance is separated from the acceptor's will and no longer has the ability to control or reverse it.
3) The time of click or advertising is equal to the time of publication. In an attempt to separate the two previous phases, it is note that the interviewer may declare acceptance and not deliver it.
4) By clicking on the stop button at the top of the electronic display or by leaving the site permanently after clicking on the Accept button, the acceptance will not

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2 Mohammed Khaled Zureikat: E-commerce contracts - online sales contract Dar Al-Hamed analytical study for publishing and distribution Jordan 2007 p85

3 Musleh Ahmad Tarawneh and Noor Hamad Al-Hijaya, "Electronic Arbitration", Journal des droits, volume II, first issue, Syria, 2003.

leave the acceptor's authority and will remain at the declaration of acceptance stage.

Eligibility for the Electronic Contract

Eligibility in electronic contracts where it is contracted at a distance, it may be difficult for one of the contracting parties to verify the eligibility of the other contractor. In this spatial separation between the parties, it is possible that they do not know all the basic information about each other. Therefore, the website dealing is an imaginary place.

The electronic contract must be valid and must be issued by two contractors with contractual capacity. This has led specialists in this field to propose solutions and suggestions to avoid this defect, particularly through advertising, which is a neutral third party in which both parties have confidence. Although, some legal experts believe that the solution is to adopt a legal system that allows the identity of the parties to be verified by any means. This verification would allow personality verification, i.e. each party can confirm the identity of the other party. It should be noted that the legalization of French consumption stipulated in Article 12/18 and the European Directive of 20 May 1997 decided that, for each offer to sell a product or service at a distance, the supplier would include in its presentation data relating to the identification of the entity. The identification detail would include the name and address of the establishment and electronic mail address.

The electronic contract, like any other contract need to be stored properly and must be issued by two contractors with contractual eligibility. If the parties wish the contract to be properly signed, they must check the question of eligibility by any available means. Data submitted by an online contractor may not be correct. In this case, the contractor cannot verify the other contractor's identification data, which can certainly affect the validity of the contract, if the eligibility of one of the parties or one of them to the contract is already unavailable. The defects of will (defects of consent), which are tainted by the will of the person's defects, will become inappropriate, because it will not emanate from free will.

ABDUL RASOUL ABDUL REDHA, D JAMAL FAKHER ALNKAS[4]

Proof of electronic contract

Judicial evidence focuses on a specific legal fact and the forms prescribed by law. As with traditional contracts, electronic drafting alone is not sufficient to constitute full evidence unless it is signed by those who wish to contest it. Evidence in electronic transactions poses many technical difficulties due to the modernity and complexity

[4] Samir Hamed Abdul Aziz Jamal, ibid., P. 79.

of this technology and the character of the owners of illegal electronic transactions. Deception, subtlety, and fraud use high efficiency and quick information technologies to erase any illegal work and its concrete external effects.

Taher Shawky

There is trust and security in international commercial contracts concluded by traditional methods, as these contracts are concluded in the presence of the parties to the contract or their legal representatives. They agree by writing on fixed paper that is easy for each party to keep. In e-commerce contracts, the contract is often concluded between two parties who do not have a physical means of communication, which raises many problems as to how to prove the contract during dispute. There is no doubt that if the contract were concluded electronically and performed by the parties without dispute, such implementation would not raise the issue of proof and would not determine the law applicable to them. It should be noted that the increase in the volume of trade via e-commerce networks is closely linked to the availability of stable rules of evidence, as this is the only thing that brings confidence to legal certainty in e-commerce contracts.

Types of E-Commerce Contract Disputes

Electronic contractual disputes vary according to their diversity and much jurisprudence is classified into three types, based on the contractual components incorporated in electronic contracts. These contracts are signed between merchants and hybrid electronic contracts to create a virtual store.

The contract to enter the network is the oldest type of e-commerce. It is a "contract under which the service provider undertakes to provide the customer with technical access to the Internet, by providing the means to activate it. This is the most important communication program for establishing the link between the computers. It performs certain technical steps necessary to register the new customer, in return for the customer's obligation to pay the prescribed subscription fees.

Mohammed Khalid Zureikat[5]

This contract is binding on both sides and the service provider has the obligation to connect the customer to the network, which implies providing the customer with a username, password and e-mail address. In addition to the contractual obligation, the hotline aims to solve technical problems that the customer may encounter

5 Inas Khalid, op. cit., P. 129

through telephone; although, the customer is solely responsible for paying subscriptions.

Disputes arising from this type of contract are considered to be one of the most complex types of disputes, because of the legal problems with regard to the interpretation and amendment of the contract. It requires coping with technological advances.

A housing contract is also called an information rental that is closely linked to the Internet. It is defined as the service contract under which a service provider makes available some of the functionality of its equipment or information tools through the availability to use the hard disk of its computer in another way. This type of contract is concluded by anyone wishing to have a website address or create a virtual store, in which the service provider allocates space on the hard disk of his computer to store subscriber information. This ensures easy access to the subscriber's website or virtual store for a certain period of time and for a certain value. The second party to the Internet access contract only pays the premiums, as the subscriber in the hosting contract, who commits to the obligations.

E-commerce contracts - online sales

Payment of subscription fees, acquisition of all the material necessary for the management of its site, and the commitment to abide by a charter of good conduct is required in hosting service provider. This includes several obligations, including the non-management of racial sites, the online sale of objects, etc. It also warns that it may be liable to civil or criminal prosecution if it violates applicable national and international laws.

The contract for the establishment of the virtual store is where many merchants gather under an address similar to the traditional shopping. This type of contract has allowed small and medium-sized companies to access new markets to get rid of their products and to break the monopoly of the large institutions in these markets, particularly those specializing in software, publishing books, newspapers, magazines, videos and music. These companies can sell their products at the best prices to avoid transport costs. A physical delivery is where the consumer can pay for the product by credit card and download a book, a cassette, software magazines, and films on his own computer. The store is established in agreement with the service provider or owner of the virtual shopping centre, the latter being obliged to open the participant's store on the Internet. This requires the license to use a specific program allowing him to trade directly on the network. However, it rises many contractual disputes such as compliance with the terms of the agreements between the company and the virtual store service provider, as well as non-contractual disputes such relating to unfair competition or trade secrets. These contracts are the most common electronic transactions, where conflicts are encountered, especially with the consumer, but most of them involve simple

financial values. This has led many countries to adopt several laws to protect the consumer under contract via the Internet against arbitrary conditions.

Law Applicability to Electronic Transactions

It is necessary to know the legal implications of electronic transactions and determine the rights and obligations of their parties to verify their validity in accordance with the law applicable to them. This also helps in the identification of law that is necessary to settle disputes arising from such transactions. It is conceivable that these disputes will be brought to court when the parties remain silent on the choice of arbitration as a means of resolving their dispute, if the dominant method of resolving these disputes is through arbitration once the parties have agreed. These transactions fall within the fertile domain of private international law. On the other hand, the conduct of electronic transactions may be associated with the commission of crimes or errors by their sellers, causing damage to others or committing acts or actions involving irregularities or violations of the laws in force in all these cases, it is necessary to know the applicable law.

Electronic Contractual Transactions

The law of the State in which the common domicile of the contractors is located shall be applied to contractual obligations. Electronically agreed transactions are subject to this notice, regardless of how the parties to the transaction communicated to each other to conclude the contract. This is confirmed by Article 1477 of the French Code of Procedure and Article 1054 of the Dutch Code of Procedure and international conventions. It is stipulated in all the regulations of arbitration centers to limit the parties' willingness to choose the applicable law for a link between the disputes or to deal with the law chosen by the parties. If the parties do not agree on the determination of the applicable law, the implied will may be inferred from all the circumstances surrounding their transactions, including the nationality of the parties, their domicile, the currency agreed or fulfilled. In relations with another party, it may be a professional or craft activity or through an institution that frequently carries out transactions such as airlines, insurance companies or banks. It leads to derivation of the concessionaires' desire to apply that party's law electronically as the holder of the separate obligation. This reflects the provisions of Article IV of the Rome Convention which apply the law of the State, with which the contract is most closely connected with the law of the State.

If the arbitrator or judge is unable to determine the willingness of the parties to apply a specific law considering all the circumstances surrounding their transactions, the case law and judicial system of some countries have been assumed to determine the law governing the contract. In this case, the court imposes a non-existent will on the contracting parties and evaluates it on the basis of evidence

drawn from the circumstances of the contract, such as domicile, nationality or place of contract. The law applicable in the absence of the explicit or implicit will of the contractors is determined by fallback controls that the judge may use if he does not comply with the will of the contractors. In this case, the legislator has considered that the contractors being established within a State. One is considered as an adequate criterion to justify the subordination of the contract to the law of that state. However, such an agent may not be able to determine the applicable law, if the contractors do not have a common domicile. A final support agent will then be set up in the event that do not expressly or implicitly agree to subject the contract for a particular law. It may seem difficult for electronic transactions to determine where they are concluded in cases where each party to the transaction has a contract with a country different from the one with which the other party has a contract.

CONCLUSION

International conventions direct towards transactions containing many legal obstacles. The most important of which is the requirement for traditional writing in some international conventions and the non-acceptance of electronic writing in addition to the problem of delivery over the Internet. The United Nations Convention on the Use of Electronic Communications in International Contracts was adopted by the United Nations International Trade Law Commission .It was found that most traditional attribution rules could be applied, with the exception of certain attribution rules such as the attribution rule on literary and artistic property and attribution rules referring to the application of the law of the place where legal persons have their headquarters. While personal and regional attribution rules are capable of resolving conflicts of law in international commercial contracts, their dependence on geographical and spatial concentration and location makes their application to electronic contracts a problem that raises many difficulties. This has led to the inability of some private international law standards and controls governing international commercial contracts to cover e-commerce transactions in the event of a dispute over the law applicable due to the nature of the medium used. The proposed solutions to the problem of conflict of laws in electronic commerce contracts are the material electronic approach. The case law is divided into two directions; the first is that its proponents run counter to the idea of the private existence of electronic physical rules and deny any independence from traditional substantive rules. The latter is an extension of it. The second trend believes in the particular existence of electronic physical rules .It confirms its independence from traditional substantive rules, because they originate in an electronic environment and in the arms of electronic commerce. This divergence has not reached the level of negation of the status of the legal system; although, it has not escaped criticism of corrections because of its shortcomings and its inability to take over all disputes arising in the field of electronic commerce. This signifies the need for a conflict approach in private international law to fill the above gaps and deficiencies, with the

possibility of adapting some of the rules to support the implementation of electronic commerce contracts. In the absence of commercial premises, this confirms that the two approaches coexist and that it is possible to complement each other.

RECOMMENDATIONS

The present study recommends determining the penalties for questioning this law. There is also need to determine the legal nature of electronic contracts in for investigating the legislative competence. Moreover, reference to the applicable law on the basis of both physical and contested approaches is required to provide the necessary protection for electronic commerce. The protection of electronic consumer is always the weak point of these contracts, considering the nature of Arab society, the rules of behavior, the habits and customs of the electronic society, and its material rules.

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REVIEW ARTICLE

INDONESIAN PENAL REFORM: CONCEPT AND DIRECTION OF THOUGHT

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ABSTRACT

Criminal law reform is essentially an effort to review and reform (reorientation and reform) criminal law in accordance with the development of the socio-political and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reforms in the context of improving the penal system are still being carried out. The reform of Indonesian law is currently directed at efforts to reorient the substance of criminal law rules which are considered no longer relevant to the life of the Indonesian people because many evil acts in the optics of society are not considered evil and are prohibited in the optics of positive law. All happened because Indonesian criminal law in general is a legacy from the Dutch, which is culturally different from the culture of Indonesian society which is Eastern style. If you place the law as a reflection of society, then the current Indonesian criminal law does not reflect this, then the reform of Indonesian criminal law currently leads to a reorientation of the substance of Indonesian criminal law according to the will of the community.

Keywords: *Penal Reform; Renewal of Criminal Law; Concept*

INTRODUCTION

Law is a description or reflection of the society in which the law applies. The law that applies in Indonesia will be effective if the law comes from the spirit of the people who created the law itself, namely the Indonesian legal community. As has been described above, that the laws that apply in our country today are no longer able to answer the challenges of the times, so a revolutionary change is needed in the sense that there is a need for a fundamental change from the existing law and legal system.

Pancasila as the root of the legal ideals of the Indonesian nation has a consequence that in the dynamics of the life of the nation and state, as a view of life adopted, it will provide coherence and direction (direction) in thoughts and actions. The idea of law is the idea, intention, creativity and thought regarding the law or the perception of the meaning of law, which in essence consists of three elements, namely justice, usability, and legal certainty. The ideals of law are formed in the minds and hearts of humans as a product of the unified view of life, religious beliefs, and social realities. In line with that, Indonesian law and law should rely on and refer to these ideals of law (Sidharta, 2010: 84-85).

Many of the laws in force in Indonesia come from the legacy of the Dutch colonial rule, for example the Criminal Code (KUHP) which was written in the early 19th century and often contradicts the social conditions of the Indonesian people in contemporary times today. This of course requires an effort to adjust to the level of progress of society, so that criminal law in Indonesia requires reform efforts. Thus, the idea of reforming and developing national criminal law is essentially inseparable from political, philosophical, sociological, and other practical considerations as reasons for reforming the national criminal law.

The consequence of the law that continues to undergo changes, changes, reforms and legal reforms will lead to progressive laws in the future, which aim to strengthen the virtues of law so that they are supposed to last a long period of time. In a repressive type of legal order, law is seen as a servant of repressive power and an order from a sovereign (bearer of political power) who has unlimited discretionary authority. In this type, law and the state and politics are not separate, so that the instrumental aspects of the law are more prominent (dominant is more prominent to the surface) than the expressive aspects. In the autonomous type of legal order, law is seen as an independent institution capable of controlling repression and protecting its own integrity. The legal order is based on the rule of law. Subordination of official decisions to law, legal integrity, and within that framework legal institutions and ways of thinking have clear boundaries. In this type is procedural justice that highly emphasized. In the responsive legal type, the law is seen as a facilitator of responses or suggestions for responses to social needs and aspirations. This view implies two things. First,

the law must be functional, pragmatic, purposeful and rational. Second, goals set the standard for criticism of what is working. In this type, the expressive aspect of law is more prominent than the other two types and substantive justice is also concerned with procedural justice. Through this responsive type of law, Satjipto Rahardjo considers it an ideal type of law (Rahardjo, 1982: 139). In the same context, Barda Nawawi Arief, the development of general regulations on the Criminal Code since the enactment of Law no. 1 of 1946 regarding the Criminal Law Regulations to date, has not undergone any fundamental changes, because basically the general principles of criminal law and punishment in the Criminal Code are still like those of the Dutch East Indies WvS (Arief, 2009: 4).

Legal reform cannot be separated from the concept of legal reform, which has a very broad scope, because legal reform does not only mean reforming laws and regulations. Legal reform includes the legal system as a whole, namely reform of the legal substance, legal structure, and legal culture. In essence, criminal law reform is an effort to review and reform (reorientation and reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society. Therefore, the exploration of community values in the effort to reform Indonesian criminal law must be carried out so that the Indonesian criminal law in the future is in accordance with the current conditions of the socio-political and socio-cultural Indonesian society. In its implementation, the exploration of this value is based on positive criminal law, customary law, religious law, criminal law in other countries, as well as international agreements regarding the material of criminal law. Religious law, especially that which is adhered to by the majority, namely Islam, needs to be a source for modern and contemporary legal reform because the interpretation of religious law also follows the development of society (Maula, 2010: 10).

The reform of Indonesian criminal law aimed at accommodating the laws that live in society into the content of criminal law regulations is a form of criminal politics through efforts to criminalize acts. Such an effort is an effort to suppress crimes that occur in society, at the same time being linear with efforts to create welfare because conduciveness in the social life of the community is one of the supporting factors for the creation of community welfare. Legal pluralism is an advantage but also a problem because legal pluralism if it is not accommodated in statutory regulations can trigger the ineffectiveness of the law, because the law is not in line with the culture of society, or it means that the community does not want laws that are incompatible with society (Prasetyo, 2015: 20).

As a public law, criminal law finds its importance in legal discourse in Indonesia. In the criminal law, there are rules that determine the actions that may not be carried out accompanied by threats in the form of punishment and determine the conditions for which the penalties can be imposed. The public nature of criminal law has a consequence that the criminal law is national in nature.

Thus, Indonesian criminal law is enforced throughout the territory of the Indonesian state. In addition, considering that the material of criminal law is full of humanitarian values, criminal law is often described as a double-edged sword. On the one hand, criminal law aims at upholding human values, but on the other hand, criminal law enforcement actually imposes sanctions on misery for humans who violate it. Therefore, discussion of the material of criminal law is carried out with extra caution, namely by paying attention to the context of the community in which criminal law is enforced and still upholding civilized human values. The issue of suitability between criminal law and the community in which the criminal law is enforced is one of the prerequisites for whether or not criminal law is good. This means that criminal law is considered good if it meets and conforms to the values held by society. Conversely, criminal law is considered bad if it is outdated and not in accordance with the values in society (Pradityo, 2017: 137).

This paper seeks to examine the concept of reforming Indonesian criminal law as part of legal reform efforts in welcoming the reform of Indonesian criminal law. In addition, this paper also examines the direction of criminal law reform in the main points of thought or basic ideas or socio-philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far.

METHOD

This study uses a normative juridical research method, namely research with a focus on the study of norms in positive law. The approach used in this research is a conceptual approach, namely the concept/direction of reform of Indonesian criminal law. Legal materials in this study use literature legal materials from number of literatures that are relevant to the focus of this study (Ibrahim, 2006: 57).

THE CONCEPT OF INDONESIAN CRIMINAL LAW REFORM

Indonesian criminal law is a legacy of colonial law when the Dutch colonized Indonesia. If Indonesia declares itself as an independent nation since August 17, 1945, then it is appropriate that Indonesian criminal law is a product of the Indonesian nation itself. However, this idealism did not match the reality. Indonesian criminal law is still using the criminal law inherited from the Netherlands. Politically and sociologically, the enforcement of this colonial criminal law clearly created problems for the Indonesian nation.

In essence, criminal law reform is an effort to review and reform (reorientation and reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society. Therefore, the

exploration of community values in the effort to reform Indonesian criminal law must be carried out so that the Indonesian criminal law in the future is in accordance with the current conditions of the socio-political and socio-cultural Indonesian society. In its implementation, the exploration of this value is based on customary law, positive criminal law, religious law, criminal law in other countries, as well as international agreements on the material of criminal law (Muladi, 2005: 4).

Criminal law is part of the legal system or norm system. As a system, criminal law has the general nature of a system, namely *wholism*, has several elements, all elements are interrelated (relations) and then forms a structure. Lawrence W. Friedman divides it into three elements, namely structural elements, substance elements, and legal culture elements (Friedman, 2015: 12-18). From the description above, there is the determination of the Indonesian nation to realize a criminal law reform which can be interpreted as an attempt to reorient and reform criminal law in accordance with the central values of socio-political, socio-philosophical and socio-cultural which underlie and giving sides to the aspired normative content and substance of criminal law (Arief, 2010: 30).

Legal reform in a legal system includes four main aspects of the legal system, namely:

a. Philosophical aspects, namely the existence of values that underlie the legal system.
b. Legal principles aspects.
c. Normative aspects, namely the existence of norms or laws/regulations.
d. Sociological aspects, namely the legal community as supporters of the legal system.

These four basic aspects are arranged in a series one by one which forms a substantive system of law (national) (Ariyanti, 2019: 183). The essence of legal reform is how to renew the law in a legal system so that the four main aspects above are in one unity or have a unifying fabric. The definition of unity here is intended so that these four aspects become one for the whole or the whole (*wholism*), are interrelated (relations) and form a structure (Ariyanti, 2019: 184).

The meaning of criminal law reform for the benefit of Indonesian society refers to two functions in criminal law, the first is the primary or main function of criminal law, is to tackle crimes. Meanwhile, the secondary function is to ensure that the authorities (government) in overcoming crimes actually carry out their duties in accordance with what has been outlined by the criminal law. In its function of overcoming crime, criminal law is part of criminal politics, in addition to non-penal efforts in such countermeasures. Given this function, the formation of criminal law will not be separated from a review of the effectiveness of law enforcement. The need for criminal law reform is also related to the substance of the KUHP which is dogmatic in nature (Teguh & Aria, 2011: 8).

Efforts to reform criminal law in the formation of a national Criminal Code are a basic necessity for society in order to create fair law enforcement. Criminal

law is an effort to tackle crime through the criminal law, so that the fear of crime can be avoided through criminal law enforcement with criminal sanctions. Criminal law with the threat of criminal sanctions cannot be a legal guarantee or the main threat to human freedom in social and state life. The criminal sanctions referred to here, to restore the original situation as a result of a violation of the law committed by a person or by a group of people, require certainty and law enforcement. Such criminal sanctions will be obtained by the formation of the National Criminal Code that reflects the values, society of Indonesia (Teguh & Aria, 2011: 10). The reform of Indonesian criminal law is based on the following reasons:

a. The Criminal Code is seen as no longer in accordance with the dynamics of the development of Indonesia's national criminal law.
b. The development of Criminal Law outside the Criminal Code, both in the form of special criminal law and administrative criminal law, has shifted the existence of the criminal law system in the Criminal Code. This situation has resulted in the formation of more than one criminal law system that is applicable in the national criminal law system.
c. In several cases there have also been duplication of criminal law norms between the criminal law norms in the Criminal Code and the criminal law norms in laws outside the Criminal Code (Arief, 2010: 9).

The current Criminal Code does not regulate the concepts adopted in relation to the meaning of Criminal Acts and Criminal Liability. This situation often creates debate as well as differences in the enforcement of criminal law in Indonesia. Although basically most of the teachers of Dutch criminal law are influenced by a monistic view, which basically sees the issue of accountability as part of a criminal act. This means that in a criminal act itself includes the ability to be responsible. It has been a long time since Indonesia has developed dualistic thinking, one of which is specifically influenced by Prof. Moelyatno as conveyed in his inaugural speech as a professor at Gajah Mada University, which basically assumes that the concept that separates "*criminal acts*" from the issue of "criminal liability" is considered more in line with the way of thinking of the Indonesian people. This concept seems to have been used as one of the bases in updating the Criminal Code, as seen in the title of chapter II (book I), namely "Criminal Actions and Criminal Accountability" (Pohan, 2010).

The three pillars of criminal law reform are influenced by the use of the dualistic concept referred to above, the pillars of reforming Indonesian criminal law include:

a. Criminal Act.
b. Criminal Responsibility.
c. Criminal and Criminal (Punishment and Treatment System) (Anwar & Adang, 2008: 50).

The meaning and essence of criminal law reform can be pursued in two ways as follows:

a. Viewed from a policy approach point of view.
   1) As part of social policy, criminal law reform is essentially part of an effort to overcome social problems in order to achieve / support national goals (community welfare).
   2) As part of the criminal policy, criminal law reform is essentially a part of public protection efforts (particularly efforts to combat crime).
   3) As part of law enforcement policies, criminal law reform is essentially part of an effort to renew the substance of the law in order to make law enforcement more effective.
b. Seen from the point of view of the value approach that the reform of criminal law is essentially part of an effort to review and reassess the socio-political, socio-philosophical and socio-cultural values that underlie and provide content to the aspired normative & substantive content of criminal law (Arief, 2010: 29-30).

Reforming criminal law has become an urgent need for fundamental changes in order to achieve the goals of a better and more humane crime. This need is in line with the strong desire to be able to realize a law enforcement that is more just for every form of criminal law violation in this reform era. An era that urgently needs openness, democracy, protection of human rights, law enforcement and justice/truth in all aspects of the life of society, nation and state.

In this reform era, there are 3 factors of criminal law order that are very urgent and must be renewed immediately. First, positive criminal law to regulate aspects of community life is no longer in accordance with the times. Some of the positive criminal law arrangements are legacy products of colonial law such as the Criminal Code, where the provisions in the Criminal Code lack social relevance to the conditions it regulates. Second, some of the provisions of positive criminal law are no longer in line with the spirit of reform which upholds the values of freedom, justice, independence, human rights and democracy. Third, the application of positive criminal law provisions creates injustice to the people, especially political activists, human rights and democratic life in this country (Arief, 2010: 8-9).

In reforming criminal law in Indonesia, it must first be known about the main problems in criminal law. This is so important, because the criminal law that applies nationally, as Sudarto said, is also a reflection of a society that reflects the values that are the basis of that society. If these values change, then the criminal law must also change (Abidin, 1993: 3).

THE MAIN THOUGHT OF CRIMINAL LAW RENEWAL

Efforts to reform criminal law, in essence, include the field of criminal law policy which is part of and closely related to law enforcement policies, criminal policies

and social policies. Therefore, the reform of criminal law is in principle part of a policy (rational effort) to renew the substance of the law in order to make law enforcement more effective, tackle crimes in the framework of protecting society, and overcome social problems and humanitarian problems in order to achieve national goals, namely social protection and social welfare (Arief, 2011: 3).

In addition, criminal law reform is also part of an effort to review and reassess basic thoughts or ideas or socio-philosophical, socio-political and socio-cultural values that underlie criminal policies and criminal law enforcement policies so far. It is not a criminal law reform if the idealized value orientation of the criminal law is the same as the value orientation of the old criminal law inherited from the colonizers (KUHP WvS). Thus, criminal law reform must be formulated with a policy-oriented approach, as well as a value-oriented approach. Therefore, criminal law reform should be based on the basic ideas of Pancasila, which is the basis for the values of national life that are aspired to and explored for the Indonesian nation. The basic ideas of Pancasila contain a balance of values/ideas in it. The following is the balance of ideas/values in question:

1. Religious.
2. Humanistic.
3. Nationalism.
4. Democracy.
5. Social justice (Arief, 2011: 4).

If the balance of the five ideas is difficult to explore and implement, then it can be compressed into three balances, namely:

1. Religious.
2. Socio-democracy (unification of the ideas of democracy and social justice).
3. Socio-nationalism (union between humanistic ideas and nationalism).

And if the three condensed ideas are still deemed difficult to explore and implement, one idea is sufficient, namely gotong royong (gotong royong), which includes all the previously formulated ideas. If it is related to the concept of criminal law reform (the material criminal law system and its principles) which is currently being fought for, it must be based on the main ideas mentioned above. In principle, the idea is simply called the idea of balance. This balance idea includes several things, namely:

1. Monodualistic balance between public interest and individual interest.
2. Balance between protection/interests of criminal offenders (the idea of criminal individualization) and victims of criminal acts.
3. The balance between the objective (action/outer) and subjective (person/mental attitude) factors is commonly called the *daad-dader strafrecht* idea.
4. Balance between formal and material criteria.
5. Balance between legal certainty, flexibility and justice.
6. Balance of national values and universal values (Arief, 2011: 7).

Then, this idea of balance is also manifested in three main problems of criminal law, namely in matters of criminal acts, problems of criminal error/liability, as well as problems of crime and conviction. Briefly and take only one example each, the following is a brief description of the implementation of the idea of balance into the three main problems of criminal law.

1. Crime Issue (Legal Source / Legal Basis)

   Legal sources or legality bases to declare an act as a criminal act, are not only based on the principle of formal legality (based on law), but also based on the principle of material legality, namely by giving place to living law or unwritten law in society. Therefore, it is necessary to expand the legality principle based on:

   a. The basis of national legislative policy after independence.
   b. The foundation of scientific agreement, through national seminars, for example.
   c. Sociological foundation.
   d. Universal and comparative basis (comparison).

2. Error Issue (Criminal Liability).

   The principle of no punishment without error (the principle of culpability) which is the principle of humanity, is explicitly formulated in the concept as a pair of the legality principle which is the principle of society. The concept of renewal also does not view the two principles as rigid and absolute conditions. In certain cases, the concept provides the possibility to apply the principle of strict liability, the principle of vicarious liability and the principle of forgiveness or forgiveness by judges (*rechterlijk pardon* or judicial pardon). In the principle of forgiveness or forgiveness by judges, there are several points of thought, including to avoid the rigidity or absolutism of punishment, as well as a form of judicial correction of the legality principle. This is solely so that judges in enforcing the law are not only for the law itself (Soedarto, 2010: 100).

3. Criminal and Criminal Matters.

   The idea of balance implemented in criminal and criminal matters is as follows:

   a. Purpose of Criminalization.

      Starting from the idea that the criminal law system is a unitary system that aim and the criminal is only a means to achieve the goal, the concept of formulating the objectives of punishment is based on the balance of two main objectives, namely protection of the community and protection / fostering of individuals. In another sense, the way criminal law works must face social realities.

   b. Terms of Criminalization.

      Starting from these two main objectives, the terms of punishment according to the concept also depart from a mono-dualistic balance,

between the interests of society and the interests of individuals. Therefore, the conditions for punishment are based on two very fundamental principles, namely the principle of legality (the principle of society) and the principle of fault/culpability (the principle of humanity/individual).

c. Problem Criminal.

Another aspect of community protection is the protection of victims and restoration of the balance of values that have been disturbed in society. To fulfill this aspect, the concept of providing additional sanctions in the form of compensation payments and fulfillment of customary obligations. So, in addition to the perpetrator of a criminal act receiving criminal sanctions, the victim or the community also gets attention and compensation in the criminal system.

d. Criminal Guidelines / Rules Issues.

The idea of a balance between certainty (rigidity) and flexibility (flexibility) is also implemented in the guidelines and rules of punishment, one of which is that, even though there is a conviction that has permanent strength, it is still possible to change or review (the principle of modification of sanction) to the decision. This happens when there is a change in the laws and regulations, as well as a change in the improvement of the convicted person. However, in certain cases if there is a conflict between legal certainty and justice, the concept provides guidance so that in considering the law to be applied, the judge should prioritize justice over legal certainty as far as possible (Saleh, 1983: 22).

DIRECTION OF CRIMINAL LAW REFORM IN INDONESIA

Development in the field of law, especially the development or reform of criminal law, not only building legal institutions, but also must include the development of legal products that are the result of a legal system in the form of criminal law regulation and which are cultural in nature, namely attitudes. and values that influence the enforcement of the legal system (Rahardjo, 1980: 84-86). Reform and development of criminal law cannot be carried out ad-hoc (partial) but must be fundamental, comprehensive and systemic in the form of recodification which includes 3 (three) main problems of criminal law, namely the formulation of criminal acts, criminal liability (criminal responsibility) both from actors in the form of natural people (natural person) and corporations (corporate criminal responsibility) and crimes and actions that can be applied (Muladi & Sulistyani, 2013: 89).

In the Criminal Code, criminal acts are divided into two, namely crimes and violations. However, in general, criminal acts can be divided as follows:

1. Crime and offense.

2. Formal offenses and material offenses.
3. Delik Dolus and Delik Culpa.
4. Offense commissionis, offense ommossionis and offense commissionis perommissinis commissa.
5. Single offense and multiple offense.
6. *Aflopenda* delicten and voortdurende delicten.
7. Complaint offense and regular offense.
8. Simple offense and offense with justification (Lamintang, 1990: 213).

Initially legal experts divide the types of criminal acts into what is called *rechtdelicten* and *wetsdelicten*. *Rechtdelicten* are offenses that are contrary to unwritten law, while *wetsdelicten* are offenses which are deemed appropriate to be punished, because they are stated in that way which deserves to be punished (Soedarto, 1990: 28).

Responding to the condition of Indonesian law which still has a western culture due to the application of the Dutch state co-conditions principle to its colonies, legal reform is needed in relation to the original Indonesian law. According to Sudarto, legal reform, especially criminal law, is felt to have a high level of urgency because it involves the first three things, political reasons, namely that an independent country must have its own national law, for the sake of national pride. Second, sociological reasons are reasons that require laws to reflect the culture of a nation. Third, the practical reason for wanting the applicable law in a country is the law in the country's native language, not a translation of the law from which it originates (Muladi, 1985: 85).

Criminal law reform is part of a broad legal reform. According to Barda Nawawi Arief, criminal law reform is essentially part of a rational effort to make law enforcement effective through improving legal substance, rational efforts to tackle crime (evil deeds both by law and by society), national efforts to overcome social problems that can be resolved through law. . Criminal law reform according to the author can be interpreted as legal politics in the sense of post factum or legal politics implemented when concrete situations have occurred in society (Arief, 1999: 89).

Sudarto gave an opinion regarding the criminal law policy in relation to criminalization, the following points must be considered:

1. Must pay attention to the national development goals, which data make a just and prosperous society based on Pancasila.
2. Actions that would be prohibited by the Criminal law must be actions that are not desired by the community (Soedarto, 1990: 39).

Starting from the national goal of Soedarto and Barda Nawawi Arief argues that criminal law reform must be shown to:

1. Protection of the community from harmful and harmful asocial actions / actions.
2. Improvement of perpetrators of asocial acts / actions as a form of community protection from dangerous traits.

3. Law enforcement that resolves conflicts by restoring the balance lost due to criminal acts (Hiariej, 2016: 108).

The reform of the criminal law as mentioned above relates to criminalization which is related to acts that are against the law. An act against the law in the realm of criminal law should be final, namely an act that is contrary to written law as a consequence of the application of the *lex certa* principle, this can be interpreted as an unlawful nature. However, the doctrine is known to be against material law, namely actions that are contrary to the appropriateness or values of justice in society. Violating formal and material laws sometimes contradicts the result of the incompleteness of the law. For example, the *overspelling* of a young couple who are not in a marriage bond is not considered a formal act of violating the law,

The direction of reforming Indonesian criminal law is in a position of how to accommodate laws that live in society into positive law within the framework of national goals oriented to Pancasila as well as alternatives that can be used to address pluralism of law in Indonesia in order to avoid conflicts between one law and the law. other. Accommodating laws that live in society is an effort to review a number of prohibitions that are immoral in nature but are not regulated in positive law.

According to Devlin, the policy of increasing immoral acts as a criminal act, morality is a reflection of the existence of society. control of immoral acts by law can be justified, so that criminalization based on acts deemed immoral can be justified. In line with Devlin's opinion, according to Sudarto, the reform of Indonesian criminal law is currently directed at the reorientation of main ideas, basic ideas, or socio-philosophical, socio-cultural and socio-political values of Indonesian criminal law in accordance with national objectives that reside in ideology of nation (Soedarto, 1990: 39).

Paying attention to the direction of reforming Indonesian criminal law, is how to align it with national goals through accommodating laws that live in society into positive law. Reforming criminal law, especially material criminal law, is directly related to the criminalization of acts. According to Soerjono Soekanto, criminalization is an act or determination by the authorities regarding certain actions which the community or community groups consider as actions that can be convicted of being a criminal act or make an act a criminal act and therefore can be punished by the government by working on his name (Soekanto, Liklikuwata & Kusumah, 1981: 74-76).

The act of criminalization by the state is a form of legislation which has limitations aimed at protecting the community (citizens) as subjects which it regulates so that their freedom is not limited. Criminalization has a relationship with changes that occur in society. Social change does not only mean changes in the structure and function of society, but also includes changes in the values, attitudes and behavior patterns of the community. If you pay attention to criminalization, it is closely related to the condition of the social structure,

meaning that the social structure affects an act that is categorized as a criminal act when the act is against the law in a material sense (mala in perse). Criminalization of actions that are considered contrary to the values that live in society cannot be separated from Eugent Erlich's opinion regarding living law. According to the author, criminalization of bandage is obligatory for the will in the social structure through agreed principles as the main door for criminalization.

Paying attention to this in the context of criminalization is an elaboration of bringing up positive law with laws that live in a society that is often in conflict. The living law view of law shows another side of law that is not just a law in its formal (formal legalistic) sense. Law is born in the realm of everyday experience, formed through habits that eventually become an effective order in society. An order that prohibits an act is usually considered to be contrary to appropriateness in social life.

According to Suteki, in relation to living law, it states that the law does not fall from the sky but processes in the dynamics of society and creates certain constellations. One of the standards for criminalizing acts that are against the law in society is customary law. The nature of customary law in viewing violations is restoration, meaning that there are customary actions that must be taken. The concrete recovery measures include the payment of customary fines.

Hilman Hadikusuma further stated that the characteristics of customary criminal law are the interconnectedness between the real and the unreal, the human power and the unseen power which results in disruption of the harmony that is built in the intended link. These characteristics lead to the consequence of resolving conflicts that occur in the realm of customary crimes in the form of the implementation of a number of rituals to restore the damaged harmony caused by customary offenses. The current issue of criminalization is emphasizing acts that are prohibited but not followed by sanctions in a customary style whose goal is to restore which is reflected through traditional rituals. The types of sanctions in the current criminalization process are more inclined to apply criminal sanctions as referred to in article 10 of the Criminal Code (Pradityo, 2017: 139).

The draft of the Criminal Code as an *ius contituendum* has a futuristic direction where the types of sanctions are more varied than the current Criminal Code which is a Dutch heritage with a different cultural pattern. The current Criminal Code with its western style is oriented towards justice, certainty, and benefit. Meanwhile, Indonesia as an eastern country is oriented towards peace as a legal goal. The philosophy (goal) of the Indonesian nation is a philosophy extracted from the culture and life of the Indonesian nation that has existed for hundreds of years. According to Soediman Kartohadiprojo, the philosophy of the Indonesian nation is not a free individual but an individual who is bound in the sense of kinship. Amendments to the Draft Criminal Code are in the form of additional penalties for the fulfillment of local customary obligations or legal

obligations that live in the community. This formulation shows the eastern-oriented goal of law in the form of peace.

The author's argument is based on the fact in indigenous peoples that violations (criminal acts) are seen as disturbances of balance (*evenwichtstoring*), harmony, and harmony in community life which results in individual and community damage. Criminalization is a public reaction that aims to restore the damaged balance, harmony and harmony as a result of an offense (a criminal act). Damage to balance, harmony, and harmony as a disorder (not peaceful) is countered by implementing customary provisions aimed at restoring the damaged balance, harmony, and harmony so that they become peaceful again is the goal of eastern-oriented law.

The development of the Draft Criminal Code which has begun to lead to eastern-style legal objectives is seen as accommodating the values that live in society as well as efforts to elaborate the existing legal system in Indonesia, is how to reconcile modern law through legal formalism with values that live in society as a source. the value. However, it would be more comprehensive if the provisions on customary payments were placed as the main crime not as an additional punishment, so that it became the main (primary) crime, but the criminal act crystallized from the customary provisions or customary crimes which were then regulated in positive law which was automatically followed by a system of sanctions so as not to eliminate the characteristics of customary law as well as the embodiment of the oriental style, namely the presence of peace (Pradityo, 2017: 140-141).

CONCLUSION

Criminal law reform is essentially an effort to review and reform (reorientation and reform) criminal law in accordance with the development of socio-political and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reforms in the context of improving the penal system are still being carried out. The reform of Indonesian law is currently directed at efforts to reorient the substance of criminal law rules which are considered no longer relevant to the life of the Indonesian people because many evil acts in the people's optics are not considered evil and are prohibited in the optics of positive law. All happened because Indonesian criminal law in general is a legacy from the Dutch, which is culturally different from the culture of Indonesian society which is Eastern style. If you place the law as a reflection of society, then the current Indonesian criminal law does not reflect this, then the reform of Indonesian criminal law currently leads to a reorientation of the substance of Indonesian criminal law in accordance with the will of the community. Therefore, it is suggested that the law must reflect on society, thus Indonesia's current criminal law does not reflect this, so the current reform of Indonesian criminal law leads to a reorientation of the

substance of Indonesian criminal law in accordance with the will of the community. In addition, criminal law must be carried out extra cautiously, namely by taking into account the context of society because criminal law is a basic need for society in order to create fair law enforcement.

REFERENCES

Abidin. A. Z. (1993). *Bunga Rampai Hukum Pidana*. Jakarta: Pradnya Paramita.

Anwar, Y., & Adang, A. (2008). *Pembaharuan Hukum Pidana*. Jakarta: Grasindo.

Arief, B. N. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Citra Aditya Bakti.

Arief, B. N. (2009). *RUU KUHP Baru Sebuah Resrukturisasi/Rekonstruksi Sistem Hukum Pidana Indonesia.* Semarang: Badan Penerbit Universitas Diponegoro.

Arief, B. N. (2010). *Bunga Rampai Kebijakan Hukum Pidana*. Cetakan Kedua. Jakarta: PT. Kencana Prenada Media Group.

Arief, B. N. (2011). *Pembaharuan Hukum Pidana dalam Perspektif Kajian Perbandingan*. Bandung: PT. Citra Aditya Bakti.

Ariyanti, V. (2019). Pembaharuan Hukum Pidana di Indonesia yang Berkeadilan Gender dalam Ranah Kebijakan Formulasi, Aplikasi, dan Eksekusi. *Halu Oleo Law Review*, *3*(2), 178-195.

Friedman, L. M. (2015). *Sistem Hukum Perspektif Ilmu Sosial*. Cet. 7. Translated by M. Khozim, 2015, Bandung: Nusamedia.

Hiariej, E. O. S. (2016). *Prinsip-Prinsip Hukum Pidana*. Jakarta: Cahaya Atma Pustaka.

Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum*. Malang: Bayu Media Publishing.

Lamintang, P. A. F, (1990). *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: Sinar Baru.

Maula, B. S. (2010). *Sosiologi Hukum Islam di Indonesia: Studi tentang Realitas Hukum Islam dalam Konfigurasi Sosial dan* Politik. Malang: Aditya Media Publishing.

Muladi, M. (1985). *Lembaga Pidana Bersyarat*. Jakarta: Alumni.

Muladi, M. (2005). *Lembaga Pidana Bersyarat*. Cetakan Ketiga. Bandung: Alumni.

Muladi, M., & Sulistyani, D. (2013). *Pertanggungjawaban Pidana Korporasi*. Bandung: PT. Alumni.

Pradityo, R. (2018). Menuju Pembaharuan Hukum Pidana Indonesia: Suatu Tinjauan Singkat. *Jurnal Legislasi Indonesia*, *14*(2), 137-143..

Prasetyo, T. (2015). *Keadilan Bermartabat: Perspektif Teori Hukum*. Jakarta: Nusa Media.

Rahardjo, S. (1980). *Hukum dan Masyarakat*. Bandung: Angkasa.

Rahardjo, S. (1982). *Ilmu Hukum*. Bandung: Alumni.
Saleh, R. (1983). *Suatu Reorientasi dalam Hukum Pidana.* Jakarta: Aksara Baru.
Sidharta, A. B. (2010). *Ilmu Hukum Indonesia*. Bandung: FH Unika Parahyangan.
Soedarto, S. (1990). *Hukum Pidana 1 A dan 1 B*. Purwokerto: Fakultas Hukum Universitas Jenderal Soedirman.
Soedarto, S. (2010). *Kapita Selekta Hukum Pidana*. Bandung: PT. Alumni.
Soekanto, S., Liklikuwata, H., & Kusumah, M. W. (1981). *Kriminologi: Suatu Pengantar.* Bandung: Ghalia Indonesia.
Teguh, T., & Aria, A. (2011). Hukum Pidana Horizon Baru Pasca Reformasi. Jakarta: Raja Grafindo Persada.

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REVIEW ARTICLE

LIFETIME IMPRISONMENT IN THE PERSPECTIVE OF HUMAN RIGHTS

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ABSTRACT

Criminal law reform is essentially an effort to review and reform (reorientation and reform) criminal law in accordance with the development of the socio-political and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia. Criminal law reforms in the context of improving the penal system are still being carried out. The reform of Indonesian law is currently directed at efforts to reorient the substance of criminal law rules which are considered no longer relevant to the life of the Indonesian people because many evil acts in the optics of society are not considered evil and are prohibited in the optics of positive law. All happened because Indonesian criminal law in general is a legacy from the Dutch, which is culturally different from the culture of Indonesian society which is Eastern style. If you place the law as a reflection of society, then the current Indonesian criminal law does not reflect this, then the reform of Indonesian criminal law currently leads to a reorientation of the substance of Indonesian criminal law according to the will of the community.

Keywords: *Lifetime Imprisonment; Punishment; Human Rights; Criminal Justice*

INTRODUCTION

The 1945 Constitution means that the State of Indonesia symbolizes a state of law, in which in a state of law there must be recognition and protection of human rights for every human being. Human beings will receive equal treatment and protection in the eyes of the law, including in the social, cultural, and economic spheres. Included as a basic principle contained in article 2 which explains that "The Republic of Indonesia recognizes and upholds human rights and fundamental human freedoms as rights inherently inherent in and inseparable from human beings, which must be protected, respected, upheld in remembrance of human dignity, well -being, happiness, intelligence, and justice." Therefore, the State of the Republic of Indonesia has guaranteed the protection of human rights, based on the provisions of the law and not including the will of a person or a group that can be the basis of power.

The fundamental right that a person has from birth is the definition of Human Rights, this right is thought to be a gift given by God Almighty. All human beings should uphold human rights because they belong to all human beings. In addition to human beings, the state must also protect human rights, because as said before, the state also highly upholds and views one's human rights through the distribution of regulations that are real and coercive for its citizens, so as not to look down on the human rights of others. The purpose of enforcing the law that has been established while safeguarding every human right of every citizen himself.

There are many criminal offenses that often occur in Indonesia, for example in cases of narcotics and terrorism crimes and are tried with the threat of a very serious crime and can even be subject to the threat of the death penalty. So it is clear that it is against human rights, especially the right to life. But it is in reality in the field is still used because it still imposes the Book of Criminal Law (KUHP) which is working until now.

Prison sentences represent the usual punishments in the criminal penalty system. This sanction is decided by a panel of judges to decide a criminal case. The implementation of criminalization in Indonesia is carried out through the correctional system which is based on Law No. 15 of 1995 concerning Corrections, in which the Law changes the basic idea of a juridical philosophical system from a prison system to a penitentiary system. The imprisonment system which strongly refers to the element of revenge through the institutional umbrella of the prison house is gradually seen as a system and means that are contrary to the concept of social rehabilitation and reintegration, so that the perpetrator of the crime knows and is aware of his actions, and no longer intends to commit an act. imprisonment, and can return to society and become a good citizen who can be accounted for in the community. The implementation of imprisonment using the correctional system is a series of law enforcement which has the aim so that the people who are nurtured or guided can understand their

mistakes, want to improve themselves, and do not intend or interfere with their actions so that later it is hoped that when they leave the guidance they can actively participate again in the environment. Public.

Article 12 of the Criminal Code explains the general rules for life imprisonment, in which the article states that paragraph (1) imprisonment is life imprisonment or a sentence for a certain period of time, paragraph (2) The punishment for imprisonment for a certain period of time is one day at the minimum and the maximum is one day. fifteen years imprisonment, paragraph (3) imprisonment for a specified period of time is allowed to be imposed for twenty consecutive years in the case of crimes for which the criminal sentence of the panel of judges is allowed to choose between the death penalty, life imprisonment and imprisonment for a certain period of time, and paragraph (4) imprisonment for a certain period of time may be> 20 years.

In article 12 above, the general provisions of life imprisonment are only regulated in one paragraph, namely paragraph (1). This article emphasizes that imprisonment can be in the form of life imprisonment or temporary imprisonment. It can be interpreted that this general provision does not pertain to the application of provisions for life sentences as in the regulations regarding imprisonment for a certain period of time. In addition, Article 15 of the Criminal Code also does not regulate and explain the possibility of parole for life inmates.

However, in practice Indonesia still uses the Criminal Code, which regulates the threat of life imprisonment, for example Treason to kill the head of state, article 104; Inviting foreign countries to attack Indonesia, article 111 paragraph (2); Giving help to the enemy when Indonesia was in war, article 124 paragraph (3); Killing the head of a friendly state, article 140 paragraph (1); Pre-planned killings in articles 140 paragraph (3) and 340; Violent theft by two or more people, at night or by means of dismantling and so on, which causes people to mourn or die, article 365 paragraph (4); Piracy at sea, on the coast, on the coast, and at times so that people die, article 444; In times of war, it encourages riots, rebellion, etc. between workers in state defense companies, article 124 paragraph (3); In war, he deceived when he conveyed the needs of the army, article 127 and article 129; Extortion by weighting article 368 paragraph (2) (Waluyo, 2000: 13).

And outside of the Criminal Code, the death penalty also regulates narcotics offenses, subversion laws, corruption charges, terrorism offenses and so on. In line with the development of criminal law, which currently has the aim of being able to protect the interests of the public and the interests of individuals who can become victims of crime and criminals. Life punishment is one of the means aimed at protecting the public interest from things that could be dangerous by an irreparable crime. However, the current life sentence has triggered various quarrels from several parties, and human rights activists or activists from various groups actually protested against the implementation of the life sentence.

In this case the 1945 Constitution regulates human rights which have been outlined in article 28 letter A to article 28 point J. Therefore, the certainty in that article can be linked using Law No. 39 of 1999 concerning Human Rights which explains that "*Every person has the right to live in a peaceful, secure and peaceful society and state order that respects, protects, and fully implements human rights and basic human obligations as regulated in this law*" (Article 35 of Law Number 39 of 1999).

Therefore, this paper is intended to analyze on: (1) How is life sentence in the perspective of the Indonesian criminal system? (2) What is the view of human rights in the life sentence? The purpose of this research is to find out the related matters (1) life sentence in the perspective of the Indonesian criminal system; (2) Human Rights Views in life imprisonment.

METHOD

The research method is the method used by the author in obtaining information or data. In this case the research process used is juridical normative, namely by using a statutory approach with an assessment of the Human Rights View of Lifetime Criminal Sentences. By using a qualitative writing method, the writer explains the data in the form of a sentence and then becomes a systematic and effective paragraph. Then the authors draw conclusions in an inductive way as a result or answer regarding Human Rights Views Regarding Lifetime Criminal Sentences.

LIFETIME IMPRISONMENT IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

The Criminal Code considers that a class of malicious behavior against the security system of a country can be said to be the type of crime most likely to be at risk of getting the threat of life imprisonment. These provisions can be seen in articles 104,106,107,111 paragraph (2), 124 paragraph (2), and paragraph (3), and 140 paragraph (3) of the Criminal Code. For example, Article 140 paragraph (3) contains treason which was carried out in a planned manner, against the life or independence of the head of a friendly state which resulted in death.

The crimes regulated in this article include crimes against friendly countries. Another type of group crime that can be referred to as a life sentence is a crime that is dangerous to the general public. The criminal agreement is contained in 5 articles, namely about deliberately causing a fire, explosion, flood which causes the death of a person, about deliberately drowning, stranding, or damaging a boat that causes the death of people as stated in article 192 (2), about deliberately destroying or, damaging a building which causes the death of a person as stated in article1 200 (3), concerning crimes, entering, something into

public drinking water which can cause the death of people as stated in article 202 (2), and selling, bidding, delivering and / or distributing dangerous goods. which is dangerous to life and may cause the death of the person as stated in paragraph 204 (2).

Criminal Code with the threat of life imprisonment or a maximum sentence of twenty years. Mistakes in flight that can be subject to a life threat are contained in article 479 letter f sub b which describes actions that are deliberate and are included in actions against the law that are injurious to destroy and render the aircraft unusable which can result in the death of people. Article 479k which threatens to imprisonment for life or imprisonment of up to twenty years for the acts stipulated in Articles 479 i and 479 if they are carried out by two or more persons collectively, as a continuation of an evil conspiracy, with a plan of more than two years, 1 serious injury, to cause damage to the aircraft, to deprive someone of liberty, paragraph (1) or to the death penalty or life imprisonment or a sentence of twenty years (2) if that act results in the death of a person or the destruction of the aircraft.

Crime groups have also been regulated in Pasa1 479 letter o which threatens life imprisonment or twenty years of imprisonment for the acts in Pasa1 479 number 1, Pasa1 479 letter m, and Pasa1 479 letter n if treated by two or more people collectively. similarly, as a continuation of an evil consensus, with a more than twofold plan, resulting in serious injury to paragraph (1) or by death or life imprisonment or a maximum sentence of twenty years paragraph (2) if the act resulted in the death of a person or the destruction of the aircraft.

Based on the explanation contained in it, it can be seen that the most factors for the class of crimes that are sentenced to life imprisonment are crimes that cause death or take victims. In the formulation of the Criminal Code, we generally know that it is a single system and an alternative. Where most of its use in the Criminal Code in the criminal system is a single system. In fact, almost all offenses which are crimes listed in the second volume of the Criminal Code include the specter of imprisonment by establishing a single system1. Regarding life criminal cases, not a single Pasa1 has the punishment of being punished by a single system1. All life imprisonment sentences in the Criminal Code have been formulated using an alternative system.

Judging from the preparation of life imprisonment in the KUHP using an alternative system as a whole, which shows that life imprisonment in the Criminal Code is a kind of punishment that can be chosen for its imposition, not imperative. This is different from the formulation of imprisonment for a certain period of time, which uses the formulation of criminal threats with a single imperative system.

In the "correctional" setting the policy on life imprisonment is paradoxical1. The accumulation of life-long prisoners in prisons clearly disturbs the viewpoint of prisoners, especially life-long prisoners whose garage applications have been denied. At the same time, according to the current

Criminal Code, prisoners who are sentenced to life have relatively little chance of reintegrating into society. The lack of hope for the return of life-long prisoners to the community is due to the emergence of a juridical case against the possibility that society will return to life-long prisoners. The main juridical obstacle that causes life-long convicts to return to society is the provisions of the Criminal Code. As the parent of the Indonesian criminal law system, many provisions in the Criminal Code are not in accordance with the concept of "*correctionalization*". At the mass, it can be seen that there are no provisions in the Criminal Code that allow life-long prisoners to re-adapt to society.

Although parole can be carried out as "guidance in society" according to Article 15 paragraph 1 of the Criminal Code, this provision is very difficult to apply to prisoners for life. The provisions of Article 1 15 paragraph 1 of the Criminal Code states "*if the convicted person has served two thirds of the length of the imprisonment imposed on him, which must be at least nine months, then he can be granted conditional release. If the convicted person has to serve several sentences in a row, that punishment is considered as one punishment*".

According to the provisions of Article 15 paragraph 1 of the Criminal Code above, it appears that conditional exemption will be granted to the prisoner after he has served two thirds (2/3) of the sentence imposed. In other words, parole is only granted if the time limit for the sentence is known and therefore can be calculated or measured. As previously mentioned, the law / KUHP does not explicitly and clearly provide a duration regarding life imprisonment, so it is not known the length of life imprisonment. This means that prisoners cannot be released on condition. Because, because it is not known the length of life imprisonment, 2/3 (two thirds) of the life sentence cannot be determined.

According to Article 1 paragraph 1 of KEPPRES No. 5 of 1987, there are two conditions for parole, namely: (1) the punishment must be in the form of a criminal, temporary imprisonment; and (2) when serving a sentence, the prisoner concerned has good behavior. According to the provisions stipulated in Article 1 paragraph 1 point 1 (a) above, KEPPRES No. 5 of 1987 clearly does not give life-long prisoners the possibility of obtaining remissions. Article 7 Presidential Decree No. 5/1987 regulates the possibility of obtaining remission and exemption from the death penalty. According to what is written in Article 7, it opens an opening for life-long prisoners to receive remissions, with the provision that the sentence has been changed from life imprisonment to temporary imprisonment. Article 7 (2) KEPPRES No. 5 of 1987 states "The change from life imprisonment to temporary imprisonment is carried out by the president". Thus, based on the content of Article 7 (2) KEPPRES No. 5 of 1987, a life sentence can only be changed to a sentence for a certain period of time under a guarantee.

Provisions Pasa1 7 paragraph 2 KEPPRES No. 5/1987 besides providing a gap in the possibility for convicts who are sentenced for life to receive remission, it is also a penalty, it can even be called a regression, because, there is no guarantee that if a life sentence gets pardon, it will definitely be changed to a

temporary sentence. In addition, it is not an easy legal remedy to change life imprisonment into a sentence for a certain period of time through clemency, especially for prisoners who are legally "ordinary people". Apart from the two provisions above, the juridical conditions for life-long prisoners to return to society are also due to the various regulations under them, namely the provisions for the implementation of the two provisions. The implementation of the two regulations above can be referred to, for example, the Minister of Justice Decree No.M.03.HM.02.02 year 1988 and the Decree of the Minister of Justice No M.01.PR.04.10 thn1989 which states that the substantive requirements for a prisoner to obtain an assessment permit, are: The other person has served half (1/2) of his prison term. According to this provision, assimilation is also not possible for a prisoner for life.

We can see from these various regulations that there are obstacles in returning life-long prisoners in the community, which clearly contradicts the concept of "*correctionalization*" which is held in the Indonesian prisoner enforcement system.

PERSPECTIVES ON HUMAN RIGHTS IN LIFETIME IMPRISONMENT

In the law on penalties, the definition of convicted person has been explained and disclosed, that is, a person who is convicted based on a court decision that has obtained permanent legal force. Meanwhile, the law of Law No. 12 of 1995 concerning Corrections contained in article 1 point 7 explains what is meant by convicts, namely convicted convicts who have served a criminal violation of independence in a correctional facility (prison).

With the verdict of life imprisonment, the prisoner is a convict who must carry out the sentence and lose his independence to be fostered in the prison who is subject to life imprisonment. In essence, prisoners for life also have the same rights in carrying out their sentence in the correctional institution (prison). Likewise, we know that human rights also govern a person's independence, so it can also be said that life imprisonment also violates human rights. However, basically, the imposition of a life sentence is an attempt to reduce a criminal act that occurs in social life. So, we can conclude that in upholding the criminal law, it must not be separated from the loss of one's freedom.

As for the rules regarding the rights of detainees, namely PP No.32 of 1999 concerning Terms and Procedures for the Implementation of the Rights of Correctional Assistants and has been updated in government regulation No. PP No.32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assistants.

Based on Article 1 point 5 of Law No.12 of 1995 concerning Corrections, a person who is serving a life sentence is also classified as a convicted citizen in a

correctional facility. Therefore, in this paper discusses the form or process of guidance in correctional institutions that are given to convicts while serving a sentence in accordance with the Correctional Law.

Based on Article 5 of the Correctional Law No.5 of 1995, the socialization civilization system can be implemented based on the principles of:

1. Protection.
2. Equality of treatment and service.
3. Education.
4. Guidance.
5. Respect for human dignity.
6. Loss of freedom is the only suffering.
7. Guaranteed the right to stay in touch with certain families and people.

Thus, the convicts have the same rights in undergoing a civilization period that is in line with the above principles. This also applies to convicts who are sentenced to death, while those convicted of life imprisonment do not get the right to leave to visit family. This is in accordance with article 36 paragraph (1) letter c of the Minister of Law and Human Rights of the Republic of Indonesia No.21 of 2013 concerning the Requirements and Procedures for Granting Remissions, Assimilation, Leave, Visiting Family, Parole, Free Leave, and Conditional Leave which regulates that leave from visiting family cannot be granted to a convict who receives a life sentence.

Likewise with assimilation, it cannot be imposed on convicts for life. Assimilation is the implementation of the civilization of convicts and citizens of the penitentiary institution which is carried out by bringing together inmates in the community in accordance with Article 1 (2) of the Law and Human Rights Act No. 21 of 2013 on the requirements and procedures for granting Remission, Assimilation, Family Visiting Leave, Exemption Conditional, Leave Ahead of Free, and Conditional Leave.

CONCLUSION

The implementation of life sentence decisions in the Indonesian legal system contradicts human rights, namely the right to live independently in accordance with the values of pancasi1a and the 1945 constitution. In the criminal system in Indonesia, life imprisonment is one of the alternatives to the death penalty. Life sentence is related to the subsidiary function which is a substitute for a criminal who is punishable by a maximum death penalty. Life imprisonment is the classification of criminal sanctions that can be selected in its implementation.

REFERENCES

Adan, H., & Rahayu, S. (1983). Suatu Tinjauan Ringkas Sistem Pemidanaan di Indonesia. Jakarta: Akademika Presindo.

Anonym. (2009). KUHP dan KUHAP. Jakarta: Sinar Grafika.

Muladi, M., Arief, B. N. (1984). Teori-Teori dan Kebijakan Pidana. Bandung: Alumni.

Nandang, N. (2010). Pembaharuan Sistem Pemidanaan anak di Indonesia. Yogyakarta: Graha Ilmu.

Prodjoodikoro, W. (2003). Asas-Asas Hukum Pidana di Indonesia. Bandung: PT. Refika Aditama.

Republic of Indonesia. (1995). UU No12 Tahun 1995 tentang Pemasyarakatan

Republic of Indonesia. (1999). PP No. 32 Tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak WargaBinaan Pemasyarakatan

Republic of Indonesia. (2013). PerMen No 21 Tahun 2013 Tentang Syarat danTata Cara Pemberian Remisi, Asimilasi, Cuti, Pembebasan Bersyarat, Cuti Menjelang Bebas, dan Cuti Bersyarat

Sudarto, S. (1977). Kapita Selekta Hukum Pidana. Bandung: Alumni.

Sugandhi, R. (1980). KUHP Dan Penjelasannya. Surabaya: Usaha Nasional.

Sunarto, R. (2007). KUHP dan KUHAP, Dilengkapi Yurisprudensi Mahkamah Agung dan Hogee Raad. Jakarta: PT. Raja Grafindo Persada.

Susilo., R. (1988). KUHP serta Komentar Komentarnya Lengkap Pasal Demi Pasal. Bogor: Politeia.

Syaiful, B. (2009). Perkembangan Stelsel Pidana Indonesia. Yogyakarta: Total Media.

Tongat, T. (2004). Pidana Seumurhidup dalam sistem Hukum Pidana di Indonesia. Malang: UMM Press.

Waluyo, B. (2008). Pidana dan Pemidanaan. Jakarta: Sinar Grafika

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REVIEW ARTICLE

THE IMPLEMENTATION OF CAPITAL PUNISHMENT IN INDONESIA: THE HUMAN RIGHTS DISCOURSE

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ABSTRACT

Human rights are the most basic rights possessed by humans and this right is considered a gift given from God Almighty. Human rights are also protected by the State because the state also highly respects the human rights of a person by providing strict and binding rules for its citizens so that they do not perceive the human rights possessed by others. Capital punishment is one of the means to protect public interests of a social nature which are endangered by irreparable crimes. This paper is intended to analyze the capital punishment or death penalty in Indonesia in the context of human rights. The research method used in this paper is using the normative method. The results of this study indicated that the execution of the death penalty can be carried out for perpetrators of criminal acts who have crossed the human limit, endanger, and threaten many people.

Keywords: *Human Rights; Capital Punishment; Death Penalty; Human Rights*

INTRODUCTION

The 1945 Constitution explains that the State of Indonesia is a constitutional state, where in a constitutional state there is always recognition and protection of human rights. Humans will receive the same treatment and protection before the law, including in the social, cultural, and economic spheres. Included as a basic principle in Law Number 39 of 1999 concerning Human Rights Article 2 states that "The Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights inherently inherent in and inseparable from humans, which must be protected, respected, upheld for the sake of commemoration of human dignity, welfare, happiness, intelligence and justice." So, in the Republic of Indonesia has guaranteed the protection of human rights, based on legal provisions and not the will of a person or group that is the basis of power. (Nazmi, 1992, p. 50).

The basic rights that a person has from birth are the definition of Human Rights, this right is considered a gift from God Almighty. All human beings should uphold human rights because they are owned by every human being. Apart from humans, the state also protects the existence of human rights, because the State also highly respects the human rights of a person by giving strict and binding rules for its citizens so that they do not consider the human rights of others. The purpose of enforcing the rules that have been set to protect every human right of every citizen himself.

The number of criminal offenses that often occur in Indonesia, for example in cases of narcotics and terrorism crimes, are prosecuted with very burdensome criminal threats and can be subject to the threat of a death penalty. So that it is clear that it has violated human rights, especially the right to life. However, in reality in the field it is still used because it still uses the Criminal Code (KUHP) which is still valid today.

Capital punishment is one of the types of crimes contained in article 10 (Criminal Code) is the heaviest criminal. Bambang Poernomo said that capital punishment is one of the oldest forms of punishment, so it can be said with the will of the times, but until now no other alternative has been found as a substitute (Poernomo, 1982, p. 9).

According to Soedarto (Sakidjo & Poernomo, 1990, pp. 78-79), do not agree with the existence of the death penalty in Indonesia because humans have no right to take the lives of others, but also remember that judges can also be wrong in imposing sentences and it is not true that the death penalty is to frighten people so that people do not do evil, because lust cannot be stopped with threats.

However, in practice, Indonesia still uses the Criminal Code, which regulates the death penalty, for example (Waluyo, 2000, p. 13):

a. Plot to kill the head of state, art. 104.
b. Inviting foreign countries to attack Indonesia, article 111 paragraph (2).

c. Giving help to the enemy when Indonesia was in war, article 124 paragraph (3).
d. Killing the head of a friendly state, article 140 paragraph (1).
e. Pre-planned killings in articles 140 paragraph (3) and 340.
f. Violent theft by two or more people, at night or by dismantling and so on, which causes people to mourn or die, article 365 paragraph (4).
g. Piracy at sea, on the coast, on the coast, and at times so that people die, article 444.
h. In times of war, it encourages riots, rebellion, etc. between workers in state defense companies, article 124 paragraph (3).
i. In war, he deceived when he conveyed the needs of the army, articles 127 and 129.
j. Extortion by weighting article 368 paragraph (2).
k. And outside of the Criminal Code, the death penalty is also regulated in the criminal act of narcotics, subversion law, corruption, terrorism and so on.

In accordance with the current development of criminal law, criminal law has the aim of protecting the interests of society and the interests of individuals who are victims of crime and criminals. Capital punishment is one of the means to protect public interests of a social nature which are endangered by irreparable crimes. However, the death penalty is currently inviting polemic from various parties, and human rights activists or activists from various groups strongly oppose the implementation of the death penalty. And how do the states think that they are considered to have violated human rights by carrying out the death penalty or execution of prisoners?

In this case the 1945 Constitution has regulated human rights which have been outlined and translated into articles 28 A, 28 B, 28 C, 28 D, 28 E, 28 F, 28 G, 28 H, 28 I, 28 J. in this article it can be linked to Law No.39 of 1999 concerning Human Rights which explains that,

"Everyone has the right to live in a peaceful, safe and secure society and state order that respects, protects, and fully implements human rights and basic human obligations as regulated in this law" (Article 35 of Law Number 39 of 1999).

Based on the above background, the issues to be discussed will be formulated, namely: 1) how is the execution of the death penalty according to human rights?, 2) can narcotics crime be punishable by death penalty?. The purpose of this research is to find out about 1) to determine the implementation of the death penalty according to human rights. 2) to describe the execution of the death penalty for narcotics crime.

METHOD

The research method used in this paper is to use the normative method, namely, by examining the problems that arise from the legal side based on the prevailing laws and regulations (Ammiruddin, 2003, p. 118). With research on the implementation of the death penalty according to human rights for narcotics crime.

IMPLEMENTATION OF THE DEATH PENALTY ACCORDING TO HUMAN RIGHTS

Capital punishment is one of the means by means of penal means in controlling criminal acts. In preventing a repeat offense and/or providing a deterrent effect on the community and against the convict himself from committing another criminal offense, the choice of the death penalty can be used. In repressive efforts against criminals, the imposition of capital punishment, general prevention in the form of a deterrent effect, are expected to reduce the number of crimes. In reality, there is no relationship between the imposition of capital punishment and a decrease in the crime rate. The placement of the death penalty as the first principal punishment in Article 10 of the Criminal Code (KUHP), does not psychologically trigger a deterrent effect on society.

The imposition of the death penalty can present various controversies. based on the theory of human rights, that the right to life is a right that cannot be reduced (non-derogable rights). International instruments support the existence of the right to life as stated in the Declaration of Human Rights and the ICCPR (McRae, 2017; Zimring & Johnson, 2008; Leechaianan & Longmire, 2013). Likewise in Article 28A of the 1945 Constitution which emphasizes that everyone has the right to live and has the right to defend life and life (Anjari, 2015, p. 112). Meanwhile, article 28I states "the right to life is a human right that cannot be reduced under any circumstances". Article 28I explains "that requires people to pay attention to the right to life". However, Article 28J states "every person is obliged to respect the human rights of others and is obliged to comply with the restrictions established by law to ensure recognition and respect for the rights and freedoms of others". Meanwhile, in this article, there is responsibility for human rights violations, and the application of the death penalty is still used in accordance with the criminal law system in Indonesia.

The implementation of the death penalty in narcotics crime cases in Indonesia has caused quite a lot of controversy (Ahmad, 2021; Hood, 2001). Like several years ago, there were many prisoners related to narcotics cases who had to carry out the death penalty. According to the Minister of Religion for the 2014-2019 period, Lukman Hakim Saifuddin explained that the implementation of the death penalty in Indonesia is positive law that are still being applied today.

According to Lukman Hakim Saifudin, stated that the death penalty in Indonesia is not a type of violation that violates human rights. Human rights in law can be defined as limitation, solely for the respect of the human rights of others as victims of the perpetrators' crimes. "Indonesia adheres to human rights that can be limited by law, not unlimited human rights or unlimited liberal human rights. Where restrictions are imposed solely to protect the human rights of others and to respect others." Then this statement can be exemplified as a form of accountability for the perpetrator of a criminal act against victims who have human rights.

Meanwhile, according to Poengky, as the Executive Director of a human rights monitoring agency, said "the institution will be consistent in its attitude against the death penalty and will continue to fight for its abolition". Because it has violated the right to life of humans, which can threaten the death penalty or execution. Poengky also said that "*the death penalty is a form of violation of human rights (HAM) because it does not respect the right to life. That no one can take the life of another person, even the state*."

Asep Warlan Yusuf also argued from the perspective of legal observers that, "the implementation of the death penalty in Indonesia does not mean violating human rights and is considered cruel. Because the punishment is to punish an act that is considered an extraordinary crime, then this is the final punishment. It is important that there is a death penalty. However, there are several things, the death penalty is not very easy to impose," however, the implementation of the death penalty needs rules as a limitation so that not many prisoners are subject to the death penalty.

From these cases, the death penalty in its implementation in Indonesia needs to be regulated in its application and implementation so that its objectives are clear and effective so that it does not harm the parties involved. In the application of the death penalty, it is also necessary to look at the types of crimes committed so that they are appropriate and fair, both to the perpetrator and the victim and the victim's family.

Thus, the threat of death penalty is given because someone has lost someone's life deliberately and is considered to have violated someone's human rights. However, in some countries there are quite different opinions. They view that the death penalty does not violate applicable human rights, because this punishment is not only intended to eliminate a person's life but also to protect the next generation of the nation from extraordinary crimes. One of the countries that apply the death penalty is the United States which also has the sovereignty to carry out a sentence. The death penalty is imposed by using the electric chair.

THE IMPLEMENTATION OF DEATH CRIMINAL EXECUTION FOR NARCOTICS CRIME IN INDONESIA

In the formulation of criminal sanctions that there are criminal sanctions in the Anti-Narcotics Law that have been formulated cumulatively, especially the death penalty or life imprisonment which has been added with a fine. Then this can lead to various polemics because the cumulative formulation is rigid and imperative (Arief, 2010, p. 197).

Meanwhile, the formulation of the highest amount of accumulation between imprisonment and fines is large enough to amount to hundreds or even billions of rupiah. It is feared that this will not be effective and could cause a problem, because if there is a fine that is not paid then it must be replaced by imprisonment in lieu of fines in accordance with the applicable regulations Article 148 of Law No.35 of 2009 on Narcotics that "if the criminal verdict is a fine as regulated in This law is not paid for by the offender of narcotics crime and narcotics precursor crime, the perpetrator is sentenced to imprisonment of 2 (two) years as a substitute for unpaid fines" (Article 148 of Law No. 35 of 2009 on Narcotics).

However, the implementation of the death penalty in Indonesia has been regulated in Law Number 35 of 2009 concerning Narcotics contained in Article 133 paragraph (1) which states that Every person who orders, gives or promises something, gives an opportunity, recommends giving convenience, forces with threats, forces by force, practices tricks, or induces children who are not yet old enough to commit a crime as referred to in article 111, article 112, article 113, article 114, article 115, article 116, article 117, article 118, article 119, article 120, article 121, article 122, article 123, article 124, article 125, article 126, and article 129 shall be punished with death penalty or criminal punishment. life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 2,000,000,000.00 (two billion rupiah) and a maximum of Rp. 20,000,000,000.00 (twenty billion rupiah).

Based on this article, under certain circumstances the perpetrator in accordance with the provisions has received a narcotics crime and if the crime is committed at a certain time or the state is in an emergency, it can be enforced in accordance with the applicable regulations.

In the explanation of Law Number 35 of 2009 concerning Narcotics in the general section, it explains that law number 22 of 1997 concerning Narcotics has regulated the eradication of narcotics crimes through the threat of fines, imprisonment, life imprisonment and death penalty. Meanwhile, law number 22 of 1997 also regulates the use of Narcotics for medicinal and health purposes as well as regulates medical and social rehabilitation. However, in reality, the crime of narcotics has shown negative results for the community which are increasing

both qualitatively and quantitatively, causing victims in various circles, especially among the younger generation such as adolescents and even children.

Effectiveness in the implementation of the death penalty for narcotics criminal offenders is also guided by other laws and regulations that have been regulated in Law No. 2/PNPS/1964 concerning Procedures for the Implementation of the Death Penalty Imposed by Courts within the General and Military Courts, which has been mentioned in article 1 of Law No. 2/PNPS/1964 that "among other things, the execution of the death penalty, which is imposed by a court within the domain of general justice or military court, is carried out by being shot to death"

The execution of the death penalty is also regulated in the National Police Chief Regulation No. 12 of 2010 concerning Procedures for the Implementation of Death Penalty. There is in article 1 number 3 Perkapolri Number 12 of 2010 mentions in Article 1 number 3 Perkapolri No.12 of 2010 concerning Procedures for the Implementation of Death Penalty, emphaszied that the death penalty or death penalty is one of the main sentences imposed by a judge on a convict who has obtained permanent legal force. Regarding the process or procedure for the execution of the death penalty, it consists of several stages including: preparation, organizing, implementing, and ending.

Thus, the implementation of the execution of the death penalty in Indonesia has a clear objective of providing a deterrent effect on criminals, including narcotics crimes. The imposition of the death penalty by a judge has sparked debate between human rights activists and criminal law experts. This has also been tested in the Constitutional Court in 2007 on the old narcotics law, namely Law No. 22 of 1997. However, the result of the case verdict, the Constitutional Court still maintains the death penalty on the grounds that narcotics crimes are considered a serious crime. or extraordinary crimes (extra ordinary) against humans, so that special treatment is required by way of the harshest punishment, namely the death penalty.

CONCLUSION

The execution of the death penalty can be carried out for perpetrators of criminal acts who have crossed the human limit, endanger and threaten many people, destroy the order of life and human civilization, and damage the country's economy. Criminal acts that are subject to the death penalty include: corruption, narcotics, premeditated murder and criminal acts of terrorism. Meanwhile, the process of implementing the death penalty has been regulated through the applicable regulations, with methods or procedures for the execution of the death penalty which have permanent legal force.

REFERENCES

Ammiruddin, A. (2003). *Pengantar Metode Penelitian Hukum*. Jakarta: PT Raja Grafindo Persada, Jakarta.

Anjari, W. (2018). Penjatuhan Pidana Mati di Indonesia dalam Perspektif Hak Asasi Manusia. *E-Journal Widya Yustisia*, *1*(2), 107-115.

Arief, B. N. (2010). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Jakarta: Prenadamedia Group.

BBC. (2015). "Pegiat HAM Kecam Eksekusi Hukuman Mati Narkoba", *BBC News Online,* January 16, 2015. Retrieved from https://www.bbc.com/indonesia/berita_indonesia/2015/01/150116_eksekusi_terpidana_narkoba

Kitab Undang-Undang Hukum Pidana

Muladi, M. (2004). *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*. Jakarta: Refika Aditama.

Nazmi, D. (1992). *Konsepsi Negara Hukum*. Padang: Angkasa Raya.

Perkapolri No. 12 Tahun 2010 tentang Tata Cara Pelaksanaan Pidana Mati.

Poernomo, B. (1982). *Hukum Pidana Kumpulan Karangan Ilmiah*. Jakarta: Bina Aksara.

Sakidjo, A., & Poernomo, B. (1990). *Hukuman Pidana, Dasar Aturan Umum Hukum Pidana Kodifikasi*. Jakarta: Ghalia Indonesia.

Saputri, D. S. (2016). "Pengamat: Huku,am Mati Tak Berarti Melanggar HAM", *REPUBLIKA Online,* July 28, 2016. Retrieved from https://www.republika.co.id/berita/nasional/hukum/16/07/28/ob0oa3365-pengamat-hukuman-mati-tak-berarti-melanggar-ham

Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

Waluyo, B. (2000). *Pidana dan Pemidanaan*. Jakarta: Sinar Grafika.

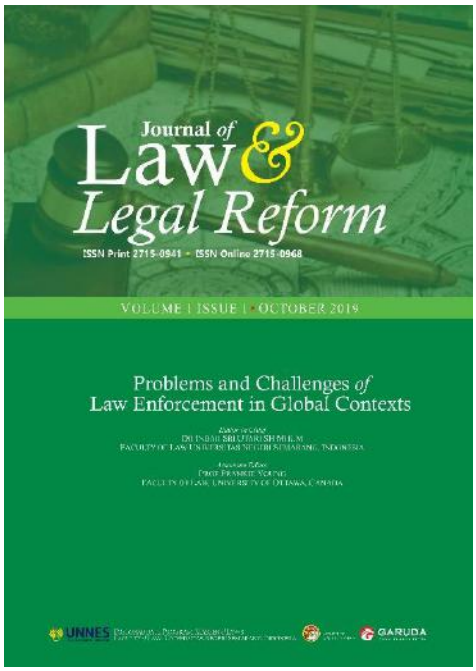
McRae, D. (2017). Indonesian capital punishment in comparative perspective. *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia*, *173*(1), 1-22.

Zimring, F. E., & Johnson, D. T. (2008). Law, society, and capital punishment in Asia. *Punishment & Society*, *10*(2), 103-115.

Leechaianan, Y., & Longmire, D. R. (2013). The use of the death penalty for drug trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A comparative legal analysis. *Laws*, *2*(2), 115-149.

Ahmad, I. F. (2021). Why Indonesia Mantain Capital Punishment. *Fiat Justicia Jurnal Ilmu Hukum Fakultas Hukum Universitas Lampung*, *15*(1), 25-38.

Hood, R. (2001). Capital punishment: A global perspective. *Punishment & Society*, *3*(3), 331-354.



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The aim of this journal is to provide a venue for academicians, researchers, and practitioners for publishing the original research articles or review articles in legal studies, especially in law reform studies. The scope of the articles published in this journal deal with a broad range of topics, including: Criminal Law; Civil Law; International Law; Constitutional Law; Administrative Law; Islamic Law; Economic Law; Medical Law; Customary Law; Environmental Law and another section related contemporary issues in law in the perspective of law reform and its development.

Review Policy

Manuscripts submitted will be subject to reviews by an editorial team board and a peer reviewer who are experts and familiar with the relevant field of research. After review process, the Managing Editor will inform the authors of the acceptance, rejection, or necessity of revision

of the manuscript. All manuscript submitted will undergo the ***first stage*** of the review process carried out by the Internal Editor, which includes: suitability of the manuscript with focus and scope, manuscript template; writing standards (including the number of words), and similarity (plagiarism check by Turnitin). Regarding plagiarism check, the percentage limit allowed does not exceed 20%. After passing the first stage, the manuscript will be sent to be processed in ***the second stage***, namely the review process (through a double-blind peer-review system).

In carrying out article publication services, we refer to the following service time standards

Services	Duration
First Step Review (Internal Review)	1 week (7 working days)
Similarity Check	1 week (7 working days)
Second Step (Peer Review Process by External Reviewers)	1-2 month
Review Decision Notification of Acceptance (after the Author submitted the revised version of manuscript)	Conditional 1 week (7 working days)
Copyediting & Proofreading	1-2 weeks
Publication	Conditional (based on the publishing schedule)

Open Access Policy

This journal provides immediate open access to its content on the principle that making research freely available to the public supports a greater global exchange of knowledge.

Paper Format

The word limit for the submission is 4000-10000 words (including of footnotes (if any) and abstract).

The sequence of manuscripts following: Title; Abstract; Keywords; Introduction; Method (for original research articles); Results and Discussion; Conclusion; and References.

Main Headings of Manuscripts. Following main headings should be provided in the manuscript while preparing. Main headings, sub-headings and sub-sub headings should be numbered in the manuscript with the following example:

MAIN HEADING
MAIN HEADING
I. SUB-HEADING
1. Sub-Sub Headings
**please follow and check our manuscript template*

- **Title**
  Title of articles are written with Cambria FB (20pt) and preferably not more than 14 words. Author(s) name, affiliations, and e-mail.

- **Abstract**
  The abstract should be clear, concise, and descriptive. This abstract should provide a brief introduction to the problem, objective of paper, followed by a statement regarding the methodology and a brief summary of results. Font Cambria FB (13 pt) *Italic* and preferably not more than 250 words.

- **Keywords**
  Keywords arranged by alphabetically and should have at least two keywords and maximum five keywords separated by a semicolon (;).

- **Introduction**
  The introduction should be clear and provide the issue to be discussed in the manuscript. At the end of the paragraph, the author/s should end with a comment on the significance concerning identification of the issue and the objective of research.

- **Method**
  The method written in descriptive. This Method are optional, only for original research articles.

- **Result and Discussion**
  This section is the most important section of your article. Contains the results of the object of study and should be clear and concise. The title of Result and Discussion may not be used, Author can directly mention the main heading title.

- **Conclusion**
  Conclusion contains a description that should answer the objectives of research. Do not repeat the Abstract or simply describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

- **References**
  References at the end of the manuscript should be written in *APA (American Psychological Association)* Citation Style. Please use Reference Manager Applications like EndNote, Mendeley, Zotero, etc. (we suggest Mendeley). All publications cited in the text should be included as a list of Bibliography, arranged alphabetically by author.

  Books with an author:

  Suhadi, S. (2020). *Regulasi dan Implementasi Ganti Kerugian Tanah Desa dan Tanah Wakaf dalam Pengadaan Tanah.* Semarang: BPFH UNNES.

  Ali, A. (2012). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialpru-dence) Termasuk Interpretasi Undang-Undang (Legisprudence).* Jakarta: Kencana.

  Books with an editor or more:

  Sulistiyono, T., et.al. (eds). (2020). *The Implementation of Law and Its Implication to The Citizen: In the Public and Private Law Perspectiv*es. Semarang: BPFH UNNES.

  Irianto, S. (ed). (2009). *Hukum Yang Bergerak; Tinjauan Antropologi Hukum.* Jakarta: Yayasan Obor Indonesia.

  Journal articles:

  Das, D. Z., & Rohilla, B. S. (2020). Conflicting Interests of Legislators in India: An Exploratory Study. *Journal of Law and Legal Reform, 1*(4), 605-616. https://doi.org/10.15294/jllr.v1i4.39867

  Online sources:

  British Broadcasting Corporation. (2012). *Noken Papua Mendapat Pengakuan UNESCO*. Available from: *http://www.bbc.co.uk/indonesia/ber-ita_indonesia/2012/12/121205_noken_unesco.* [Accessed May 16, 2015].

- **Footnotes**
  Footnotes are should not be used for citation, but for explaining or giving comment to the argument or paragraph.

- **Figures/Graphics**
  The figures should be clearly readable and at least have a resolution of 300 DPI (Dots Per Inch) for good printing quality.

- **Table**
  Table made with the open model (without the vertical lines).

Publication Ethics

Journal of Law and Legal Reform is a peer-reviewed journal as committed to keep and uphold the highest standards of publication ethics. All articles not in accordance with these standards will be removed from the publication at any time even after the publication. This statement explains the ethical behavior of all parties involved in the act of publishing an article in this journal, including the author, the editor in chief, the editorial board, the peer-reviewers and the publisher (Postgraduate Program Master of Laws, Universitas Negeri Semarang). This statement is based on COPE's Best Practice Guidelines for Journal Editors.

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Submission Manuscript

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