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Research Article

Review Article

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Unnes L.J. was first published in 2012 on *Bahasa Indonesia*. Initially, this journal was intended to accommodate various papers of undergraduate student research results, at the Law Faculty of Universitas Negeri Semarang. But in its development, *Unnes L.J.* also received various papers from various campuses and institutions, and open for all affiliations and occupations. *Unnes L.J.* has been indexed by DOAJ (Directory Open Access Journal) since 2015, and from the beginning used the open access journal system in full. *Unnes L.J.* has also been accredited in the national journal system in Indonesia (SINTA 3). As a form of improving the quality of journals, since 2019 *Unnes L.J.* has exclusively published in English and with a new and fresher look. *Unnes L.J.* publishes both the Research Article and Review Article for each edition. The journal, which is published twice a year (April & October), is expected to become a forum for the development of legal studies for Indonesia and the global level.

UNNES LAW JOURNAL
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Supervision by the Financial Services Authority on Investment-Based Life Insurance (Unit Link)

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UNNES LAW JOURNAL
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Supervision by the Financial Services Authority on Investment-Based Life Insurance (Unit Link)

Rizky Noor Fajrina, Waspiah Waspiah

ABSTRACT. Problems with unit-linked life insurance products such as product transparency where the agent does not provide a detailed explanation regarding the characteristics, benefits, risks, and costs of unit-linked life insurance. This study aims to describe the protection of unit link life insurance in Indonesia and the supervision of the Financial Services Authority, the constraints faced and the steps that must be taken so that the insurance business can run well. This study uses a qualitative, sociological juridical approach. Primary data sources were taken by interview, observation, and documentation. While secondary data obtained from legislation, books, journals, scientific articles related to research. The results showed that: (1) The protection of the unit link life insured in Indonesia is not yet in accordance with the existing regulations. Life insurance agents who violate Marketers Standards of Practice and Code of Conduct may be subject to sanctions. Preventive and repressive efforts are carried out by the Financial Services Authority in order to protect the insured. (2) Supervision of the Financial Services Authority in the insurance business is micro-prudential supervision which, by its nature, is divided into prudential supervision and market conduct supervision. The conclusions in this study: (1) The protection of life insurance for unit link in Indonesia is not yet fully in accordance with the applicable regulations, this is due to several life insurance agents that do not meet the applicable rules.

KEYWORDS. Unit Link Life Insurance, Financial Services Authority, Micro-prudential Supervision

Supervision by the Financial Services Authority on Investment-Based Life Insurance (Unit Link)

Rizky Noor Fajrina, Waspiah Waspiah

Introduction

The role of insurance as a service product is relatively slow in its development because insurance products are less attractive to consumers to buy. But it is undeniable that insurance plays an important role in a number of industrial and trade activities.[1] The diversity of insurance products offered by an insurance company include health insurance, education insurance, and life insurance. Furthermore, it is emphasized that life insurance is an agreement between a policy holder and an insurance company, which provides guarantees to other family members for the best survival).[2]

Information disclosure on unit link life insurance product explanation by insurance agents that is not comprehensive, product transparency where agents do not provide detailed explanations related to the characteristics, benefits, risks, and costs of unit link life insurance, giving a large commission by insurance companies to agents in the first year of consumer participation, the assumption of the development of investment returns is quite high, and

1 Mulyadi Nitisusastro, *Asuransi dan Usaha Perasuransian di Indonesia*, Alfabeta, Bandung, 2013, pp. 3-4.

2 Purani GM, "Life Insurance-Growth Engine of Society", International Journal of Research & Review Vol 4 No 6, 2017, pp. 28-29.

the investment performance of unit link life insurance is not included in the illustrations presented to consumers.[3]

The existence of an insurance agreement set forth through this insurance policy is a way that can be used to protect the rights of the insured party from anything that will harm him.[4] Explanation of the rights and obligations of the insured need to be explained by the agent so that each party can meet their obligations. The rights that must be obtained by the insured are also conveyed and the risks to be received by the insured are also conveyed. But there are still many agents who act out of line with their duties that only prioritize the interests of agents without notifying the risks faced by the customer.

The Financial Services Authority acts as a supervisor in the financial services sector, one of which is insurance making the Financial Services Authority the only supervisor in this sector. The complaints of the insured who feel cheated by the agent complained about it to the Financial Services Authority. The insurance policy basically provides an overview of when the insurance company will pay the insured, the amount to be paid, and matters governing the filing of a claim, where insurance policies are usually explained by the insurance agent or the insurance company to the prospective insured who will register. But in fact, it is not uncommon for insurance agents or insurance companies to be less able to explain the benefits and risks of unit link life insurance products, namely as life insurance and investment.

This institution which oversees the financial services sector is called the Financial Services Authority (OJK). Law Number 21 of 2011 concerning the Financial Services Authority (the Financial Services Authority Act) basically contains provisions regarding the organization and governance of institutions that have regulatory and supervisory authority over the financial services sector. Under the Financial Services Authority Act, the Financial Services Authority has a function to implement a system of regulating overall activities within the financial services sector. With the enactment of the Financial Services Authority Law, all arrangements and supervision of the financial sector that is spread in BAPEPAM-LK and Bank Indonesia will be integrated into the Financial Services Authority. With the establishment of the Financial Services Authority, the regulation and supervision of the

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3 Department of Consumer Protection, *Financial Service Sector Consumer Protection Study*. OJK Consumer Protection Department, Jakarta, 2017, p. 8

4 Dinda Bertha, "Implementation of Unit Link Bancassurance Insurance Claim Settlement at PT. Astra Aviva Life", *Private Law Journal* Vol. 6 No. 1, 2018, pp. 165-176.

Capital Market and Non-Bank Financial Industry (IKNB) automatically switches to the Financial Services Authority. As mentioned in Article 4 of the Financial Services Authority Law, one of the objectives of the establishment of the Financial Services Authority is to protect the interests of consumers and the public against violations of laws and regulations in the financial sector that are under the authority of the Financial Services Authority.

This paper is intended to analyze two main things, *first* is what is the protection for unit link life insurance in Indonesia? and *second* is how is the supervision of the Financial Services Authority on unit link life insurance? The objectives to be achieved in the study are to find out and analyze the mechanism for implementing Unit Link Life Insurance in Indonesia and its protection; and also to find out and analyze the Financial Services Authority supervision system mandated in Act Number 21 of 2011 on the implementation of Unit Link Life Insurance.

The theory used by the author is the theory of legal effectiveness and the theory of supervision. The theory of legal effectiveness that was coined by Soerjono Soekanto consisted of 5 (five) factors, namely legal factors, law enforcement, facilities or facilities, society, and culture.[5] Then the supervision theory consists of 3 (three) stages, namely preliminary supervision, supervision carried out together with activities, and feedback supervision.

Method

This research uses descriptive qualitative research. This type of research uses sociological juridical legal research. Sociological law research is legal research that obtains data from primary data.[6] Data collection methods are done by interviewing, observing, and documenting and studying literature.

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5 Soerjono Soekanto, "Kesadaran hukum dan kepatuhan hukum" *Jurnal Hukum & Pembangunan* Vol. 7 No. 6, 1977, pp. 462-470; Soerjono Soekanto, *Sosiologi suatu pengantar,* UI Press, Jakarta, pp. 53-56.

6 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri,* Ghalia Indonesia, Jakarta, 1990, p. 52-53. See also Lexy J. Moleong, *Metodologi Penelitian Kualitatif.* Bandung, Remaja Rosda Karya, 2010.

Covered Insurance for Unit Link Life Insurance in Indonesia

Unit-linked life insurance company provides authority to marketers, such as financial advisors, financial consultants, or generally better known as agents for marketing unit-linked life insurance products. The basis for an insurance agent to be able to do product marketing in addition to being required to have an insurance sales agent license certification, the agent is also required to have special unit-linked certification in order to market unit-linked products. The certification is issued by the Indonesian Life Insurance Association (AAJI) and must be renewed every 2 (two) years. Agents who already have the certification can market the unit linked product of a life insurance company based on an agency agreement between the life insurance company and the agent.

Unit link product marketing is carried out by insurance agents through several stages, namely prospecting, approaching, fact finding, sales presentation, trial close, and closing. Prospecting is the initial stage of the agent will look for prospective insured if life insurance is needed, then the agent will approach the insured candidate. This approach stage forms the closeness between the agent and the prospective insured so that the agent can easily conduct fact finding in obtaining data to identify the insured candidate in determining the product that suits the needs and desires of the insured candidate.

The agent has found a suitable product and then will conduct a sales presentation to provide an explanation to the prospective insured about the product that suits their needs. This is clearly stated in Article 16 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection of the Financial Services Sector which stated that: “Financial Service Institutions must pay attention to the compatibility between the needs and abilities of consumers with the products and / or services offered to consumers.”

However, life insurance agents often do not provide detailed explanations regarding the characteristics, benefits, risks, and costs of unit link life insurance. If the explanation given by the agent is as desired by the prospective insured, a trial close is then conducted. Trial close is an effort so that the prospective insured knows the monthly premium payment, the costs that are in the unit link, and the amount of Sum Insured to be obtained.

The last stage is the closing (closing of sales) which is the final decision of the prospective insured to decide whether or not to buy unit link products

that have been offered by agents. This stage is the root of honesty from prospective customers, if the prospective customer does not fill the documents honestly then the risk that occurs is when the claim will not be processed by a life insurance company. The insured submits an application related to his unit link life insurance as outlined in the Life Insurance Application Letter (SPAJ). Life Insurance Application Letter (SPAJ) is a document provided by the guarantor to be filled out and signed by a prospective customer which includes statements from prospective customers relating to coverage data. Through the letter, the insured has a policy number that serves as the customer's identity and a means to make premium payments.

The next requirement that must be carried out by the prospective insured after completing the Life Insurance Application Letter (SPAJ) is to conduct a medical check-up. This health test is carried out in order to cope with manipulation of data that can harm the insurer in the future, and also to equate health data that has been filled by the insured in the Life Insurance Application Letter (SPAJ). This health test produces two possibilities, namely if the insured is declared to have a congenital disease, then the guarantor only provides coverage for the disease. If the death does not occur due to the disease, then the insured cannot submit a claim and if the insured suffers from a disease that is not severe and can still be cured, then there must be an extra premium the amount determined by the guarantor. The following below is a product marketing flow by the agent:

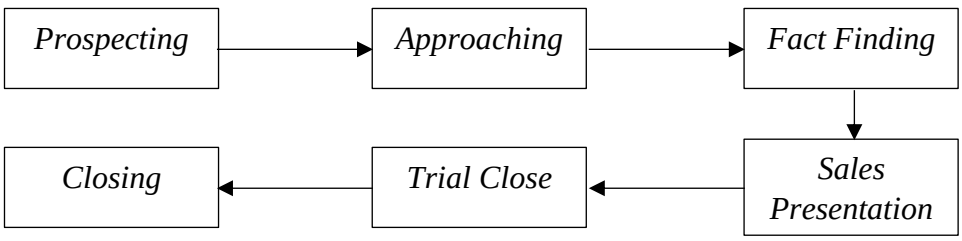

Fig. 1 Unit Link Life Insurance Product Marketing Process
Source: Interview Results by Authors

Unit link life insurance is synonymous with protection and investment. The insured decides to buy a unit link life insurance policy with one of his goals to get the return on the investment attached to the unit link life insurance product. The division of profits from investment returns promised by life insurance companies, certainly does not necessarily get the benefits as expected by the insured. Determination of the allocation of funds

(premiums) for protection and investment accounts is the choice of the insured himself. The insured has the freedom to choose the percentage amount to be set for the protection account in this case life insurance and the percentage amount for the investment account.[7]

Unit link life insurance makes it easy for customers who have investments without having to take care of themselves starting from opening, buying to selling and having to go back and forth to the bank to take care of it and conduct research to determine which mutual funds are suitable. However, unit link life insurance makes it easy so that costs such as acquisition costs, investment buying and selling spreads, investment purchase costs, and administrative costs take up the insured premium. So that in the first year to the third year the insured does not necessarily get a large investment return because it is necessary to pay a large acquisition cost. The benefits of unit-linked life insurance customers can be enjoyed if you make long-term investments as shown on Table 1.

Table 1. Life Insurance Cost at Unit Link

Cost Type	**Amount (explanation)**
Insurance fee	Depends on your age, gender, coverage, and other risks
Acquisition Cost	70% in the first year, 70% in the second year, 20% in the third to fifth years, and 0% in the sixth year and so on
Administrative costs	Annual = Rp. 10,000 Half Yearly = Rp. 20,000 Quarterly = Rp.27,500 Monthly = Rp. 35,000
Investment Management Costs	It is stated in the policy
Funds Transfer Costs	Rp. 100,000 per transaction, free of switching costs as much as 5 times in each policy year
Withdrawal Fees	Cost =% x periodic premium unit balance withdrawn
Top Up Fee	Top up fee is 5% of top up premium
Tax	Taxes imposed on withdrawal or redemption of the policy in accordance with applicable laws and regulations

Source: PRULink Prudential

Contained in the Standards of Practices and Code of Ethics for Marketers that marketers must always provide clear, true and complete

[7] Also see Rusydiana, Aam S., and Taufiq Nugroho. "Measuring Efficiency of Life Insurance Instution in Indonesia: Data Envelopment Analysis Approach." *Global Review of Islamic Economics and Business* Vol. 5 No. 1, 2017, pp. 12-24.

information to the life insurance company represented, prospective insured, and insured. However, if there are agents who violate these provisions and harm life insurance companies or the insured, life insurance companies can impose sanctions on each agent in the form of written warnings, reporting violations of marketers to the Indonesian Life Insurance Association (AAJI) to be included in the List of Troubled Marketers and / or revocation of agency certification, screening, and / or termination of agency agreements.

The Financial Services Authority has 2 (two) efforts to protect the insured, namely preventive and repressive measures. Preventive efforts namely education provided through various mass media as well as social media and socialization conducted by the Financial Services Authority as a whole both in elementary schools, junior high schools, senior high schools, universities, and organizations in the community both in villages and cities through the FSA program Teach. Then repressive efforts namely making regulations include the Financial Services Authority Regulation (POJK) and the Board of Commissioners' Circular Letter (SEDK) and the filing facility for the insured and financial service institutions.

The Financial Services Authority through Consumer Protection Education (EPK) has the ability to evaluate the occurrence of risks early. Dispute resolution contained in Article 32 Paragraph (1) of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection of the Financial Services Sector stated that “Financial Service Institutions are required to have and implement a service mechanism and complaint resolution for consumers.”

Complaints in each life insurance company are the first stage of dispute resolution (Internal Dispute Resolution). If the insured is not satisfied with the actions of the financial service institution, then the second stage will be carried out, namely External Dispute Resolution by conducting dispute resolution outside the court or through the court. This is explained in Article 39 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 Concerning Consumer Protection in the Financial Services Sector, that:

(1) In the event that a complaint settlement is not reached, the consumer can settle the dispute outside the court or through the court; and
(2) Settlement of disputes outside the court as referred to in paragraph (1) shall be carried out through alternative dispute resolution institutions.

Disputes that can be followed up by the Financial Services Authority are complaints that indicate disputes in the financial services sector and civil cases which have the largest amount of losses of Rp. 500,000,000.00 rupiah

for life insurance disputes. The granting of dispute resolution facilities carried out by the Financial Services Authority is an effort to bring the insured together with the guarantor to review the problem fundamentally in order to obtain a settlement agreement. Based on Article 45 of the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 Concerning Consumer Protection in the Financial Services Sector explained that:

(1) Implementation of the facilitation process until the signing of the Deed of Agreement is carried out within a period of no later than 30 (thirty) working days since the insured and the guarantor signs the facilitation agreement; and
(2) The duration of the facilitation process can be extended up to the next 30 (thirty) working days based on the Deed of Agreement of the Insured and the Insurer.

So, it can be understood that dispute resolution between the insured and the guarantor can be facilitated by the Financial Services Authority if the dispute is civil, and the maximum loss is Rp. 500,000,000.00 (five hundred million rupiah). Then the form of agreement between the two parties is the Deed of Agreement if it is successful, but if it is not successful it will be set forth in the minutes of the results of the facilitation of the Financial Services Authority signed by the insured and the guarantor.

The problem of legal influence is not only limited to the emergence of obedience or obedience to the law but includes the total effect of the law on actions or behavior that are both positive and negative. A sanction can be actualized to the public in the form of obedience (compliance), with these conditions indicating that there are indicators that the law is effective. Factors that influence the effectiveness of law according to Soerjono Soekanto[8] include the following:

1. Legal factors

   Justice is an inseparable part of the aims of the law. Then without legal certainty people do not know what to do and then anxiety arises. Certainty is defined as clarity of norms so that it can be used as a guide for social life. Without legal certainty, people will not know what to do, do not know their actions are right or wrong, prohibited or not prohibited

[8] Soerjono Soekanto, "Perspektif Sosiologi Hukum terhadap Pembinaan Hukum." *Jurnal Hukum & Pembangunan* Vol. 11 No.5, 1981, pp. 461-466, see also Soerjono Soekanto, "Kesadaran hukum dan kepatuhan hukum." *Jurnal Hukum & Pembangunan* Vol 7 No. 6, 1977, pp. 462-470; Soerjono Soekanto, "Membudayakan Hukum Dalam Masyarakat." *Jurnal Hukum & Pembangunan* Vol. 7 No. 5, 1977, 326-337.

by law. Law for humans, so in the implementation of law or law enforcement must provide benefits or uses for the community. The law can then be recognized as a law, if it gives maximum benefit to as many people as possible.

This is in accordance with Law Number 40 of 2014 concerning Insurance and Decisions of the Chairperson of the Capital Market and Financial Institution Supervisory Agency Number KEP-104 / BL / 2006 Regarding Unit Link Products which regulates the terms of marketing of unit link products in order to minimize losses both on the side of the guarantor and the insured. Then the Financial Services Authority Regulation Number 23 / POJK.05 / 2015 About Insurance Products and Insurance Product Marketing which regulates the marketing of insurance products allowed by the Financial Services Authority and Financial Services Authority Regulation Number 1 / POJK.07 / 2013 About Consumer Protection in the Financial Services Sector to protect the insured from upstream to downstream.

2. Law enforcement factors

Section on law enforcement is law enforcement apparatus that is able to provide certainty, fairness, and proportional benefits of law. The law enforcement apparatus encompasses the understanding of law enforcement institutions and law enforcement officials. Law enforcement officials in the realm of life insurance are the Financial Services Authority. The Financial Services Authority (OJK) is a state institution formed under Law Number 21 of 2011 that functions to organize an integrated regulatory and supervision system for all activities in the financial services sector in the banking sector, capital market and non-financial services sector. banks such as Insurance, Pension Funds, Financing Institutions, and other Financial Services Institutions.

Based on Article 4 of Law Number 21 Year 2011 concerning the Financial Services Authority, the Financial Services Authority is established with the aim that all activities within the financial services sector:

a. Organized regularly, fairly, transparently and accountably;
b. Being able to realize a financial system that grows in a sustainable and stable manner; and
c. Able to protect the interests of consumers and society;

So, that the law enforcement factors to measure the effectiveness of the law here are clearly listed in the Article in Law Number 21 of 2011 concerning the Financial Services Authority.

The Financial Services Authority functions to implement an integrated regulatory and supervision system for all activities in the financial services sector. Based on these functions law enforcement has an obligation to provide legal certainty, legal justice, and proportional use of the law. The Financial Services Authority is authorized to impose sanctions on life insurance companies that violate statutory regulations. It aims to create activities in the insurance sector that are sustainable and stable to protect the interests of the insured.

Carrying out its duties and authorities the Financial Services Authority is based on several principles, namely:

a. The principle of independence, namely being independent in making decisions and carrying out the functions, duties, and authorities of the Financial Services Authority while still in accordance with applicable laws and regulations;
b. The principle of legal certainty, namely the principle in the rule of law that prioritizes the basis of laws and regulations and justice in every policy of the implementation of the Financial Services Authority;
c. The principle of public interest, namely the principle that defends and protects the interests of consumers and society and promotes public welfare;
d. The principle of openness, which is the principle that opens itself to the right of the public to obtain true, honest, and non-discriminatory information about the implementation of the Financial Services Authority while still paying attention to the protection of personal and group human rights, and state secrets, including secrets as stipulated in the legislation invitation;
e. The principle of professionalism, which is the principle that prioritizes expertise in carrying out the duties and authorities of the Financial Services Authority while still based on the code of ethics and the provisions of the legislation;
f. The principle of integrity, which is the principle that holds fast to moral values in every action and decision taken in the operation of the Financial Services Authority; and

g. The principle of accountability, the principle that determines that every activity and the final results of every activity of the Financial Services Authority must be held accountable to the public.

The legal certainty given by the Financial Services Authority is by designing the Financial Services Authority Regulation which is prepared in line with the development of insurance in Indonesia. In this case the legal certainty given by the Financial Services Authority as law enforcement is concrete and tangible, so that everyone can see it. The existence of Financial Services Authority Regulation Number 23 / POJK.05 / 2015 About Insurance Products and Insurance Product Marketing is a real form of legal certainty from law enforcement because with this regulation both life insurance companies and life insurance agents have guidelines in marketing their products.

3. Factors of facilities or legal facilities

There are legal facilities or facilities in insurance to cope if there is a dispute between the insurance company and the insured. Talking about life insurance certainly cannot be separated from risk and *evenemen*. The risk held by the unit link life insurance is a pure risk.[9] Pure risk (pure risk) is an event that is still uncertain that a loss will arise, where if the event occurs, the loss arises while if the loss does not occur then the situation returns to normal (neither profit nor loss).

Risk in unit link life insurance is a pure risk classified as individual risk because unit link life insurance protects the life of the insured. Handling of risks that can be carried out by the insured is by accepting the risk, avoiding the risk, preventing the risk, and diverting or dividing the risk. What is most likely to be done by the insured is to divert or share the risk because the risk is related to the event. Evenemen are events which according to normal human experience cannot be ascertained or even though they are certain to occur, when they occur they cannot be determined nor are they expected to occur and if they do will result in

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[9] For further reading and comparative study, please also see Marnia Rani, "Asuransi tanggung gugat kapal terhadap risiko dan evenemen dalam kegiatan pelayaran perdagangan melalui jalur laut." *Jurnal Selat* Vol. 3 No. 2, 2016, pp. 425-440; Rusli, Tami. "Klausul Evenemen All Risk dalam Perjanjian Pembiayaan Konsumen." *Pranata Hukum* 4.2 (2009); Hengky KV, Paendong. "Perlindungan Pemegang Polis Pada Asuransi Jiwa Di Kaitkan Dengan Nilai Investasi." *Jurnal Hukum Unsrat* 1.6 (2013): 1-14; Putra, I. N. D. D. (2017). The Influence growth of income, assets, ratio of claim and risk based capital on the profitability of life insurance companies in Indonesia. *International Journal of Business and Commerce*, *6*(9), 24-42.

losses. So, that certain steps can be taken, namely by transferring or sharing risk to life insurance companies. Based on the Financial Services Authority Regulation No. 1 / POJK.07 / 2013 Concerning Consumer Protection in the Financial Services Sector, every financial service institution in this case the insurance business is required to have a complaint facility, the purpose of holding this facility is to become a facility for the insured who has complaints that he faces in the period of coverage. In addition, the Financial Services Authority has supporting facilities as a means to achieve its goals, namely a call center that is available for 24 (twenty-four) hours by contacting 157, complaints by letter or walk in, introduction through various media about consumer protection, socialization in various regions and layers which is called the FSA Teaching, and the existence of consumer services through the Financial Information Service System (SLIK).

4. Community factors

The level of public financial literacy every year shows an increase from 2016 which was originally only 29.7% now in 2019 reaching 38.03%. The increase is the result of joint hard work between the Government, the Financial Services Authority, the Ministry / related institutions, the Financial Services Industry and various other parties who continue to strive to continuously improve financial literacy in the community. The education and consumer protection functions are

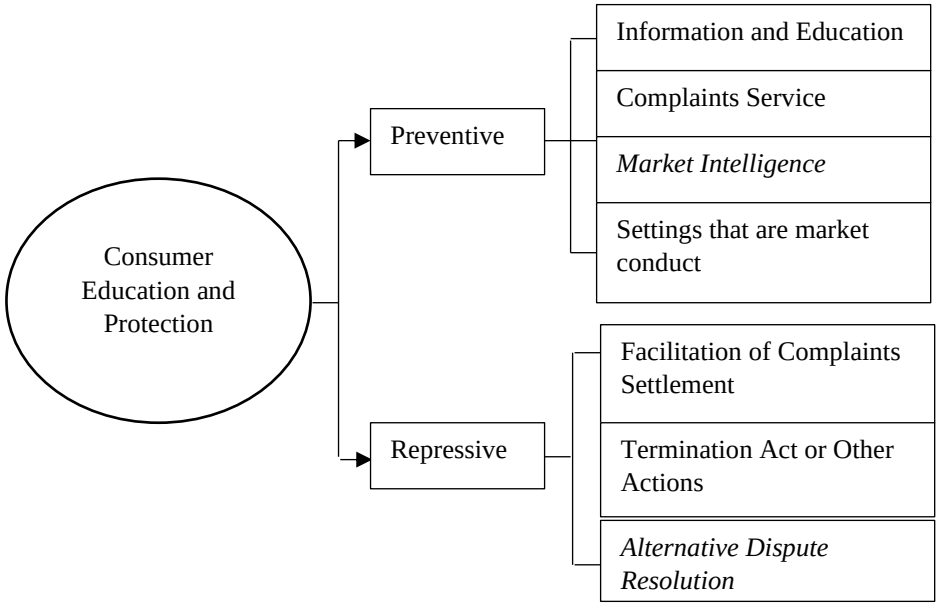

Fig. 2 Consumer Education and Protection Concept
Source: Get to know the Financial Services Authority and Class X Financial Services Industry

important pillars in the financial services sector. The concept of consumer education and protection in the realm of insurance at the Financial Services Authority is grouped into two namely preventive and repressive measures. The following concept of Consumer Protection Education which is owned by the Financial Services Authority as shown on Figure 2.

Preventive efforts carried out in the form of regulation and implementation in the field of education and consumer protection. Education is done through various media and methods. Preventive education is needed as a first step to provide good understanding to the community. In this preventive activity, the Financial Services Authority must ensure that the products and services provided by financial service institutions meet the standards.

Then repressive efforts are made in the form of resolution of complaints, facilitation of dispute resolution, termination of activities or other actions, and legal defence to protect the insured. The Financial Services Authority conducts preventive and repressive actions that lead to financial inclusion and financial system stability. Consumer trust and confidence in a functioning insurance market are prerequisites for maintaining long-term financial stability, growth, efficiency, and innovation; and

5. Cultural factors

There are 4 (four) stages of a society to be able to have good legal awareness, namely legal knowledge, legal understanding, legal attitude, and legal behavior patterns. Public legal knowledge about life insurance is not evenly distributed because this is a lot of complaints of the insured to the life insurance party as a guarantor due to unit link life insurance products. Transparency of information from unit link life insurance agents sometimes does not match what the insured will face. This knowledge must be increased to understanding because understanding means the insured can explain and communicate the legal material to other parties.

Supervision of the Financial Services Authority on Unit Link Life Insurance

An insurance company is an institution that is deliberately designed and formed as a risk recipient institution. Thus, insurance companies basically

offer insurance services as a product to the public. Insurance company management is also created in such a way that it can handle the activities of companies that are oriented towards targets as fulfilment of premium payments, investments and claim payments. Collecting funds from the insured called premiums by life insurance companies certainly needs to be monitored so that there are no cheats committed by life insurance companies.

Law Number 21 of 2011 has established the Financial Services Authority as an independent and free agency from the interference of other parties, which has the functions, duties and authority of the regulation, supervision, inspection and investigation as regulated in the law. This is in accordance with Article 5 of Law Number 21 Year 2011 concerning the Financial Services Authority which stated that "OJK functions to organize an integrated regulation and supervision system for all activities in the financial services sector."

The implementation of the duties of the Financial Services Authority (supervisory board) coordinates and cooperates with Bank Indonesia as the Central Bank. The supervision of the Financial Services Authority is different from the supervision of Bank Indonesia. Supervision conducted by the Financial Services Authority is micro-prudential supervision, while Bank Indonesia conducts macroprudential supervision.

Micro-prudential supervision of the entire financial services industry is carried out by the Financial Services Authority to ensure that in terms of institutional, business processes, governance, capital, liquidity and reporting systems for each financial service institution. Micro-prudential supervision can be done directly (on site supervision) by visiting financial service institutions or carried out off site. The need for on-site and off-site supervision to directly see and monitor the performance of each financial service institution is appropriate and compliant with the provisions issued by the Financial Services Authority.

Market Conduct according to POJK explanation Number 1 / POJK.07 / 2013 Concerning Consumer Protection in the Financial Services Sector stated that "market conduct is the behavior of Financial Service Business Actors in designing, compiling, and conveying information, offering, making agreements, for products and / or services as well as settling disputes and complaint handling. " In accordance with the mandate of Law Number 21 Year 2011 regarding the Financial Services Authority, the Financial Services Authority has a role in:

1. Arrangement of all financial service sectors;
2. Supervision of all financial service sectors, and
3. Consumer protection of financial services.

The existence of three major roles of the Financial Services Authority in the financial services sector mentioned above, makes the Financial Services Authority has the authority to conduct prudential supervision and market conduct. The need for market conduct supervision is to ensure that aspects of consumer protection implemented by financial services institutions are in accordance with the principles of consumer protection as stipulated in the Financial Services Authority Regulation Number 1 / POJK.07 / 2013 concerning Consumer Protection in the Financial Services Sector.

Indonesia applies an internal twin peak supervision model which means that prudential supervision and market conduct supervision are carried out by one institution, the Financial Services Authority. Market conduct supervision conducted by the Financial Services Authority is to complement the supervision conducted by prudential supervision with a different focus and scope of supervision while maintaining a balance between the growth and development of life insurance companies and the interests of the insured. The objectives of market conduct supervision are as follows:

1. For Life Insurance Companies
    a. Have a culture and behavior oriented towards the insured, and
    b. Ensuring the balance and harmonization between the interests of life insurance companies and the insured.
2. For the Insured
    a. Empower and protect the responsible and / or the community through the role of business actors; and
    b. Increase the confidence of the insured and / or the public in the financial services sector.

Every life insurance product, both unit link and uncertain, is approved by the Financial Services Authority. So, there is no unit link life insurance product that can harm the insured and benefit the guarantor. This is in accordance with Article 28 Paragraph (1) of the Financial Services Authority Regulation Number 23 / POJK.05 / 2015 2015 concerning Insurance Products and Marketing of Insurance Products stated that “every new insurance product to be marketed must be reported to the Financial Services Authority to obtain an approval letter or registration letter.”

So there are no products circulating in the life insurance industry market in Indonesia that do not pass the approval of the Financial Services Authority. If a life insurance company is found to be in violation of these provisions, the Financial Services Authority is authorized to impose administrative sanctions. Administrative sanctions that may be imposed in the form of written warnings, fines, obligations for directors or equivalent to undergo a reassessment of capability and propriety, restrictions on business activities, and / or revocation of business licenses.

Unit link life insurance that has been explained previously is a combination of insurance and investment. The Financial Services Authority has the authority to make arrangements and supervision in the capital market sector that has been described in the Financial Services Authority Act. Unit link life insurance products are overseen by the Financial Services Authority more precisely in the Non-Bank Financial Industry (IKNB) section, while investments in these products have a responsibility, namely the investment manager overseen by the Financial Services Authority of the capital market section. So that each section already has their respective duties. The mechanism for investment managers entering their own markets is detailed and has their own certificates.

Unit-linked life insurance cannot be separated from the role of life insurance agents who are the spearhead of unit-linked life insurance products. Every life insurance agent is required to take the test after the insurance agent certificate appears which is the identity of each insurance agent. Each insurance agent is registered with the Financial Services Authority through the Indonesian Life Insurance Association (AAJI). The process of becoming an insurance agent is very long, the first prospective agent is obliged to attend education and training in accordance with company regulations and then the agent will be registered with the Indonesian Life Insurance Association (AAJI) to obtain a temporary license which is valid for 6 (six) months. After joining a life insurance company, agents are advised to register with the Indonesian Life Insurance Association (AAJI) to participate in the full agency licensing program.

If within 6 (six) months the agent does not take the exam and the validity of the temporary license expires, the agent is prohibited from selling life insurance. The difference is the story if the agent passes the exam within a period of 6 (six) months then the Indonesian Life Insurance Association (AAJI) will provide a certificate and a full agency license card to the relevant agent through their respective companies. The validity of a full license also

has an expiration time and insurance agents are obliged to extend their licenses. The Financial Services Authority as a supervisor has the objective to improve the performance of bank and non-bank financial services institutions and protect consumers of the financial services sector. So that the Financial Services Authority has an obligation to provide education about existing regulations to minimize the risks that will be carried out by financial service institutions.

Feedforward control is a form of supervision designed to overcome problems or deviations from the standards or objectives. This oversight aims to achieve the objectives of the establishment of the Financial Services Authority so that all activities in the financial services sector:

a. Organized regularly, fairly, transparently and accountably;
b. Being able to realize a financial system that grows in a sustainable and stable manner; and
c. Able to protect the interests of consumers and society.

Supervision of the Financial Services Authority which is also a microprudential supervision is divided into 2 (two), namely prudential supervision and market conduct. Microprudential supervision aims to ensure that the entire financial services sector, including life insurance, guarantees the health of individual insurance companies. Whereas market conduct supervision aims to ensure that aspects of consumer protection applied by financial service institutions are appropriate to protect the interests of consumers so as not to be disadvantaged.

Market conduct supervision to increase consumer confidence. The scope of market conduct supervision conducted by the Financial Services Authority is in accordance with the product life cycle which includes the process of adjusting products made by life insurance companies to the needs of consumers, making a summary of product information, consumer rights and obligations as well as the terms and procedures for using the product, the marketing process products, and the process of resolving consumer complaints or disputes through internal dispute resolution and external dispute resolution.

Then supervision carried out together with the implementation of activities (concurrent control) aims to ensure the accuracy of the implementation of an activity. The regulation was created to protect insurance companies and the public. In the implementation of these regulations not only do life insurance companies violate them, but the insured also has the potential to violate existing provisions. Micro-prudential

supervision can be done directly (on site supervision) by visiting insurance companies or off site. The need for on-site and off-site supervision is to see and directly monitor the performance of every financial service institution, including insurance companies, is it appropriate and compliant with the provisions issued by the Financial Services Authority.

Feedback control is a form of supervision that measures the results of an activity that has been completed. This monitoring is historical in nature which means that measurements are made after the activity occurs. The supervision of the Financial Services Authority is to process the results of prudential supervision and market conduct supervision as well as financial reports from each life insurance company. So that the Financial Services Authority can evaluate the performance of its supervision, especially in the insurance space in Indonesia, which is stated in the periodic report of each insurance business. Periodic reports provided by the insurance company are divided into monthly, quarterly, semi-annual, annual, and others.

Conclusion

Based on the results of research and improvement that has been carried out by researchers namely about "Supervision by the Financial Services Authority in Investment-Based Life Insurance (Unit Link)", it can be drawn conclusionsprotection for unit link life insured is carried out by life insurance companies, the Indonesian Life Insurance Association, and the Financial Services Authority. Some obstacles faced by the insured in the form of product transparency where the agent does not provide a detailed explanation. Insurance agents who do not comply with the standards of practice and code of conduct of life insurance marketers may be subject to sanctions. The Financial Services Authority requires every insurance company to own and implement a service mechanism and complaint resolution for consumers. Supervision of the insurance business conducted by the Financial Services Authority in accordance with Law Number 21 of 2011 concerning the Financial Services Authority. Microprudential supervision is more focused on the performance of individual financial service institutions including their conglomerates.

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Controversial Criminal Punishment for Victim of the Spread of Immoral Chat

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UNNES LAW JOURNAL
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Controversial Criminal Punishment for Victim of the Spread of Immoral Chat

Rachmadan Eka Cipta, Ali Masyhar

ABSTRACT. The purpose of this research is to (1) analyze the Supreme Court's consideration of victims of the spread of sordid chatter in the Supreme Court's decision Number 574K / PID.SUS / 2018, and (2) analyze the arguments of the Public Prosecutor regarding the offense Article 27 paragraph (1) juncto Article 45 paragraph (1) of the Information and Electronic Transaction Law in decision No. 574K / PID.SUS / 2018. This type of research uses qualitative methods with a normative juridical approach. In this method, secondary data uses the decision of the Mataram District Court Number: 265 / Pid.Sus / 2017 / PN.MTR and the decision of the Supreme Court Number 574 K / Pid.Sus / 2018. Primary data to support this research were obtained from interviews of the Supreme Court of the Republic of Indonesia and the Institute for Criminal Justie Reform. Results and discussion of research (1) The values underlying the Supreme Court in the Supreme Court's decision Number 574K / PID.SUS / 2018 and (2) the Prosecutor's argument The Public Prosecutor related to offense Article 27 paragraph (1) jo Article 45 paragraph (1) of the Information and Electronic Transaction Law in the decision No. 574K / PID.SUS / 2018. Overall it can be concluded that (1) The value underlying the Supreme Court in passing this decision is that the judge tries to apply the benefits of the law. (2) The Public Prosecutor's Arguments in indicting or in prosecution cannot describe the offenses that are charged to the defendant, this is a serious record in the first-level court of the indictment and the demands of the Public Prosecutor are declared unproven on the defendant.

KEYWORDS. Punishment, Immoral Chat, Victim of Crime, Victimology

Controversial Criminal Punishment for Victim of the Spread of Immoral Chat

Rachmadan Eka Cipta, Ali Masyhar

Introduction

The case began when Baiq Nuril still the honorary teacher at SMAN 7 Mataram, at that time Baiq Nuril harassed by former Principal via phone. However society assumes that She have an affair, then Baiq Nuril record to prove that the relationship is not as charged. The tapes were distributed to colleagues Baiq when he tells about to make things as evidence. The former principal of SMAN 7 Mataram reported Baiq Nuril because he he did not accept the tape was scattered. At the first trial at the Mataram District Court with case number 265 / Pid.Sus / 2017 / PN. MTR., She was declared not guilty because it did not fulfill the elements of Article 27 paragraph (1) of Law No. 11 of 2008 concerning Electronic Information and Transactions. The prosecutor appealed to the Supreme Court, and different results came out and said She was guilty. Based on the background that has been described, the author is interested in conducting a research concerning Criminal Punishment on Victim of the Spread of Immoral Chat (Study of Supreme Court Decision Number 574 K/Pid.Sus/2018) with the following problem formulations, *first* what value lies behind the Supreme Court of the punishment penalties against the decision No. 574 K / PID.SUS / 2018 and *second* how the argument of prosecutor offense related elements of Article

27 paragraph (1) in conjunction with Article 45 paragraph (1) of the Law on Information and Electronic Transactions against the decision No. 574K / PID.SUS / 2018?

This study aims to: (1) analyze the Supreme Court's consideration of victims of the spread of Immoral Chat in the Supreme Court decision Number 574K / PID.SUS / 2018 and (2) Analyze the Prosecutor's argument regarding the offense of Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of Information and Electronic Transactions law in decision Number 574 K / PID.SUS / 2018. The theory used in this research is justice, certainty, legal benefit. The three legal values raised by Gustav Radbruch are always echoed in lecture halls which have a strong meaning to create laws that are good for the nation and state. Furthermore, justice and certainty are two values that are interrelated in law. The discussion in the entity space as the syringe law of these two values seems to be a conflict, so that in philosophy it means the search for just certainty or certain justice.[1]

Method

The research approach used in this research is a qualitative research approach with a normative juridical research type. The focus of research is the analysis of judges' considerations in the Supreme Court Decision No. 574 K / Pid.Sus / 2018 and the arguments of the public prosecutor regarding the articles accused. This research produces a series of descriptions that are descriptive-analysis in nature, where descriptive means describing an object in accordance with reality in detail, systematically and thoroughly regarding the decision of the Supreme Court No. 574 K / Pid.Sus / 2018. While analytical itself means describing or describing the data obtained normatively and empirically with theory and thematic which are then used to thoroughly analyze the problems that occur after the research is carried out.

This research was conducted by examining through library materials, journals, laws and other sources and supported by interviews with Mr. H. Suharto S.H., M.Hum. Junior Registrar for Special Crimes at the Supreme Court of the Republic of Indonesia and Ms. Genoveva A.K. Sheila Maya S.H. Researcher at the Institute for Criminal Justice Reform. The validity of the data from this research was obtained by the writer using one form of

[1] Sidharta, *Reformasi Peradilan dan Tanggung Jawab Negara, Bunga Rampai Komisi Yudisial, Putusan Hakim: Antara Keadilan, Kepastian Hukum, dan Kemanfaatan,* Jakarta, Komisi Yudisial Republik Indonesia, 2010, pp. 3-5.

triangulation, including triangulation with sources. In triangulation with this source, the author can meet the predetermined criteria.

Values underlying the Supreme Court in a Convict

According to Ali Masyhar, crime today is no longer focused on conventional-based crimes such as theft, murder, and so on. This is also in line with the development of increasingly advanced times, crimes in the world of technology cannot be handled only in a conventional way through our current Criminal Code. So that in enforcing the law (especially criminal law) judges are expected to be able to compensate, this certainly requires extraordinary law enforcement efforts.[2] The ability of Indonesian criminal law still has limitations in overcoming crimes, our criminal law also lacks an adaptive attitude in responding to developments that occur in society.

Masyhar then explained that the law exists to regulate human life, including human interaction. The history of human life was originally the creature "*homo homini lupus*" which is a reflection of uncivilized humans. A cultured nation will have an attitude of respect for each other, because that is called respecting differences. A person or group of people who cannot accept pluralism, respect others, affirm their own desires, are reflections of uncivilization and deserve criticism for endangering the concept of peace which is then called crime.[3]

1. Background of the Case

Baiq Nuril received a phone call from the former principal of SMAN 7 Mataram Haji Muslim in August 2012, during which Haji Muslim shared his personal secret with Mrs. Nuril over the phone. Mrs. Nuril, without the

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[2] Ali Masyhar, "Formulation Model of Retroactive In the World (Comparative Study with Indonesian Penal Code)", *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 12 No. 4, 2017, pp. 25-26. For further reading concerning to criminal law, human rights, and punishment, please also see Emi Nugraheni Solihah and Ali Masyhar, "The Implementation of Capital Punishment in Indonesia: The Human Rights Discourse", *Journal of Law and Legal Reform* Vol. 2 No. 2, 2021, pp. 321-28; Ridwan Arifin, Ali Masyhar, and Btari Amira, "The Invisible Big Waves: How Indonesia Combat with Radicalism and Terrorism in Global Perspective", *HIKMATUNA* Vol. 6 No.1, 2020, pp. 105-121; Ali Masyhar, "Balancing Principles of Legality in Teaching Legal Studies", *The Indonesian Journal of International Clinical Legal Education*, Vol. 1 No. 3, 2019. https://doi.org/10.15294/iccle.v1i01.20709.

[3] Ali Masyhar, "Regeneration modus and Strategy of Terrorism", *South East Asia Journal of Contemporary Business, Economics and Law*, Vol 18 No. 4. 2019, pp. 13-14.

knowledge of Haji Muslim, recorded the conversation. December 2014, Mrs. Nuril was delivered by Husnul Aini to meet Lalu Agus Rofiq to ask for a phone that had been borrowed, a few hours after that came Haji Imam Mudawin and She said that She had something to say. Mrs. Nuril did not give this recording for a moment, this is because Mrs. Nuril is afraid if bad thing happens. Haji Imam Mudawin on every occasion kept asking Nuril to submit the recording on the grounds that the recording was to complete the evidence for the report to be made to the DPRD.

The recording was obtained by Haji Imam Mudawin, after a period of time the recording of the actual report material to the DPRD was scattered in the SMAN 7 Mataram environment. Nuril and Haji Imam Mudawin were contacted by the Head of the Mataram City Education and Youth Office to ask about the scattered recordings, which led to Haji Muslim's dismissal from his position as Principal of the SMAN 7 Mataram School. Haji Muslim who did not accept his recordings was scattered then reported Nuril to the Mataram Police on suspicion of committing a criminal act of Article 27 paragraph (1) of Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE).

2. History of the Case

Nuril was reported on March 17, 2015 at the Mataram Police, on March 27 2017 Nuril's case was only investigated by investigators. The first trial at the Mataram District Court was held on May 4, 2017 and the case was decided at the first stage on July 19, 2017. Mrs. Nuril was charged by the Prosecutor of violating Article 27 (1) of Law Number 11 of 2008 j.o. Law Number 16 of 2016 concerning Electronic Information and Transactions. At the first level, Baiq Nuril Maknun was released because the panel of judges considered himself not legally and convincingly proven to have violated Article 27 (1) of the ITE Law as charged by the prosecutor.

3. The Charges Applied

The criminal indictment letter dated June 14 2017 by the public prosecutor explains that the defendant's actions have been legally and convincingly proven to have violated Article 27 paragraph (1) jo. Article 45 paragraph (1) of Law Number 11 Year 2008 concerning Electronic Information and Transactions. In the same indictment, the public prosecutor charged Nuril with a sentence of 6 (six) months and a fine of Rp.

500,000,000.00 (five hundred million rupiah) a subsidiary of 3 (three) months in prison.

Analyzing the charges applied in this case, it is very clear that the Public Prosecutor in this case is using a subsidiary type of indictment. This is because there is no specificity in the indictment which is only one article which was imposed on Mrs. Nuril. A single indictment itself is sufficient to formulate an indictment in the form of a single letter, namely a clear description that fulfills the formal and material requirements stipulated in Article 143 paragraph (2) of the Criminal Procedure Code.[4]

4. Supreme Court Decision

The legal education system has been designed in such a way as to strengthen the legal system of continental Europe which is clearly not the original legal system of the Indonesian nation. Finally, it is appropriate if there is a conflict between the laws carried out by the state and the existing laws and living for a long time in the community. So a big question arises whether law enforcement officials read the law more in the arena of black over white, rigid, rigid and prioritize the principle of legal certainty while justice is ignored[5]. The author will analyze the values contained in this decision along with the juridical and non-juridical aspects.

A. Juridical Aspect

The existence of a juridical aspect is intended so that the Judge in saying his consideration that observes the facts of the trial and the applicable provisions must be included in the decision so that the decision is not null and void by law.[6]

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4 M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, Jakarta: Sinar Grafika, 2013, p. 399.

5 Ali Masyhar, *Pergulatan Kebijakan Hukum Pidana dalam Ranah Tatanan Sosial*, 2008, Semarang, Unnes Press, p. 20.

6 M. Yahya Harahap, *Op.cit*, p. 360. For further reading please also see Ni Luh Ariningsih Sari, "Analisis Putusan Mahkamah Agung No. 574. K/Pid. Sus/2018 Pada Kasus Baiq Nuril Maknun (Ditinjau dari Konsep Keadilan)", *Media Keadilan: Jurnal Ilmu Hukum* Vol. 10 No.1, 2019), pp. 1-16; Rahmat Nopriadi, "Analisis Putusan MA No. 574. K/PID. SUS/2018. pada Kasus Baiq Nuril Maknun Ditinjau dari Sosiologi Hukum (Amnesti Presiden)", *Jurnal Sagacious* Vol. 4 No. 2, 2018, pp.73-80; Aditya Yuli Sulistyawan, "Berhukum Secara Objektif Pada Kasus Baiq Nuril: Suatu Telaah Filsafat Hukum Melalui Kajian Paradigmatik", *Humani (Hukum dan Masyarakat Madani)* Vol. 8 No. 2, 2018, pp. 187-200; Reda Manthovani, and Kukuh Tejomurti, "A Holistic Approach of Amnesty Application for Baiq Nuril Maknun in The Framework of Constitutional Law of Indonesia", *Yustisia Jurnal Hukum* Vol. 8 No. 2, 2019, pp. 277-291; Hanif Fudin Azhar, "Menakar Keadilan Putusan Hakim Terhadap

The identity of the defendant is written in full in the decision of the Mataram District Court as well as in the decision of the Supreme Court of the Republic of Indonesia. History of Nuril's detention, she was detained at the State Detention Center and was subsequently detained in city custody from 31 May 2017 to 26 July 2017. The charges applied were a single indictment with one article, namely Article 27 paragraph (1) of Law of the Republic of Indonesia Number 11 Year 2008 concerning Electronic Information and Transactions. The verdict of the Public Prosecutor stated that Nuril was found guilty according to the prosecutor's indictment, sentenced him to a 6 (six) month imprisonment reduced while he was in detention and paid a fine of five hundred million rupiah in addition to three months in prison. The District Court's decision stated that Nuril was not proven to have been charged by the prosecutor of restoring the defendant's rights in his capacity, position, dignity and dignity. There is no decision of the High Court, this is because this case did not go through the High Court stage, this is in accordance with the provisions of Article 244 of the Criminal Procedure Code which reads "against decisions of criminal cases given at the last level by other courts, apart from filing a request for cassation to the Supreme Court except for decisions. free". However, with the Constitutional Court decision No. 114 / PUU-X / 2012 in 2013 which states the phrase "except for acquittal" in Article 244 of Law Number 8 of 1981 concerning Criminal Procedure Law does not have binding legal force, so the authority to examine cassation requests against free decisions is owned. The reason for the appeal for cassation is that the Public Prosecutor has the reason that the Mataram District Court is considered incorrect and wrong in implementing legal regulations or does not apply the law that should have been issued an acquittal and declared not legally proven and convincingly guilty of the indictment the public prosecutor made The decision was made based on inaccurate legal conclusions and considerations because the decision did not see the legal facts that were legally relevant properly, and did not see the legal facts revealed in the trial.

In this decision, all the juridical aspects contained in the Supreme Court Decision No. 574 K / Pid.Sus / 2018 is in accordance with what is required in KUHAP in Article 197 paragraph (1) KUHAP and in accordance with Article 51 paragraph (2) of Law No. 14 of 1985 concerning the Supreme Court.

Kasus Baiq Nuril Perspektif Maqāṣid Asy-Syari'ah", *Jurnal Ilmiah Mahasiswa Raushan Fikr* Vol. 9 No.1, 2020, pp. 38-56.

B. Non Juridical Aspect

Apart from the juridical aspect, the judge also considers non-juridical aspects in the basis of imposing a sentence. The first aspect is Baiq Nuril's background, he was an honorary employee of SMAN 7 Matararam before being fired. She lives her life accompanied by her husband and two children. This changed when the Principal of SMAN 7 Mataram continued to say immoral things. Then the issue arose that Nuril had a special relationship with the school principal. The second aspect is the impact of the defendant's actions, the most obvious impact of the defendant's actions is that the Witness Haji Muslim felt ashamed and was dismissed from his position as school principal. However, for the wider community it does not really have any impact on social order. The third aspect is the condition experienced by Nuril who was dismissed from his job by witness Haji Muslim before being detained by the police. Nuril is traumatized because this condition should not make Nuril the guilty person.

This case becomes interesting when the judges make interpretations that should not have been carried out by the Supreme Court, so that the Supreme Court is considered to have overstepped the powers that should only have come to the *judex juris*. In the author's evidence that the Supreme Court Judge overstepped his authority so that he carried out an interpretation that led to *judex facti* contained in the judges' legal considerations which read:

> *"Although at first the Defendant was not willing to hand over the conversation to witness Haji Imam Mudawin, but in the end the Defendant was willing to hand over the recorded conversation on the Defendant's cellphone because the Defendant was fully aware that by sending and transferring or transferring the contents of the recorded conversation on his cellphone It is most likely that the defendant on the Defendant's laptop and / or it can be ascertained that or at least the witness Haji Imam Mudawin will be able to distribute and / or transmit and / or make Electronic Information and / or Electronic Documents accessible in the form of the contents of the recorded conversations which contain immorality violations."*

This is where there is an interpretation made by the Supreme Court which if it is concluded:

> *"Nuril had previously fully realized that the deeds he had committed were likely or at least certain that Haji Imam Mudawin could spread them too."*

Seeing the fact in the Mataram District Court that Nuril did not immediately give the cellphone containing the recording, Nuril gave his cellphone because it had been repeatedly asked by Witnesses Haji Imam Mudawin and Nuril advised that the cellphone containing the recording was used as a report to the DPRD.

The fact that the Supreme Court then concluded was that the recordings owned by Nuril in his cellphone were transferred to Nuril's laptop. Whereas in the legal facts in the trial of the Mataram District Court the laptop belonged to witness Haji Imam Mudawin, this fact has been mentioned in the consideration of the Mataram District Court decision No. 265 / Pid.Sus / 2017PN. MTR. on page 16. The judge at the Mataram District Court explained that it was proven that the witness Imam Mudawin plugged the data cable from Nuril's cellphone into a laptop device belonging to the Toshiba brand belonging to Haji Imam Mudawin.

5. Underlying Value

The decision issued by the judge is the result of a trial process in court. Whereas the court is the place for people who seek justice, so that the judge's decision should fulfill the expectations of justice seekers. In relation to this, three elements must be reflected, namely justice, legal certainty, benefit in deciding the case[7]. Regarding 3 legal values, the value of justice is the value that is most often debated. A person feels his sense of justice has been fulfilled for a court decision, but sometimes not for the other party. Equality before the law is part of a sense of justice, but for some people it is even considered unfair[8]. During World War II, Nazi-controlled Germany used the certainty value theory to legalize inhuman practices by making rules that

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[7] Margono, *Asas Keadilan,Kemanfaatan dan Kepastian Hukum dalam Putusan Hakim*, Jakarta, Sinar Grafika, 2012, pp. 37-38.

[8] Ali Masyhar, *Op.cit.* p. 15.

justified cruel acts. Radbruch finally fixed his theoretical position above by placing the value of justice in a position above other legal values.[9]

Judges should include several aspects in the decision. Some of these aspects are a description of the process of social life which is part of social control, an embodiment of applicable law and essentially useful for every person or group as well as the state, a balanced manifestation of legal provisions (*das Sollen*) and reality on the ground Sein), a picture of the ideal awareness between law and social change, has a benefit for those who litigate, and in the future it should not cause a new conflict for the litigants and society.[10]

The law is harsh, but as it sounds, this is an expression of the adage "*Lex Dura, sed tamen scripta*". This adagioum is very often heard for adherents of legal certainty. The public really hopes that legal certainty is because with legal certainty, the community will be more orderly. The task of the law itself is to create legal certainty because it aims at public order[11]. The public will feel the benefit of the judge's own decision when the judge is not only the mouthpiece of the law alone (*La bouche da la loi*), the judge is required to be able to decide something by not applying the law textually but only pursuing justice. Considering that the judge's decision will later become a law, the judge should maintain a balance in society by restoring the social order to its original state. The community really hopes that the settlement of cases through the court will bring benefits or benefits to life together in society. The hope is that at least the judge's decision can restore the balance of the social order, meaning that the guilty party is sanctioned, while the injured party will receive compensation or get what is due to him.[12]

Suharto S.H., M.Hum. (Junior Registrar for Special Crimes at the Supreme Court of the Republic of Indonesia) said that in making a decision, the judge prioritizes the values of justice. This also applies if there is a

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9 Hardi Munte, *Model Penyelesaian Sengketa Administrasi Pilkada*. Medan, Puspantara, 2017, p. 26.

10 Rommy Haryono Djojorahardjo, "Mewujudkan Aspek Keadilan Dalam Putusan Hakim Di Peradilan Perdata". *Jurnal Media Hukum dan Peradilan* Vol. 5 No. 1, 2019, p. 95.

11 Sudikno Mertokusumo,*Mengenal Hukum Suatu Pengantar*. Yogyakarta, Liberty, 2005, p. 160.

12 Fence M Wantu, "Mewujudkan Kepastian Hukum, Keadilan dan Kemanfaatan dalam Putusan Hakim di Peradilan Perdata", *Jurnal Dinamika Hukum* Vol 12 No. 3, 2012, p. 486.

conflict between the three values described by Radbruch, the Judge is obliged to prioritize the value of justice.[13]

The value that is the reason for the imposition of crimes carried out by the Supreme Court based on the Electronic Transaction Information Law is to be in line with what the government aims at developing technology using legal means and a set of rules, so that technology and information can be utilized and carried out safely so that misuse does not occur Keeping in mind the cultural and religious values in society, this is based on the fact that today's technology in addition to presenting information for the good of humans is also a tool that can be said to be the most frequent means of committing acts against the law. The Supreme Court hopes that this criminalization can be used as an education for the public in Indonesia, especially for Nuril to be more vigilant when using electronic media, especially when it comes to a person's personal data or interpersonal conversations, where the use of that data should have the consent of the person concerned.

The Supreme Court is of the view that in this case we have to look at a broader aspect. Suharto emphasized that this case must be seen in a series of events, in seeing these events must be linked to the theory of causality. Simply put, when a teacher punishes a student for standing in a room then an earthquake occurs so that the child dies from being crushed by rubble, is the teacher responsible. According to Suharto, the theory of causality itself is useful for assessing who is responsible to find and determine whether or not there is a causal relationship between actions and consequences that arise in this case. The author in this analysis uses the theory of cause and effect, then the most likely thing is that the Supreme Court uses the theory of causality. In this theory itself, in this theory, every condition or factor that comes together to cause an effect and cannot be eliminated from a series of factors that give rise to an effect must be considered an effect, this teaching has an impact on the expansion of accountability in actions[14]. This theory is very easy to apply because it will not cause problems and attract widely the factors that influence it.

Preamble to Law Number 19 of 2016 which is an amendment to Law Number 11 of 2008, it explains that the law was amended on the basis that at that time many people were detained for committing a defamation. Articles related to defamation were amended so that the public would not easily fall

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13 Personal Interview with Panmud PidSus MA RI 14 November 2019.
14 Sudarto, *Hukum Pidana I.* Semarang, Yayasan Sudarto, 2013, pp. 113-114.

into the offense of the law, however, there is one article regarding this decency which (can be considered) escaped the change. According to the author's analysis, if at that time the article on decency was also changed by explaining the meaning of decency which the author felt was too broad and ambiguous then it was not impossible that Nuril could escape from criminal conviction by the Supreme Court.

Suharto explained that he saw this case with criminal responsibility. Even though Nuril did not give it through an electronic system and it was not him who distributed it, did his criminal responsibility just disappear. In seeing this, we have to look once again at criminal responsibility, Van Hamel explained that criminal responsibility is a normal condition and psychological maturity which brings 3 forms of ability to understand the meaning and consequences of his actions, understand that his actions cannot be justified or prohibited by society, and determined by the ability to act.[15]

Seeing the perpetrator's mistake, the judge must ascertain whether he is able to take responsibility for his actions. If the judge makes a decision not seeing whether he is an adult or not, of course this is a problem. The ability to take responsibility itself is not clearly explained in the Criminal Code. However, in Article 44, Article 48, Article 49, Article 50, and Article 51 it describes someone who is unable to take responsibility (negative criminal responsibility). The ability to take responsibility alone is not an absolute element in every criminal act, it is only prejudiced against each suspect. If the results of the examination (mental disorders or imperfect growth) cannot be accounted for, then it is clear that he should not be convicted.[16]

The legal analysis of this decision is that the panel of judges does not accommodate the values of justice, certainty, although they still try to accommodate the value of legal benefits. In the verdict pronounced by the Panel of Judges of the Supreme Court No: 574K / Pid.Sus / 2018, it is very unfortunate that the judge later stated himself that Nuril was deemed aware that the cellphone containing the recording could be distributed to the public. The role of the Supreme Court judge as the *judex juris* in adjudicating the Nuril case aims to correct errors in the application of the law that are alleged to have been committed by the Mataram District Court, considering that his

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[15] Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi dalam Peraturan Perundang-Undangan Khusus di Luar KUHP di Indonesia*, Jakarta, Sinar Grafika, 2017, pp. 15-16.

[16] Martiman Prodjohamidjojo, *Memahami Dasar-Dasar Hukum Pidana*, Jakarta, Pradnya Paramita, 1997, pp. 36-37.

main role in the context of examining and deciding the appeal for cassation is as a *judex juris.*

Judging from the attitude of the Supreme Court by issuing decisions that can create unity in the application of law, as is the obligation of the Supreme Court under Article 253 paragraph (1) of the Criminal Procedure Code, cassation legal measures have the aim of creating a unity in the application of law by means of decisions that are contrary to law are annulled or if the judex factie has wrongly applied the law, while the decision of the Supreme Court in the case is to grant the appeal of the public prosecutor on the basis that the appeal for cassation is not based on the provisions in Article 248 paragraph (3) of the Criminal Procedure Code, but rather bases the cassation memory which focuses on the facts of the trial which in this case the validity has been checked and as a basis in deciding Nuril to be free in decision No. 265 / Pid.Sus / 2017 / PN.MTR by the Mataram District Court.

Seeing the legal certainty based on the law, then referring to the elements of Article 27 paragraph (1) of the Electronic and Transaction Information Law, Nuril did not fulfill all the elements of offense in that article. Legal certainty should be carried out with legal facts at the trial of the Mataram District Court explaining that the recording originates from electronic digital evidence which cannot be guaranteed its integrity and cannot be accounted for as valid evidence. Putting the evidence aside from the decision in the legal logic of the consideration of the Supreme Court Judges should guarantee legal certainty.

The next element is justice. Justice is indeed subjective, conditional and bound by time and space. It is possible that people who steal 3 eggs are not punished and are judged to be fair. Public opinion itself sometimes creates justice that can form a measure of justice so that it views court decisions as unfair. For judges, justice does not have to be favored by the crowd or the majority, sometimes it even seems to contradict public opinion but that does not mean it is unfair. Even though justice is considered subjective, justice here must contain aspects of stability which means order and peace for the community. In this consideration, it appears that the Judge does not see this aspect. That the judge said Nuril was guilty because he was deemed to know that the recording could be distributed by the witness Haji Imam Mudawin, even though Nuril had advised that this recording was only for material to report to DRPD and not to be disseminated. If you look at it from another point of view, Nuril is in fact a victim whose chatter spreads by other people.

Legal benefit is the last aspect, because this benefit can have an impact on the wider community. The analysis that the author states here is that the aspect of legal benefit is attempted to be fulfilled by the Supreme Court Judge, by means of the Judge giving considerations to the public to be more careful in using technology.[17]

Seeing the legal considerations described above, the author sees that the Supreme Court is trying to create legal benefits. In addition to creating legal benefits, the Supreme Court strives to curb the existing legal culture in society related to technological advances. It should be noted that in the facts the trial explained that Nuril was not the one who carried out the act of transmitting or distributing, but someone else. Furthermore, if the Supreme Court is of the opinion that the act committed by Nuril, namely handing over a cellphone to witness Haji Imam Mudawin, is an act of making it accessible, the author assumes that this is not true, because it refers to the offense element in Article 27 paragraph (1) of the Information and Electronic Transactions law must be carried out in an electronic system. What was done by Mrs. Nuril, namely handing over the cellphone, was not included in the actions carried out in the electronic system. The active actions of moving, transferring, sending and distributing which were carried out by Haji Imam Mudawin, Mulhakim, and Muhajidin were then given to Hj. Indah Deporwati, Muhalim, Lalu Wirebakti, Hanafi, Sukrian, and H. Isin could be classified as "*distributing*" and "*transmitting*" and "*making accessible*" Electronic Information".

Evidence of electronic documents through validation of electronic digital evidence, does not find data related to the alleged criminal act in accordance with the elements of offense in Article 27 paragraph (1). This statement was proven by the Digital Forensic Examination Team for the IT and Cybercrime Sub-Directorate for Economic Crime and Special Criminal Investigation at the National Police Criminal Investigation Unit with General

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[17] Please also see Aris Hardinanto, and Zumrotul Jannah, "The Usage of Forensic Computer Report on The Case of Baiq Nuril Maknun", *International Conference on Social Science 2019 (ICSS 2019)*. Atlantis Press, 2019; Faidlur Rohmah, and. Natangsa Surbakti, *Analisis Tindak Pidana ITE Berdasarkan Perkara Baiq Nuril*. Diss. Universitas Muhammadiyah Surakarta, 2020; Soraya Ramli, Faiz Afio Dhiarafah, and Diah Merrita, "A Case of Baiq Nuril in Media: Sara Mills' Critical Discourse Analysis", *Lingua: Jurnal Ilmiah* Vol. 15 No. 2, 2019, pp. 101-115; Febriana, Asyri, Muhammad Rif'an, and Tria Vista Maghfira, "Baiq Nuril's Amnesty Impacts on Legal Certainty in Indonesia", *Unram Law Review* Vol. 4 No.1, 2020, pp. 40-46.

Data Records on the Results of Examinations related to Digital Evidence Number 220-XII-2016-CYBER on 5 (five) sub-digital evidences.

Argument from the prosecutor regarding the element of offense in Article 27 paragraph (1) j.o Article 45 paragraph (1) of the Electronic and Transaction Information Law

The letter of prosecution made by the Public Prosecutor states that Mrs. Nuril is legally and convincingly proven guilty of committing a criminal act "intentionally and without the right to distribute and / or transmit and / or make Electronic Information and / or Electronic Documents accessible with contents that violate decency. "As the indictment of the public prosecutor violates Article 27 paragraph (1) jo. Article 45 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions with the argument that the act of handing over a cellphone owned to Haji Imam Mudawin is an act that fulfills the element of offense making accessible content that violates decency.

The public prosecutor charged Nuril with a single indictment, the prosecutor also did not explain in more detail why and why Nuril was charged with this article. In this case the author wants to analyze the elements of the offense in the article. Examining the elements of the offense in Article 27 paragraph (1) of Law No. 11 of 2008 concerning Electronic Information and Transactions, it will be divided into Intentionally and without Rights, Distributing and / or transmitting and / or making Electronic information and / or Electronic Documents accessible, as well as Content that violates decency.

In essence, in Criminal Law, the law must be interpreted in accordance with the law itself and because Law Number 11 of 2008 concerning Electronic Information and Transactions does not provide an official explanation of the meaning of "on purpose", then looking at the good interpretation of the doctrine of Criminal Law and according to the needs of criminal justice practice in Indonesia. Every element of deliberation in the formulation of a criminal act according to MvT is always aimed at all the elements that are behind the words `` intentionally " always suffers from that deliberate element. According to the doctrine of Criminal Law, if a formulation of a criminal act is used the term "deliberately", it will be divided into 2 (two) forms, namely Dolus Malus and *Dolus Eventualis*. *Dolus Malus*

is in the case of a person committing a criminal act not only does he want that action, but also understands if his act is prohibited by law and is punishable by punishment[18]. Meanwhile, Dolus Eventualis is intentional as a form of possibility, namely an understanding to do an act which is known to result from another action that he does not want from his action, but the maker continues to do the action.[19]

Deliberate itself has 3 features, namely intentionally with the intention that this means that the perpetrator knows and wants the consequences of the crime. Deliberately Deliberate as a possibility when the consequences of the criminal act of the perpetrator are certain to occur, but also not certain. While deliberate as certainty is when the perpetrator has guessed and understood the consequences of his actions and even the effects of his actions.[20]

Proof of whether Nuril carried out an act "intentionally and without rights" must consider the element of the offense "distributing and / or transmitting and / or making Electronic Information and / or Electronic Documents accessible". This is because in a statutory formula, if the offense is behind the element "intentionally", then all the elements of the offense are covered by opzets from the offender. The analysis that the author conveyed Nuril did not know that the recording would be widespread, this was because Nuril told the recording to Haji Mudawin to be used as evidence for reports to the DPRD. Then the recording of the chat by Haji Mudawin was transferred to his laptop and distributed to other people who were not in his interest. Looking at the construction of criminal law that sees the core element is "on purpose", in this case, whether Nuril's actions of "distributing and / or transmitting and / or making Electronic information and / or Electronic Documents accessible" are indeed done on purpose, as well as the act of "distributing and / or transmitting and / or making accessible Electronic information and / or Electronic Documents ”which Nuril wants and knows is prohibited, but is still being done.

The author argues that what Nuril did was actually not intentional, but committed "unconscious negligence". Nuril could indeed imagine Imam Mudawin spreading it for the sake of his complaint to the DPRD, but Nuril did not imagine if it turned out that Haji Imam Mudawin had spread it to

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18 S.R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*, Jakarta, Alumni Ahaem-Petehaem, 1996, p. 163.

19 P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung, Sinar Baru, 1984, p. 186.

20 Sudarto. *Op.cit*. p. 237.

other people. If the case of Mrs. Nuril continues to be constructed as part of the elements on purpose, Nuril still has the rights to the recording.

Phrases in and / or at any material action in Article 27 paragraph (1) of the Law on Electronic Information and Transactions results in the nature of the elements in this article being an alternative - cumulative. The meaning of this arternative - cumulative nature is that if all material actions are fulfilled (cumulative) or only one material action is fulfilled (alternative), then according to the law it is considered proven. The element of distribution in the explanation of the Transaction and Electronic Information Law is sending and / or distributing Electronic Information and / or Electronic Documents intended for the public using Electronic Systems. In the world of Information Technology, explaining what is meant by distributing is sharing copies, copies that are shared can be received at the same time or different times. Furthermore, the element of transmitting in the explanation of the Transaction and Electronic Information Law is an act of sending Electronic Information and / or Electronic Documents which is addressed to one other party using an Electronic System. Transmission is part of the distribution of information in which there must be a receiver and a sender through the information transmission channel.

The explanation in the Transaction and Electronic Information Law regarding making accessible is an act other than distributing and transmitting using an electronic system means that results in electronic information or electronic documents being known to the public or other parties. In the explanation from the point of view of Information Technology, the phrase make accessible involves many parties. These parties can make publishing, intermediary, and so on. Article 1 point 4 explains that what is meant by "Electronic Documents" is all Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and / or heard. through a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meaning or meaning or can be understood by someone who is able to understand them . The last element is the element. The key difference between this verse and other verses is the element of "content that violates morality". This is because all material actions contained in this article must have content elements that violate decency. The fundamental weakness in this element is that there is no explanation regarding content that violates decency in the Transaction and

Electronic Information Law. Actions that violate decency are actually actions that destroy the sense of morality in society. The sense of decency that is attacked is actually what is considered as courtesy or a sense of courtesy by a group of people in society which injures the sense of immorality in all people in a society.

he elements described in the article clearly show that Nuril did not violate the act, this is evidenced by the fact that the trial at the first level was based on the testimony of Husnul Aini and Lalu Agus Rofiq who were present when Haji Imam Mudawin and Mrs. Nuril met at the office, it was clear that the distribution / transmission process in the indictment described by the public prosecutor it was carried out using the method of "inserting a data cable into Mrs. Nuril's cellphone, then the data cable was connected to the notebook belonging to the witness Haji Imam Mudawin" it was proven if Haji Imam Mudawin did this. Regarding Mrs. Nuril handing over a cellphone to Haji Imam Mudawin, it cannot be said that an activity as it is accused of distributing and / or transmitting and / or making it accessible, so that in the view of the author of the Supreme Court it is not correct to interpret Article 27 paragraph (1) and misunderstand that the actions which what Nuril did was not carried out through an electronic system like what the elements of this article should say. In terms of quality and validation of electronic digital evidence, it must meet the qualification requirements that all cumulative criteria must be met, namely accessible, can be displayed again, can be guaranteed its integrity, and can be accounted for as determined in Article 6 j.o. Article 5 Law Number 11 Year 2008 concerning Electronic Information and Transactions.

The key to distinguishing this verse from other verses is the element of "content that violates decency". This is because all material actions contained in this article must have content elements that violate decency. The fundamental weakness in this element is the absence of an explanation regarding content that violates decency in the Transaction and Electronic Information Law.

Actions that violate decency are actually actions that destroy the sense of morality in society. The sense of decency that is attacked is actually what is considered as courtesy or a sense of courtesy by a group of people in society which injures the sense of immorality in all people in a society. The author is of the opinion that if in the Transaction and Electronic Information Law if there is no explanation, then Article 103 of the Criminal Code applies which has an explanation "if the criminal law outside of the Criminal Code

does not specify otherwise, then Chapter I-VIII Book I of the Criminal Code applies to law the law." Article 281, Article 282 paragraph (1), and Article 283 paragraph (2) of the Criminal Code explain that what is meant by an offense of decency must be carried out in public or at least openly is the key in this analysis.

Table 1. The key to decency violation analysis

Provision	Notes and explanation
Article 281	By a maximum imprisonment of two years and eight months or a maximum fine of five hundred rupiahs: 1) anyone who intentionally and **openly** violates decency; 2) whoever deliberately and in front of others who is there is contrary to his will, violates decency.
Article 282 Paragraph (1)	Any person who broadcasts, displays or posts **in public** the writings, images or objects **whose contents are known to violate decency**, or who with the intention of broadcasting, showing or posting them **in public**, makes such writings, images or objects, brings them into the country, forward it, take it out of the country, or have supplies, or any person who publicly or by circulating the letter without being asked, offers it or shows it as obtainable, shall be punished by a maximum imprisonment of one year and six months or a maximum fine of three hundred rupiah.
Article 283 Paragraph (3)	Anyone who broadcasts, displays or posts **in public** writings, images or objects that violate decency, or who with the intention of broadcasting, showing or posting it **in public** makes, imports into the country, continues to take it out of the country, or is in stock, or Anyone who openly or by circulating letters without being asked, offers, or designates as obtainable, is threatened, if there is good reason for him to suspect that the writing, image or object violates decency, by a maximum penalty of nine months or a maximum fine of a lot of four thousand five hundred rupiah

Facts in the case of Nuril, what she did was done in a private space, so according to the analysis of the author, Nuril violates this element is considered inappropriate. This is based on the fact that the Electronic Transaction Information Law does not provide a clear picture of violating decency, so the Criminal Code applies because it is general in nature. When the Criminal Code is enacted, it must be understood that violating this decency must be declared publicly or in front of the public.

In relation to the actions committed by Nuril, it must also be reviewed in the nature of being against the law. The teaching against formal law initially explained that an action is interpreted as unlawful when the action has fulfilled every element in the formulation of an offense according to statutory regulations. Material legal teachings explain that an action can or cannot be said to be against the law, not only seen by statutory regulations or written law, but must also be reviewed by unwritten law.[21]

The nature of violating material law in a negative function which is explained as a public judgment if an action is not wrong even though the formulation of the offense in a written regulation is fulfilled which has an impact on the lawsuits given to the perpetrator is eliminated[22]. Judging from this nature, Nuril's actions cannot be said to be a criminal act. This is in accordance with the Jurisprudence in decision No. 180 K / Pid / 2010 The Supreme Court has the opinion that the Supreme Court expresses its opinion that a series of words which are a warning to the public cannot be considered as an attempt to defame someone's good name. This is because what was conveyed in order to fight for the rights of the Defendant which was taken and the intent and purpose was a warning.

Using the jurisprudential construction above, actually can use the nature of opposing material laws in a negative function. Because in fact Nuril handed over the cellphone as evidence of a report to the DPRD. This also confirms that this act is a guarantee that the sexual harassment act will get justice. The actions that were carried out by Mrs. Nuril were not even appropriate for judicial proceedings. The statement that was conveyed based on the facts at the trial at the Mataram District Court, Nuril did not fulfill all the elements being accused or had reached the stage of the prosecution. Elements without rights, Mrs. Nuril has died in terms of prosecution. This can be understood from an almost similar case, namely the decision of the Supreme Court Number 22 / PK / Pid.Sus / 2011 with the defendant Prita Mulya Sari. In this verdict, Prita was charged with committing a criminal act of Article 27 paragraph (3) of Law No. 11 of 2008 concerning Electronic Information and Transaction, namely deliberately and without the right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents that contain defamation and / or defamation,

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[21] Shinta Agustin, et.al., *Penjelasan Hukum: Penafsiran Unsur Melawan Hukum Dalam Pasal 2 Undang - Undang Pemberantasan Tindak Pidana Korupsi*, Jakarta, LeIP. 2016, pp. 25-30.

[22] Erdianto Effendi., *Hukum Pidana Indonesia, Suatu Pengantar*, Bandung, Refika Aditama, 2011, p. 118.

the Panel of Judges states that proven. Consideration The panel of judges approved Prita's statement which explained that her act of distributing, transmitting, making accessible electronic information that she did was a form of merely giving an “appeal” to the public, so that the public would not feel the complaints she experienced.

Using the same construction in Nuril's case by changing it to immoral content when it is done to give an appeal to the public so that what Prita feels does not happen to others, Nuril cannot be convicted. The important thing and the key to the case that must be considered is that the real victim is Nuril, who advises others about the occurrence of immoral acts in the form of sexual harassment.

Conclusion

Based on the exposure in the previous chapters and field research, data and information have been obtained that describe the Judicial Analysis of the Imposition of Crime against Victims of the Spread of Nasty Chat (Study of the Supreme Court Decision No. 574K / PID.SUS / 2018), so that the explanation can be drawn The conclusion of the value behind the Supreme Court in passing this decision is that the judge tries to apply legal benefits. It is clear that the Supreme Court of Justice made this decision based on the value of benefit and formal justice for the defendant. The arguments of the public prosecutor in accusing or in the prosecution cannot describe the elements of the offense imposed on the defendant, this is a serious note in the first instance of the indictment court and the prosecutor's demands are declared not proven to be the defendant. In seeing the elements of offense to distribute, transmit, make accessible it must be understood in a system. So that if the act committed is not in the electronic system, it is clear that the law cannot be used.

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The Authority of Government Officials in Delegating and Mandating

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The Authority of Government Officials in Delegating and Mandating

Arifin Tumuhulawa, Roy Marthen Moonti

ABSTRACT. Power sharing vertically in a unitary state has its consequence for the existence of the environment of both central and local governments. By the existence, another consequence appears which is the relationship between central government and local government in order to avoid the overlap of the authority implementation. One of the crucial aspects in democratic state of law (*democratischerechtsstaat*) is legality principle (*legaliteitsbeginsel*). It means that each legal action of the government should be based on the applicable laws and regulations or the authority given by the applicable regulations. The problem statements and the aims of this research are to find out the authority of the Government Officials in running the government affairs and to investigate the meaning of delegating and mandating conducted by the government officials. Authority is the formal power owned by administration boards and/or officials or other state administrators to act in public law report including some competences. The basic principles of authority are first, the administration officials act and make decision based on their authority; second, the authority to use should be accounted for and tested by both legal norm and legal principle. Delegation is defined as delegating authority from the higher board and/or government officials to the subordinates in which the responsibility and liability is switched completely to the delegates. Mandate does not contain the transfer of authority. It is only the mandator gives his/her authority to another person (mandatary) to make decision or take actions on his/her behalf.

KEYWORDS. Authority, Government, Delegating, Mandating

The Authority of Government Officials in Delegating and Mandating

Arifin Tumuhulawa, Roy Marthen Moonti

Introduction

Power sharing vertically in a unitary state has its consequence for the existence of the environment of both central and local governments. By the existence, another consequence appears which is the relationship between central government and local government in order to avoid the overlap of the authority implementation.

The existence of law and country in the concept of the rule of law is two sides that cannot be separated between one and another.[1] One of the crucial aspects in democratic state of law (*democratischerechtsstaat*) is legality principle *(legaliteitsbeginsel*). It means that each legal action of the government should be based on the applicable laws and regulations or the authority given by the applicable regulations. This authority contains the meaning of *het vermogen tot het verrichten van bepaalde rechtshandeiinge*: the ability to conduct certain legal actions. In a public law, authority (*bevoegdheidj*) is considered as the main concept in both constitutional law

[1] Muten Nuna & Roy Marthen Moonti, "The Independence of Socio-Political Rights and Participant of Citizens in Democracy System in Indonesia", *Jurnal Ius Constituendum*, Volume 4 Number 2, 2019, pp. 112-113.

and administrative law: *het begrib bevoegdheid is da nook een kembegrip in het staats-en administratiefrecht*.[2]

Based on this authority, the government has legality either politically or legally to do various legal actions (*rechtshandelingen*), and this authority also creates the government's responsibility principle; *niemand ken een bevoegdheid uitoefenen zander verantwordngschuldigis zijn ofzander dat ofdie uitaefening centralebestaarf* (no one can conduct authority without responsibility or control). In other words, *geen bevoegdheid zander verantwoordelijkbeid* or there is no authority without responsibility. Due to the authority of the government basically comes from regulations which is the crystallization of the people's aspiration (democracy) and one of pillars in the state of law (*rechtsstaat*), the public liability of the authority holder will be juridical and political responsibility as well as juridical control through Juridical and Political Control Board through People's Representative Council. [3]

Each state administration, state official, and government official has legitimation that is the authority served by legislations. Hence, the government is approved and obeyed by the people and the authority or competence given by regulations to the apparatus should have legitimation from the people so that they become orderly.

"Authority is a formal power coming from legislative power (served by legislations) or from executive/administrative power. Authority is a power on certain people or government divisions. Meanwhile, competence is only applicable on certain things. In authority there are some competences. Competence is the power to conduct public legal actions."

Authority can be obtained by 3 (three) ways, attributing, delegating, and mandating. The attributive authority is obtained throughout regulations while non-attributive authority is obtained through mandate or delegation. The legal products can be made by Public Officials that have non-attributive authority to conduct the government.[4] Practically, the role of government in many aspects of citizens' life generally is called public services (*bestuurzorg* or public service) for people's prosperity.[5]

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[2] Stroink, F.A.M., *EnJ.G.Steenbeek Inleidinginhet Staat-en Administratlef Recht,* Alphen AandenRijn: Samsom H.D IjeenkWillink, 1985, p. 26.

[3] Ridwan, "Government Public Accountability in the Perspective of State Administration Law", *Journal of Law*, Volume 10 Number 22, p. 28.

[4] Nafisakhatul Layliyah, "Competence in State Administration Law". p. 1.

[5] Mustamu Julista, "Discretion and Responsibility of Government Administration", *Sasi Journal*, Vo. 17 No. 2, 2011. p. 1.

Basically, the authority given to the government is not different from the state administration in absolutism era. What makes them differ is that the authority is limited with the rules contained in regulations which are based on the concept of the rule of law applied. L.J.A Damen as cited in Ridwan states that in a legal country, the involvement of government in the citizens' life should be referred to legality principle (*legaliteitsbeginsel*) which is considered as the most important principle in the state of law. Unfortunately, the legality principle which is referring more to the written law has many problems as what happens in Indonesia. Phipus M. Hadjon states that the idea of *rechtsstaat* tends to be legal positivism. The consequence is that the law should be created consciously by the board.

It is also what makes the situation becomes dilemmatic for the government to run the task for the sake of people's welfare. The written regulation will not be able to accommodate all aspects of human's life as life is continuing dynamically. It means that every time discrepancy happens between legality principle and reality to face. This triggers the discovery of *freis ermessen* giving contest by the government; the government's independency to act initiatively in solving the problems. This independent authority of the government is well-known as discretion.[6]

By this discretion authority, most of the power which is held by law-making institution should be turned over to the government as the executive board. So, the legislative board supremacy is switched to be executive board supremacy. It occurs because the state administration solves the problem without waiting for the change of laws by legislative board. In principle, the government administrative officials cannot refuse to provide public services without any legal reasons or anything related to unclear legal reasons, as long as it is still in their authority area.[7]

Referring to the determination, the problems occurs related to the limitation of the government's act in using discretion and who will be responsible for that action, whether it is the government's organ as the official or as the individual, and also what kind responsible to bear.[8]

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[6] Sufriadi, "Job Responsibilities and Individual Responsibilities in Government Administration in Indonesia", *Juridical Journal*, Vol. 1 No. 1, 2014. p. 59.
[7] Mustamu Julista, *Op.Cit.*, p. 2
[8] Sufriadi, *Op.cit.* p. 60.

Method

This study applied normative law research using normative case study in form of leal action product such as studying the regulations. It was focuses on laws as norms applied in the community which become the references of the people. So, the normative law research focused on the inventory of positive laws, legal principles and doctrines, legal findings in cases in *concreto*, systematic law, synchronization level, the comparison of law, and the history of law. [9]

The Authority of Government Officials in the Implementation of Government Affairs

In State Administration Law, we are familiar with the term competence. Competence becomes the limitation of power for what extent we can do or cannot do something. Generally, competence in State Administration Law is the power to utilize the resources to reach for goals in organization and the task is generally defined as obligation or a job to be done by someone in his/her work.

Authority is the formal power owned by administration boards and/or officials or other state administrators to act in public law report including some competences. The basic principles of authority are first, the administration officials act and make decision based on their authority; second, the authority to use should be accounted for and tested by both legal norm and legal principle.

According to Indonesia Dictionary, competence and authority, both are defined as right and responsibility to act and power to make decision, to order, and to delegate the responsibility to other people/boards. [10]

Meanwhile, in Black Law Dictionary, the authority is defined broader. It is not only in doing the practice of power but also in implementing and enforcing the law. Further, it is defined as definite obedience, it contains command, it is to decide, and there is a jurisdictional supervision in it. Moreover, it is also described as prestige, charisma, and physical strength. Competence is the main concept in state constitutional law and state

[9] Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung, PT. Citra Aditya Bakti, 2004, pp. 52-53.
[10] Nafisakhatul Layliyah, "Competence in State Administration Law". pp. 3-4.

administrative law, because the competence contains right and responsibility. In state constitutional law, competence is described as rule of law (*rechtskracht*). It means that only legal actions (based on competence) can obtain rule of law (*rechtskracht*). Meanwhile, according to Bagir Manan as cited in Ridwan HR, competence in legal terminology is not same with power. Power only describes the right to do or not to do something. Competence includes both right and responsibility. Without competence, people cannot do anything. [11]

In administrating the government in the region, local government has the authority to form the legal products in the region. Observing the Article 7 Verse (1) Law Number 12 of 2011 concerning the formation of laws and regulations that administrates the hierarchy of laws and regulations, the regional legal products that includes in the hierarchy is the Province Regulation and Regional/City Regulation. However, referring to the Article 8 Verse (1) Laws Number 12 of 2011 concerning the formation of Laws and Regulations, there are other kinds of regulations recognized such as regulation determined by Regent/Mayor.

The further determination about the regional legal products then is regulated in Minister of Home Affairs' Regulation Number 80 of 2015 about the determination of Regional Legal product. The regional legal products regulated in Minister of Home Affairs' Regulation Number 80 of 2015 about the determination of Regional Legal product consists of Provisions and regulations. The legal products in the form of regulations consist of: [12]

a. Regional Regulation;
b. Regulation of Regional Head;
c. Joint Regulation of Regional Heads; and
d. Regulation of Regional House of People's Representative;

Meanwhile, the legal products in the form of provisions consist of:

a. Decree of Regional Head;
b. Decree of Regional House of People's Representative;
c. Decree of Head of Regional House of People's Representative; and
d. Decree of Honorary Board of Regional House of People's Representative

One of principles of state of law (*rechtsstaat*) is legality principle (*legaliteitbeginsel*), as the foundation to give authority to the government as

[11] Moh. Mahfud MD, & Sf. Marbun, *Kompetensi dalam Hukum Administrasi Negara*, Jakarta: Airlangga, 2009. p. 75.

[12] Ali Marwan Hsb & Evlyn Martha Julianthy, "The implementation of Local Government Attribution Authority based on Law Number 23 of 2014 concerning Local Government", *Indonesian Legislation Journal* Vol. 15 No. 2, 2018, pp. 6.

the legality in doing legal actions. In a state of law, particularly in continental system, this legality principle is strictly embraced which indicates that without any authority given by laws and regulations, the government cannot conduct the legal actions. However, theoretically and practically, particularly in modern country, it is almost impossible to formulate the functions and authorities of the government in detail by set them in laws and regulations. It is because the functions and authorities of the government are closely related to provide services to public that is continuously developed. Automatically in government legal actions, there is an implication of freedom (*beordelingsruimte*) or implementation.[13]

This authority can be considered as one of main studies in state administration system. This term is also becoming the answer of the question about the basic of governmental administration in doing actions. Further, the discussion about authority will also refer to a kind of responsibility in state administration when there is discrepancy or deviation of the policy made. In this part, the discussion will be related to how the efforts are made by the citizens as the injured party on the policy issued by the government apparatus. If the authority run by the government is not appropriate to the laws and regulations or the authority is misused or applied arbitrarily which causes the violation of the citizens' rights, then the citizens will get the legal protection (*rechtsbescherming*), for example through administrative justice.

Authority and competence are terms used in public law field. But, there is a difference between the two. Ateng syafrudin states that the term of authority (*kewenangan, gezag*) should be differentiate from competence (*wewenang, bevoegheid*). Authority is defined as formal power coming from the regulations, while competence is only a certain part of the authority. There are competences in the authority (*rechtsbe voegdheden*). Competence is the scope of public legal action, the scope of government's competence, not only in making decision (*bestuur*), but also in carrying out the tasks, and giving and distributing the competence is particularly determined in laws and regulations.[14]

Competence is the right owned by the board and/or government officials or other state administrators to make decision and/or to take action in governmental administration.[15] Governmental authority which is further

[13] Ridwan, *Op.cit.* p. 29.
[14] Laws Number 30 of 2014 concerning Government Administration.
[15] *Ibid.*

called as authority is the power of by the board and/or government officials or other state administrators to act in public law field.[16]

In legal terms, competence is a legal power based on law. Operationally, competence is an ability to do certain legal actions, or to conduct positive law. Hence, it can create the legal relationship between government and citizens. As what has been discussed above, the governmental competence can be obtained by attributing, delegating, and mandating. In a state of law, it has been determined that the delegation of competence, characteristics, and contents of the competence, as well as the implementation of it must obey the juridical boundaries. In the delegation of authority or vice versa, there are either written or unwritten regulations. If the authority run by the government is not appropriate to the laws and regulations or the authority is misused or applied arbitrarily which causes the violation of the citizens' rights, then the citizens will get the legal protection (*rechtsbescherming*), for example through administrative justice.[17]

Delegating and Mandating by Government Officials

The definition of competence delegation is giving the competence to the people pointed by the competence holder. The use of competence delegation wisely is the critical factor for the effectiveness of an organization. Therefore, the role of competence delegation is crucial in an organization.

Sometimes, someone who has certain position has limitations in doing a job such as number of tasks and skills. If these limitations cannot be overcame, it will worsen the organization's performance. Hence, there should be a delegation of the competence and responsibility. Delegating is:

1) an organized process in organization/organizational framework involving as many people and individuals in making decision, supervising, running tasks relating to task certainty; and
2) an action to over the task (certainly and clearly), authority, right, responsibility, obligation, and accountability to the subordinates individually in each task position. The delegation is conducted by

[16] *Ibid.*

[17] Ridwan, *State Administrative Justice: The Manifestation of Success in Politics of Law in New Order Regime*, Paper as Lecture material in Master of Law Program, Postgraduate Program, Faculty of Law, Islamic University of Indonesia, 2011, p. 6.

dividing the tasks, authority, right, responsibility, obligation, and accountability in a formal job description in an organization.

Delegation is defined as delegating authority from the higher board and/or government officials to the subordinates in which the responsibility and liability is switched completely to the delegates.[18]

The use of competence delegation wisely is the important factor for the effectiveness of an organization. Therefore, the role of competence delegation is crucial in an organization. By having tasks, competences, and responsibilities, the individuals should agree to give their accountability on the tasks they are given to. It is appropriate to the fact that they will always be asked for their liability on the tasks they run and their responsibility they are given to. Everything related to tasks, competences, responsibilities, and liabilities are the elements of the competence delegation.

Competence delegation is only the stage of a process when giving the competence which has function to take off the position by carrying the responsibility out.[19] According to Manullang, delegating is an activity of somebody assigning his/her staffs/subordinates in order they conduct some parts of the manager's tasks and in the same time giving the authority to the staffs/subordinates, so they can do the tasks appropriately and take responsibility on the task delegated to them.[20]

There are three elements related to the delegation namely task, authority, and accountability.

1. Task
   Task is works that should be done by somebody on a certain position. The task can reinforce the employees to be more productive in a company, hence the work effectiveness can be achieved.
2. Authority
   Authority is rights or competences to make all decisions related to one's function. In running the competence delegation in a company, it should be based on the authority because the authority gives the employees rights in making decision related to their interests and functions for the company.

[18] Laws Number 30 of 2014 concerning Government Administration.
[19] Malayu S.P. Hasibuan, *Human Resource Management*, Jakarta. Haji Masagun, 2006. P. 72.
[20] Manullang, M., *Management of Personnel 3rd Edition*. Yogyakarta, Gajah Mada University Press, 2006. p. 10.

3. Accountability

   Accountability is reporting on how somebody has conducted his/her tasks and how he/she uses the competence given to him/her. Responsibility is the most important thing in carrying the competence in a company because the responsibility of the employees is giving the report or accountability to the decision they have made.

Delegation, someone who gives delegation is called delegator and the recipient is called delegates. In delegation, all competences are switched to the delegates including the responsibility. In administrative relationship, if the delegation is sued, there is only one to be sued, the delegate. To make it clear, the Ten Berge states that the conditions of delegation are:[21]

1. Delegation should be definitive, it means that delegates cannot use their competences that have been authorized to them.
2. Delegation should be based on the determination of the laws and regulation, it means that delegation will be possible if there is the determination to delegating in laws and regulation.
3. The delegation cannot be done to subordinates, it means that in staffing hierarchy, there should not be a delegation.
4. The responsibility to give explanation, it means that delegators have right to ask for the explanation about the implementation of the competence.
5. Policy rules (*beleidsregel*), it means that the delegators should give the instruction (direction) about the use of the competence.

The principle which is well known in delegating is the principle of trust. The delegators only delegate some parts of their competences to the trusted delegates. This trust should be based on objective consideration related to their skill, ability, honesty, ability, and responsibility of the delegates themselves.[22]

Meanwhile, mandating can be occurred if the government's organs allow their authorities run by other organs on their behalf. Based on Government Administration Law, mandating is defined as giving authority from the higher Boards and/or government officials to the lower boards and/or officials in which the responsibility and liability have to be on ones who authorize the mandate.[23]

Mandate does not contain the transfer of authority. It is only the mandator gives his/her authority to another person (mandatary) to make

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[21] Mila Marwiyah Hasibuan, *Competence Delegation in State Administration Law*. p. 7
[22] *Ibid.*, p. 8.
[23] Nafisakhatul Layliyah, "Competence in State Administration Law". p. 7.

decision or take actions on his/her behalf.[24] However, mandate according to Rosjidi Ranggawidjaja following the statement of Heinrich Tripel, is *opdrach*/errand to another organ to do competence or a legal act conducted by the competence holder by giving fully authority to other objects in running competence of the mandatory on his/her behalf. Therefore, mandate is same with a particular authority to do certain things.[25]

In the Bill of Government Administration, it is formulated that mandate is authority given by a government's organ or delegator to other people or organs to take decisions on behalf of the mandator.[26]

In *Algemene Wet Bestuursrecht* (*Awb*), mandate means the giving of competence from the government's organ to another organ to take decision on his/her behalf (mandator). In the other words, as what has been stated by H.D van Wijk Willem Konijnenbelt, "mandate occurs if the government organ allow his/her authority run by another person on his/her behalf" (Mandate, *een bestuursorgaan laat zijn bevoegheid namens hem uitoefenen door een ander*) (there is no statement about the transfer of competence, and there is no discussion about delegating the competence in mandating. There is no change of competence in mandating) (at least in terms of formal juridical).[27]

Mandate in State Administration Law principles is different with mandatory in the construction of mandatory according to the explanation of 1945 Constitution before the change. In the State Administration Law, mandate is defined as order to conduct the superior's task. The authority, anytime, can be done by the mandatory, and there is not responsibility transfer. Based on the explanation, if the competence is obtained by government organ through attribution, it is original coming from laws and regulations which is from certain articles in laws and regulations. The mandatary can create new competence or broaden the existing competence with intern and extern responsibility of the implementation of the distributed competence which is completely on the mandatary.

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[24] J.G. Brouwer in Sonny Pungus, "*The Theory of Authority*."
[25] Sufriadi, *Op.cit.* p. 63.
[26] *Ibid.*
[27] Ridwan, *Op.Cit.,* pp.33-34.

Conclusion

Authority is the formal power owned by administration boards and/or officials or other state administrators to act in public law report including some competences. The basic principles of authority are first, the administration officials act and make decision based on their authority; second, the authority to use should be accounted for and tested by both legal norm and legal principle. Delegation is defined as delegating authority from the higher board and/or government officials to the subordinates in which the responsibility and liability is switched completely to the delegates. Mandate does not contain the transfer of authority. It is only the mandator gives his/her authority to another person (mandatary) to make decision or take actions on his/her behalf.

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Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)

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Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)

Baruna Poking Bagus Saputro

ABSTRACT. Specifications in the study use a qualitative approach that is descriptive analytical and uses the type of doctrinal law research with mthe juridical normative research method of synchronization and just remedies in the resolution of public information disputes. The results of research and discussion in the thesis, namely: First, contains ssynchronized resolution of public information disputes based on Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by Law of the Republic of Indonesia Number 9 of 2004 and finally with Law of the Republic of Indonesia Number 51 of 2009 with Republic of Law Indonesia Number 14 of 2008 concerning Public Information Openness. Second, it includes just legal remedies in resolving public information disputes. Conclusions based on the results of research and discussion include: First, ssynchronized resolution of public information disputes based on Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by Law of the Republic of Indonesia Number 9 of 2004 and finally with Law of the Republic of Indonesia Number 51 of 2009 with Republic of Law Indonesia Number 14 of 2008 concerning Openness of Public Information can be done with a juridical analysis of the competence and position of the State Administrative Court and the Information Commission, as well as the synchronization of laws against the relevant laws. Second, just remedies in resolving public information disputes are carried out with a juridical analysis based on justice theory. Finally, the author provides suggestions in the form of legislative review efforts to amend relevant laws, based on democratic political configurations in order to be able to produce responsive legal products for the realization of legal certainty and justice.

KEYWORDS. Information Commission, Administrative Court, Public Information Dispute Resolution, Synchronization

Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)

Baruna Poking Bagus Saputro

Introduction

The enactment of RI Law Number 14 of 2008 concerning Openness of Public Information and RI PERMA Number 2 of 2011 concerning Procedures for Settling Public Information Disputes in the Court, has expanded the authority of the State Administrative Court specifically in adjudicating public information disputes, namely disputes that occur between Information Users Public and State Public Bodies relating to the right to obtain and use information based on legislation. This is in accordance with the provisions in Article 47 paragraph (1) of the Republic of Indonesia Law No. 14 of 2008 concerning Openness of Public Information in conjunction with Article 2 of the Republic of Indonesia Regulation No. 2 of 2011 concerning Procedures for Settling Public Information Disputes in the Court.

As in Article 23 of RI Law Number 14 of 2008 concerning Openness of Public Information, what is meant by the Information Commission is an independent institution that functions to run RI Law Number 14 of 2008 concerning Public Information Openness and its implementing regulations, establish technical guidelines for public information service standards and resolve disputes public information through mediation and / or non-litigation adjudication. Decisions of the Information Commission derived from agreements through mediation are final and binding. Meanwhile, the

settlement of public information disputes through non-litigation adjudication by the Information Commission can only be taken if the mediation attempt is declared unsuccessful in writing or the disputing parties, or one or the disputing parties withdraw from the negotiations. With regard to the Judicial Decision from the Information Commission, a claim can be filed if one or the parties to the dispute in writing state that they did not accept the decision. As stipulated in Article 47 paragraph (1) of RI Law Number 14 of 2008 concerning Openness of Public Information, namely: "Filing a lawsuit is done through the State Administrative Court if the sued is the State Public Agency".

The formulation of the problem in the study includes: First, how is the synchronization of public information dispute resolution based on RI Law No. 5/1986 concerning State Administrative Court with RI Law No. 14/2008 concerning Public Information Openness? Second, how is a just legal remedy in solving public information disputes? While the objectives in the study include: First, identifying, analyzing, and understanding how to synchronize public information dispute resolution based on RI Law Number 5 of 1986 concerning State Administrative Court with RI Law Number 14 of 2008 concerning Openness of Public Information. Secondly, identifying, analyzing, and understanding how legal remedies are fair in resolving public information disputes.

Overall thesis research conducted by the author has the characteristics as a normative juridical study of synchronization and just remedies in resolving public information disputes. As a theoretical foundation in the form of State Law and State Administrative Law, Legal Synchronization, Administrative Justice and Public Information Disputes, Good Governance, and Justice Theory. Whereas as a conceptual foundation in the form of a review of synchronization of laws and regulations and review of dispute resolution of public information with justice.

Method

Specifications in the study use a qualitative approach that is descriptive analytical and uses the type of doctrinal law research with mthe juridical normative research method of synchronization and just remedies in the resolution of public information disputes. Focusing on the use of secondary data sources, which, as Soerjono Soekanto, in secondary data use

legal materials which include.[1] First, primary legal materials in the form of binding legal materials consisting of norms or the basic rules, basic rules, statutory regulations, legal materials that are not codified, jurisprudence, treaties, and legal materials from the colonial era which still apply today. Second, secondary legal material in the form of materials that provide an explanation of the primary legal material. Third, tertiary legal material in the form of materials that provide instructions and explanations for primary and secondary legal materials.

Synchronization of Public Information Dispute Resolution Based on the Competence of the Information Commission and the State Administrative Court

The competence of a court to examine, try and decide on a case is related to the type and level of justice. Based on its type, the judicial environment is divided into general court, state administrative court, religious court and military court. Whereas based on the level of justice the judiciary is distinguished from the first court, the court of appeal and the court of appeal. RI Law Number 48 of 2009 concerning Judicial Poweradheres to the dual system of courts, namely the two judicial systems in addition to the general court, there is also an independent administrative court. As a consequence of the dual system of courts, it is necessary to confirm the dispute field or administrative case as the field of competence of the relevant court.

There are several ways to find out the competence of a court. First, in the opinion of E. Utrecht, competence can be seen from the subject matter of the dispute (*geschilpunt, fundamentum petendi*). Second, in Sjachran Basah's opinion, competence can be seen by making a distinction on attribution (*absolute competentie* or *distributie van rechtsmacht*).[2] Third, in the opinion of Zairin Harahap, by distinguishing absolute and relative competence.[3] Competence in judging can be divided into two, namely the attribution

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1 Soerjono Soekanto, & Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2014, pp. 12-13.

2 Victor Yaved Neno, *Implikasi Pembatasan Kompetensi Absolut Peradilan Tata Usaha Negara*. Bandung: Citra Aditya Bakti, 2006, pp. 32-33.

3 Zairin Harahap, 2001. *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Rajawali Pers, pp. 31-32.

competency judiciary (*attributie van rechtsmacht*) and the distribution judicial competence (*distributie van rechtsmacht*). Attribution judicial competencies are absolute authority or absolute competence, namely the competence of court bodies in examining certain types of cases and absolutely cannot be examined by other judicial bodies. While the judicial competence of distribution or relative competence or relative competence is in accordance with the principle of the actor of the forum rei so that the competent authority is the court of domicile.[4]

Comparison of absolute competence and relative competence each of which is owned by the Information Commission based on RI Law Number 14 of 2008 concerning Public Information Openness and State Administrative Court based on RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 In 2004 and the latest with RI Law Number 51 of 2009 are as follows:

Table 1 Comparison of Information Commission Competencies and Administrative Court

Competence	Information Commission	Administrative Court
Absolute	- Article 1 number 3 of RI Law Number 14 of 2008 - Article 1 number 5 of RI Law Number 14 of 2008 - Article 23 RI Law Number 14 of 2008 - Article 26 paragraph (1) RI Law Number 14 of 2008 - Article 37 RI Law Number 14 Year 2008	- Article 1 number 3 of RI Law Number 5 of 1986 jo. Article 1 number 9 of RI Law Number 51 Year 2009 - Article 1 number 4 of RI Law Number 5 of 1986 jo. Article 1 number 10 of RI Law Number 51 Year 2009 - Article 3 of RI Law Number 5 of 1986 - Article 47 RI Law Number 5 of 1986
Relative	- Article 26 paragraph (2) and paragraph (3) of RI Law Number 14 of 2008 - Article 27 paragraph (2), paragraph (3), and paragraph (4) of RI Law Number 14 of 2008	- Article 6 RI Law Number 5 of 1986 jo. Article 6 RI Law Number 9 Year 2004 - Article 54 RI Law Number 5 of 1986 jo. Article 54 RI Law Number 9 Year 2004

Source: Authors' Research Data Analysis, 2018

[4] W. Riawan Tjandra, *Hukum Acara Peradilan Tata Usaha Negara*. Yogyakarta: Universitas Atmajaya, 2002, p. 31.

Law No. 14 of 2008 concerning Openness of Public Information gives attributive authority to the Information Commission which includes absolute and relative competencies. The absolute competence of the Information Commission based on the provisions of Article 1 number 3, Article 23, and Article 26 paragraph (1) of RI Law Number 14 of 2008 concerning Public Information Openness states that the functions and duties of the Information Commission are to receive, examine and decide on resolving disputes over public information through mediation and / or non-litigation adjudication. As for the object of the dispute as regulated in Article 1 number 5 of RI Law Number 14 of 2008 concerning Public Information Openness is a public information dispute.

Whereas the relative competence of the Information Commission can be simply defined as the authority of the Information Commission in an effort to resolve public information disputes which are determined based on the level or hierarchy of the Public Agency as stipulated in Article 26 paragraph (2), Article 26 paragraph (3), Article 27 paragraph (2)), Article 27 paragraph (3), and Article 27 paragraph (4) of RI Law Number 14 of 2008 concerning Openness of Public Information. Public bodies are divided into three levels or hierarchies, which include central public bodies, provincial public bodies, and district / city public bodies. Therefore, Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Law No. 51/2009 give attributive authority to the State Administrative Court which includes absolute and relative competence. The absolute competence of the State Administrative Court based on the provisions of Article 47 of RI Law Number 5 of 1986 concerning the State Administrative Court states that the duties and authority of the State Administrative Court are to examine, decide upon, and resolve state administrative disputes. As for the objects of state administration disputes as regulated in Article 1 number 3 and Article 1 number 4 of RI Law Number 5 of 1986 *juncto* Article 1 number 9 and Article 1 number 10 of RI Law Number 51 of 2009 are the State Administration Decree. However, in the case of a State Administration Decree as the object of the state administration dispute there are limitations as mentioned in Article 2, Article 48, Article 49, and Article 142 of RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 2 of RI Law 9 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. The restrictions are divided into three which include direct restrictions, indirect restrictions, and temporary restrictions are temporary. and Article 142 of RI Law Number 5 of 1986 concerning State

Administrative Court in conjunction with Article 2 of RI Law Number 9 of 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. The restrictions are divided into three which include direct restrictions, indirect restrictions, and temporary restrictions are temporary. and Article 142 of RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 2 of RI Law Number 9 of 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. The restrictions are divided into three which include direct restrictions, indirect restrictions, and temporary restrictions are temporary.

First, direct restriction is a limitation which makes it impossible at all for the State Administrative Court to examine, decide upon, and resolve state administrative disputes as referred to in Article 2 and Article 49 of RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 2 of the RI Law Number 9 of 2004 concerning Amendment to the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court. *Second*, indirect restrictions are restrictions that are still possible for the State Administrative Court to examine, decide upon, and resolve state administrative disputes provided that all available administrative efforts have been taken as stated in Article 48 of RI Law Number 5 of 1986 concerning Judiciary State Administration. *Third*, Whereas the relative competence of the State Administrative Court can be simply defined as the authority of the State Administrative Court in the effort to settle state administrative disputes determined based on each territory or place of the competent court whose jurisdiction covers the defendant's domicile as regulated in Article 6 and Article 54 RI Law Number 5 of 1986 concerning State Administrative Court in conjunction with Article 6 and Article 54 of RI Law Number 9 of 2004 concerning Amendment to RI Number 5 of 1986 concerning State Administrative Court. Initially, the State Administrative Court will be established in the regency / city domicile, but in the meantime, it has only been established in the domiciled territory of the provincial capital.

The competence of the State Administrative Court according to RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 is narrower when compared to the competence of the State Administrative Court according to Thorbecke's view and Buys. According to Thorbecke when the *fundamentum petendi* (the subject of the dispute) is located in the field of public law, the state administrative judge has the authority to decide it. Meanwhile,

according to Buys, the measurement that must be used in determining whether or not a state administrative judge is authorized is total (subject to dispute).[5]

Synchronization of Public Information Dispute Resolution Based on the Position of the Information Commission and the State Administrative Court

Constitutionally in the Indonesian constitutional system as regulated in Article 24 of the 1945 Constitution of the Republic of Indonesia, it is stated that the judicial function or judicial power is carried out by the Supreme Court, including judicial bodies that are under it in the general court, state administrative court, religious court, military court, and by a Constitutional Court. Duties and functions as an affirmation regarding judicial authority as stipulated in Article 24 of the 1945 Constitution of the Republic of Indonesia are further regulated in RI Law No. 48/2009 concerning Judicial Power. In addition, along with the needs and demands of the public for justice and the development of the theory of constitutional law, various judicial institutions that have been formed by the state through laws and regulations as a special court appear in their position as a general court whose task and function is specifically to examine and decide on various types of disputes which are the authority to adjudicate from existing judicial institutions. As for the other part of the institution or body or commission as a quasi-judicial with its position that stands alone outside the general court environment whose task and function is to examine and decide upon a dispute through a non-litigation settlement mechanism (Aryani, 2015: 5-6).

Jimly Asshiddiqie specifically gave a view on the quasi-judicial institution based on the consideration of the Texas Court Decision in the Perdue, Brackett, Flores, Utt, and Burns cases against Linebarger, Goggan, Blar, Sampson, and Meeks, LLP, 291 sw 3d 448 which states that a state institution can be categorized as a quasi-judicial institution if it has the following powers as emphasized by Aryani[6]: *a*. Provide judgment and

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5 Nomensen Sinamo, *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta: Permata Aksara, 2016, p. 42.

6 P. Dyah Aryani, *Putusan Komisi Informasi Dalam Bingkai Hukum Progresif*. Jakarta: Komisi Informasi Pusat Republik Indonesia, 2015, pp. 5-6.

consideration; *b.* Hear and determine or confirm facts to make a decision; *c.* Make decisions and considerations that bind legal subjects; *d.* Influence individual rights or individual property rights; and e. Test the witnesses, force the witnesses to attend and to hear the statements of the parties in the trial.

Starting from this view, a comparison of the position of the Information Commission and the position of the State Administrative Court in the judicial function can be elaborated, as follows:

Table 2 Comparison of Information Commission Position and State Administrative Court in Judicial Functions

<table>
<tr><th colspan="6">Judicial</th><th>Quasi-Judicial</th></tr>
<tr><td colspan="6">Article 24 of the Constitution of the Republic of Indonesia 1945</td><td>RI Law No. 14 of 2008</td></tr>
<tr><td rowspan="4">Constitutional Court</td><td colspan="5">Supreme Court</td><td rowspan="4">Information Commission</td></tr>
<tr><td colspan="2">General Courts</td><td rowspan="3">State Administrative Court</td><td rowspan="3">Religious Courts</td><td rowspan="3">Military Justice</td></tr>
<tr><td>Criminal Public</td><td>Civil Code</td></tr>
<tr><td>Special Crimes</td><td>Special Civil Code</td></tr>
</table>

Source: Analysis of Author's Research Data, Adaptation from Jimly Asshiddiqie's Opinion, 2013.

The State Administrative Court is a judicial institution under the Supreme Court in charge of exercising judicial authority to administer justice in order to enforce law and justice within the state administrative court environment in addition to the environment of the general court, religious court and military court. The task or authority has been determined in RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009, namely as a judicial institution that has the authority specifically to settle administrative disputes. state effort through the mechanism of dispute resolution in court (in court settlement).

The position of the Information Commission as a consequence of RI Law No. 14 of 2008 concerning Openness of Public Information based on this view can be categorized as a quasi-judicial institution. The presence of the Information Commission in the development of modern law as a quasi-judicial institution that has the authority specifically to resolve public

information disputes through out of court settlement mechanisms becomes an ideal for the process of resolving legal disputes that do not always have to be resolved through the courts (in court settlement).

Synchronization of Public Information Dispute Settlement Based on the Substance of Article in RI Law Number 5 of 1986 concerning State Administrative Court and RI Law Number 14 of 2008 concerning Public Information Openness

Synchronizing the settlement of public information disputes based on RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 with RI Law No. 14/2008 concerning Openness of Public Information can be done with analysis of the substance of the articles which are related to one another. So as to find out the extent of synchronization of the substance of the articles governing the authority to adjudicate in efforts to resolve public information disputes based on the competence of the State Administrative Court and the competency of the Information Commission can be described through the following table:

Table 3 Synchronization of Article Substance

No.	Classification	Law No. 5/1986 concerning State Administrative Court as amended by Law No. 9/2004 and finally Law No. 51/2009	Law Number 14 of 2008 concerning Openness of Public Information
1	Chapter	Chapter I. General Provisions	Chapter I. General Provisions
	Part	First part	Part One
	Subject	Definition	Definition
	Article	Article 1 number 10	Article 1 number 5
	Description of Substance	State Administration Dispute is a dispute arising in the field of state administration between a person or a Civil Legal	Public Information Disputes are disputes that occur between public bodies and users of public

		Entity and a State Administration Agency or Officer, both at the central and regional levels, as a result of issuing state administrative decisions, including employment disputes based on statutory regulations applicable.	information relating to the right to obtain and use information based on legislation.
2	Chapter	Chapter IV A lawsuit	Chapter X. Lawsuit and Court Appeals
	Part	First part	Part One
	Subject	A lawsuit	Lawsuit to court
	Article	Article 53 paragraph (1)	Article 47 paragraph (1)
	Description of Substance	Individuals or Legal Entities who feel their interests have been harmed by a State Administration Decree can file a written claim to the competent court which contains demands that the disputed State Administration Decree be declared null or void, with or without claims for compensation and / or rehabilitated.	Filing a lawsuit is done through a state administrative court if the sued is the State Public Agency.

Source: Authors' Research Data Analysis, 2018

Based on the synchronization of article substance in RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 of 2009 with RI Law Number 14 of 2008 concerning Openness of Public Information above, found a connection between one another. There is an expansion of the competence of the State Administrative Court, where previously the duties and authority of the State Administrative Court were to examine, decide upon, and resolve state administrative disputes with the object of the dispute being the State Administrative Decree, expanded to include public information disputes submitted by the State Public Agency and / or Public Information Applicant.

Legal Synchronization of Public Information Dispute Settlement Based on RI Law Number 5 of 1986 concerning State Administrative Court and RI Law Number 14 of 2008 concerning Public Information Openness

The authority to adjudicate by the State Administrative Court in the settlement of public information disputes originates from RI Law No. 14 of 2008 concerning Public Information Openness. So that it can be said that the authority is an attributive authority obtained by the State Administrative Court from Law outside of Republic of Indonesia Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51 Year 2009, the substance of which contains material and formal law in the administration of state administrative justice. Therefore, a legal system has a principle that is a measure of the existence of the legal system itself. According to Lon L. Fuller, the legal system must contain a certain morality. Failure to create such a system not only gives birth to a bad legal system, but rather something that cannot be called a legal system. Lon L. Fuller's opinion on the measurement of the legal system is laid out on eight principles called principles of legality, which are as follows: (Satjipto, 2000: 51-52) a. A legal system must contain regulations, not just ad hoc decisions; b. Every legal rule must be published; c. Legal regulations are not retroactive; d. The rules must be arranged in an understandable formulation; e. A system is prohibited to contain rules that conflict with each other; f. Regulations are prohibited containing demands that exceed what is done; g. It is forbidden to change the rules frequently so that someone will lose orientation; and h. There must be a match between the legal regulations enacted and their implementation.

Maria Farida Indrati Soeprapto stated that the theory of statutory regulation (*gesetzgebungstheorie*) is oriented to look for clarity and clarity of meaning or meanings and is cognitive.[7] A normative study must use a statutory approach (statue approach), because it conducts research on various legal rules which are the focus and central theme of the study. Must see the law as a closed system that has the following characteristics: *a*. Comprehensive, meaning that the legal norms contained therein are logically

[7] Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan, Jenis, Fungsi, dan Materi Muatan*. Yogyakarta: Kanisius, 2007, pp. 8-9.

related to one another; *b.* All-inclusive, that the set of legal norms is quite capable of accommodating existing legal problems, so that there will be no lack of law; and *c.* Systematic, that besides linking one another, the legal norms are also arranged hierarchically.[8]

The function of legal norms according to Hans Kelsen include governing, prohibiting, authorizing, allowing, and deviating from the provisions. In a legal norm system, for example there is a hierarchy of tiered legal norms, which stipulates that the norms below are valid and have validity if formed by or based on and are based on the highest norms (basic law) called *grundnorm*. The validity of a norm in a legal norm system is relative, dependent on higher norms forming and determining the power of conduct.[9]

The theory of the level of Hans Kelsen's legal norms was inspired by a student named Adolf Merkl, who put forward the theory of *die Lehre vom Stufenbau der Rechtsortnung* (legal stage), namely that law is a hierarchical regulation, a legal system that conditions, is conditioned, and legal actions. Norms that codify contain conditions for making other norms or actions.[10] Thought about the hierarchy of laws and regulations is a result of the influence of thought about the law by Hans Kelsen, where law is a normo-dynamic norm because the law is always formed and erased by the institution or authority authorized to shape it.[11] Adolf Merkl also stated *das Dolpelte Rechsantlizt*, which is a norm that always has two faces, Hans Nawiasky's theory divides the hierarchical structure of legal norms into four types, namely *staatsfundamentalnorm, staatsgrundgesetz, formall gesetz, and verordnungen autonome satzung*. If it is connected with the state of law of Indonesia, then there is the structure of the arrangement as follows: *(1) Staatsfundamentalnorm* (state fundamental norms): Pancasila (OpeningThe 1945 Constitution of the Republic of Indonesia); *(2) Staatsgrundgesetz* (basic rules of the state / basic rules of the state): The Body / articles in The 1945 Constitution of the Republic of Indonesia, the Resolution of the People's Consultative Assembly, and the Constitutional Convention; *(3) Formell*

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8 Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*. Malang: Banyumedia Publishing, 2006, pp. 302-303.

9 Tanto Lailam, *Teori & Hukum Perundang-Undangan*. Yogyakarta: Pustaka Pelajar, 2017, p. 12.

10 Jimly Asshiddiqie, & Ali Syafa'at, *Teori Hans Kelsen Tentang Hukum*. Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006, pp. 109-110.

11 Shandra Lisya Wandasari, Sinkronisasi Peraturan Perundang-Undangan Dalam Mewujudkan Pengurangan Risiko Bencana. *UNNES Law Journal*, 2(2), 2013, pp. 146-147.

Gesetz (formal law): Constitution; and *(4) Verordnungen autonome satzung* (implementing rules and autonomous rules): hierarchically from Government Regulations to Decisions of Regents or Mayors.

The theory of Hans Kelsen and Hans Nawiasky basically provides an understanding that methodologically the search for a legal norm that underlies the lower norm and the search for a lower norm contrary to the higher norm does not take place indefinitely (*regressus ad infinitum*), because in the end there must be a norm that is considered the highest norm or until it stops at the norm above which there is no higher norm[12] (called the *grundnorm* as the highest norm by Hans Kelsen or *staatsfundamentalnorm* as the fundamental norm by Hans Nawiasky.[13]

In connection with legal principles and principles, Purnadi Purwacaraka and Soerjono Soekanto are of the opinion that in order for a statutory regulation to be effective, a substantial principle must be paid attention to. First, the law does not apply retroactively, meaning that the law can only be applied to the events mentioned in the law and occur after the law is declared effective. Second, laws made by higher authorities have a higher position (lex superior derogate legi inferiori). Third, special laws override general (lex specialist derogate legi generali) laws. Fourth, the new law defeats the old one (lex posterior derogate legi priori). Fifth, the law cannot be contested, meaning that the law can only be revoked and / or amended by the agency that created it. Sixth, the law is a means to achieve spiritual and material welfare for society and through individuals through preservation or renewal or innovation.[14]

Ronny Hanitijo Soemitro as quoted by Yudho Taruno Muryanto and Djuwityastuti stated that synchronization of laws and regulations can be examined both vertically and horizontally. If the synchronization of the laws and regulations is examined vertically, it will be seen how hierarchical it is. Then, if the synchronization of the laws and regulations is examined horizontally, it means that the extent to which the laws and regulations governing these various fields have functional relations consistently.[15] Peter Mahmud Marzuki argues that in approaching the synchronization level of

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12 Tanto Lailam, *Teori & Hukum Perundang-Undangan*, 2017, pp. 26-27.

13 Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan, Jenis, Fungsi, dan Materi Muatan*, 2007, pp. 48-49.

14 Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan yang Baik*. Jakarta: Rajawali Pers, 2010, pp. 117-118.

15 Yudho Taruno Muryanto, & Djuwityastuti, "Model Pengelolaan Badan Usaha Milik Daerah (BUMD) Dalam Rangka Mewujudkan Good Corporate Governance". *Jurnal Yustisia* 3(1), 2014, pp. 129-130.

legislation, in addition to understanding the type, hierarchy, and principles of forming legislation.[16]

To find out the position RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and most recently RI Law No. 51/2009 and RI Law No. 14/2008 concerning Openness of Public Information isby using the statutory approach (statue approach) to conduct research on the synchronization level of legislation whether vertically or horizontally. Normatively synchronize the two laws based on theory *die Lehre vom Stufenbau der Rechtsortnung* from Hans Kelsen and Hans Nawiasky as well as based on the type and hierarchy of the laws and regulations as regulated in Article 7 paragraph (1) and paragraph (2) of the Republic of Indonesia Law No. 12 of 2011 concerning the Formation of Laws and Regulations stipulating that the legal force of the legislation is in accordance with the type and hierarchy of the laws and regulations The rules are as follows:

Table 4 Legal synchronization

Types and Hierarchy Based on Article 7 of Law Number 12 Year 2011	**Laws and regulations**	***die Lehre vom Stufenbau der Rechtsortnung***
The 1945 Constitution of the Republic of Indonesia	-	*Staatsgrundgesetz*
Decree of the People's Consultative Assembly	-	
Government Act / Regulations in Lieu of Law	RI Law Number 5 of 1986 concerning State Administrative Court	*Formell Gesetz*
	Republic of Indonesia Law Number 9 of 2004 concerning Amendment to Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court	
	RI Law Number 51 of 2009 concerning Second	

[16] Peter Mahfud Marzuki, *Penelitian Hukum*. Jakarta: Prenadamedia Group, 2016, pp. 75-76.

	Amendment to Law of the Republic of Indonesia Number 5 of 1986 concerning State Administrative Court	
	RI Law Number 14 of 2008 concerning Openness of Public Information	
Government regulations	-	*Verordnungen autonome satzung*
Presidential decree	-	
Provincial Government Regulation	-	
District / City Government Regulations	-	

Source: Authors' Research Data Analysis, 2018

Based on methodological understanding in Hans Kelsen and Hans Nawiasky's Theory, the position of RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 of 2009 and RI Law Number 14 The year 2008 regarding Openness of Public Information is a formal law which is hierarchically contained instructural structure of formell gesetz. Whereas based on the type and hierarchy of laws and regulations as regulated in Article 7 paragraph (1) and paragraph (2) of RI Law Number 12 of 2011 concerning Formation of Legislation the position of Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by Law of Republic of Indonesia Number 9 of 2004 and the latest to Law of Republic of Indonesia Number 51 of 2009 and Law of Republic of Indonesia Number 14 of 2008 concerning Openness of Public Information is located on the same level, namely in type and hierarchy in the position as Law.

Substantially the two laws are synchronized in a horizontal level with the enactment of the principle *lex specialist derogate legi generali*. RI Law Number 14 Year 2008 concerning Openness of Public Information that is of a nature *lex specialist* push aside RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Act No. 51/2009 which is *legali generali*. Because the lex specialist nature of RI Law No. 14 of 2008 concerning Openness of Public Information is a source of positive written law that has implications for the expansion of the

competency level of the State Administrative Court in the dispute of public information disputes.

Legal Efforts to Settle Public Information Disputes Based on Plato's Theory of Justice

Plato's theory of justice emphasizes harmony. Plato gives the definition of justice as the supreme virtue of the good state, while the definition of a just person is the self-disciplined man whose passions are controlled by reason. Justice is not directly related to law, because according to Plato justice and the rule of law are the general substance of a society that makes and maintains its unity.[17]

Plato's view of justice is known for individual justice and justice in the state. To find the correct understanding of individual justice, first must find the basic characteristics of justice in the state, therefore Plato expressed "let us inquire first what it is the cities, then we will examine it in the single man, looking for the likeness of the larger in the shape of the smaller". Although Plato said so, it does not mean that individual justice is identical with justice in the state. It is just that Plato saw that justice arises because of adjustments that give a harmonious place to the parts that make up a society. This conception of Plato's justice is formulated in the phrase giving each man his due, which is to give everyone what they are entitled to. Therefore, laws need to be upheld and laws need to be formed.[18]

In relation to law, the material object is about the value of justice as the essence of the principle of legal protection, while the formal object is a juridical normative perspective with the intention of finding basic principles that can be applied to resolve problems that arise in the field of using the value of justice as intended. Concerning the value of justice in question, especially with regard to the object, namely the rights that must be given to citizens. Usually this right is assessed and treated from various aspects of political and cultural considerations, but the essence remains unchanged namely *suum cuique tribuere*.[19]

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17 Julia Bader, and Jörg Faust. "Foreign aid, democratization, and autocratic survival." *International Studies Review* 16(4), 2014, pp. 575-595.

18 Julia Bader, and Jörg Faust, *Ibid.*

19 Julia Bader, and Jörg Faust, *Ibid.* for further reading concerning Theory of Justice, please also see David Keyt, "Plato on justice." *Socratic, Platonic and Aristotelian Studies: Essays in Honor of Gerasimos Santas*. Springer, Dordrecht, 2011, pp. 255-270; Afifeh Hamedi, "The concept of justice in Greek philosophy (Plato and

Based on the methodological understanding of Plato's Justice Theory that was born from the philosophy of idealism, it can be seen that to view a problem which in this case is a dispute of public information, it requires regulation with positive written law that must reflect justice, because the law and the law is not solely to maintain order and maintain state stability, but the most important thing of the law is to guide the people to achieve priority, so that they are eligible to become citizens of the ideal state.

Legal Efforts to Settle Public Information Disputes Based on Aristotle's Theory of Justice

Aristotle's theory of justice emphasizes proportion or balance. Aristotle gives the definition of justice in two distinctions. First, distributive justice is giving the distribution and appreciation of each individual according to his position as a citizen and wants equal treatment for those who are equal according to the law. Second, corrective or remedial justice, namely providing a measure of the technical principles that govern administration rather than the law implementing the law. In regulating legal relations, it is necessary to find a general measure to deal with the consequences of actions regardless of individual subjects and their intentions can be assessed according to an objective measure.[20]

Punishment must correct the crime, compensation must correct the error or civil misappropriation, the return must correct the profit that is obtained improperly. The conception of Themis, the Goddess who weighs the balance without looking at individual subjects, implies this form of justice. However, corrective, or remedial justice must be understood as subject to distributive justice.[21]

Based on the methodological understanding of the Aristotelian Justice Theory that was born from the flow of the philosophy of realism, it can be seen that efforts to resolve distributive justice disputes with equality before the law in the implementation of RI Law Number 5 of 1986 concerning State Administrative Court as amended with RI Law Number 9 Year 2004 and

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Aristotle)." *Mediterranean Journal of Social Sciences* 5 (27 P2), 2014, pp. 1163-1163; Mfonobong David Udoudom, and Samuel Akpan Bassey. "Plato and John Rawls on Social Justice." *Researchers World* 9(3), 2018, pp. 110-114.

20 Teguh Prasetyo, & Abdul Halim Barkatullah, *Filsafat, Teori, dan Ilmu Hukum: Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. Jakarta: Rajawali Pers, 2012, p.268.

21 Teguh Prasetyo, & Abdul Halim Barkatullah, *Ibid.*

finally with RI Law Number 51 Year 2009 with RI Law Number 14 Year 2008 concerning Public Information Openness.

Legal Remedies for Public Information Disputes Based on Justice Theory John Rawls

Another theory that talks about justice is the theory put forward by John Rawls. In his theory it was stated that there are three things that are the solution to the problem of justice. First, the principle of freedom is the same for everyone (principle of greatest equal liberty). Second, the difference principle. Third, the principle of fair equality to obtain opportunities for everyone (the principle of fair equality of opportunity).[22]

The principle of equality is further advanced by Wolfgang G. Friedmann which basically contains two meanings. First, equality is seen as an element of justice, in which there are universal values and justice can be interpreted on the one hand as law, this can be seen from the term justice, which means law, but on the other hand, justice is also the goal of law. In achieving this goal, justice is seen as impartiality. This attitude contains the idea of equality, which is the equality of fair treatment for all people. Second, equality is a right, equality as a right can be seen from the provisions of The Universal Declaration of Human Rights 1948, as well as in the International Covenant on Economic, Social and Cultural Rights 1966.

Based on the methodological understanding of the John Rawls Justice Theory, it can be seen that efforts in resolving equitable public information disputes require the principle of equal freedom for everyone (the principle of greatest equal liberty), the principle of difference (the difference principle), and the principle of equality fair to get the opportunity for everyone (the principle of fair equality of opportunity) in the implementation of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 with RI Law Number 14 of 2008 concerning Openness of Public Information. In relation to the regulation of human rights and citizens' freedom, the theory is a theory that is quite relevant to be applied.

[22] Julia Bader, and Jörg Faust, 2014, *Ibid.*

Legal Efforts to Resolve Public Information Disputes Based on The Theory of Working of Law William J. Chambliss and Robert B. Seidman

Related to synchronizing the settlement of public information disputes based on RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 with RI Law No. 14/2008 concerning Public Information Openness examined using the Theory of Law Work from William J. Chambliss and Robert B. Seidman. The constructions contained in the theory are as follows.[23]

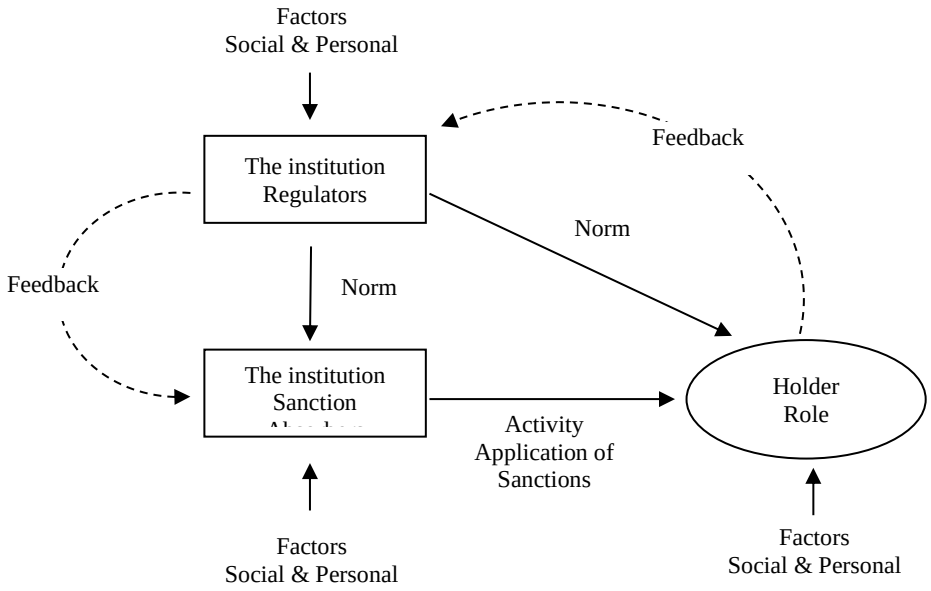

Figure 1 The Theory of the Operation of the Law by William J. Chambliss and Robert B. Seidman

Based on the methodological understanding of the Theory of William J. Chambliss and Robert B. Seidman, it can be seen that the position of the subject of public information disputes which includes the Public Information Applicant, and the State Public Agency is the role holder. The Public Information Applicant and the State Public Agency are targets of a law that is related to the achievement of the objectives of the promulgation of RI Law No. 14 of 2008 concerning Openness of Public Information, including: a. Guaranteeing the right of citizens to know the plans for making public

[23] Satjipto Rahardjo, *Hukum dan Masyarakat*. Bandung: Angkasa, 1980, p. 27.

policies, public policy programs, and public decision-making processes, and the reasons for making public decisions; b. Encourage community participation in the process of making public policy; c. Increase the active role of the community in public policy making and good management of public bodies; d. Realizing good state administration, which is transparent, effective and efficient, accountable and can be accounted for; e. Knowing the reasons for public policies that affect the lives of many people; f. Develop science and educate the life of the nation; and / or g. Improve information management and services within the Public Agency to produce quality information services. and / or g. Improve information management and services within the Public Agency to produce quality information services. and / or g. Improve information management and services within the Public Agency to produce quality information services.

Therefore, it is expected not to be bound by legalistic-positivistic thinking. Because, if the two judicial institutions are shackled in legalistic-positivistic thinking patterns, the public will only look at the mouthpiece or mouth of the law (*la bouche de la loi*).[24] Therefore, the Information Commission and / or the State Administrative Court are expected to be able to seek legal progression outside the source of positive written law which is not entirely determined limitatively because of the dynamic nature of the law with the aim of resolving public information disputes based on the nature of the law that is as stated by Gustav Radbruch, which includes the value of justice based on a philosophical basis, the value of expediency based on a sociological basis,

RI Law No. 14 of 2008 concerning Openness of Public Information has a harmonizing spirit as an Act that contains general provisions in information disclosure which are also equipped with institutions that can review policies related to the implementation of disclosure through information dispute resolution. Thus, RI Law No. 14 of 2008 concerning Openness of Public Information has an implicit function as an instrument of coordination and harmonization of laws and regulations. Based on that, RI Law Number 14 Year 2008 regarding Openness of Public Information related to the authority to adjudicate by the Information Commission and the State Administrative Court in an effort to resolve public information disputes does not complicate its application in judicial practices because there is no disharmony. Because,

[24] P. Dyah Aryani, 2015, pp. 8-9.

In connection with the discussion, it can become a formulation of strategic legal efforts to meet legal certainty and justice in resolving disputes over public information, which includes: First, applying the nature *lex specialist* RI Law Number 14 of 2008 concerning Openness of Public Information which rule out the legali generali nature of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Law No. 51/2009. Second, considering the existence of PERMA RI Number 2 of 2011 concerning Procedures for Settling Public Information Disputes in Courts as the formal law needed in settling public information disputes. Third, it makes it imperative for the Information Commission and / or the State Administrative Court in examining, adjudicating and deciding public information disputes not to be bound by legalistic-positivist mindset. Because it is necessary to realize that the formation of written law or legislation is basically a state political policy formed by the House of Representatives and the President.[25]

There is an assumption that political determinants of law so that law is a political product, where politics as an independent variable is extreme distinguished from democratic politics and authoritarian politics, while the law as a dependent variable is distinguished from responsive law and orthodox law. Democratic political configurations give birth to responsive laws while authoritarian political configurations give birth to orthodox or conservative laws, seeing the reality that law in the sense of abstract rules (imperative articles) is the crystallization of political wills that interact with each other and compete.[26] (Mahfud MD, 2014: 7-10). In addition, because each dispute is not as a whole determined in a limitative manner in the substance of positive written law so that legal progress is needed in order to fulfill the resolution of public information disputes that are based on the nature of the law which includes the value of justice on the basis of philosophical grounds,

Conclusion

This research highlighted some points, *First*, whereas the State Administrative Court as a judicial institution that has the authority

[25] Daniel Zuchron, *Menggugat Manusia Dalam Konstitusi Kajian Filsafat atas UUD 1945 Pasca-Amandemen*. Jakarta: Rayyana Komunikasindo, 2017, pp. 217-218.

[26] Moh. Mahfud MD, *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers, 2014, pp. 7-10.

specifically resolves state administrative disputes and obtains an attribute expansion of authority to resolve public information disputes that occur between the Public Information Applicant and the State Public Agency through the mechanism of dispute resolution in court (in court settlement) as an appellate court against a lawsuit against the Information Commission Judicial Decision. 2. Based on*die Lehre vom Stufenbau der Rechtsortnung*, the position of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally with RI Law No. 51/2009 and RI Law No. 14/2008 concerning Openness of Public Information is a formal law that is hierarchically contained within structural structure of *formell gesetz*. Whereas based on the type and hierarchy of laws and regulations as regulated in Article 7 paragraph (1) and paragraph (2) of RI Law Number 12 of 2011 concerning Formation of Legislation the position of the Republic of Indonesia Law Number 5 of 1986 concerning State Administrative Court as amended by the Republic of Indonesia Law Number 9 of 2004 and finally to the Republic of Indonesia Law Number 51 of 2009 and the Republic of Indonesia Law Number 14 of 2008 concerning Openness of Public Information lies in the equivalent position, namely in type and hierarchy in the position as Law. Thus, substantially the two Laws are synchronized in a horizontal level with the enactment of the principle *lex specialist derogate legi generali*. *Second*, regarding just legal remedies in resolving public information disputes are: 1. Based on a methodological understanding of Plato's Justice Theory that was born from the idealism philosophical flow, efforts to resolve public information disputes require regulation with positive written law that must reflect justice that is not merely to maintain order and maintain the stability of the state, but rather to guide the people to achieve virtue, so that they are worthy of being citizens of an ideal state. Therefore, written positive law manifested by RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law No. 9/2004 and finally RI Act No. 51/2009 with RI Law No. 14/2008 concerning Openness of Public Information must be closely related with the moral life of every citizen. 2. Based on a methodological understanding of the Aristotelian Justice Theory that was born from the philosophy of realism, efforts in resolving equitable distributions of public information disputes require equality before the law in the implementation of RI Law No. 5/1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 of 2009 with RI Law Number 14 of 2008 concerning Openness of Public Information. Other than that, in the settlement of public information

disputes that have a corrective or remedial justice requires remedies for the consequences of the act regardless of individual subject matter and its purpose can be assessed according to an objective measure by providing penalties against perpetrators who are legally proven guilty of a public information dispute must correct their actions, giving compensation must correct mistakes or misappropriation that must correct the benefits obtained improperly. 3. Based on the methodological understanding of John Rawls's Theory of Justice, efforts in equitable dispute resolution of public information require the principle of equal freedom for everyone (the principle of greatest equal liberty), the principle of difference (the difference principle), and the principle of fair equality to get the opportunity for everyone (the principle of fair equality of opportunity) in the implementation of RI Law Number 5 of 1986 concerning State Administrative Court as amended by RI Law Number 9 of 2004 and finally with RI Law Number 51 2009 with RI Law Number 14 of 2008 concerning Openness of Public Information. 4. Based on the methodological understanding of the Theory of William J. Chambliss and Robert B. Seidman, the position of the subject of a public information dispute which includes the Public Information Applicant, and the State Public Agency is the role holder. Public Information Applicants and State Public Agencies are targets of a law that is related to the achievement of the objectives of the promulgation of RI Law No. 14 of 2008 concerning Openness of Public Information.

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Quote

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

United Nations, Universal Declaration of Human Rights

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Indonesia's Role in Combating Terrorism in Southeast Asia

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Indonesia's Role in Combating Terrorism in Southeast Asia

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ABSTRACT. Terrorism is not a new issue but is an increasingly important issue for ASEAN countries, including Indonesia. Indonesia's involvement in the fight against terrorism is not only to fulfill its obligations as part of the international community to jointly fight terrorism, but also to fulfill its national interests. Indonesia's foreign policy in handling this issue puts forward cooperation with other countries, especially in ASEAN. Where in this study aims to know more about Indonesia's role in combating terrorism in the Southeast Asian region and to better understand the obstacles faced by Indonesia in combating terrorism in the Southeast Asian region. To achieve these objectives, this study uses a type of normative research with descriptive qualitative research methods. The data collection technique was carried out using the library research technique. Where the data comes from books, articles, journals and other documents. The results of the research show that terrorism is a security problem and a cross-border problem so that cooperation between ASEAN countries is needed to eradicate terrorism in Southeast Asia through the ASEAN Convention on Counter Terrorism. Indonesia's role in eradicating terrorism by internal and external efforts carried out bilaterally and multilaterally. Such as the efforts made by the Indonesian government in tackling terrorism in the ASEAN regional scope through various forums in ASEAN, such as being involved in the ARF (ASEAN Regional Forum), and AMMTC (ASEAN Ministerial Meeting on Transnational Crime), ASEAN Defense Ministerial Meeting (ADMM), ASEAN Senior Official Meeting on Transnational Crime (SOMTC), as well as through the Joint Sea Patrol, which is based on the ASEAN Convention On Counter Terrorism (ACCT) for security and peace in ASEAN countries. Shows that there is a positive change in tackling terrorism in Southeast Asia. Given that terrorism is a transnational crime, in Indonesia's role in eradicating terrorism there are several obstacles and challenges. This challenge relates to the principles of consensus and non-intervention, domestic conflicts as well as differences in commitments and perceptions among ASEAN countries.

KEYWORDS. Indonesia, Prevention, Terrorism, ASEAN

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Introduction

Security issues have long been an important issue discussed for countries in Southeast Asia, be it security in traditional or non-traditional contexts. Given that in building an integrated region, the security factor is very influential on the success of the regional integration process, including in the Asian region, especially in the Southeast Asia region. The Southeast Asian region is a region that is facing serious challenges in the security sector. The problem of terrorism is a problem faced by many Southeast Asian countries. The number of terrorism incidents occurring in Southeast Asia has resulted in ASEAN being demanded to play a bigger role in solving this problem. When the problem of terrorism befell ASEAN, such as the bombings in Bali, October 2002 and the JW Marriot Hotel, Jakarta in August 2003 and a number of bombings in the Philippines that are suspected of being linked to the Jamaah Islamiah Network in Singapore, Malaysia and Thailand,[1] this will further strengthen ASEAN to act more actively. The ASEAN government elites realize that it is time for ASEAN to have an effective instrument to combat terrorism. The widespread impact of terrorism has made countries in the Southeast Asia region feel very interested in actively participating in solving this common problem.[2]

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1 K. Ramakrishna, Terrorism in Southeast Asia: The Ideological and Political Dimensions. *Southeast Asian Affairs*, 2004, p. 54-60.

2 Setnas. 2017. Sekretariat Nasional ASEAN–Indonesia. Diakses dari http://setnas-asean.id/asean-defence-ministers-meeting-admm, pada tanggal 08 Desember 2020, pukul 21.43 WIB.

Given that terrorism is not new in Southeast Asia, because there are several rebel groups that often use violence, such as: Pattani (Thailand), Jemaah Islamiyah (Indonesia, Malaysia, and Thailand) and the Moro Islamic Liberation Front / MILF (Southern Philippines), thus spreading fear in society. To anticipate the terrorism movement as a transnational crime, every international organization, countries in this case Thailand, Laos, Cambodia, Myanmar, Indonesia, Malaysia, Singapore, and the Philippines pay serious attention to handling the terrorism issue. Various agreements and agreements have also been made with the aim of countering the issue of terrorism so that it does not develop into a real threat, both for the national interest of a country and the interests of organizational groups in the regional scope. In this case, ASEAN as a regional organization that focuses on issues especially security (security) also makes the issue of terrorism on the agenda in every policy issued.

ASEAN has a common interest to cooperate in fighting transnational crime, especially terrorism. This is because in reality transnational crimes including terrorism have operated transnationally. In fact, ASEAN has made various agreements and a fairly comprehensive Plan of Action in an effort to combat the dangers of terrorism. In the ASEAN Community, especially in the points of cooperation, the ASEAN Security Community (ASC)[3] places the problem of terrorism as a common problem that must be resolved immediately. Considering that the issue of terrorism is an issue that threatens Southeast Asian countries, including Indonesia. Indonesia as an ASEAN member country initially saw the terrorism incident that occurred on 11 September 2001 as an American problem not an Asian problem. However, the acts of terrorism during the Bali Bombing incident on 12 October 2002 and followed by the JW Marriot bombing in 2003, made countries in Asia, especially Indonesia, have the same view in seeing terrorism.

Moreover, Indonesia has been pointed out as a hotbed of terrorism after Afghanistan and Pakistan. Although many parties think that Indonesia has experienced the threat of terrorism since the beginning of 2000, actually, terror in the form of threats to the sovereignty of the Republic of Indonesia and the legitimate government has started since the early years of independence. Even the Reformation era, which opened a democratic atmosphere in Indonesia, did not reduce acts of terror. This can be seen from the events of a series of bombings at the end of 2000, 2001, 2002, 2003, and

[3] Tomotaka, S, ASEAN Security Community: An initiative for peace and stability. *NIDS Security Reports*, *3*(4), 2008, pp. 17-34.

2005, where a series of bombs continued to shake Indonesia and the biggest ones were the JW Marriot hotel bomb (August 2003),[4] the bomb at the Australian Embassy in Jakarta, and the Bali bombing on October 2, 2005. In Indonesia itself, there is an institution that deals with terrorism, this institution is the National Counterterrorism Agency or known as the BNPT. The presence of BNPT is an emergency need that must be realized when terrorism emerges and continues to spread violence. However, terrorists still exist and become a threat to Indonesian citizens and ASEAN countries. This group is always looking for the weakness of the state, by looking for the right moment to act, so that strengthening efforts are needed to counter terrorism in the ASEAN Region, especially for Indonesia, various regulations and policies are certainly needed to maximize Indonesia's role in countering terrorism in ASEAN, so the authors are interested in conduct research related to Indonesia's role in countering terrorism in ASEAN as well as what obstacles it faces in efforts to maximize this role. Based on this background, the formulation of the problems taken is related to how Indonesia's role is in combating terrorism in the Southeast Asia region and how the obstacles faced by Indonesia in combating terrorism in the Southeast Asia region.

Method

According to Morris L. Cohen, Legal Research is the process of finding the law that governs activities in human society. Through research, lawyers find the resources needed to predict what the court will do and thus they can take certain actions. Legal research is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is carried out to solve legal issues faced.[5] Methodology means according to a certain method or way, systematic based on a system and consistency is the absence of things that are contradictory in a certain framework.[6] And the methods used in writing this article are as follows:

In writing this article, the author uses a type of normative research. This type of normative research is a scientific research to find the truth based

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4 Brookes, G. P. (2010). *The multilayered effects and support received by victims of the Bali bombings: A cross cultural study in Indonesia and Australia* (Doctoral dissertation, Curtin University).

5 Peter Mahmud Marzuki. *Penelitian Hukum Edisi Revisi*. Jakarta: Prenamadia Group, 2016, p. 43

6 Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti, 2004, p. 23

on the logic of legal science based on its normative side. In preparing this article, the authors used normative legal research methods through literature study. The author chooses research locations in various libraries that provide books and literature that can support the author's research implementation. In addition, the author also reviews papers, articles and other sources accessed on the internet, which of course come from credible and trusted sources.[7]

In this study, the authors use a statute approach and a historical approach from legal materials in the form of the ASEAN Convention on Counter Terrorism (ACCT).[8] The statute approach and the historical approach, namely the approach taken by examining all laws and regulations related to the legal issue that is being handled and the approach by looking at existing history. As well as the authors use a conceptual approach in which this approach departs from the views and doctrines that are developing in legal science.[9]

In tracing this article, the writer used normative research methods. In this case the author examines the legal materials which consist of:

a. Primary legal materials, namely legal materials that have binding legal force, consist of laws relating to the object of research[10], namely the ASEAN Convention on Counter Terrorism.
b. Secondary legal materials, namely materials that provide an explanation of primary legal materials, such as draft laws, research results, books made by legal circles and so on related to the author's research theme.
c. Tertiary Legal Materials, namely materials that provide an explanation of both primary and secondary legal materials, namely in the form of legal dictionaries, law magazines, articles, and encyclopedia which have a relationship with the issues discussed by the author

In collecting data, the author refers to the use of research methods that are sourced from reading material, namely library research which analyzes data related to the problem, with data collection techniques from literature in the form of books, and articles containing news about facts and problems that

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7 Jhonny Ibrahim. *Teori dan Metode Penelitian Hukum Normatif*, Malang, Bayumedia, 2006, p. 43

8 Bambang Sunggono. *Metodologi Penelitian Hukum*, Jakarta: PT Grafindo Persada, 2010, p. 25.

9 Soerjono Soekanto dan Sri Madmuji. *Penelitian Hukum Normatif; Suatu Tinjauan Singkat.* Jakarta: Rajawali Pers, 2007, p. 12

10 Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2013, p. 12

occur both in print and electronic media that can support and relate to the author's research.

The data obtained will be processed so that it becomes an integrated and systematic scientific work. In this data analysis the writer uses qualitative analysis methods, meaning that the results of this study are described in the form of explanations and sentence descriptions that are easy to read and understand to be interpreted and conclusions are drawn generally based on facts that are specific to the subject under study (Basuki 2006: 68). By using qualitative analysis methods, it can provide a description of the facts collected and data analysis through interrelated sources so that the results can be presented descriptively.

The legal materials that have been obtained will be analyzed normatively qualitatively, normatively because this research has a starting point from the existing regulations as positive legal norms. Meanwhile, qualitative analysis is carried out by understanding and arranging legal materials that have been collected and arranged systematically, which will eventually draw conclusions in this article.

Definition of Terrorism

The word "terrorist" and terrorism comes from the Latin word "*terrere*" which means to make trembling or vibrate. And in fact, until now there is no universally accepted definition.[11] The term terrorism is a concept that has a sensitive connotation 'because terrorism results in the emergence of innocent civilian victims. Some experts try to define the notion of terrorism as put forward by Schmid and Jogman in their book Political terrorism as follows: "Terrorism is a method that is inspired by anxiety over repeated cruel actions, which are used by a person, group or actor who has power. which are (semi) secret, for moral,[12] criminal or political reasons, where, in contrast to murder, the direct target of violence is not the primary target. Victims of human violence are generally randomly selected (representative or symbolic targets) from the target population, and act as messengers. The communication process based on threats and violence between terrorists (organizations), victims (in danger) and the main target is

[11] Salifu, O. F., *United Nation approaches to global terrorism: a case study of Boko Haram* (Master's Thesis), 2017.

[12] Kanu, I. A., & KANU, C. C., *Africa at the Cross Roads of Violence and Gender Inequality: The Dilemma of Continuity in the Face of Change*. Author House, 2018.

used to manipulate the main target (audience), turning it into the main target of terror, a target of prosecution, or a target of attention, depending on whether it is being pursued. intimidation, coercion, or propaganda.[13]

It is thus appropriate that the definition of acts of terrorism depends on us, the witnesses, the people who feel threatened or anxious. This is what we call, or often also by public agencies, such as the news media, that acts of violence create these notions as terrorism. These are acts of public vandalism, carried out without a clear militaristic purpose, which can cause widespread anxiety (fear). The terrorism movement is considered as one of the biggest threats to humanity and humanity in the future and will continue to spread widely if not prevented immediately. Terrorism is a crime against humanity that takes a lot of attention from the world community.

ASEAN and Terrorism

ASEAN is one of the regions that has a high risk of terrorism attacks at sea because of the geopolitical location of this region. This area is located in the world trade route, which makes terrorism groups pay special attention to this region.[14] There is an assumption that the ASEAN region is a haven for terrorist networks, the main reason is because the majority of the population is Muslim, so that indications of the existence of theoretical networks that are still connected to the Al-Qaida group are considered quite strong. ASEAN has at least become the basis of three terrorist groups, namely the Abu Sayyaf group, The Moro Islamic Liberation Front (MILF) and Jemaah Islamiyah. The three groups have the potential and have been proven to be able to carry out terrorism at sea.[15]

Terrorism is not a new issue in Southeast Asia.[16] At first, this problem was only considered as a form of transnational crime, such as drug smuggling and illegal arms sales. However, the last two issues have been seen as more

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13 Abba, A. A., *Terror and Tragic Optimism as Sustaining Constructs in Camus's The Plague and Soyinka's Season of Anomy*, 2017.

14 Yu, H., Motivation behind China's 'One Belt, One Road Initiatives and establishment of the Asian infrastructure investment bank. *Journal of Contemporary China*, *26*(105), 2017, pp. 353-368.

15 Abuza, Z., The Moro Islamic Liberation Front at 20: State of the Revolution. *Studies in Conflict & Terrorism*, *28*(6), p=2005, pp. 453-479.

16 Tan, A. T. (Ed.)., *A handbook of terrorism and insurgency in Southeast Asia*. Edward Elgar Publishing, 2009.

crucial for countries in Southeast Asia than the issue of terrorism.[17] This view has finally changed completely since the 9/11 tragedy and the 2002 First Bombardment,[18] when the issue of terrorism began to get the attention of countries in the region. Since this incident, ASEAN countries have had a big interest in the issue of terrorism, considering that a number of ASEAN member countries have the roots of the domestic terrorism movement and are believed to be countries of origin for terrorists who are affiliated with international terrorism networks.[19] The importance of the issue of theory for ASEAN is marked by the initiation of separate discussions on terrorism in a number of ASEAN forums. ASEAN also issued a Joint Declaration regarding this issue in November 2001.[20]

Indonesia's Role Through the ASEAN Convention on Counter Terrorism (ACCT)

Apart from being one of the countries considered to have a major threat of terrorism due to the many acts of terror that have occurred, it is also because one of the terrorist groups most often suspected of being responsible for acts of terror, namely Jamaah Islamiayah (JI),[21] is based in Indonesia. After the 2002 Bali bombings and the arrest of Amrozy, Imam Samudra and Muklas, a number of analysts linked terrorism in Indonesia with the international terrorist network Al-Qaeda. The association with international networks is an argument that is believed by the international community. The United States government believes in the existence of the Al-Qaeda network in Indonesia. According to intelligence reports from Singapore and Malaysia, Al-Qaeda is present in the Southeast Asia region through Jema'ah Islamiah (JI). Most of JI's leaders are Indonesian.[22] The rise of terrorism cases occurring in the country proves the reality that the high threat of terrorism is

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17 Emmers, R., Comprehensive security and resilience in Southeast Asia: ASEAN's approach to terrorism. *The Pacific Review*, *22*(2), 2009, pp. 159-177.

18 Hoffman, B., Rethinking terrorism and counterterrorism since 9/11. *Studies in Conflict and Terrorism*, *25*(5), 2002, pp. 303-316.

19 Zhang, J., & Benoit, W. L., Message strategies of Saudi Arabia's image restoration campaign after 9/11. *Public Relations Review*, *30*(2), 2004, pp. 161-167.

20 Hamilton-Hart, N., Terrorism in Southeast Asia: expert analysis, myopia and fantasy. *The Pacific Review*, *18*(3), 2005, pp. 303-325.

21 Singh, B., The challenge of militant Islam and terrorism in Indonesia. *Australian Journal of International Affairs*, *58*(1), 2004, pp. 47-68.

22 Djelantik, S., *Poverty, ethnicity and religious factors in the increase of terrorism: a case in Indonesia*, 2013.

in the national interest. It not only threatens socio-economic stability and domestic politics and security, but also affects Indonesia's relations with other countries.

In reality, the issue of terrorism has created a negative image of Indonesia abroad, namely, among other things, that Indonesia is seen as an insecure country and is labeled a "terrorist hotbed". To strengthen anti-terrorism diplomacy, the Indonesian government undertakes efforts to counter terrorism in the country, namely by strengthening formal, institutional, and practical legal. Legally formally, Indonesia has tried to strengthen national regulations by making various new laws and regulations and ratifying 7 (seven) of the 16 (sixteen) international conventions related to terrorism. Meanwhile, institutionally, Indonesia formed a special agency to combat terrorism, namely Densus 88 and the National Counterterrorism Agency (BNPT). In the context of regional cooperation, the Indonesian government has positioned ASEAN as an important part of its efforts to combat the threat of terrorism. The transnational characteristics of terrorism cause the threat of terrorism in Indonesia to be believed not to stand alone, but to have links with international terrorism networks, including terrorist networks in several countries that are members of the ASEAN forum, such as in Thailand, the Philippines and Malaysia.

ASEAN Convention on Counter Terrorism (ACCT) as a forum or forum for each member country to dialogue on regional security in Southeast Asia and strive to tackle terrorism by holding several meetings to discuss the issue of terrorism and how to act on it, among other things by exchanging information, improving security systems , make rules with cooperation in implementing anti-terror laws and appeal to all participants to make rules by implementing anti-terror laws which are indeed difficult to implement because not all of the member countries have anti-terror laws. The role of the ACCT is as a forum for communication and exchange of information on terrorism issues in order to advance cooperation between member countries, especially ASEAN in dealing with terrorism in Southeast Asia.[23] The harmonization of cooperation in the ACCT can be seen from the cohesiveness of ASEAN member countries in agreeing to the neutrality of defining terrorism as a common enemy and also counter-terrorism efforts by still adjusting to the principles of upholding human rights, international law

[23] Agus Prihatyono, *Peran Indonesia Dalam Mewujudkan ASEAN Security Community Dan Upaya Mengatasi Kendaladalam Pelaksanaan Rencana Aksi*. Diakses dari lontar.ui.ac.id, 2019.

and UN resolutions and without labeling certain communities as terrorist groups.

Indonesia as a lead-shepherd in the field of combating terrorism in ASEAN has pioneered the formulation of the ACCT. ACCT which is comprehensive in nature, which includes aspects of prevention, repression and rehabilitation programs, so that it can be used to expand cooperation in the field of combating terrorism with ASEAN Talk Partners. This is proof that one of Indonesia's roles in combating terrorism in the ASEAN region is through the ACCT which was signed by all the Heads of ASEAN Member States at the 12th ASEAN Summit on January 13, 2007 in Cebu, Philippines. Since 27 May 2011, the ACCT takes effect after six ASEAN Member States (Cambodia, Philippines, Singapore, Thailand, Vietnam and Brunei) have ratified it. Where Indonesia is also a country that ratifies ACCT through Law no. 5 of 2012 which was passed on April 9, 2012.[24] The ACCT Convention provides a framework for cooperation between ASEAN member countries to eradicate, prevent and stop acts of terrorism in all its forms and manifestations, and to strengthen cooperation between law enforcement agencies and the relevant authorities of the Parties in combating terrorism. This convention is a major step for ASEAN to fight terrorism in the ASEAN region, because this convention is a strong legal basis for increasing ASEAN cooperation in the field of combating terrorism. More specifically, this convention emphasizes law enforcement for terrorists with the jurisdiction of each country.

Indonesia's Role through the ASEAN Regional Forum (ARF)

The ASEAN Regional Forum (ARF) itself is the first security agreement made at the Asia-Pacific regional level. ARF provides an opportunity for regions to discuss their different security views and integrate isolated countries into regional security systems. ARF encourages changes in the construction pattern of relationships between major powers and interests in the region. In other words, the ARF has become a tool of guidance in the

[24] Indomaritim. 2020. *Kerja Sama ASEAN di Bidang Politik dan Keamanan*. Diakses dari https://indomaritim.id/kerja-sama-asean-di-bidang-politik-dan-keamanan/ Kerja Sama ASEAN di Bidang Politik dan Keamanan, pukul 17.45 WIB.

climate of regional security relations.[25] The Indonesian government is actively involved in the agreement in ASEAN in dealing with transnational crimes of terrorism with several steps, namely Indonesia is active in forming the Asean Regional Forum which focuses on discussing the issue of terrorism, Indonesia agrees to the ASEAN conventions againt on Transnational Crime, Indonesia participates in the ASEAN Summit every 2 years, Indonesia participated in the ASEANAPOL conference related to the coordination of police agencies in Southeast Asian countries in dealing with terrorism.

At the 27th ASEAN Regional Forum (ARF), in this case Indonesia stated for all member countries to work together in overcoming problems that exist in the Asia Pacific region. Starting from border disputes, the increasing number of tensions in the South China Sea, the undeveloped denuclearization of the Korean Peninsula, the threat of terrorism, to the vitality between big powers and other issues that are a threat to the Asia Pacific region. Currently, ARF is very important and always relevant to strengthen cooperation between countries facing problems in the Southeast Asia region. In this case, the values and norms are considered to have identified the Southeast Asian region in facing various difficult challenges and have become the mainstay of cooperation between the names of partners. in this Southeast Asian region. In this case, it is hoped that all partner countries that are members of the ARF can uphold the existing values. Then the cases of the threat of terrorism and human trafficking are still very smooth and it is important to strengthen cooperation to overcome this so that cross-border security is maintained. Then the increase in cases of poverty and racism will result in the potential and tone of the groups they will tour in the terrorism movement for that, Indonesia proposes a statement regarding the treatment of children recruited by or associated with terroist groups (Utari, 2020).

Indonesia's Role Through the ASEAN Defense Ministerial Meeting (ADMM)

In 2006 the ASEAN Defense Ministerial Meeting (ADMM) was formed as a mechanism that can be used as a forum for communication related to defense issues and policies among Southeast Asian countries. The

[25] Melany Jesdika Utari. 2020. *Peran Indonesia Dalam ARF*. Diakses dari https://www.wartaprima.com/peran-indonesia-dalam-arf, pada tanggal 06 Desember 2020, pukul 13.21 WIB.

existence of the ADMM is one of the supports for the development of one of the pillars of the ASEAN Community which will be implemented in 2015, namely the ASEAN Political and Security Community (APSC). The ASEAN Defense Ministers Meeting (ADMM) is a form of the ASEAN Political and Security Pillar, namely the ASEAN Defense Ministers Meeting in the region to increase transparency, openness and mutual trust among ASEAN member countries (Setnas, 2017). ADMM is a cooperation platform between ASEAN Defense Ministers which aims to increase Confidence Building Measures (CBM) and maintain peace and security stability in the region through dialogue and practical cooperation. ADMM-Plus is a form of expansion of ADMM Defense cooperation by involving 8 (eight) ASEAN Talking Partner Countries, namely the United States, Australia, the People's Republic of China (PRC), Japan, the Republic of Korea (ROK), New Zealand, India and Russia. (ADMM, 2017)

ADMM plays a significant role in efforts to strengthen the pillars of the ASEAN Community in politics and security. ADMM is a cooperation platform between ASEAN Defense Ministers which aims to increase Confidence Building Measures (CBM) and maintain peace and security stability in the region through dialogue and practical cooperation. The formation of the ADMM begins with the ASEAN Security Community (ASC) Action Plan, adopted at the 10th ASEAN Summit, stipulating that ASEAN will work towards the establishment of an annual ADMM. The inaugural ADMM meeting was held in Kuala Lumpur on 9 May 2006. The ASEAN Defense Ministers' Meeting (ADMM) is the highest defense consultation and cooperation mechanism in ASEAN. ADMM in this case not only has significance for regional security in accelerating regional cohesion and maintaining stability within the region. ADMM is an instrument that can be used by countries in the Southeast Asian region to carry out their defense diplomacy. Likewise, Indonesia sees that the existence of the ADMM can be a strategic instrument for Indonesia to carry out defense diplomacy multilaterally, both against all countries in Southeast Asia and against countries outside the region. (Rosadi, 2018)

For Indonesia itself, the ADMM is a very effective mechanism in implementing defense diplomacy. This is related to the nature of the ADMM, which is a multilateral forum that brings together countries in Southeast Asia and with countries outside the region through the ADMM plus mechanism. Indonesia took advantage of various constructive dialogues that were held to convey various defense policies related to Indonesia's response to security

dynamics both from within the region, from global security dynamics as well as domestic security dynamics in Indonesia. Through the trust built as a result of defense diplomacy carried out within the ADMM framework, Indonesia has the flexibility and opens up opportunities to strengthen the defense system by forging closer cooperation with partners in the region and with partners from outside the region. In the ADMM Indonesia will have many opportunities to explain the advantages of Indonesia's defense industry products to other countries. Thus, the opportunity to open up the market for domestic defense industrial products will be wider. The opening of the defense industry market will be a very strategic matter because it will be a prerequisite for the development of the domestic defense industry, which is currently being a concern to support the development of Indonesia's defense system. Thus, diplomatic efforts are very important in this ADMM,[26] especially the role of Indonesia as a country that leads peace and security efforts in the ASEAN region and to further enhance cooperation in resolving all regional conflicts, capacity gaps, and assessing the progress of cooperation in security. maritime, military medicine, humanitarian assistance and disaster relief, peacekeeping operations and counter-terrorism.

Indonesia's Role Through ASEAN Our Eyes

So far, Indonesia has established good defense cooperation with ASEAN member countries. However, threats to regional and national security in Indonesia are currently very dynamic, whether they are real threats, unreal threats, and threats of mindset warfare or propaganda.[27] In order to anticipate this, it is necessary to carry out cooperation efforts of ASEAN countries in early detection and early prevention. These efforts include collecting strategic intelligence data / information, strategic analysis, strategic studies, as well as academic forums and think tank forums. That way, we get comprehensive information and insights related to the development of the strategic environment. ASEAN cooperation efforts in tackling these threats strategically include "ASEAN Our Eyes" which was

[26] ADMM. 2017. *About the ASEAN Defence Ministers' Meeting Plus (ADMM-Plus).* Diakses dari https://admm.asean.org/index.php/about-admm/about-admm-plus.html, pada tanggal 07 Desember 2020, pukul 13.15 WIB.

[27] S. Puspanathan, 2016. *Upaya ASEAN untuk memerangi terorisme.* Diakses dari http://www.asean.org/15060.htm, pada tanggal 05 Desember 2020, pukul 16.50 WIB.

initiated by Indonesia to face the threat of terrorism.[28] At the 12th ASEAN Defense Ministers Meeting (ADMM) on February 6-7 in Singapore 2018. Our Eyes as a new program in dealing with the problem of terrorism has officially become one of the new programs in dealing with the problem of terrorism in Southeast Asia. Of course, the new Our Eyes program must adapt the mechanism to other programs that also address the problem of terrorism in ASEAN. This is so that the new program can run effectively in accordance with its existing mechanisms and other existing programs can also run according to their own mechanisms. It is intended that all programs dealing with terrorism issues in ASEAN can run together and complement one another. In addition, Our Eyes, through its programs that focus on efforts to prevent acts of terrorism, will certainly continue to evolve in accordance with existing developments. Even though the "Our Eyes" program is a new program, this program has at least worked with its 4 flagship programs, namely:

1. Meeting with allies of the United States
2. Joint military patrols (Southeast Asian Waters)
3. Intelligence information data exchange
4. Soft Strategy (Dialogue)

Where the exchange of strategic information on ASEAN Our Eyes through the ADI (ASEAN Direct Communication Infrastructure) mechanism in the form of an information exchange platform for ASEAN countries has shown the international community about ASEAN's commitment to the realization of a strong, safe, peaceful and prosperous region.

Indonesia's Role through the ASEAN Senior Official Meeting on Transnational Crime (SOMTC)

As one of the countries whose existence has been calculated in the Southeast Asia region, Indonesia has been appointed to continue the leadership of the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC). SOMTC is a forum for cooperation between ASEAN countries in combating transnational crime. The SOMTC meeting is held every year in

[28] Kompas. 2020. *Peran Indonesia di Asia Tenggara*. Diakses dari https://www.kompas.com/skola/read/2020/01/05/180000369/peran-indonesia-di-asia-tenggara?page=all, pada tanggal 06 Desember 2020, pukul 14.31 WIB.

rotation in each ASEAN member country. The results of the SOMTC meeting will then be brought to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) for further discussion and ratification. Where Indonesia through the National Counter-Terrorism Agency (BNPT) and the National Police Criminal Investigation Unit who acted as voluntary lead shepherd in Combating Terrorism and Transnational Crime at SOMTC, held The 2nd ASEAN Cross-Sectoral and Cross-Pillar Meetings to Develop the Work Plan of the ASEAN Plan of Action to Prevent and Counter the Rise of Radicalization and Violent Extremism (ASEAN PoA PCRVE) 2018-2025. This second meeting was held with the aim of discussing input from SOMTC member countries and ASEAN Sectoral Bodies / Organizations / Entities who were present at The 1st Meeting on the draft Work Plan of the ASEAN PoA PCRVE 2018-2025. The implementation of the results of the follow-up to the ASEAN PoA PCRVE 2018-2025 in the Work Plan of the ASEAN PoA PCRVE 2018-2025 can become a common reference for ASEAN member countries to strengthen closer cooperation in preventing and fighting the rise of radicalization and violent extremism.[29]

Previously, SOMTC Indonesia as Chair of the Working Group on Counter Terrorism in collaboration with the United States Government held the ASEAN-U.S. Workshop on Developing National Action Plans on Countering Violent Extremism (ASEAN-US Workshop on the Development of National Action Plans for ASEAN Countries in Combating Violent-Based Extremism). The meeting was held as an effort to encourage ASEAN countries to formulate a National Action Plan on countering violent extremism. Organizing this workshop is in line with the ASEAN PoA PCRVE 2018-2025, which recommends ASEAN countries by referring to the ASEAN Plan of Action to develop national action plans for each ASEAN country. Where these activities are held with the aim of exchanging experiences and good practices through various approaches at the global, regional and national levels related to efforts to prevent and fight radicalization and violent extremism that leads to terrorism.[30]

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[29] Independensi. 2019. A*nggota ASEAN Perkuat Koordinasi Cegah Radikalisme dan Estrimisme.* Diakses dari https://independensi.com/2019/08/08/anggota-asean-perkuat-koordinasi-cegah-radikalisme-dan-ekstremisme/, pada tanggal 08 Desember 2020, pukul 15.40 WIB.

[30] *Ibid*.

Indonesia's Role through the ASEAN Ministerial Meeting on Transnational Crime (AMMTC)

ASEAN cooperation in dealing with the problem of transnational crime was first raised at the ASEAN Minister of Home Affairs meeting in Manila in 1997 by issuing the ASEAN Declaration on Transnational Crime. At this meeting ASEAN countries agreed that it is important to overcome this problem by coordinating and cooperating regionally through a regional cooperation forum which was later called the ASEAN Ministers Meeting on Transnational Crimes (AMMTC) forum. AMMTC was formed in 1997 with the SOMTC mechanism as its subordination. Where in Indonesia, AMMTC is chaired by the Chief of Police, while SOMTC is a high-level official meeting with the main task of implementing decisions and policies taken by AMMTC. AMMTC then becomes a forum that facilitates the meeting of Ministers in ASEAN who deal with transnational crimes. Cooperation within the scope of AMMTC is then important to follow up because in addition to the negative impact on national defense and security, the handling of the issue of terrorism is also significant to be carried out together in the scope of ASEAN through the AMMTC forum because all ASEAN member countries have ratified the ACCT in 1999. 2011.

Then with the existence of the Bali Concord II and the agreement to form a security community, which became known as the ASEAN Political-Security Community, ASEAN member countries agreed to use the AMMTC as a forum to tackle transnational crimes, including terrorism.[31] Indonesia sees the ASEAN Comprehensive Plan of Action on Counter Terrorism (ACPOA on CT) which is an elaboration of the ASEAN Convention on Counter Terrorism (ACCT) and the Senior Officials Meeting on Transnational Crime (SOMTC) Working Group on Counter Terrorism (WG on CT) as a means to strengthen security cooperation as well as to emphasize other ASEAN countries to tighten rules in dealing with terrorism in the Southeast Asian region. This is done so that terrorism can be followed up in terms of prevention, handling, and deradicalization. Handling was carried out from 2 (two sides), namely the domestic and regional sides. In the absence of the aforementioned legally binding frameworks, any agreement that results is only voluntary, so that a country can follow or ignore it without any

[31] Kemlu. 2019. *Indonesia dan Upaya Penanggulangan Terorisme*. Diakses dari https://kemlu.go.id/portal/i/read/95/halaman_list_lainnya/indonesia-dan-upaya-penanggulangan-terorisme, pada tanggal 06 Desember 2020, pukul 09.19 WIB

sanctions. These frameworks are a form of agreement which is translated into a regional action plan, so that strong political will will emerge from the implementing countries. Thus, Indonesia needs to maximize its role in the AMMTC forum in dealing with the issue of transnational crime, particularly the issue of terrorism. The handling of terrorism must go in two directions, namely from within and outside the country. From within the country, the Indonesian government can use existing legal instruments. From abroad, Indonesia can maximize the function of the AMMTC forum to maximize the implementation of existing work programs and update documents by following developments in the strategic environment of the region.[32]

Indonesia's Role through the Joint Sea Patrol

Considering that there have been several acts of terror that have spread in the Southeast Asian region in recent years, including hijackings and hostages by the Abu Sayyaf group in the waters of the Sulu Sea and its surroundings and the occupation of the city of Marawi in the Philippines by the Southeast Asian ISIS group. Responding to the situation in the Southeast Asian region, the Government of Indonesia has taken the initiative to undertake trilateral cooperation with the Philippines and Malaysia to support subregional handling of the problem of security disturbances due to terror acts. The cooperation between Indonesia, Malaysia and the Philippines was formed to increase the effectiveness of handling intas-state organized crime, especially terrorism, especially in the Sulu Sea and Sulawesi. Several trilateral meetings between the ministers of Indonesia, Malaysia, and the Philippines have resulted in an agreement between the three countries to conduct a joint sea patrol in the territorial waters of Indonesia-Malyasia-Philippines to overcome security disturbances and trans-border crimes in the region.[33]

Furthermore, through several trilateral meetings between the Indonesian, Malaysian and Philippine Foreign Ministers, the three countries

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[32] Basuki Eka Purnama,. 2016. *Giliran Indonesia Pimpin Pemberantasan Kejahatan Lintas Negara*. Diakses dari https://mediaindonesia.com/politik-dan-hukum/42473/giliran-indonesia-pimpin-pemberantasan-kejahatan-lintas-negara, pada tanggal 05 Desember 2020, pukul 13.21 WIB.

[33] Yuni Arisandi Sinagar. 2017. *Peraan Indonesia Dalam Mengatasi Terorisme di ASEAN*. Diakses dari https://www.google.com/search?client=firefox-b-d&q=peran+indonesias+dalam+mengatasi+terorisme+di+asean, pada tanggal 07 Desember 2020, pukul 17.16 WIB.

agreed to carry out subregional cooperation for the handling and prevention of terror acts in the Southeast Asia region, one of which is through a deradicalization program to tackle the emergence of terrorist acts and groups originating from the ideology of radicalism. Regarding the deradicalization efforts, the Indonesian government stated that it is ready to support the Philippine government in the deradicalization process in Marawi after liberating the city from terror by radical groups. Apart from reconstruction and infrastructure development, one focus of Indonesia's support is related to the education sector and deradicalization in Marawi. Indonesia's support in the deradicalization process is in line with the desire of the Philippine Government to develop tolerance through education. Furthermore, the Indonesian government expressed its readiness to assist in developing curriculum and religious education. The Indonesian government will also provide more scholarships for students from Marawi.

In the field of joint training operations, Indonesia carries out joint exercises with Singapore, Malaysia, Thailand and Cambodia on a bilateral basis. Meanwhile, in the field of education, Indonesia has conducted military student exchanges with almost all ASEAN countries (Kompas, 2019). In addition, the Indonesian government conveyed the readiness of the Jakarta Center for Law Enfocement Cooperation (JCLEC) to provide training that can increase the reliability and professionalism of Philippine law enforcers and security forces with a curriculum designed according to needs. Given that basically no country in the world can stand alone in facing the disturbance and threat of terrorism. For this reason, ASEAN member countries including Indonesia must unite as a community to face common challenges in the region, including the threat of terrorism.[34]

Constraints faced by Indonesia in Countering Terrorism in ASEAN

A. Principles of Non-Intervention

The principle of non-intervention, which has been considered sacrosant, is often considered to be an "obstacle" to counter-terrorism problems, which in fact require "intervention" from fellow members. The use of the principle of non-interference to respect national sovereignty and security has made ASEAN less flexible in implementing counter terrorism

[34] *Ibid.*

cooperation. As a result, ASEAN's movement is limited. This principle also does not allow ASEAN to develop an active and coercive preventive diplomacy mechanism.[35] In connection with the implementation of the ASEAN regional mechanism in counter terrorism, the principle of non-interference, which has been considered sacrosant so far, is often considered to be an "obstacle" to issues which in fact require "intervention" from fellow members. For example, in the application of a counter terrorism agreement where counterterrorism cooperation is needed between ASEAN countries including Indonesia, including in terms of accepting the involvement of other members who wish to obtain information related to terrorist data in a country. The involvement of other members who want to help with handling should not be considered as a form of intervention in domestic problems. Meanwhile in ASEAN itself, things like this are basically still considered a form of intervention.

B. Consensus Mechanism

The attitude of maintaining the principles of national sovereignty and integrity of each member state that must be adhered to in counter terrorism hinders efforts to deal with the problem of terrorism. Resolving the problems that many ASEAN countries face will certainly be difficult without involving countries in the region. In reality, because terrorism is a very specific problem, the implementation of counter terrorism cooperation will always intersect with the issue of other countries' sovereignty.[36] If the principle of upholding this sovereignty is maintained, the implementation of the counter terrorism agreement will be difficult. The difficulty in reaching consensus has pushed some member countries to activate options with a bilateral or trilateral framework, something which tends to be counter-productive towards efforts to develop regional perspectives. The consensus mechanism means that in any level the handling of the terrorism problem in ASEAN will only be carried out if the parties concerned agree. This has led to the slow implementation of the agreement in ASEAN and even not running.[37] For

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35 Jihan Nadia. 2019. *Potensi Besar, Prabowo : ASEAN Tidak Boleh Terpecah Belah* Diakses dari https://www.teropongsenayan.com/107138-punya-potensi-besar-prabowo-asean-tidak-boleh-terpecah-belah, pada tanggal 06 Desember 2020, pukul 17.56 WIB.

36 Funston, J. (1998). ASEAN: out of its depth?. *Contemporary Southeast Asia*, p. 22-37.

37 Narine, S. (2002). *Explaining ASEAN: Regionalism in Southeast Asia*. Lynne Rienner Publishers.

example in the ASEAN Regional Forum (ARF) which is only considered a forum that prioritizes consensus, as it is known that the development of contemporary problems and issues is very fast growing and also requires the right time to solve existing problems.[38] The principle of non-intervention which is strongly held by ASEAN members also makes the distribution of power that occurs equal among all ASEAN members, so that no party is dominant enough to direct this regime. As Underdal stated in his theory, ideally there should be a fair distribution of power, where there are dominant parties who can act as leaders but are not strong enough to ignore the rules, and there are minority parties who are strong enough to control the dominant party.

C. Different Conditions of Interest and Views

If you look deeper, the same applies to each ASEAN member country as a sovereign country. The counter-terrorism policies in ASEAN countries are based on the perception of threats in each country against the increasing threat of terrorism in their countries.[39] This can be seen from the mapping of the counterterrorism policies of ASEAN countries where at the operational-strategic level there is no uniform counter-terrorism approach and action.[40] Differences in attitude in responding to terrorism have created sharp differences of opinion, which can reduce mutual trust among ASEAN leaders, which has been painstakingly built and maintained so far. The difference in threat perceptions regarding terrorism itself and the gap in the handling of terrorism among ASEAN member countries so that not a few say that the war against terrorism is a war against the perception of the threat itself.[41] For example, the Hambali case and the existence of the Mujahidin movement in Malaysia, which Mahathir's government identified as militant, had caused differences of opinion between the Malaysian and Indonesian governments. Meanwhile, the Al Ghozi case has resulted in differences of opinion between the Philippine and Indonesian governments. Furthermore, Senior Minister Lee Kuan Yew's statement has not only caused controversy

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38 Funston, J. (1999). Challenges facing ASEAN in a more complex age. *Contemporary Southeast Asia*, p. 205-219.

39 Tan, S. S., & Nasu, H. (2016). ASEAN and the development of counter-terrorism law and policy in Southeast Asia. *UNSWLJ*, *39*, p. 1219.

40 Emmers, R. (2003). ASEAN and the securitization of transnational crime in Southeast Asia. *The Pacific Review*, *16*(3), p. 419-438.

41 Kemlu. 2016. Kerjasama politik keamanan ASEAN, www.kemlu.go.id/.../kerjasama%20politik%20keamanan%20ASEA. Diakses pada tanggal 07 Desember 2020, pukul 18.11 WIB.

between the leaders of Singapore and Indonesia, but has spread to the level of society that requires high-level resolution.

D. Domestic Political Conflict

The conflicts that occur, both domestic political conflicts and conflicts among ASEAN member countries, also have an impact on the effectiveness of ASEAN's role in eradicating criminal acts of terrorism in the Southeast Asian region.[42] This is because, for example, domestic political conflicts in Thailand and Myanmar have resulted in these two countries being more focused on resolving domestic political conflicts than on eradicating criminal acts of terrorism in the Southeast Asia Region. And conflicts between ASEAN Member countries, such as diplomatic relations between Indonesia and Malaysia related to borders and culture also prevent ASEAN from eradicating criminal acts in the Southeast Asia region.

Conclusion

ASEAN as a multilateral organization that houses countries in Southeast Asia has an obligation to respond to international security issues, one of which is terrorism. As part of the international community, countries in Southeast Asia including Indonesia have played an important role in encouraging all efforts to face the threat of terrorism. Given that the role of Indonesia and the countries in ASEAN in facing regional security threats is an integral part of ASEAN's ideals since its inception. In facing the threat of terrorism and ISIS, ASEAN countries have good cooperation to jointly promote the eradication of terrorism in Southeast Asia. Cooperation and the role of countries in the region need to be increased in facing the threat of terrorism in ASEAN. Considering that the obstacles faced by ASEAN, including Indonesia in eradicating criminal acts of terrorism in the Southeast Asia region, are ASEAN principles of non-intervention, differences in perceptions of each ASEAN country, as well as domestic political conflicts.

[42] Gerstl, A. (2010). The depoliticisation and 'ASEANisation'of counter-terrorism policies in South-East Asia: A weak trigger for a fragmented version of human security. *Available at SSRN 1618968*.

Suggestion

The magnitude of the threat of terrorism that occurs at the regional level and requires cooperation with one another. Given that regional security institutions are not only in ASEAN, but can also synergize in the Asia Pacific region and globally with various world powers in dealing with terrorism, to overcome various problems that exist, ASEAN needs to take concrete and sustainable steps by involving the highest leaders from member countries in the form of meetings, both bilateral and multilateral, with specific discussions, especially regarding the redefinition of the principle of non-intervention and how the consensus mechanism is, and one of the concepts that needs to be put forward is the concept of the Responsibility To Protect. If the meeting can take place and produce points that are in line with the concept of redefining state sovereignty, ASEAN as an organization must immediately issue guidelines in acting in relation to interference from other countries in matters of terrorism eradication in ASEAN, so that peace and security can be achieved.

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Considering the Existence of Academic Draft as the Political Instrument of Law Development

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Considering the Existence of Academic Draft as the Political Instrument of Law Development

Herry Wiyanto

ABSTRACT. The direction of law development follows the nation's ideas or goals, which is the formulation to achieve the state's goal as contained in the Preamble of the 1945 Constitution of the Republic of Indonesia, which is to protect protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice. This paper answers some problems, including How is the essence of academic draft in making laws and regulations in Indonesia, To what extent is academic draft's contribution as an instrument of the national development and how is the ideal concept of academic draft as the instrument of instrument the national development. The essence of academic draft is the philosophical, sociological and juridical bases of a draft of law and regulation and the assessment and harmonization function and the existence of academic draft are designed as the "catalyst" of a product of legislation to be made so as not to be out of the appropriate principles. Academic draft's contribution to the current national law development is felt lacking because of the newly required bill making process after 2011 through Law 12 Year 2011 concerning Formation of Laws and Regulations. Besides, academic draft is not yet capable of harmonizing and balancing every interest group in every bill discussion. In the ideal concept, the role of academic draft as the assessment and harmonization in every Bill is capable of preventing overlapping regulation or interest out of the law intervening Bill making for the regulation to remain in the real law corridor. It also needs regulatory arrangement by academic draft arranging team to maintain the objectivity.

KEYWORDS. Academic Draft, Development Politics, Politics of Law

Considering the Existence of Academic Draft as the Political Instrument of Law Development

Herry Wiyanto

Introduction

Indonesia is a nation of law.[1] This confirmation is the manifestation of the long journey of Indonesia's history in the life of the people and of the nation. The nation's long struggle and experience direct the direction of development in Indonesia, including the law development.

The direction of law development follows the nation's ideas or goals, which is the formulation to achieve the state's goal as contained in the Preamble of the 1945 Constitution of the Republic of Indonesia, which is to protect protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice.[2]

The law development idea is achieved, among others, through academic draft instrument. In its journey of making history, academic draft rises and falls in terms of form, content and even whether or not it is mandatory in each drafting laws and regulations.

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1 See the 1945 Constitution Article 1 paragraph 3 stating that Indonesia is a state based on the rule of law, which is the third amendment dated 9 September 2001.

2 See Preamble of the Constitution fourth paragraph, in which the formulation serves as the national goals or the gate of every activity of all components of the state of Indonesia in various fields.

Here, there is tug of war of the urgency of academic draft to guide bill or any other regulations. Academic draft, which *nota bene* the substance is the philosophical, sociological and juridical background of a bill, is expected to be an instrument in law development politics. This role is a law idea (*das sollen*), since in the real world, formation of laws and regulations rises and falls along with sectoral and political interests, which are greatly dominant.

The Idea of the Existence of Academic Draft to balance and influence the law development politics may be realized, considering that study on academic draft may be objective, open and progressive. Academic draft determination on political interest, sectoral ego and other interest which are contradictory to the goals of the nation is expected considering the objectivity of a Bill review with philosophical, sociological and juridical bases.

According to the matters presented above, the following problems are formulated:

1. How is the essence of academic draft in arranging laws and regulations in Indonesia?
2. To what extent is academic draft's contribution as the instrument of the national development?
3. How is the ideal concept of academic draft as the instrument of the national development?

Method

This paper is a normative legal research which is more directed to research on legal systematic. The focus of the author is on the issue of academic papers contained in the laws and regulations in Indonesia. With this legal systematic research method, the authors identify the notion of an academic text which has a particular meaning in legal life itself.

The Essence of Academic Draft in Arranging Laws and Regulations in Indonesia

A. Academic Draft History

Academic Draft is not something strange in the process of law and regulation arrangement in Indonesia. In the BPHN environment, especially, Academic Draft arrangement activity has even existed from 1970s. Considering the importance of an Academic Draft of bill, BPHN considers it

necessary to make an explanatory note of the form, content, position and format of Academic Draft.[3] On 29 December 1994, the National Law Development Agency (BPHN) issued technical guidelines on Academic Draft arrangement, through Decision of Head of National Law Development Agency No.G-159.PR.09.10 Year 1994 concerning Technical Guidelines on Arranging Academic Draft for Laws and Regulations.[4]

Further, Presidential Decree (Keppres) Number 188 Year 1998 concerning Bill Preparation Procedure mentions the term Academic Draft as "Academic Design".[5] Meanwhile, Law Number 10 Year 2004 concerning Formation of Laws and Regulations does not explicitly regulate Academic Draft. Academic Draft just "emerges" expressly through Presidential Regulation Number 68 Year 2005 concerning Preparation Procedure for Bill, Draft Government Regulation and Draft Presidential Regulation.[6]

The term Academic Draft in Decision of Head of the National Law Development Agency No.G-159.PR.09.10 Year 1994 and Presidential Decree Number 188 Year 1998, is facultative.[7]

Presidential Regulation of the Republic of Indonesia Number 61 Year 2005 concerning the Arrangement Procedure and Management of National Legislation Program Article 13 sets that it is mandatory to include academic draft in delivering the plan of Bill formation in case other Minister or Head

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3 Prof. Dr. Ahmad M. Ramli, S.H., M.H.,, *Peran Naskah Akademik Dalam Penyusunan Rancangan Peraturan Perundang Undangan, Secara Teori Dan Praktik (Pembahasan Rancangan Undang-Undang Di DPR)* [The Role of Academic Draft in Bill Arrangement, Theoretically and Practically (Discussion on Bill at DPR)], Paper, p. 113

4 The decision explains the name/term, form and content, position and format of Academic Draft.

5 Article 3 paragraph (1) Presidential Decree 188/1998 states "Minister or leader of Bill Arrangement Initiating Institution may also first arrange academic design of the Bill that will be arranged".

6 Article 5 paragraph (1) Presidential Regulation Number 68 year 2005 states that: "Initiator of Bill arrangement may first arrange Academic Draft concerning the materials to be regulated in the Bill". Further, Article 5 paragraph (2) Presidential Regulation Number 68 Year 2005 states "Academic Draft arrangement as referred to in paragraph (1) is conducted by initiator together with Department of which duties and responsibilities in the field of laws and regulations and their implementation may be submitted to higher education institution or other third party with the capability therefor.

7 This may be observed in article 3 paragraph (1) which mentions the Academic Draft with the term Academic Design for law arrangement. The use of formulation of phrase "may also" contains the meaning of non-mandatory, thus Minister or leader of bill arrangement initiating institution may not arrange Academic Draft.

of Non-Department Government Institution has arranged Bill Academic Draft.

Meanwhile, Presidential Regulation of the Republic of Indonesia Number 68 Year 2005 concerning the Procedure to Prepare Bill, Draft Government Regulation in Lieu of Law, Draft Government Regulation and Draft Presidential Regulation does not contain the requirement to arrange Academic Draft to arrange laws and regulations.[8]

This is different when the government promulgates Law number 12 of 2011concerning the Formation of Laws and Regulations, where academic draft exists together with national legislation program (Prolegnas).[9] Therefore, with the existence of Law Number 12 year 2011 concerning the Formation of Laws and Regulations, academic draft is a requirement for arranging laws and regulations.

B. Definition of Academic Draft

According to Multiwati Darus, Academic Draft may be defined as an academic or scientific design.[10] Jimly Asshiddiqqie differentiates Academic Draft, Political Draft and Legal Draft. Academic Draft has different form or format from official bill. Academic design draft is arranged as the result of academic activity pursuant to the rational, critical, objective and impersonal principles of scientific knowledge. Political Draft is after academic draft has been decided by political authority holder to be official bill, thereafter the status of bill changes to political draft. Meanwhile, Legal Draft is after Bill has been approved by DPR and the Government, thus within 30 (thirty) days it must be signed by President and if it is not signed, it is declared valid under the provisions of Article 20 paragraph (5) the 1945 Constitution of the Republic of Indonesia. Thereafter, Political Draft changes to Legal Draft.[11]

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8 See article 5 paragraph 1 Presidential Regulation 68 year 2005 stating that in bill arrangement, it may first arrange Academic Draft….". The phrase "may" can be defined as facultative.

9 Article 19 Law No 12 year 2011 mentions the national legislation program which combines the national legislation program making must be accompanied with a Bill which must be preceded by academic draft.

10 In the paper of Technical Guidane, Jakarta, BPHN, 2007 entitled "*Fungsi dan Peran Academic Draft dalam penyusunan Prolegda Serta Metodologi Analisis dan Evaluasi Peraturan Perundang undangan* [Function and Role of Academic Draft in arranging Prolegda and Methodology, Analysis and Evaluation of Laws and Regulations] For more detail, see http://nuswantorotejo.blogspot.com/2013/06/naskah-akademik-dalam-pembentukan html#.VJKGy8m YPXs, downloaded on 19 December 2014

11 *Ibid*.

Under Law Number 12 Year 2011 concerning Formation of Laws and Regulations**,** academic draft is a draft which is the result of legal research or study and result of other research on a certain issue which is scientifically accountable regarding arrangement of the issue in a Bill, Draft Provincial Local Regulation or Draft Regency/City Local Regulation as solution to the community's legal issues or needs.[12] The position of Academic Draft is[13]:

1. Initial material containing the ideas of the urgency of approach, scope and content material of a Law or Regulation;
2. Something to taken into consideration in applying for permission to initiate arranging Bill/ RPP (Draft Presidential Regulation) to President;
3. Main material to arrange Bill.

Based on the history and definition of academic draft above, the essence or philosophy of academic draft is the philosophical, sociological and juridical bases of a bill.

Academic draft is designed as the "catalyst" of a legislation product to be made so as not to be out of the appropriate principles. The conception is actually not far from the paradigm of progressive law.[14] The essence of the existence of academic draft is also close to the concept of justice law, legal certainty and usefulness.[15]

Academic Draft's Contribution as the Instrument of National Law Development

A. Law as the Instrument of National Development

The Indonesian order of aw starts from the Proclamation of Independence on 17 August 1945, since with the Proclamation of Independence, the

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12 See article 1 paragraph 11 Law Number 12 Year 2011 concerning the Formation of Laws and Regulations.

13 See section three of the Position of Academic Draft in the Decision of Head of National Law Development Agency (BPHN) No. G.159. PR. 09. 10 Year 1994 concerning Technical Guidelines on Arranging Academic Draft for Laws and Regulations

14 The paradigm of progressive law is popularized by Late Prof. Satjipto Raharjo which basically viewing law not only from normative perspective, but also viewing the operation of law in the society and the importance of justice in law enforcement.

15 The concept is developed by Gustav Radbruch (1878 – 1949), who is a Germany law expert and law philosopher who emphasizes three aspects of law, namely justice, legal certainty and usefulness.

Republic of Indonesia is formed by the Indonesians. And thereafter, the Indonesians have made decision to determine and implement its own law.[16]

National Development is the effort performed by all components of the nation in achieving the nation's goals[17]. In the New Order era, the main bases of the national legal policy are contained in Resolution of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR RI) IV / 1973 Concerning the Guidelines on State Policy (GBHN), regarding policy in legal field stating: "Guidance on legal field must be capable of directing and accommodating legal needs pursuant to the awareness of people's law which develops towards modernization according to the level of development progress in all fields so as to achieve order and legal certainty as the infrastructure to be directed to improved guidance of the Nation Unity, also serving as the facility in support of whole modernization and development.

Law Number 25 Year 2000 Concerning National Law Development (Propenas) Year 2000 – 2004 outlines ten directions of development policy in legal fields, one of which is to organize a whole and integrated national legal system.[18] The statement implies law as the instrument of the national development.

The existing issue is that if the regulation is too detailed, it may inhibit the implementation of a duty. The too detailed procedural regulations force members of DPR to perform their duties.[19]

Legal order, including the politics of law and regulation making, should be kept away from any forms of manipulation. This conforms to Frederic Bastiat's opinion: "Law is manipulated! And state's power to regulate is manipulated together with it! Law, in my opinion, does not only deviate from its objective which is, correct, but is used to pursue a contradictory objective! Law becomes weapon for greed! Instead of reducing crime, the law itself is guilty for the crime it should deal with"[20]

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16 Zainal Asikin.2012. *Pengantar Tata Hukum Indonesia* [Introduction to the Indonesian Order of Law], Rajawali Pers: Jakarta, p. 5

17 See Article 1 Paragraph 2 Law of the Republic of Indonesia Number 25 Year 2004 concerning National Development Planning System.

18 See introduction of Law Number 25 of 2000 concerning National Legal Development (Propenas) Year 2000 – 2004 section priority of national development, in which the ten priorities are part of the priority to realize legal supremacy and good governance.

19 Patriani Siahaan. 2012. *Politik Hukum Pembentukan Undang-undang Pasca Amandemen UUD 1945* [Legal Politics of Law Formation After Amendment to the 1945 Constitution], p.141.

20 Frederic Bastiat. 2010. *Hukum* [Law], Translation. Fredoom Institute: Jakarta, p.1.

Indonesia is different from almost totally urbanized countries. There are too many existing local-traditional groups in Indonesia. The distance between Jakarta and Irian is not only physical, but also cultural, which may also be centuries away. Such condition requires specific legal wisdom and no uniform legal application can be conducted for the whole Indonesia.

Such social configuration poses additional burden to the government and lawmaking institution, to act more carefully. Law making cannot be conducted carelessly, in the sense of considering Indonesia as completely homogenous people. Way of acting based on such a perception may lead to fatal consequence.[21]

B. Academic Draft as the Instrument of Law Development Politics

Law development politics cannot be separated from the definition of legal politics itself. Meanwhile, legal politics may simply be formulated as legal policy that will be or has been implemented nationally by the government; it also covers the definition of how politics influences law by viewing the existing power configuration behind the law making and enforcement.[22]

On a more technical level, the underlying statement is actually, where is academic draft as the instrument of law development politics. Before answering, let us see a legislation discussion system made under Law Number 12 of 2011 concerning Formation of Laws and Regulations which mandates a national legislation program (prolegnas) system. [23] Meanwhile, the role of academic draft is set forth in article 19 Law Number 12 year 2011 concerning Formation of Laws and Regulations.

According to the article formulation, actually we can see the role of academic draft as a requirement to review and harmonize every Bill. What is meant by "review and harmonize" is the process to examine the correlation

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21 Satjipto Rahardjo. 2007. *Biarkan Hukum Mengalir, Catatan Kritis Tentang Pergulatan Manusia dan Hukum* [Let the Law Flows, A Critical Note to Human and Law Interaction]. Kompas:Jakarta. p. 57

22 Mahfud MD. 2010. *Politik Hukum di Indonesia* [Legal Politics in Indonesia], Rajawali Pers: Jakarta, pp. 9-10

23 Definition under on article 1 paragraph 9 Law no 12 year 2011 concerning Formation of Laws and Regulations, Prolegnas is the National Legislation Program, hereinafter referred to as Prolegnas, is an instrument to plan the Law formation program that is arranged on a planned, integrated and systematic manner.

of materials to be set forth in other Laws and Regulations vertically or horizontally in order to prevent overlapping regulations or authorities.[24]

The other role of academic draft is to accelerate DPR's performance in completing Bill as mandated by the national legislation program in which the fact shows DPR's less satisfactory performance with regard to Bill completion.[25]

Academic draft may become the balancing and harmonizing factor of various pull-push of interest in every Bill discussion. In fact, what is no less important is the parties involved in academic draft making. Academic draft implementer or maker's background, either from higher education institution or other party, will greatly influence the quality of academic draft.

It requires academic draft's high integrity so that the output of an academic draft will produce a comprehensive and objective review regarding the philosophy, sociology and jurisdiction of a bill.

1. The ideal concept of academic draft as the instrument of national law development

With regard to the national law development idea to form an ideal legal system as idealized, according to Soerjono Soekanto, in order to improve law development, it should at least pay attention to the requirements, one of which is to pay attention to the society's capability to comply with the law[26].

The paradigm of law development in Indonesia needs extra careful formulation since it requires a comprehensive review, from the perspective of sector, form and target of the law development. In addition, it should pay attention to the dynamics perspective, and the heterogeneity contained in the supporting components of the national legal system also needs to be given a place appropriately and proportionally in formulating the paradigm of law development.[27]

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[24] See explanatory note to article 19 Law 12 year 2011 concerning Formation of Laws and Regulations

[25] MEMBERS OF DPR RI period 2009-2014 are on capable of completing a half of the total Bill (RUU) targeted in the National Legislation Program (Prolegnas) 2009-2014, namely 247 Bills (RUUs). However, after the process of discussion full of dynamics, only 126 Bills are successfully brought to Law in the period 2009-2014, for more detail see http://www.jurnas.com/emobile/12/2014-10-01/315763, accessed on 19 December 2014.

[26] Soerjono Soekanto.1979 *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum* [The Use of Legal Sociology to Legal Group]. Penerbit: Alumni : Bandung. p. 27

[27] Law Seminar of KHN, for more detail see http://www.komisihukum.go.id/in, accessed on 12 December 2014.

The development law theory developed by Prof. Mochtar Kusumaatmadja which is in line with positivism and utilitarianism tends to ignore justice. In the context of legislation planning, government's activity to bind itself to other countries through an international agreement is not clear and inconsistent. The reason is the weakness of law, its planning and study.[28]

Considering that formulating law development paradigm requires a comprehensive study, philosophical approach also needs to be emphasized, not only juridical-formal and sociological study with partial dimension. Therefore, the discourse of the necessity to formulate law development paradigm should start from scientific forums, which will lead to a shared "awareness" among carriers of law development in the country.[29]

Research on living law and society's level of readiness in response to law update is conducted systematically and in focus. The result of the research is also used to change the law education approach which is monolithic all this time. The change to the approach of law higher education will in turn support the fundamental bases of the law development paradigm in Indonesia since it is assumed to have been rejected from the bases with due accountability, either from ontological, epistemological or axiological aspects, including Indonesian context.[30]

This should also apply to academic draft with strong study of philosophy of law comparable to its juridical, normative and sociological studies. The ethical, moral and holistic values contained in academic draft are expected to illuminate every frame of articles in the bill.

At least, the concept of academic draft contains the Pancasila legal system values which are full with prismatic, namely:[31]

a. Prismatic between individualism and communalism
b. Prismatic of religious state an secular state
c. Prismatic *rechstaat* and the rule of law

For the law to operate appropriately, it requires power, but the existing power shall not violate individual's rights and interest, since law

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28 *Ibid*.
29 Seminar KHN
30 *Ibid*.
31 According to Prof. Mahfud MD, the prismatic conception is to take what is good from two contradictory concepts of law to be taken for complementary legal concept, similarly with the four principles of law making based on Pancasila legal system, which are to guarantee nation's integration, democracy is built with monocracy system, law creates social justice and civilized religious tolerance. This is delivered at a lecture of doctorate program of law science of Undip, in legal politics subject, in November 2014 in Jakarta.

also serve to protect human interest. In order to protect human interest, law should be implemented and enforced. It is through law enforcement that law becomes fact. Enforcing the law, there are three elements to be taken into consideration, namely legal certainty *(rechtssi-cherheit),* usefulness *(zweckmassigkeit),* and justice *(gerechttgheit).*[32]

Realizing this nation's goals requires state organization with division of duties and authorities for all people. This is to be implemented by the government horizontally and vertically. Every officer implements their respective duties as an integral part of duties.[33]

Public good should be legislator's objective, with public benefit as foundation of reasoning. Knowing society's true goodness is what shapes legislation science; the science is achieved by finding the way to realize the goodness. It is for the principle to function appropriately, which means that this principle shall become the base for a reasoning system[34]:

Justice in the sense of legality is a quality related not only to the content of a positive legal order, but with its application. Justice in this sense is pursuant to and required by each positive law, either capitalistic, communistic, democratic or autocratic legal order.[35]

Conclusion

This paper concluded that the essence of academic draft is the philosophical, sociological and juridical bases of a draft of law and regulation and the assessment and harmonization function and the existence of academic draft are designed as the "catalyst" of a product of legislation to be made so as not to be out of the appropriate principles. Academic draft's contribution to the current national law development is felt lacking because of the newly required bill making process after 2011 through Law 12 Year 2011 concerning Formation of Laws and Regulations. Besides, academic draft is not yet capable of harmonizing and balancing every interest group in

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32 Agus Santoso, *Hukum, Moral dan Keadilan, Sebuah Kajian Filsafat Hukum* [Law, Moral and Justice, A Study on Philosophy of Law], Kencana Prenata Media Groeup, Jakarta, p. 5.

33 R.Abdoel Djamali, PHI, Revision, Raja Grafindo, Jakarta, p. 128.

34 Jeremy Bentham, *teori perundang-undangan, prinsip legislasi, hukum perdata dan pidana* [theories of legislation, principle of legislation, civil and criminal laws], translated from The Theory of Legislation, 2010, p. 26.

35 Hans Kelsen, *Teori Umum tentang Hukum dan Negara* [General Theories of Law and State], translation.Nusa Media Bandung, 2011, p. 17.

every bill discussion. In the ideal concept, the role of academic as the assessment and harmonization in every Bill is capable of preventing overlapping regulation or interest out of the law intervening Bill making for the regulation to remain in the real law corridor. It also needs regulatory arrangement by academic draft arranging team to maintain the objectivity.

This research also suggest that regulation of academic draft should also regulate the mechanism to appoint the academic draft arranging team, thus an objective and comprehensive study on academic draft may be obtained. Academic draft should become the barometer in every bill discussion. The concerned barometer is for assessing the institution or ministry's performance that seriously produces excellent quality of academic draft. Academic draft should be capable of accelerating DPR's performance in completing Bill as mandated by the national legislation program which in fact shows DPR's dissatisfactory performance with regard to Bill completion.

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Presidential Regulation Number 68 Year 2005 concerning Preparation Procedure for Bill, Draft Government Regulation and Draft Presidential Regulation.

Meanwhile, based on Presidential Regulation of the Republic of Indonesia Number 61 Year 2005 concerning the Arrangement Procedure and Management of National Legislation Program

Presidential Regulation of the Republic of Indonesia Number 68 Year 2005 concerning the Procedure to Prepare Bill.

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The Evaluation of Early Marriage Law Renewal in Indonesia

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The Evaluation of Early Marriage Law Renewal in Indonesia

Andi Hidayat Anugrah Ilahi

ABSTRACT. The study objective is to evaluate Child marriage law reform implementation compared to the five regions with the highest Indonesian cases. This research is descriptive using a literature study. The data source consists of primary data consisting of laws. 16 of 2019 and the Decree Number 22 / PUU-XV / 2017 of the Constitutional Court and secondary legal sources from books, websites, journals, theses, and other sources of information that researchers can use can be justified. The data analysis method uses content analysis from its implementation in the form of regional regulations, programs, and other local government activities in implementing legal products regarding Child marriage, which have a significant impact on Indonesian people's structure of life, such as poverty, reduced educational opportunities, reproductive health hazards, risks. The findings from the research reveal that there have been many efforts by local governments in supporting legal reform which are manifested in institutional programs, working groups and community activities as efforts to mitigate and eliminate Child marriage in Indonesia. However, these efforts have not been fully successful; it is necessary to enforce the article on the sanctions on the marriage law to strengthen the law.

KEYWORDS. Implementation, Legal Renewal, Child Marriage

The Evaluation of Early Marriage Law Renewal in Indonesia

Andi Hidayat Anugrah Ilahi

Introduction

Indonesia or that also called the State (NKRI), the Unitary Republic of Indonesia where the state Island the largest in the world which is divided into 17,504 islands[1] with a total population of 270,054,853 people in 2018[2]become one of the wealthiest countries in terms of ethnic, linguistic and religious diversity. Furthermore, the number of tribes in Indonesia reaches 1340, which are spread from Sabang to Merauke[3]. This is not without reason, seen from Indonesia's extent 1,922,570 km2 on land and sea 3,257,483 km2. Suppose the total reaches 5,180,053 km2. This then became a challenge for the Indonesian government to be able to achieve the diversity and breadth of Indonesia's territory, so that in 1999 the first time regional autonomy was listed in "Law Number 22 the Year 1999" which aims to develop the potential of each region to achieve the welfare of the community. And development progress in Indonesia.[4]

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1 Dari 17.504 Pulau Di Indonesia, 16.056 Telah Diverifikasi PBB, Merdeka.Com.

2 Central Bureau of Statistics, BPS Catalog: 2101018, BPS, 2013.

3 'Suku Bangsa | Indonesia.Go.Id' <https://www.indonesia.go.id/profil/suku-bangsa> [accessed 22 November 2020]."Tribes of Nations | Indonesia.Go.Id "<https://www.indonesia.go.id/profil/suku-bangsa> [accessed 22 November 2020].

4 Bayu Kharisma, 'Desentralisasi Fiskal Dan Pertumbuhan Ekonomi : Sebelum Dan Sesudah Era Desentralisasi Fiskal Di Indonesia', *Jurnal Ekonomi Dan Studi Pembangunan*, 14.2 (2013), 101–19.Bayu Kharisma, "Fiscal Decentralization and Economic Growth: Before and After the Era of Fiscal Decentralization in Indonesia", Journal of Economics and Development Studies, 14.2 (2013), 101–19.

In the development of regional autonomy in Indonesia in 2002, it only consisted of 32 provinces. Furthermore, in 2012 it added two other regions with great potential for expansion due to geographical area and potential natural resources. The parts are North Kalimantan (Kaltara) and West Sulawesi (Sulbar).[5]. West Sulawesi Province itself is a province in Indonesia which is in the west directly adjacent to Sulawesi South and West Sulawesi. The creation of West Sulawesi Province has been fought for since 1960, and in the end, it was found momentum in 1999 when the reform movement. The long struggle for the creation of West Sulawesi Province has been manifested through the Mandar community's extraordinary efforts with the Members of the Indonesian House of Representatives' support through the input of the Members' ideas regarding the new autonomous regional regulations. By date October 5, 2004, West Sulawesi Province was officially created based on Law 26 of 2004.

Being an area with high potential from natural resources and geographically, West Sulawesi is one of the relatively fast provinces in its development. Judging from Government development in West Sulawesi in 2019, it has experienced consequences followed by the continued increase in the West Sulawesi Human Development Index (HDI). In 2019, West Sulawesi's HDI was already at 65.73. This figure increased by 0.63 points or grew by 0.97 percent compared to the HDI of West Sulawesi in 2018, which was 65.10. But alternating with the direction of development in West Sulawesi province, several other factors apparently hinder the development of the quality of human resources in West Sulawesi province, one of which is Child marriage.

In the State of Indonesia, the practice of child marriage has spread to 34 provinces with various statistical figures. Women aged 20 to 24 who directly marry before they turned 18 in 2018 are predicted to reach 1,220,900. This nominally ranks Indonesia as the 10th country with the highest number of child marriages in the world. For women aged 20-24 who have been married, for the first time less than 18 years of age, the total figure is above 30%. Here are some provinces in Indonesia with the highest percentage of Child marriage, including the new autonomous region, namely Central

[5] 'Provinsi Di Indonesia - BELAJAR KURIKULUM 2013' <https://www.damaruta.com/2015/08/provinsi-di-indonesia.html> [accessed 17 November 2020]."Provinces in Indonesia - BELAJAR KURIKULUM 2013" <https://www.damaruta.com/2015/08/provinsi-di-indonesia.html> [accessed 17 November 2020].

Sulawesi (31, 91%), West Kalimantan (32.21%), South Kalimantan (33.68%), and West Sulawesi (34%),

This is in line with the data, which shows that child marriage is related to various factors with a systematic nature or those from the population, family, or individual abilities. Susenas and literature studies' findings show that the group that often occurs in child marriage are girls, children who are in a low economy, live in rural areas, and have minimal knowledge. Female workers under the age of 18 are likely to take steps to work in illegal fields and are therefore more vulnerable than women in the same age group who marry after 18 years and work[6].

Many human rights organizations respond to national or international ratios related to Child Marriage in Indonesia, especially on the negative impacts resulting from child marriage, namely: reduced opportunities for educators, vulnerability to reproductive health, an increase in the threat of death in infant and child marriages, physical trauma and psychological, intergenerational poverty, isolation/exclusion, violence in the family, trafficking in persons, divorce and sexual violence[7]. The practice of Child child marriage has virtually ended the teenage period for these children, which should have been a period of physical and social, emotional change for them. Child marriage inevitably dwarfs the abilities that some adolescents (millennial and millennial) have this state, of course[8].

In essence, the Law in Indonesia itself has regulated Child marriage since 1974. Where? This legal product is an attempt by the Indonesian people to control women's protection, especially minors, in engaging in marriage ties. The legal reform regarding the transition of Law 1 of 1974 concerning "Marriage" has a background of relations to the Constitutional Court of the Republic of Indonesia which issued a Constitutional Court Decree Number 22 / PUU-XV / 2017 concerning "The Age Limit for Marriage for Women"[9] Furthermore, in October 2019 the Indonesian government again issued Law

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6 Badan Pusat Statistik, 'Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Ditunda', *Badan Pusat Statistik*, 2020, 0–44.Central Bureau of Statistics, "Prevention of Child Marriage that Cannot be Delayed", Central Bureau of Statistics, 2020, 0–44.

7 Ahmad Juhaidi and Masyithah Umar, 'Pernikahan Dini, Pendidikan, Kesehatan Dan Kemiskinan Di Indonesia : Masihkah Berkorelasi?', *Khazanah: Jurnal Studi Islam Dan Humaniora*, 18.1 (2020), 1 <https://doi.org/10.18592/khazanah.v18i1.3585>.

8 Hapid Ali, 'Tinjauan Hukum Terhadap Perkawinan Di Bawah Umur Dihubungkan Dengan Undang-Undang', 4.1 (2020), 7.

9 Rafiah Septarini STIS Hidayatullah Balikpapan, 'Jurnal Ulumul Syar'i, Juni 2019', *Jurnal Ulumul Syar'i*, 8.1.Rafiah Septarini STIS Hidayatullah Balikpapan, "Ulumul Syar Journal" i, June 2019 ", Ulumul Syar Journal" i, 8.1.

Number 16 of 2019 for legal reform efforts to Law number 1 of 1974 concerning "marriage", this effort is solely aimed at guaranteeing the right of the state community to create a family and connect generations through official marriage, ensure the child's right to survive, develop and grow and have the right to protection from discrimination and violence and in fact marriage at the age of the child has a negative effect on children's development and will result in the inadequacy of children's fundamental rights such as education rights, health rights, children's civil rights, the right to protection from children's social rights, violence and discrimination[10].

Examining Indonesia's legal reform efforts requires strategic efforts to evaluate whether a statutory product has achieved its formation objectives. According to the theory put forward by William Dunn that "evaluation is intended to assess a public policy, the extent to which the effectiveness of the policy can be accounted for to the public." Besides, from the existence of an evaluation, the public can obtain legal information from the policy process course so that the government can carry out further assessments and improvements to perfect a policy.

Furthermore, related to the evaluation of Child marriage problems, there have been many studies, One of which has been done previously is a research done by Putri Karonia Wahyu (2008) entitled "Evaluation of the Implementation of the Policy on Postponement of Child Childhood Marriage through the 12-year Compulsory Education Program as a Prerequisite for Marriage in Ngadisari Village"[11] and research conducted by Ana (2019) entitled Child Marriage in Indonesia: Government Factors and Roles (from the point of view of Law Enforcement and Protection of Children) [12]however, there has been no further research on the evaluation of the implementation of

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[10] Hukum Online.com, 'Undang Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas UU No. 1 Tahun 1974 Tentang Perkawinan', 2019, 1–5.Hukum Online.com, "Law Number 16 Year 2019 Concerning Amendments to Law No. 1 of 1974 Concerning Marriage", 2019, 1–5.

[11] Wahyu Karonia Putri, 'evaluasi implementasi kebijakan penundaan pernikahan usia dini melalui program wajib belajar 12 tahun sebagai prasyarat menikah warga di desa ngadisari', 2018. Wahyu Karonia Putri, "evaluation of the implementation of the child marriage delay policy through 12 years mandatory study programs as a private vocational school of citizens in Ngadisari", 2018.

[12] Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin, 'Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)', *Widya Yuridika*, 2.1 (2019), 1 <https://doi.org/10.31328/wy.v2i1.823>.Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin, "Child Marriage in Indonesia: Factors and Roles of Government (Perspective of Law Enforcement and Protection of Children)", Widya Yuridika, 2.1 (2019), 1 <https://doi.org/ 10.31328 / wy.v2i1.823>.

the law Number 16 of 2019 concerning Marriage in Indonesia. For this reason, the purpose of this study is to examine further how the performance of legal reforms related to the problem of Child marriage in Indonesia.

Method

This study uses a literature review method as outlined in descriptive research. Literature review in research exposure to theories, findings, and other research materials obtained from reference materials to be the basis for research activities to make a solid frame of mind from the formulation of the problems to be studied. Literature reviews can contain explanations, summaries, and considerations of the author's thoughts on several literature sources (articles, books, slides, info from the internet, etc.) regarding the theme being reviewed. A useful literature review must be relevant, current, and adequate. This study's results have a descriptive-analytic nature because this research creates and collects data by detailing the facts of several Normative Laws regarding Child marriage.

Source a. Researchers used primary data divided into Law Number 16 of 2019 and the Decision of the Constitutional Court Number 22 / PUU-XV / 2017. b. Secondary sources of law are additional data that provide support for primary books, from books, the internet, theses, and accurate and accountable sources of information. The process of collecting data is done by searching the literature, namely by discussing and examining several library materials related to the topic of discussion. This data analysis system uses a content analysis system from the implications in the form of regional provisions, programs, and other efforts from the local government to carry out Law Number 16 of 2019 concerning Child marriage.

Socio-Cultural Context in Five Provinces with the Highest Percentage in Indonesia

A. West Sulawesi

West Sulawesi is a province ranked first in the majority of underage marriages; according to data from the Central Statistics Agency (BPS) of West Sulawesi in 2015, 11.58 percent of children in Islam were married at the age of under 16 years. Then the BPS report in 2016 said that child

marriage in West Sulawesi ranks first in Indonesia with a value of 34 percent[13].

The high rate of Child Marriage in West Sulawesi has had many impacts, namely the high ratio of infant and maternal mortality, stunting, divorce rates, domestic violence, and even high school dropout rates. The many implications of Child marriage have made Ali Baal Masdar, as the Governor, make a commitment and be at the forefront regarding the handling and prevention of first marriage is one of the West Sulawesi government's strategic issues.

In the province of West Sulawesi itself, it is estimated that there are 114,741 married women with an average age of under 21 years, and men who are married under the age of 25 years is 94,567. This figure is relatively high, considering that West Sulawesi province is a young province with a small geographical location compared to other regions on the island of Sulawesi[14].

B. Central Sulawesi

Central Sulawesi also contributes to Child marriage rates nationally. It cannot be denied that Central Sulawesi is a contributor to cases of first Marriage in Indonesia. Nationally, Central Sulawesi is in the third rank with the number of instances of 31.91 percent. Generally, children aged 15-17 with unmarried status have never been married; presentations of Child marriage are hammer city 6.90 percent, Tojo Una Regency 12.84, Sigi Regency 13.77 Banggai Islands Regency 15.37 percent, and Banggai Laut Regency 15.83 percent.[15]Nationally, the percentage of Central Sulawesi province reached 58.9% with cases under 20 years of age. The socio-cultural factors that most trigger this are dropout rates, loss of hope for work opportunities.

The social problem that has triggered Child Marriage in Central Sulawesi province is the recovery after the natural disaster on 28 September 2018. This is mainly due to the weakening of family functions due to natural disaster victims, thus providing Education and understanding of Education, especially mothers' role in the family.

The government, through general administrative assistants, law, and organizations where post-disaster occurred in Central Sulawesi, caused

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[13] BPS Provinsi Sulawesi Barat, *Katalog Publikasi*, 2020.

[14] Badan Pusat Statistik.Central Bureau of Statistics.

[15] ‘Sulawesi Tengah, Peringkat 3 Perkawinan Anak Usia Dini Di Indonesia’."Central Sulawesi, Rank 3 Child Child Marriage in Indonesia".

several social problems, including very high Child marriages. In response to this problem, the government invites us to cooperate with BKKBN as a technical agency that handles first marriage with related parties to overcome these social problems. That is because the issue of Child Marriage or Indonesian children has become the international spotlight.[16] Based on UNICEF and BPS data, there are around 1,800 children under 18 years of marriage every day. This figure is comparable to the calculation of 4 girls, 1 of whom was married before 18.[17]

C. Central Kalimantan

Based on the facts from the Central Kalimantan Statistics Agency (BPS), until now, Child Marriage in Central Kalimantan is relatively high, reaching a percentage of 20.02 first marriage rates.[18] The backgrounds for first Marriage in Central Kalimantan are very diverse. There is no school fee for children, so parents of children prefer to directly engage in marriage, which will reduce the family burden. Still, it adds to the load on the state, plus a lack of understanding of family planning which impacts on the child so that the condition of the child is increasingly difficult, both from factors of childbirth, health, welfare, social, etc., for this reason, it must be avoided or minimized its spread.[19]

The cases of Child Marriage in Central Kalimantan are very evenly distributed in rural and urban areas. So that the intervention carried out by the government is carried out in a balanced manner in all districts/cities. Interventions carried out by the government are through various programs aimed at increasing the knowledge of parents and children, from family

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[16] 'Sulteng Penyumbang Pernikahan Dini | Metrosulawesi'."Central Sulawesi contributes to Child Marriage | Metrosulawesi".

[17] Abdi Fauji Hadiono, 'Pernikahan Dini Dalam Perspektif Psikologi Komunikasi', *Jurnal Darussalam*, 9.2 (2018), 385–97 <http://ejournal.iaida.ac.id/index.php/darussalam/article/view/237/210>.

[18] 'Data Badan Pusat Statistik: Angka Pernikahan Dini Di Kalimantan Selatan Tertinggi Di Indonesia - Health Liputan6.Com' <https://www.liputan6.com/health/read/4351605/data-badan-pusat-statistik-angka-pernikahan-dini-di-kalimantan-selatan-tertinggi-di-indonesia> [accessed 25 November 2020]."Data from the Central Bureau of Statistics: The Highest Child Marriage Rate in South Kalimantan in Indonesia - Health Liputan6.Com" <https://www.liputan6.com/health/read/4351605/data-badan-pusat-statistik-angka-perikah- dini-di-kalimantan-selatan-high-di-indonesia> [accessed 25 November 2020].

[19] 'Data Badan Pusat Statistik: Angka Pernikahan Dini Di Kalimantan Selatan Tertinggi Di Indonesia - Health Liputan6.Com'."Data from the Central Bureau of Statistics: The Highest Child Marriage Rate in South Kalimantan in Indonesia - Health Liputan6.Com".

resilience-building programs, marital maturity, and others. The Central Kalimantan BKKBN regularly conducts a selection of genre ambassadors to spur the younger generation's achievements to avoid a variety of activities that lead to negative traits or promiscuity.[20]

D. East Kalimantan

According to data from the Regional Office of the Ministry of Religion of East Kalimantan in 2019, there were 845 child marriage incidents. Until the first semester of 2020, it decreased to 418 experiences consisting of 89 for men and 329 for women. The nominal Child marriage took place in Paser Regency in 2019. There were 111 registered cases. Although this figure has decreased significantly, the East Kalimantan Provincial Government is expected to be more inclined to conduct socialization and make anticipatory rules in a synergistic effort to provide education and enlightenment on stem Child marriage.[21]

Based on data from The Department of Population, Women's Empowerment and Child Protection (DKP3A) of East Kalimantan Province said that 1,131 children were married underage. From this data, in 2017, there were 542 marriages with the following details: 470 women and 72 men. Furthermore, in 2018 there were 589 child marriages, consisting of 491 girls and 98 boys[22]. According to data from the Central Bureau of Statistics, Especially in Samarinda, 1 out of 4 girls in the town of Samarinda has been married at the age below 18 years.[23]

This does not happen without reason, including poverty, minimal education, a strict culture, and social values changes. This is, of course, not

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[20] Samuel M Simanjuntak and Mikaria Doloksaribu, 'Pengetahuan Siswa Tentang Resiko Menikah Dini Melalui Pendekatan Promosi Kesehatan', *ABDIMAS: Jurnal Pengabdian Masyarakat*, 3.2 (2020), 247–54 <https://doi.org/10.35568/abdimas.v3i2.459>.

[21] 'Dibandingkan Tahun 2019, Kasus Pernikahan Dini Di Kaltim Tahun Ini Menurun - Suara Kaltim' <https://kaltim.suara.com/read/2020/11/13/061335/dibandingkan-tahun-2019-kasus-pernikahan-dini-di-kaltim-tahun-ini-menurun> [accessed 22 November 2020]."Compared to 2019, cases of Child marriage in East Kalimantan this year are decreasing - Suara Kaltim" <https://kaltim.suara.com/read/2020/11/13/061335/dibompared-tahun-2019-kasus-perikah-dini- di-kaltim-tahun-ini-decreased> [accessed 22 November 2020].

[22] '1.131 Anak Di Kalimantan Timur Menikah Dini | Merdeka.Com' <https://www.merdeka.com/peristiwa/1131-anak-di-kalimantan-timur-menikah-dini.html> [accessed 25 November 2020]."1,131 Children In East Kalimantan Are Child Married | Merdeka.Com "<https://www.merdeka.com/peristiwa/1131-anak-di-kalimantan-timur-menikah-dini.html> [accessed 25 November 2020].

[23] BPS-Statistics, *Indikator Kesejahteraan Rakyat*, *Katalog*, 2019, 4102004.64.BPS-Statistics, Indicators of People's Welfare, Catalog, 2019, 4102004.64.

without cause to be prohibited, considering that the consequences of Child marriage, the high divorce rate will then have a direct impact on the low quality of human resources.[24]

E. South Borneo

In the province of South Kalimantan, Tanah Bumbu district is the area with the highest rate of Child Marriage in Central Kalimantan, replacing Hulu Sungai Utara Regency based on data from the Ministry of Village Research in 2011. The quality of first Marriage in South Kalimantan reached a high ratio of 51/1000 population. Where this figure is very far from the national average because of around 40/1000 people. With the rate of Child childbirth, this province ranks second with 53/1000 population. Of course, this condition is very apprehensive, considering this is in line with the close chance of a divorce case because it is not ready to build a household foundation with immature age.

One of the cases that occurred in 2018, namely the young couple Zainal who is 14 years old and Ira 15 years old, even following Zainal's confession that the marriage that was carried out at his grandmother's house was not due to matchmaking or an element of coercion but because of feelings of love[25]. This, of course, raises a polemic as assumed by Yohana Yembise as Minister of Women Empowerment and Child Protection "the last condition I got in South Kalimantan was that the marriage was considered invalid." Furthermore, this young couple was then taken to the Integrated Service Center Escort to protect and empower women. Children in the district/city.[26] Again, by (PPPA) the Ministry of Women's Empowerment and Child Protection, Child marriage occurred in South Kalimantan where first marriage for children aged 14 and 15 years became a severe problem.

Regent Tapin Gusti Syahrar responded to this *" It was true the marriage was canceled because it was not following the marriage law, and*

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[24] Agi Yulia Ria Dini and Vina Febriani Nurhelita, 'Hubungan Pengetahuan Remaja Putri Tentang Pendewasaan Usia Perkawinan Terhadap Risiko Pernikahan Usia Dini', *Jurnal Kesehatan*, 11.1 (2020), 1434–43 <https://doi.org/10.38165/jk.v11i1.197>.

[25]'Menteri PPPA Yohana: Pernikahan Anak Usia Dini Di Kalsel Tidak Sah' <https://www.inews.id/news/nasional/menteri-pppa-yohana-pernikahan-anak-usia-dini-di-kalsel-tidak-sah> [accessed 25 November 2020]."PPPA Minister Yohana: Child Childhood Marriage in South Kalimantan is Illegal" <https://www.inews.id/news/nasional/menteri-pppa-yohana-peredding-anak-usia-dini-di-kalsel-tidak-sah > [accessed 25 November 2020].

[26] 'Menteri PPPA Yohana: Pernikahan Anak Usia Dini Di Kalsel Tidak Sah'."PPPA Minister Yohana: Child Childhood Marriage in South Kalimantan Is Not Legitimate".

we also really don't want things like this to happen again [27] . Thus, responding to this regional head's role is very important to explain. The population understands and is aware of the risks of Child marriage, where the risk exacerbates children from first marriages due to being too young to cause death.[28]

F. West Kalimantan

Child marriage still often occurs in West Kalimantan, where the province is included the five regions in Indonesia, the highest rate of first Marriage in Indonesia, were in West Kalimantan society, especially women aged 18 years and under apparently decide to start household life earlier, according to data from BKKBN for women under the age of 16 years of first marriage in 2017 ranged from 7.76 percent, aged 17-18 years ranged from 14.58 percent and 11 and above ranged from 51.75 percent, and from the data shown by the regional BKKBN the highest rate of marriage young people in Kapuas Hulu district where the age of marriage under 16 is around 19.65 percent.[29]

The high number of Child marriages in the province of West Kalimantan has made the BKKBN, the Department of Women Empowerment, and the Ministry of Women Empowerment and Child Protection, children at the local government level, must work together to reduce child marriage. The main goal in overcoming Child marriage is where children must be given opportunities to pursue careers, demand proper education, and plan for a better family life far from violence in the household. The high level of Child marriage made the West Kalimantan governor make a policy to tackle first marriage in his territory, where the procedure was free schools for villages[30]. Villages that are unable to afford so that children can

[27] 'Kasus Pernikahan Dini Di Tapin, Antara Kebiasaan Dan Kemampuan Ekonomi - BBC News Indonesia' <https://www.bbc.com/indonesia/indonesia-44900871> [accessed 25 November 2020]."The Case of Child Marriage in Tapin, Between Habits and Economic Capabilities - BBC News Indonesia" <https://www.bbc.com/indonesia/indonesia-44900871> [accessed 25 November 2020].

[28] 'Pemerintah Minta Kepala Daerah Serius Cegah Pernikahan Anak'."The government asks regional heads to seriously prevent child marriage".

[29] 'Kabupaten Kapuas Hulu Menjadi Daerah Dengan Tingkat Pernikahan Dini Terbesar - Tribun Pontianak'."Kapuas Hulu Regency is the Region with the Biggest Child Marriage Rate - Tribun Pontianak".

[30] Ratna Dwi Wulandari and Agung Dwi Laksono, 'Hubungan Status Ekonomi Terhadap Pernikahan Dini Pada Perempuan Di Perdesaan Indonesia', *Jurnal Kesehatan Reproduksi*, 11.2 (2020), 115–24 <https://doi.org/10.22435/kespro.v11i2.3870.115-124>.

go to school like young children throughout Indonesia. The approach is an attempt to prevent West Kalimantan teenagers from marrying young.[31]

Analysis of the Factors Causing High Child Marriage

Some factors lead to Child marriages that are often encountered in the community, namely:

a. Their ambition, both young people, feel that they both like them and that those who already have a partner or idol are influenced to marry at a relatively young age. Besides their own will, they are usually in tune with the child's relationships and friendship. For example, promiscuity that causes premarital pregnancy due to free sex among adolescents has also become a moral burden for the Indonesian nation to date.
b. Education, lack of knowledge, and parental Education resulted in a tendency to marry underage children[32]. The ratio of adolescents with low education has an index of 4.259 times (ODS ratio) higher for Child marriage compared to adolescents with soft educational background.[33]. Based on data from the Central Bureau of Statistics. Generally, women aged 20 to 24 years which immediately married before the age of 18 have not continued their schooling anymore.
c. family, because parents are not able to send their children to school until they are immediately married off, because of the lack of determination of the child to go to school and the factors that will make a spinster, therefore one way out is to be married as soon as possible when there is a mate.[34]

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[31] 'Pernikahan Dini Di Kalbar Masuk 5 Besar Indonesia, Dua Kabupaten Wilayah Pesisir Paling Tinggi - Halaman 3 - Tribun Pontianak'."Child Marriage in West Kalimantan is in the Top 5 in Indonesia, the Two Regencies in the Highest Coastal Area - Page 3 - Tribun Pontianak".

[32] Irne W Desiyanti, 'Faktor-Faktor Yang Berhubungan Terhadap Pernikahan Dini Pada Pasangan Usia Subur Di Kecamatan Mapanget Kota Manado Factors Associated With Early Mariage In Couples Of Childbearing Age At Kecamatan Mapanget Manado City', *Jikmu*, 5.2 (2015), 270–80.Irne W Desiyanti, "Factors Related to Child Marriage in Fertile Couples in Mapanget District, Manado City. Factors Associated With Child Mariage In Couples Of Childbearing Age At Mapanget Manado City District", Jikmu, 5.2 (2015), 270–80.

[33] Farida Farida, 'Pencegahan Perkawinan Anak Ucapan Terima Kasih', *Analisa*, XVI.01 (2009), 1–3.Farida.

[34] Fachria Octaviani, 'Dampak Pernikahan Usia Dini Terhadap Perceraian Di Indonesia', *Unpas.*, 2020.

d. Economy, Marriage at a relatively young age because of the family situation which is in the underprivileged group, to reduce the burden on the parents because of that their daughter is married to someone who is considered capable, This factor is also a dominant factor, especially for girls in rural areas who drop out of school.[35]
e. Adat, where some people see that Child marriage is still reasonable for children or adolescents, where this custom makes it a challenging tradition to break in the community.[36]

Implementation of Child Marriage Law Reform in Indonesia based on Law Number 16 of 2019 concerning abour marriage

In the context of legal reform, it is in line with the demands that the laws and regulations are flexible, not rigid or mean following the orders of social change in society.[37]. For this reason, to reform the marriage law and case evaluation in Indonesia, several changes to the rules and regulations have been implemented to avoid legal flaws in the pattern of social life. Furthermore, it is stated that the arrangement of other minimum age limits for marriage between men and women has created discrimination in the framework of implementing the right to make a family as covered in the 1945 Constitution Article 28B paragraph (1). Still, it has presented problems with the protection and fulfillment of children's rights as included in the Article 28B paragraph 2 states that when women are below the age of men, according to law, women can form a family more quickly.

Therefore, the Constitutional Court decision instructed the formation of the law into three maximum periods to make changes to Law No.1 of 1974 concerning "marriage" so that Law No. 16 of 2019 was born regarding the revision of Law 1 of 1974 concerning Marriage. Ethical reform in Law

[35] Verawati, et.al., 'Pengaruh Komunikasi Interpersonal Terhadap Pengetahuan Dan Sikap Remaja Dalam Upaya Pencegahan Pernikah Dini Di Kabupaten Mamuju', *Bina Generasi; Jurnal Kesehatan*, 38.1 (2020), 1–7.
[36] Akhiruddin, 'DAMPAK PERNIKAHAN USIA MUDA (Studi Kasus Di Desa Mattirowalie Kecamatan Libureng Kabupaten Bone)', *Mahkamah*, 1.1 (2016), 205–22.Akhiruddin, "THE IMPACT OF YOUNG WEDDING (Case Study in Mattirowalie Village, Libureng District, Bone Regency)", Court, 1.1 (2016), 205–22.
[37] Badan Pembinaan, Hukum Nasonal, and Kementerian Hukum,, *Rechtsvinding*, 2.3 (2012), 257–75.Development Agency, National Law, and Ministry of Law, Rechtsvinding, 2.3 (2012), 257–75.

Number 1 of 1974 reaches the age limit; good reform increases the minimum age limit of marriage for women. The minimum age of marriage for women is the same as for men, 19 (nineteen) years. Age limitation is interpreted as being considered mature in mind and body so that marriage can be carried out to realize a more quality marriage direction without divorce at the end to get healthy offspring. Efforts to increase the age limit of 16 years for women to marry will lead to a low ratio of births and reduce maternal and child mortality. Apart from being able to realize children's rights, up to the highest point of child development, the role of parents, and providing children's access to education is also included.[38]

As for the primary considerations for amendments in Law 16 of 2019 concerning amendments to Law 1 of 1974 concerning marriage, namely: "The state guarantees the right of citizens to form families and continue their offspring through legal marriage, guarantees children's rights to survival," grow, develop and are entitled to protection from violence and discrimination; Marriage at the age of children has a negative impact on the development of children and will cause the fundamental rights of children to be not fulfilled, such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights, and children's social rights; implementation of the decision of the Constitutional Court of the Republic of Indonesia Number 22 / PUU-XV / 2017 requires amendments to the provisions of Article 7 of Law Number 1 of 1974 concerning Marriage.[39]

In essence, this change in law has resulted in a new law that provides legal compliance for every individual in society, especially minors, and the role of parents and family in it. There are weaknesses in these laws, namely sanctions that will be given if the implementation is not able to be carried out as well as possible. This matter is important because where the negative impact arising from this Child marriage is very damaging to the order of life of the nation[40].

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[38] Mukhlis Mukhlis, 'Pembaharuan Hukum Perkawinan Di Indonesia', *ADLIYA: Jurnal Hukum Dan Kemanusiaan*, 11.1 (2019), 59–78 <https://doi.org/10.15575/adliya.v11i1.4852>.Mukhlis Mukhlis, "Renewing Marriage Law in Indonesia", ADLIYA: Journal of Law and Humanity, 11.1 (2019), 59–78 <https://doi.org/10.15575/adliya.v11i1.4852>.

[39] Herti Windya Puspasari and others, 'Masalah Kesehatan Ibu Dan Anak Pada Pernikahan Usia Dini Di Beberapa Etnis Indonesia : Dampak Dan Pencegahannya Maternal And Child Health Problems In Early Age Marriage At Several Ethnic Indonesia : The Impact And Prevention', *Buletin Penelitian Sistem Kesehatan*, 23.Oktober (2020), 275–83.

[40] Fachria Octaviani.

But in an effort to reform the Law of Child Marriage as stated in Law Number 16 of 2019 that there is an alternative that can be done is by strengthening several institutional and ministerial functions by issuing technical provisions to make it difficult for underage marriages to take place. However, strategic arrangements are needed between relevant ministries such as the Supreme Court, the Ministry of Religion, the Ministry of Women's Empowerment and Child Protection, the Ministry of Health, the Ministry of Home Affairs, the Ministry of Education and Culture, and the State Commission in charge of child protection. The aim is to achieve a decision solution that has a national character so that Child marriage can be addressed thoroughly and rooted in Indonesia.

Some of these steps are the strict regulatory instructions first, for issuing NI (Marriage Cover Letter), N2 (Marraige Request Letter), and N4 (Parental Consent Letter) to all sub-districts and village offices as publishers and officials in charge of administrative matters to the Office of Religious Affairs (KUA) to people who are getting married Child. Second, the Supreme Court should issue leaflets to all PAs in Indonesia according to PERMA (Peraturan Mahkamah Agung) number 15 in 2019 not to facilitate the issuance of dispensation letters to the catin who will match first. Third, if points 1 and 2 above cannot be made, then it needs further arrangement if the child is a minor when before the marriage vow is fulfilled, he is required to follow the demands of personal counseling guidance or psychological tests from related institutions, except following marriage guidance activities (big win).

Furthermore, in terms of evalution in this law, based on the fact the regional government is making full efforts to enforce Child marriage legal reform, both from local regulations, related official programs, and other social activities. In West Sulawesi Province, the Governor of West Sulawesi issued a circular regarding the prevention and handling of Child childhood marriage. The flyer is circulated to regents in West Sulawesi Province where the Governor of West Sulawesi wants to create quality human resources in West Sulawesi "[41]listed in circular number 12 of 2019, regents throughout West Sulawesi Province through the Regional Apparatus Organization (OPD) can carry out prevention and treatment of Child childhood marriage. The regent of West Sulawesi playing a role in dealing with the problem of first marriage in his region where the regent can carry out specific programs to handle Child marriage or create activities in each of the relevant Regional

[41] "Sulbarkita.Com | Culture and Nature West Sulawesi - News ".

Apparatus Organizations, for example, forming a working group (POKJA) consisting of cross sectors. From the establishment of the Working Group (POKJA) to ensure the supervision of Child childhood marriage by implementing inclusive values and gender equality. However,during the pandemic Covid-19 the case of child marriage increase significantly.

One of the most familiar LWGs and responsible for child marriage is GENRE. This program is a development program of the BKKBN office in order to prepare family life for adolescents through education for marriage age maturity, planning for education levels, careers, and marriages in a scheduled manner.[42] The approach taken is a representative advocacy effort in the school and university environment.

The head of the Central Sulawesi BKKBN said that "*we continue to maximize the planning generation program (genre) in suppressing Child marriage that occurs in Central Sulawesi with the main focus of the genre program inviting teenagers to delay the age of marriage and prevent Child marriage*." Besides that, in the province of Central Sulawesi, a program was also launched by the Governor of Central Sulawesi. Long Djanggola, namely the Child marriage prevention synergy program "Patujua" "We welcome the Central Sulawesi BKKBN initiative program and all collaborating parties, so far many agencies have implemented programs related to Child marriage prevention efforts individually and with this Patujua program, In the future, it is hoped that we can reduce the number of Child marriages in Central Sulawesi together." This program does not only involve related agencies but also involves community leaders (toma) and religious leaders (toga) so that wrong perceptions of the age of Marriage in Central Sulawesi (Central Sulawesi) society can be corrected and suppressed in such away.[43] This is then very important considering the toga and toma are very close to the community, primarily since the root of the problem of Child Marriage in

[42] 'Duta Genre Indonesia' <https://www.genreindonesia.com/duta-genre-indonesia/> [accessed 25 November 2020].“Duta Genre Indonesia” <https://www.genreindonesia.com/duta-genre-indonesia/> [accessed 25 November 2020].

[43] 'Gubernur Sulteng Dorong Program “Patujua” Melibatkan Tokoh Toga Dan Toma - SultengRaya' <https://sultengraya.com/read/102000/gubernur-sulteng-dorong-program-patujua-melibatkan-tokoh-toga-dan-toma/> [accessed 25 November 2020]."The Governor of Central Sulawesi Encourages the" Patujua "Program to Involve Toga and Toma Figures - Central Sulawesi" <https://sultengraya.com/read/102000/guberneng-sulteng-dorong-program-patujua-melibat-tokoh-toga-dan-toma/> [accessed 25 November 2020].

Central Sulawesi is closely related to the function of toga and toma, namely culture, religion, and parents who still legalize their children to marry Child[44].

Meanwhile, the first effort made by the Province of Central Kalimantan was to issue a circular letter to abolish and prevent Child marriage to protect children and women in the province. As stated by the Governor of Central Kalimantan Sugianto, "I also invite all regents/mayors and vertical agencies to jointly integrate development resources in fulfilling rights and protecting children from acts of exploitation, violence, abuse, and discrimination." As a result, the relevant agencies began to initiate socialization with cooperation from community institutions, government, customary councils, and community leaders with a quantitative evaluation of one to three years[45]. Not only that, the provincial government is doing everything possible to strengthen the family economy. The Governor believes this of Central Kalimantan to reduce the rate of Child marriage. This is because it is considered a process from the affected family economy, the quality of the family economy so that educational supplies can be fulfilled, which ultimately prevents marrying young.[46]

Unlike the case with the implementation implemented by the province of South Kalimantan, which has boosted the family planning program, the provision of population material in the social studies curriculum, the condition of knowledge of Child marriage in school and the 12-year compulsory education program which is strengthened by the provincial government through the South Kalimantan Provincial Education Office[47].

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[44] 'Gubernur Sulteng Dorong Program "Patujua" Melibatkan Tokoh Toga Dan Toma - SultengRaya'."The Governor of Central Sulawesi encourages the" Patujua "program to involve the Toga and Toma figures - Central Sulawesi."

[45] 'Kalteng Tingkatkan Sosialisasi Cegah Pernikahan Dini - ANTARA News Sulawesi Tenggara' <https://sultra.antaranews.com/nasional/berita/778015/kalteng-tingkatkan-sosialisasi-cegah-pernikahan-dini> [accessed 25 November 2020]."Kalteng Increases Socialization to Prevent Child Marriage - ANTARA News Southeast Sulawesi" <https://sultra.antaranews.com/nasional/berita/778015/kalteng-t Enhanced-socialisasi-prevent-perikah-dini> [accessed 25 November 2020].

[46] 'Gubernur Tekan Angka Pernikahan Dini Di Kalteng Dengan Penguatan Perekonomian - PEMERINTAH PROVINSI KALIMANTAN TENGAH' <https://www.kalteng.go.id/berita/read/264/gubernur-tekan-angka-pernikahan-dini-di-kalteng-dengan-penguatan-perekonomian> [accessed 25 November 2020]."The Governor Reduces Child Marriage Rates in Central Kalimantan With Strengthening the Economy -GOVERNMENT OF CENTRAL KALIMANTAN PROVINCE" <https://www.kalteng.go.id/berita/read/264/gubernator-tekan-angka-peredding-dini-di-kalteng- with-strengthening-economy> [accessed 25 November 2020].

[47] 'Wajar 12 Tahun Cegah Pernikahan Dini - ANTARA News Kalimantan Selatan' <https://kalsel.antaranews.com/berita/30254/wajar-12-tahun-cegah-pernikahan-dini>

This was stated by the Regent of Hulu Sungai Tengah Ngadimun. "*Various family planning programs include: Child marriage, can be included in the population material included in the social studies curriculum*." Besides, in 2019, the province of South Kalimantan played a crucial role in carrying out socialization through social and electronic medical and Focus Group Discussions (FGD) in districts/cities with the highest rates of Child marriage such as Tanah Lat, Hulu Sungai Selatan, Banjar, Balangan, Hulu Sungai. North, Hulu Sungai Tengah, Kuala, and Barito.[48]

For this reason, seeing the many efforts that have been made by several regions to implement Law Number 16 of 2019, the author seeks to summarize several stages that have been taken by several provincial governments with areas/villages where Child marriage rates are still high, therefore, the government should promote:

1. The Individual Approach section with a reminder. The Marriage Registration Officer carries out this stage from the Kelurahan/hamlet office to the Religious Affairs Office (KUA), when a community registers a marriage. Still, on this condition, it is not the same as the Marriage Law in Indonesia.
2. The socialization section handles Child marriage, namely by socializing it to the population, namely through community activity, for example, the Prophet's birthday, cooperation and so on, when the village head welcomes the village head by motivating parents, as the child should continue education as high as at least the child must take education at least high school graduates, with children's education will not think about Child marriage which is detrimental to him because of the negative impact of first marriage and according to the provisions of the Marriage Law so that it is free from violations of the law.
3. The recording section at this stage is the recording of the village head government. Many governments find one Child marriage. However, the government is not responsible for the marriage incident.
4. Postponement of marriage certificate means that it is difficult or perhaps the most challenging process. This step was taken so that residents who

[accessed 25 November 2020]."Naturally 12 Years to Prevent Child Marriage - ANTARA News South Kalimantan".

[48] 'Pernikahan Dini Di Kalsel Masih Tinggi, Pemprov: Faktor Budaya Masih Miliki Pengaruh' <https://kalsel.inews.id/berita/pernikahan-dini-di-kalsel-masih-tingi-pemprov-faktor-budaya-masih-miliki-pengaruh> [accessed 25 November 2020]."Child Marriage in South Kalimantan is Still High, Pemprov: Cultural Factors Still Have an Influence" <https://kalsel.inews.id/berita/perikah-dini-di-kalsel-masih-tingi-pemprov-faktor-budaya-masih-miliki -p Influence> [accessed 25 November 2020].

had the intention of getting married Child would be given a deterrent effect. Because, if this event always continues, it does not only require a small fee.[49]

In the end, it changes Law Number 1 of 1974 concerning Marriageso that Law 16 of 2019 concerning Amendments to Law 1 of 1974 was born, which was able to be implemented as well as possible by the provincial government as a form of law enforcement in Indonesia. This is also in line with the efforts of the local government or regional heads to reduce the level of poverty, welfare, and quality of human resources; however, after evaluating the implementation of the law, according to data (PPPA) of the Ministry of Women's Empowerment and Child Protection that Child marriage is increasingly an increase of 24 thousand during the pandemic.[50]

Furthermore, from the Directorate General of Religious Courts' data, there are at least 34,000 requests for convenience were submitted from January to the start of the pandemic until June 2020. 97 percent of the recommendations were realized, with a percentage of 60 percent who proposed for convenience of marriage were children under 18 years. Just as quoted from the CNN page, Chief National Population and Family Planning Agency (BKKBN) Hasto Wardoyo said that "Child marriage is part of a social disaster. Child marriage has many negative consequences, such as maternal mortality, infant mortality, child malnutrition, as well as economic impacts".

Conclusion

That based on Law Number 16 of 2019 concerning Amendments to Law 1 of 1974 regarding "marriage" is an effort to reform the law that can be implemented as best as possible by local governments in making approaches, POKJA, programs, social activities in support of efforts to mitigate and eliminate Child Marriage in Indonesia. The goal is very noble based on the

[49] 'Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)', *Widya Yuridika*, 2.1 (2019), 1 <https://doi.org/10.31328/wy.v2i1.823>.Government factors and roles, "Child Marriage in Indonesia: Factors and Role of Government (Perspective of Law Enforcement and Protection of Children)", Widya Yuridika, 2.1 (2019), 1 <https://doi.org/10.31328/wy.v2i1. 823>.

[50] 'Kasus Pernikahan Dini Meningkat Selama Masa Pandemi' <https://yoursay.suara.com/news/2020/10/21/110151/kasus-pernikahan-dini-meningkat-selama-masa-pandemi> [accessed 25 November 2020].“Child Marriage Cases Increase During the Pandemic Period” <https://yoursay.suara.com/news/2020/10/21/110151/kasus-peredding-dini-men Increase-selama-masa-pandemi> [accessed 25 November 2020] .

principle of Pancasila humanity and the Indonesian people's welfare, so that marriage needs to be eliminated from Indonesian society's habits. Still, these efforts have not been entirely successful in achieving national goals. In the future, it is necessary to take a firm stance from both legislators and local governments to reduce Child marriage to its roots. This is mainly emphasized in planning the formation of sanctions articles for violating the marriage law in order to prevent degradation of the quality of human resources and the safety of the young generation of Indonesians.

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Conflict Between Health Law and Territorial Quarantine Law Regarding the Provision of COVID-19 Vaccine

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Conflict Between Health Law and Territorial Quarantine Law Regarding the Provision of COVID-19 Vaccine

Yazid Bustomi

ABSTRACT. The study objective is to evaluate Child marriage law reform implementation compared to the five regions with the highest Indonesian cases. This research is descriptive using a literature study. The data source consists of primary data consisting of laws. 16 of 2019 and the Decree Number 22 / PUU-XV / 2017 of the Constitutional Court and secondary legal sources from books, websites, journals, theses, and other sources of information that researchers can use can be justified. The data analysis method uses content analysis from its implementation in the form of regional regulations, programs, and other local government activities in implementing legal products regarding Child marriage, which have a significant impact on Indonesian people's structure of life, such as poverty, reduced educational opportunities, reproductive health hazards, risks. The findings from the research reveal that there have been many efforts by local governments in supporting legal reform which are manifested in institutional programs, working groups and community activities as efforts to mitigate and eliminate Child marriage in Indonesia. However, these efforts have not been fully successful; it is necessary to enforce the article on the sanctions on the marriage law to strengthen the law.

KEYWORDS. Implementation, Legal Renewal, Child Marriage

Conflict Between Health Law and Territorial Quarantine Law Regarding the Provision of COVID-19 Vaccine

Yazid Bustomi

Introduction

COVID-19 has been endemic to the world since the beginning of January 2020 and it has been 1 year since this virus has claimed many lives. Until now, more than 2,000,000 people have died from around the world[1]. In Indonesia alone, it has been recorded that more than 20,000 people have died from this virus[2]. Due to the increasing number of deaths from this virus, the government has made various efforts to reduce this death rate and make Indonesia free from the virus. Various ways have been done by the government, such as Large-Scale Social Restrictions in various regions, socialization to remote parts of the country with the help of influencers, to the last resort, namely to bring in an early antidote for this virus in the form of a vaccine. Indonesia imports several types of vaccines such as: Red and White Vaccine, AstraZeneca, China National Pharmaceutical Group Corporation (Sinopharm), Moderna, Pfizer Inc and BioNTech and Sinovac Biotech Ltd[3].

Along with the development of news about vaccines, negative rumors have also emerged about the injection of the vaccine, thus causing public

1 Worldometer, "Coronavirus Cases," Worldometer, 2021.
2 Satgas COVID-19, "Peta Sebaran COVID-19," Covid-19.go, 2021.
3 Indonesia.go.id, "Mengenal 6 Jenis Vaksin Covid-19 Pilihan," INDONESIA.GO.ID, 2020.

interest to take part in proving the vaccine that will be carried out by the government. In preventing this, the government will impose sanctions for those who do not want to be vaccinated for various reasons, through Article 93 of Law Number 6 of 2018 concerning Health Quarantine Article which states, "Everyone who does not comply with the implementation of Health Quarantine as referred to in Article 9 paragraph (1) and / or obstructing the implementation of Health Quarantine, thereby causing a Public Health Emergency to be punished with imprisonment of up to 1 (one) year and / or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah) ".

Article 9 paragraph (1) of Law Number 6 Year 2018 concerning Health Quarantine states, "Everyone is required to comply with the implementation of Health Quarantine". The management of Health quarantine as referred to is contained in Articles 19 - 70. The implementation includes: Health Quarantine at Entrance and Territory, Health Quarantine Implementation at Entrance, Implementation of Health Quarantine in Areas, Large-Scale Social Restrictions, Supervision of Crew, Personnel and Passengers , including vaccines therein. So, it can be said that the nature of giving vaccines, based on Law Number 6 of 2018 concerning Health Quarantine, is mandatory.

However, there are other regulations regarding health, which are contained in Law Number 36 of 2009 concerning Health. The regulation also contains vaccines, which are a provision for health for the public, as contained in Article 38 paragraph (1) and paragraph (2). Regarding the provision of vaccines to the public, the law is regulated in Article 5 paragraph (3) which states, "Every person has the right to independently and responsibly determine the health services that are needed for himself". Thus, based on Law Number 36 Year 2009 concerning Health, the nature of vaccines is not mandatory because vaccines are an independent right.

Through this background, the author will solve the problems faced, so as not to cause confusion next time and provide legal certainty. There is a problem in the form of a conflict of norms between the regulations regarding vaccine administration in Law Number 6 of 2018 concerning Health Quarantine and Law Number 36 of 2009 concerning Health. Based on this description, this research takes the formulation of the problem: how is the power of criminal law in overcoming the refusal to give vaccines to the public? This research is limited to the formulation of the problem and the output of this research will contribute to providing legal certainty regarding the provision of the Covid-19 vaccine to the public.

Method

This type of research is normative juridical law research. The reason for using normative juridical is because there is a conflict between laws and regulations. The collection of legal materials is carried out using the literature study method in accordance with the approach used. This research was conducted using a statutory approach, namely using Law Number 6 of 2018 concerning Health Quarantine, Law Number 36 of 2009 concerning Health and Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Then the conceptual approach, which uses the concept of statutory regulations, emergency situations and punishment which refers to the doctrine and opinions of legal experts. The result of the analysis is an argument to solve the issue at hand [4]. Criminal law research is not only focused on criminal law regulations, but can include research on concepts, theoretical aspects, criminal court decisions, law enforcement institutions and related institutions, and criminal law problems that arise [5].

Health Policy During Covid-19 Outbreaks in Indonesia

Several settings have defined understanding about vaccines. Article 1 number 2 Regulation of the Minister of Health Number 12 of 2017 concerning the Implementation of Immunization, states that "Biological products containing antigens are in the form of dead or alive microorganisms that are weakened, are still intact or part of them, or in the form of microorganism toxins that have been processed into toxoid or protein. recombinants, which are added with other substances, which when given to a person will actively induce specific immunity against certain diseases".

Based on Article 1 point 3 of the Regulation of the Minister of Health Number 23 of 2018 concerning Services and Issuance of International Vaccination Certificates, it states that "Special vaccines are given in the context of creating or actively increasing a person's immunity to a disease, so that if one day they are exposed to the disease, they do not. will be sick or will only experience mild pain and will not be a source of infection".

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[4] Peter Mahmud Marzuki, *Penelitin Hukum*, 12th ed. (Jakarta: KENCANA, 2016).

[5] Yazid Bustomi, "Efektivitas Hukum Pidana Dalam Melindungi Perempuan Korban Kekerasan Seksual Di Era Sekarang Dan Mendatang" 4, no. 1 (2020): 79–91.

Based on the above understanding, it is concluded that with the current situation, vaccines are urgent to be produced and given to the community. With the aim of providing an immune effect to a disease, in this case covid-19. The goal of this vaccine is none other than to create new conditions in the form of life that can coexist with this virus. In the case of the covid-19 vaccine that is experiencing disputes, it is necessary to pay attention to the following:

State Emergency Related to COVID-19

In stating that the state is in a state of emergency, it is necessary to take a normative step as stipulated in Article 12 and Article 22 of the 1945 Constitution. Article 12 states that "the President declares a state of danger, the conditions and consequences of a state of danger are stipulated by law invite". Then Article 22 states that "in matters of urgency forcing the President to establish government regulations in lieu of laws" [6]. Based on these regulations, if a breakdown is carried out, it will be found that there are two categories of state emergencies: First, a state of danger, and Second, a compelling emergency. The two categories have the same meaning as a state emergency, but both have differences in their emphasis, namely the term danger emphasizes its structure (external factors), whereas in terms of urgency, it forces more emphasis on its content (internal factors) [7].

The use of these two articles is very different, namely Article 12 of the 1945 Constitution focuses more on the authority of the President as head of state to save the nation and state from outside interference, while the use of Article 22 of the 1945 Constitution is in the regulatory domain, namely with regard to the President's authority to stipulate a Perppu. This it emphasizes more on the internal aspects of the state in the form of urgent legal needs. force, namely: first, the element of a dangerous threat; second, there is an element of necessity, and third, there is an element of limited time available [8].

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[6] Mohammad Zamroni, "KEKUASAAN PRESIDEN DALAM MENGELUARKAN PERPPU (PRESIDENT'S AUTHORITY TO ISSUE PERPPU)," *Legislasi Indonesia* 12, no. 3 (2018): 1–38.

[7] Calvin Epafroditus Jacob, "TINJAUAN YURIDIS TERHADAP PENETAPAN KEADAAN DARURAT BERDASARKAN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945," *Lex Et Societatis* 6, no. 7 (2019): 60–67.

[8] Reza Fikri Febriansyah, "Eksistensi Dan Prospek Pengaturan Perppu Dalam Sistem Norma Hukum Negara Republik Indonesia," *Legislasi Indonesia* 6, no. 4 (2009): 667–81.

For the enforcement of an emergency must meet the requirements both material requirements and formal requirements. The material requirements are that there must be a new state institution related to the emergency situation and must also be equipped with a new authority to act and the formal requirements are that the new state institution must act based on the prevailing laws and regulations. In the context of the Indonesian state, several formal requirements that must be fulfilled in order to implement an emergency are as follows [9]:

1. The statement or declaration of the entry into force of the emergency must be stated in a certain form, namely by a Presidential Decree, while the material arrangements required in such an emergency are set forth in the form of a Perppu as intended by the 1945 Constitution;
2. The only official who is constitutionally authorized to determine and regulate a state of emergency is the President, not any other official;
3. Perpres (Presidential Decrees) and Perppu as meant above are ratified and signed by the President and promulgated in the state sheets accordingly;
4. The Perppu should clearly define what statutory provisions are overridden by the enactment of the Perppu;
5. The Presidential Regulation in question must clearly define the jurisdiction of the Republic of Indonesia, for example whether the Perppu applies to the entire national territory or only applies to certain areas, such as in certain provinces or in certain regencies;
6. The Perppu and Perpres must also determine with certainty the duration of the emergency. If such restrictions are not affirmed, it means that the Presidential Decree or Perppu is only valid during the DPR trial period until the reopening of the next trial period as referred to in Article 22 of the 1945 Constitution;
7. Immediately after the Perppu is implemented, it must be submitted to the DPR for proper approval. If during the next trial period the DPR does not or has not declared its approval, the Perppu must be declared revoked by the President.

Indonesia has several regulations related to emergencies, including: civil emergency which is regulated in Government Regulation in Lieu of Law Number 23 Year 1959; public health emergency as regulated by Law Number

[9] Risni Ristiawati, "PERTANGGUNGJAWABAN PRESIDEN MENURUT SISTEM KETATANEGARAAN SETELAH PERUBAHAN UUD 1945," *Badamai Law Journal* 3, no. 1 (March 2018): 145, https://doi.org/10.32801/damai.v3i1.5918.

6 of 2018 concerning Health Quarantine; as well as disaster emergencies as regulated by Law Number 24 of 2007 concerning Disaster Management. When related to the current situation, based on Presidential Decree No.11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (COVID-19) Public Health Emergency, the current emergency condition is a public health emergency.

So the reference to the law used is Law Number 6 of 2018 concerning Health Quarantine. In the *a quo* law Article 1 point 2 explains that public health emergencies are public health events of an extraordinary nature characterized by the spread of infectious diseases and / or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food health hazard and has the potential to spread across regions or across countries.

It is further clarified that the health quarantine law is a form of response to public health emergencies described in Article 15 paragraph (1). This will be supported by the assumption that when the government is given great power to issue various policies under the pretext of protecting public health, it is feared that there will be intolerable violations of human rights. Given that in view of international law, human rights limitations are not allowed, unless the limitation mechanism has been legitimized by national law in a clear and generally accepted manner, with reference to the relevant international conventions. For countries that are forced to deviate from their obligations to comply with international conventions, they are obliged to officially announce the existence of threats to the life of their nation [10].

This means that Indonesia has officially determined that it is experiencing an emergency through Presidential Decree No.11 of 2020 concerning the Determination of the Public Health Emergency for Corona Virus Disease 2019 (COVID-19). In an emergency, *non habet legem necessity* principles will apply. This principle implies that in an emergency there is no law, or in other words the law in a country that is experiencing an emergency does not apply [11]. Because this principle applies with the aim of giving the government the flexibility to provide the best action, if it is related

[10] Osgar S Matompo, "PEMBATASAN TERHADAP HAK ASASI MANUSIA DALAM PRESPEKTIF KEADAAN DARURAT," *Jurnal Media Hukum* 21, no. 1 (2014): 58–72.

[11] Yulia Kusuma Wardani and Muhammad Fakih, "PRAKTIK PENERAPAN PERATURAN MENTERI KESEHATAN NOMOR 290 TAHUN 2008 TENTANG PERSETUJUAN TINDAKAN KEDOKTERAN (INFORMED CONSENT) PADA PELAYANAN GAWAT DARURAT DI RUMAH SAKIT," *Jurnal Hukum Replik* 5, no. 2 (August 2018): 112, https://doi.org/10.31000/jhr.v5i2.921.

to the current situation, giving vaccines to the public is mandatory because it is the government's best effort to eliminate Covid-19 from Indonesia. This is also in line with the adigum *salus populi suprema et lex*, which means that people's safety is the highest law [12].

In line with the above, there is a legal principle of *restutio in integrum* which means that the government is obliged to return an emergency to a normal state [13]. To expedite these efforts, based on the principle *of non hebet legem necessity*, in this case the meaning of *legem* is a law which states that the covid-19 vaccine is a right. So that referring to the above principle doctrine, even in the scope of constitutional law it is known as the emergency constitutional law, because Covid-19 is an emergency disease outbreak, the waiver of the law which states that vaccines are a right is justified.

Criminal Sanctions for Refusing COVID-19 Vaccine

In an effort to enforce policies to provide the Covid-19 vaccine to the public, the government made a policy in the form of an administrative law that was given criminal sanctions. The background of the existence of a criminal aspect in administrative legislation is due to the realization of a just and prosperous society as mandated by the Preamble to the 1945 Constitution, it is necessary to have a policy of protecting society [14]. In order for all provisions of state administration to be effective, a law enforcement policy has been developed by functionalizing the aspects of criminal law in administrative regulations so as to give rise to administrative criminal law. This is related to one of the functions of the law, which is to regulate social life and control society in a direction that is considered useful [15].

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[12] Moh Zakaria and Sri Sulistijaningsih, "Tinjauan Hukum Terhadap Pelaksanaan Asimilasi Di Rumah Berdasarkan Keputusan Menteri Hukum Dan Ham Republik Indonesia Nomor M.Hh-19.Pk.01.04.04 Tahun 2020 Dalam Rangka Pencegahan Dan Penanggulangan Covid-19 Bagi Narapidana," *Era Hukum - Jurnal Ilmiah Ilmu Hukum* 18, no. 2 (2020): 156–81.

[13] H. Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Media Hukum* 25, no. 1 (2018): 13, https://doi.org/10.18196/jmh.2018.0107.111-123.

[14] Abid Zamzami, "Pelaksanaan Fungsi Hukum Administrasi Negara Dalam Mewujudkan Pemerintahan Yang Baik," *Yurispruden* 3, no. 2 (June 2020): 200, https://doi.org/10.33474/yur.v3i2.6736.

[15] Henry Donald Lbn. Toruan, "IMPLIKASI HUKUM PEMBERIAN KREDIT BANK MENJADI TINDAK PIDANA KORUPSI (Legal Implications of Bank Loans Turn into Corruption)," *Jurnal Penelitian Hukum De Jure* 16, no. 1 (August 2016): 41, https://doi.org/10.30641/dejure.2016.V16.41-60.

These provisions can be found in existing laws, such as Law Number 6 of 2018 concerning Health Quarantine, Law Number 36 of 2009 concerning Health, and Regional Regulation of DKI Jakarta Province Number 2 of 2020 concerning Management of Corona Virus Disease 2019. This law is a tool to enforce the government's efforts in the smooth implementation of the injection of the Covid-19 vaccine to the public whose purpose is none other than to free Indonesia from the Covid-19 outbreak.

However, if the regulation is broken down, it will be seen that there is a problem with the regulation. Law Number 6 of 2018 concerning Health Quarantine has made it clear that vaccines are an obligation. This statement can be seen in Article 9 paragraph (1) which states "Everyone is obliged to comply with the implementation of Health Quarantine". In the explanation of the article, Article 9 is written quite clearly and there is no other information regarding the sound of this article. Thus, the meaning of Article 9 regarding compliance with administration in this case is that all matters related to health quarantine, be it area restrictions, movement restrictions to vaccine injection, must be obeyed. If there is a violation of this, then there will be sanctions in Article 93 of the *a quo* law which states if it obstructs the implementation of the Health Quarantine and causes a Public Health Emergency to be punished with imprisonment of a maximum of 1 (one) year and / or a maximum fine. a lot of IDR 100,000,000.00 (one hundred million rupiah).

The norm in the article has an alternative cumulative character, where if someone violates the provisions of Article 9, the perpetrator may be punished in the form of a fine and imprisonment. This is of course very excessive considering that the current situation has ruined the economy, and if the sanctions to enforce the regulations are also related to the economy, it is feared that actors who do not have the capacity to fulfill these demands will feel more objections and cause new problems. In addition, the *a quo* law does not further explain that after being given a criminal offense, a person will not be re-impaled to administer the Covid-19 vaccine at a later date. This means that if someone has refused to be vaccinated, then sentenced to punishment, and officers can again force that person to inject the Covid-19 vaccine.

Provisions for vaccine refusal sanctions are also contained in the DKI Jakarta Provincial Regulation Number 2 of 2020 concerning Management of Corona Virus Disease 2019. Article 30 of the *a quo* regulation states, "Everyone who deliberately refuses to receive Covid-19 treatment and / or

vaccination, shall be sentenced to a maximum fine of Rp. 5,000,000.00 (five million rupiah) ". In contrast to the health quarantine law, the norm of sanctions in this regional regulation only charges the perpetrator of rejection with a fine. However, this has also become a polemic because the regulation only applies in the Jakarta area, not all people in that area are able to pay such a large fine. If it is enforced, it is feared that it will cause new problems. In addition, the *a quo* regulation does not further explain that after being convicted of a criminal offense, a person will not be re-subjected to vaccination at a later date. This means that if someone has refused to be vaccinated, then sentenced to a criminal offense, and officials can again force that person to inject the vaccine.

Apart from the two regulations above, there are other regulations regarding the handling of Covid-19 such as Law Number 36 of 2009 concerning Health, Presidential Regulation Number 99 of 2020 concerning Vaccines Procurement and Implementation of Vaccinations in the Context of Combating the 2019 Corona Virus Disease Pandemic (COVID-19), and Perpu Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic, the three regulations also do not include sanctions, either administrative or criminal if they refuse to be vaccinated. But it is a different story at the regional level.

For other regional regulations, until now only the Jakarta Regional Regulation Number 2 of 2020 provides provisions regarding the rejection of the Covid-19 vaccine, and until now in other regions it has not been formed or has not been formed regarding the issue of giving the Covid-19 vaccine - Each region will impose fines only or simultaneously with imprisonment. Of course, these sanctions are also adjusted to the capabilities of each region. However, the regulations at the central level should have provided direction in this regard, so that there is no criminal disparity that creates confusion for anyone and it is very unfortunate that until now there has been no regulation at the central level regarding the Covid-19 Vaccine.

Fortunately, in overcoming this problem, the government will not immediately impose penalties for those who refuse vaccines, the government will continue to make persuasive efforts, socialize and provide direction to the public regarding the provision of the Covid-19 vaccine. This means that it can be said that the use of criminal law in the case of Covid-19 vaccination is indeed used as a last resort or *ultimum remidium* not as a *premium remidium*, so that the authority of the criminal law is strictly maintained and

the government will also focus on persuasive efforts to provide Covid-19 vaccination.

Conclusion

Currently, the provision of Covid-19 vaccination to the public is mandatory and must be done because of an emergency, and the government also has an obligation to return this emergency to its original state in accordance with the principle of *restutio in integrum*. In imposing sanctions for enforcement of Covid-19 vaccination, the government must make regulations from the center regarding the provision of the Covid-19 vaccine so as not to create disparities between regulations at the regional level. Because the current Covid-19 vaccination regulations have different criminal provisions and are prone to causing problems.

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Quote

"The human body has been designed to resist an infinite number of changes and attacks brought about by its environment. The secret of good health lies in successful adjustment to changing stresses on the body."

Harry J. Johnson

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Determination of the Jurisdiction of Fisheries Crimes as Transnational Organized Crime

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Determination of the Jurisdiction of Fisheries Crime as Transnational Organized Crime

Sulaiman Rasyid

ABSTRACT. The abundance of fisheries resources in Indonesian waters has made Indonesia a target of crime in the field of fisheries, this has an impact on the welfare and prosperity of the Indonesian people, especially local fishermen, the government continues to push this fisheries crime to be recognized as a type of organized transnational crime. This study aims to find out and analyze how Fisheries Crime Arrangements and the Determination of Fisheries Crime Jurisdictions are based on the provisions of organized transnational crime conventions. The research method used in this research is Normative Law Research with a legal approach, conceptual approach. And use the theory of determining the location of the crime (Locus delicti) in determining the jurisdiction of fisheries crimes. Research results show that (1) Regulations related to Fisheries Crimes both materially and formally in Indonesian law have been regulated according to the perspective of organized transnational crime, however, current fisheries laws do not cover all existing fisheries crimes. (2) in the case of determining the jurisdiction of fisheries crimes occurring in the territory of a country involving several state parties, the States parties must establish a joint investigation body. The conclusion of this research is that the laws and regulations owned by Indonesia related to Fisheries Crimes do not cover all aspects of crimes occurring in the field of fisheries and related to the determination of the jurisdiction of fisheries crimes the Indonesian government has implemented its jurisdiction based on the provisions of transnational organized crime conventions by cooperating with state parties the other.

KEYWORDS. Fisheries Crimes, Indonesia Water Territory, Organized Transnational Crimes

Determination of the Jurisdiction of Fisheries Crime as Transnational Organized Crime

Sulaiman Rasyid

Introduction

Indonesia as an archipelago is one of the countries with the largest and most islands in the world consisting of 17,508 islands with a coastline of 81,000 Km and an area of about 3.1 million km² (0.3 million km² of territorial waters and 2.8 million km² of archipelago waters) or 62% of its territorial area. A wide and rich marine species and fishery potential, where fishing potential in the field of fishing is 6.4 million tons / year, general fishery potential is 305,650 tons / year and marine potential is approximately 4 billion USD / year. Capture fisheries products in Indonesia in 2007 were 4,924,430 tons[1]. The importance of the sea in international relations has also led to the importance of the meaning of international sea law, the purpose of this law is to regulate the dual use of the sea, namely as a highway and source of wealth and power. Because the sea can only be used with special vehicles, namely ships, the sea must also determine the status of these ships. In addition, the law of the sea must also regulate competition between countries in seeking and using the wealth provided by the sea, especially between developed and developing countries[2]. Indonesia's potential is an opportunity

[1] Supriadi & Alimudin, *Hukum Perikanan di Indonesia*, Jakarta: Sinar Grafika, 2012, pp. 1-2.

[2] Boer Mauna, *Hukum Internasional Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*. Bandung: P.T Alumni., 2013, pp. 307-308.

and economic potential that can be utilized for the advancement of the Indonesian economy, as well as the backbone of national development[3]. The abundance of fishery resources in Indonesian marine waters has apparently attracted the attention of foreign parties to also be able to enjoy it illegally through illegal fishing activities[4]. According to Divera Wicaksono, as quoted by Lambok Silalahi, illegal fishing is using a fake fishing license (SIPI), not equipped with SIPI, the contents of the permit document are not in accordance with the ship and the type of fishing gear, fishing with prohibited types and sizes[5].

Whereas in reality, fisheries crime also has links to other transnational crimes in the context of UNTOC. The territory of Indonesian fisheries law covers national waters, ranging from territorial sea, inland sea, sea of islands to the sea of the Indonesian Exclusive Economic Zone (EEZ). In the ZEEI region, Indonesia has sovereign rights which include management of fish resources. Indonesian national law extends to regulations in this region, the Government of Indonesia has the right to regulate the management of fish resources, including matters of an administrative nature, for example regarding licensing. But Indonesia only has sovereign rights in the ZEEI region, so the application of national law in this region also needs to pay attention to applicable international law[6].

Another problem arises when fisheries crimes that occur in the high seas require law enforcement officials to carefully determine the application of laws that can ensnare the perpetrators, because this is related to foreign nationals who commit crimes, and the Indonesian government must also comply with international legal regulations. applicable. Sovereignty to regulate everything that happens in the territorial territory is an authority that is owned by each country. This authority includes: determining the provisions of the Law and enforcing its national Law on all things that harm the country, this authority is called National jurisdiction in International Law. Various laws and regulations owned by Indonesia related to the practice of

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[3] Belardo Prasetya Mega Jaya, *Tindak Penegakan Hukum Terhadap Kapal Asing Yang Melakukan Illegal Fishing di Wilayah Pengelolaan Perikanan Indonesia.* Skripsi. Fakultas Hukum, Universitas Lampung, 2016, p. 2.

[4] Simela Victor Muhamad, Illegal Fishing Di Perairan Indonesia: Permasalahan dan Upaya Penanganannya Secara Bilateral Di Kawasan. *Jurnal Politica*. Volume 3, (1), 2012, pp. 59-85.

[5] Tunggal, Arif Johan, *Pengantar Hukum Laut*, Jakarta: Harvarindo., 2013, p. 25.

[6] Marhaeni Ria Siombo, *Hukum Perikanan Nasional dan* Internasional. Jakarta: PT. Gramedia Pustaka Utama, 2010, p. 24.

fisheries crime must be reiterated criminal penalties bearing in mind that many foreign vessels caught in Indonesian waters are taking the results of our marine resources, considering that Indonesia is one of the countries with stable waters. supported by the strengthening of national law in relation to eradicating crime in fishing which not only harms Indonesia but also the international community. Cooperation from all parties is needed in overcoming the crime of the marriage. Considering that the perpetrators of fishery crimes in carrying out their mode of operation are using stateless vessels, using fake flags and falsifying ship documents and crew members who make it difficult for law enforcement officials to inspect.

In the Geneva convention of 1985 governing sovereignty and state jurisdiction at sea, the regulation includes rules on territorial sea, additional zones and zones of fisheries and conservation of biological resources in the high seas, the convention is considered to be still relevant to regulate all human activities at sea[7]. Based on the above problems, it shows that Fisheries Crimes need serious handling and cooperation from various countries to eradicate these fisheries crimes together, so that comprehensive regulation and appropriate jurisdiction are needed in combating Fisheries Crimes, this is a priority because it makes it easier law enforcement for perpetrators and also facilitate law enforcement officials to coordinate with each other in overcoming this problem. Thus the author takes the title of the study, namely "Determination Of The Jurisdiction Of Fisheries Crimes as Transnational Organized Crime".

Problem Formulations in this Research are: (1). What is the regulation of fisheries crime in Indonesian waters in the perspective of organized transnational crime? (2). How is the determination of the jurisdiction of fisheries crimes based on the United Nations Convention Against Transnational Organized Crime (UNTOC) 2000?

The objectives of this research are: (1) Explain the regulation of fisheries crime in national law and international law that can be used to eradicate fisheries crimes that occur in Indonesian waters. (2). Explain the procedure for determining the jurisdiction of Fisheries Crimes Based on the "United Nations Convention Against Transnational Organized Crime" Convention. in order to eradicate fishing crimes that occur in the territorial waters of Indonesia.

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[7] Mochtar Kusumaatmadja, and Etty R. Agoes, *Pengantar Hukum Internasional*, Bandung: P.T. Alumni, 2015, p.170.

This paper analyzes the fisheries crimes in limitation on how to determine this case as transnational organized crime? Therefore, author used the theory of occurrence of crime (*Locus Delicti*). Provisions regarding the location of the crime are needed to determine whether the Indonesian Criminal Law can be applied and also which court is competent to try the person who committed the crime. To prosecute someone in court related to a crime, one must pay attention to the time and place and the occurrence of the crime[8]. To determine the locus delicti there are 3 (three) theories, namely :

1. Theory of Material Action (physical deeds)
   In this theory, which is considered as a place where a crime occurs is the place where the act was committed.
2. Instrument Theory (tool)
   In this theory the place of a crime is the place where this tool works and gives rise to the consequences of a crime
3. Theory of Effect
   In this theory, which is considered a place where a crime occurs is where the consequences of the crime occur.

Method

The research is Normative Legal Research, with the Legislative Research Approach, Conceptual Approach, and using the theory of determining the location of crime (Locus delicti) in determining the jurisdiction of fisheries crimes. Data collection techniques that are processed in this research are using literature study techniques, namely by collecting various statutory provisions, documentation, collecting literature, and accessing the internet relating to problems in the scope of international law[9]. The data analysis technique used in this study is qualitative analysis, which describes the data in quality in the form of regular, concise, logical, non-overlapping, and effective sentences, so as to facilitate data interpretation and analysis[10].

Data validity method used in this research is triangulation of data sources, triangulation is defined as data collection techniques and data

[8] Sudarto, *Hukum Pidana I Edisi Revisi*. Semarang: Yayasan Sudarto Fakultas Hukum UNDIP Semarang, 2009, pp. 60-62

[9] Soerjono Soekanto, & Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: PT Raja Grafindo Persada, 2009, p. 41.

[10] Muhammad, Abdulkadir, *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, 2004, p. 127.

sources that already exist. If the researcher collects data with triangulation, then the researcher actually collects the data and at the same time tests the credibility of the data, that is checking the credibility of the data with various data collection techniques and various data sources[11].

Regulation of Fisheries Crimes in the Perspective of Organized Transnational Crime

A. Regulation of Fisheries Crimes in the Perspective of Organized Transnational Crime

Indonesia has ratified the United Nations Convention Against Transnational Organized Crime as stipulated in the Law of the Republic of Indonesia Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime and the United Nations Convention on the Law of the Sea contained in Republican Law Indonesia Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea, so that Indonesia as a state party has the authority to take action against the perpetrators of fisheries crimes by implementing national legal jurisdiction in the Indonesian jurisdiction. Seeing the condition of the waters and biodiversity Indonesia is one the country which is the target of crime in the field of fisheries, this has an impact on the welfare and prosperity of the people of Indonesia. The large number of fisheries crimes committed in the territorial waters of Indonesia cannot be separated from the weak supervision of law enforcement officers and the legal system in Indonesia. fisheries crimes also have links to other transnational crimes in the UNTOC context. The territory of Indonesian fisheries law covers national waters, ranging from territorial sea, inland sea, sea of islands to the sea of the Indonesian Exclusive Economic Zone (EEZ). In the ZEEI region, Indonesia has sovereign rights which include management of fish resources. Indonesian national law extends to regulations in this region, the Government of Indonesia has the right to regulate the management of fish resources, including matters of an administrative nature, for example regarding licensing. but Indonesia only has sovereign rights in the ZEEI region, so the application of national law in this region also needs to pay attention to applicable international law.

[11] Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R & D*. Bandung: Alfabeta, 2018, p. 241.

Discussing the regulation of crime in the field of fisheries, especially in the perspective of organized transnational crime, the main study is the United Nations Conventions Against Transnational Organized Crime (UNTOC) and Law Number 45 of 2009 Concerning Fisheries, but also not limited to statutory regulations the other. However, seeing the chosen topic related to organized transnational crime that occurred in the field of fisheries, it is clear that the study in this study uses that law namely the United Nations Conventions Against Transnational Organized Crime (UNTOC) of 2000 and Law Number 31 of 2004 Jo Number 45 of 2009 concerning fisheries. The reason for the use of these laws is to see how the regulation related to organized transnational crime, whether this fishery crime has fulfilled the elements that can make this fishery crime categorized as an organized transnational crime and see how the regulation of law number 45 of 2009 concerning This fishery is related to fishery crime.

B. Criteria of Transnational Organized Crime

This convention related to organized transnational crime aims to promote cooperation to prevent and eradicate transnational organized crime effectively, in this convention also explained that organized criminal group "*means a structured group consisting of three or more people, formed in one period time and act in an integrated manner with the aim of committing one serious or more serious offense established in accordance with this Convention, to obtain, directly or indirectly, financial or other material benefits* ". Explanation of serious crime here is a crime that is punishable by imprisonment of at least 4 years or a more severe sentence. In Article 3 paragraph (2) the United Nations Convention Against Transnational Organized Crime explains that a crime is Transnational if it meets the following elements[12] :

a. Conducted in more than one country
b. It is carried out in one country, but the preparation, instruction and control are carried out in another country.
c. It is carried out in one country but involves a group of organized criminals who are involved in criminal activities in more than one country.
d. Performed in one country but has a major effect in another.

[12] Article 3 paragraph (2) *United Nations Convention Against Transnational Organized Crime* (*UNTOC*) of 2000.

Arrangement of National Legislation which is relevant to the elements of Organized Transnational Crimes related to Fisheries Crime

Article in the National Laws relevant to the Criminal Elements of Fisheries based on the United Nations Convention Against Transnational Organized Crime:

a. Conducted in more than one country

   These fisheries crimes are carried out in various places in different regions of the country to complicate the tracking of these fish theft crimes, fisheries crimes meet the first element that is "committed in more than one country" in the category of transnational crime because the crime is committed in more than one country with a network criminals from various countries. The following are the Regulations that can meet the first elements of organized transnational crime related to Fisheries Crimes:

   1. Article 85 of Law Number 45 Year 2009 Concerning Fisheries: using fishing gear that is prohibited from illegal fishing,
   2. Article 84 Paragraph (1) of Law Number 31 Year 2004 Concerning Fisheries: the use of hazardous chemicals.
   3. Article 86 Paragraph (1) of Law Number 31 Year 2004 Concerning Fisheries: Pollution / Destruction of Fish Resources
   4. Article 88 of Law Number 31 Year 2004 Concerning Fisheries: Issuing / importing, circulating fish outside the Indonesian fisheries management area.

b. Conducted in one country but an important part of the preparation, planning, direction or control activities occur in another country

   1. Article 92 of Law Number 31 Year 2004 concerning Fisheries: must have a SIUP (fishery business permit)
   2. Article 84 Paragraphs (2), (3), (4) of Law Number 31 Year 2004 Concerning Fisheries: involvement of the Captain, crew, ship owner, fishing company owner who catches fish with hazardous chemicals
   3. Article 93 of Law Number 45 Year 2009 Concerning Fisheries: must have SIPI (Fishing License)
   4. Article 94 of Law Number 31 Year 2004 Concerning Fisheries: must have a SIKPI (Permit for fishing vessels)
   5. Article 94 A of Law Number 45 Year 2009 Concerning Fisheries: Falsification of documents (SIUP, SIPI and SIKPI)

6. Article 103 of Law Number 45 Year 2009 Concerning Fisheries: criminal offenses committed by corporations demands and sanctions plus 1/3 of the sentences handed down.

c. It is carried out in one country but involves a group of organized criminals who are involved in criminal activities in more than one country
   1. Article 22 of the Minister of Maritime Affairs and Fisheries Regulation of the Republic of Indonesia Number 42 PERMEN-KP / 2016: regulates the sea work agreement for ship crews, and the obligation to fulfill the basic rights of fishing companies for ship crews (Health, decent salary, work according appropriate time and effort) and prohibitions on engaging in transnational organized crime activities for the crew
   2. Article 70 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.30 / MEN / 2012: Illegal Transshipment

d. Performed in one country but has a major effect in another
   1. Article 12 Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 42 / PERMEN-KP / 2015 Regarding Vessel Monitoring System: Regarding Vessel Monitoring System the obligation to install vessel transmitter equipment
   2. Article 3 Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 7 of 2019: obligation to install and activate AIS (Automatic Identification System), Administrative Sanctions
   3. Article 9 Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 7 of 2019: Administrative Sanctions if the vessel transmitter is not activated when sailing.
   4. Article 70 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.30 / MEN / 2012: Illegal Trans-shipment.

Determination of Fisheries Crime Jurisdiction in the Indonesian Water Territory

A. Determination of Fisheries Crime Jurisdiction in the Indonesian Water Territory

The application of Jurisdiction becomes a matter of International Law if in a case found a foreign element / is related to other countries. In the case of the case: Thailand-flagged Silver Sea 2 Vessels carrying out illegal trans-shipment activities in Papua New Guinea from catches made in Indonesian territorial waters. This case concerns 3 (three) countries, namely Thailand as a flagship country, Papua New Guinea whose territory is used as an illegal trans-shipment place and Indonesia whose territory is used by the perpetrators to catch their fish. All countries claim to have jurisdiction over the perpetrators of fisheries crimes, but there is only one State that can prosecute perpetrators because a crime cannot be tried twice with the same case. The country where the perpetrator was arrested has the greatest opportunity to apply his jurisdiction, however it is not certain that the country will apply his jurisdiction. Because the perpetrators were arrested in the Indonesian territorial waters and the crimes committed were regulated in a National Law, the Indonesian Government must try them.

In implementing jurisdiction, the Government of Indonesia must pay attention to the location of the crime (locus delicti), Locus delicti is the location or place, that is the enactment of criminal law in terms of the location of the crime. The determination of this locus delicti serves to determine whether Indonesian criminal law applies to the criminal act or not, determine which court has the authority to try the case and as an absolute requirement for the indictment of the indictment.

To determine the location of a crime (locus delicti) there are 3 (three) theories, namely :

b. Theory of Material Action
   According to this theory, the locus delicti is the place where the crime was committed.
c. Instrument Theory (tool)
   According to this theory, the locus delicti must be the place where the crime occurred.

d. Theory of Effect

According to this theory, what must be / is considered as a place where a crime (locus delicti) is where the consequences of the crime occur.

The Unitary State of the Republic of Indonesia as an archipelago nation characterized by the archipelago has sovereignty over its territory and has sovereign rights outside its sovereign territory and other authorities, to be managed and utilized as much as possible for the welfare and prosperity of the Indonesian people. Article 1 paragraph (3) of the Law of the Republic of Indonesia Number 43 Year 2008 states that: Jurisdiction Region is an area outside the territory of the State consisting of: Exclusive Economic Zones, Continental Shelf, and Additional Zones where the state has sovereign rights and authority certain other as regulated in statutory regulations and International Law. Regarding the authority to adjudicate related to fisheries crimes, In Article 71 A of Law Number 45 Year 2009 Concerning amendment to Law Number 31 of 2004 concerning Fisheries it is explained that the Fisheries Court has the authority to examine, try and decide cases of criminal acts in the fishery sector that occurred in the territory of the Republic of Indonesia Fisheries Management, both conducted by Indonesian citizens and foreign nationals. The Fisheries Court here is a special court within the scope of the General Judiciary which is domiciled in the District Court.

Vessels that enter the territorial waters of a country, then the state of the ship is under the jurisdiction of the country concerned. In fact the foreign ship itself has an expanded jurisdiction or what is commonly called an extra jurisdiction that is fully in force on the ship itself. However, with the entry of ships into a country's territory, namely in ports and in inland waters, the extra-territorial jurisdiction owned by a foreign ship has changed into pseudo jurisdiction or known as "quasi-territorial". With the entry of a foreign ship into the inland waters of a country or a port of a country, then two jurisdictions conflicting with their position, namely the coastal state has full territorial jurisdiction while the flag state of the ship has a territorial quasi jurisdiction. Thus, jurisdiction in inland waters and in ports, the highest authority of that authority lies with the coastal states. The basic consideration is that the position of the coastal state is stronger because it can apply the law. State flag jurisdiction or quasi-territorial jurisdiction owned by foreign vessels due to the application of the extra-territorial principle can be applied to the following conditions: 1) Entry of ships in inland waters due to an

emergency (entry in distress), 2) Criminal acts constitute disciplinary violations[13].

Determination of this jurisdiction becomes important when this transnational organized crime that has a broad dimension with the area of crime operations covering various countries that have an impact on the two countries or more allows these countries where crime occurs can apply the jurisdiction of their respective countries. However, in the process, there are often disputes over the authority to adjudicate the perpetrators of these countries. In UNTOC 2000 and UNCLOS in 1982, it was arranged about the resolution of the disputed authority issues.

In determining the jurisdiction of a country's authority the rule of law is needed to regulate it specifically for crimes with transnational or cross-border dimensions, Indonesia has ratified the United Nations Conventions Against Transnational Organized Crime of 2000 which is then contained in Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime (United Nations Convention Against Organized Transnational Crime) so that Indonesia has the authority to prosecute transnational crime perpetrators in its jurisdiction. Indonesia has also ratified the 1982 United Nations Convention on the Law of the Sea as stipulated in Law Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (this convention of the United Nations Concerning the Law of the Sea), this makes Indonesia which is a state party may apply national law in its jurisdiction.

A. Determination of Jurisdiction Based on the United Nations Convention on Transnational Organized Crime (UNTOC) 2000

Transnational crime is a global issue that is a challenge for every country, especially with the increase in the quality and quantity of crime. The increasingly complex challenges can only be overcome by increasing diplomatic efforts to form cooperation between countries, especially in the field of law. Forming legal cooperation with other countries will increase the range of international criminal law capabilities. Legal cooperation is the most effective effort to eradicate transnational crime. The importance of establishing legal cooperation is reflected in multilateral legal instruments

[13] Yasin Tasyrif, Peraturan Perluasann Yurisdiksi Pidana Di Suatu Wilayah Negara. *Jurnal Hukum & Pembangunan*. Volume 30 (1), 2000, pp. 7-19.

that always mandate each country to establish cooperation with other countries in the prevention and eradication of transnational crime, such as the United Nations Convention on Transnational Organized Crimes (UNTOC) and the United Nations Convention Against Corruption (UNCAC).

The Indonesian sea which is rich in fish resources, is a target for fisheries criminals, the lack of supervision from law enforcement apparatuses triggers the rise of illegal fishing activities in Indonesia. Cooperation from all parties is needed in overcoming the crime of the marriage. Considering that the perpetrators of fishing crimes in carrying out their mode of operation are using stateless vessels, using fake flag flags and falsifying ship documents and crew members who make it difficult for law enforcement officials to inspect. Each state has sovereignty to regulate everything that happens in its territorial territory. As an implementation of sovereignty, the State has the authority to establish legal provisions and to enforce or determine its national legal provisions for events, wealth and deeds. This authority is referred to as State jurisdiction in international law. Various laws and regulations that are owned by Indonesia related to fisheries crime practices must be reiterated criminal sanctions given the large number of foreign vessels caught in Indonesian waters are taking the results of our marine wealth, Considering Indonesia is one of the countries with vast territorial waters, this must supported by the strengthening of national law in relation to eradicating crime in fishing which not only harms Indonesia but also the international community. Cooperation from all parties is needed in overcoming the crime of the marriage.

Determination of this jurisdiction becomes important when this transnational organized crime that has a broad dimension with the area of crime operations covering various countries that have an impact on the two countries or more allows these countries where crime occurs can apply the jurisdiction of their respective countries. However, in the process, there are often disputes over the authority to adjudicate the perpetrators of these countries, in Article 4 of the United Nations Convention Against Transnational Organized Crime (UNTOC), it is explained about the protection of the sovereignty of a state party in upholding its legal authority in the sovereign territory of a state party. Article 4 contains[14]:

[14] Article 4 *United Nations Convention Against Transnational Organized Crime* (*UNTOC*) of 2000.

1. States parties must carry out their obligations based on the principles of equal sovereignty and territorial integrity of the countries and the principle of not intervening in the internal problems of other countries.
2. Nothing in this convention grants the right to a state party to take action within the territory of the other state to exercise jurisdiction and carry out functions that are only held by competent authorities of the other state under its national law.

In this article it is explained that, for states parties that have ratified the United Nations Convention Against Transnational Organized Crime (UNTOC) must carry out their obligations to enhance international cooperation in the prevention and eradication of organized transnational crime, state parties must also comply with the principle of sovereignty in carrying out their obligations , and does not interfere in the internal affairs of other countries, in paragraph two also explained that in this convention expressly states that the other party does not have the right to take action or apply jurisdiction in the territory of the other party.

In Article 4 governing the protection of the sovereignty of a state party in implementing its jurisdiction, Article 15 of the UNTOC also explains the arrangement of the application of the state party's jurisdiction which may be required in connection with organized transnational crime.

Pursuant to Article 15, it can be understood that a state party may enforce its jurisdiction over this organized transnational crime if the crime was committed by a citizen of that state and the crime was committed by a citizen of the country of the party concerned or by a person who does not have a nationality. usually residing within the territory of the country concerned. It was also explained that the state party could enforce its jurisdiction. Related to the settlement of authority disputes that occur in handling transnational organized crime, has been regulated in the provisions of Article 35 of the United Nations Convention Against Transnational Organized Crime (UNTOC) of 2000, as follows[15] :

1. States Parties shall endeavor to resolve disputes concerning the interpretation or implementation of this Convention through negotiations.
2. Any dispute between two or more States Parties concerning the interpretation or implementation of this Convention which cannot be resolved through negotiations within a reasonable time shall, at the request of one of the States Parties, be settled through arbitration. If, 6 (six) months

[15] Article 35 of the *United Nations Convention Against Transnational Organized Crime* (UNTOC) of 2000

after the date of the request for arbitration, the States Parties cannot agree on the arbitration organization, one of the States Parties may submit a dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval or accession to this Convention, declare that it does not bind itself to paragraph (2) of this Article. (3) This other State Party shall not be bound by paragraph (2) of this Article for any State Party making such conditions.
4. Each State Party which makes the conditions in accordance with paragraph (3) of this Article may at any time withdraw the conditions through notification to the Secretary-General of the United Nations.

However, based on the Law of the Republic of Indonesia Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized crime, the Government of the Republic of Indonesia is not bound by the provisions of Article 35 paragraph (2) and holds that if there is a dispute due to differences in interpretation and application of the contents of the convention, which is not (as stipulated in paragraph (1) of this Article, can appoint the International Court of Justice only based on the agreement of the parties to the dispute.

Transnational organized crime often takes place in a broad dimension involving two or more countries where these transnational crimes occur, so good communication between countries is needed so that there is no dispute over authority to try perpetrators of transnational organized crime, in the case of the investigation process , prosecution or litigation Article 19 of the United Nations Convention Against Transnational Organized crime (UNTOC) of 2000 requires States parties to consider signing bilateral or multilateral agreements to establish joint investigative bodies in the case of investigation, prosecution or litigation related to crimes organized transnational events that occur in one or more countries, in Article 19 of UNTOC 2000 it is stated that[16] :

> "States Parties shall consider the signing of bilateral or multilateral agreements or arrangements relating to matters which are the subject of investigation, prosecution or litigation in one or more States, the relevant competent bodies may form bodies joint investigation agency. In the absence of agreement or arrangement,

[16] Article 19 *United Nations Convention Against Transnational Organized Crime* (*UNTOC*) of 2000

> joint investigations can be carried out on a case-by-case basis. The States Parties involved must ensure that the sovereignty of the State Party whose territory will be used for investigation activities is fully respected ".

In connection with fisheries crimes that occur in Indonesian territorial waters or that involve the jurisdiction of one or more than two countries under the United Nations Convention Against Transnational Organized Crime (UNTOC) of 2000 provides an explanation of the obligation for States parties to consider the signing of bilateral agreements or multilateral or arrangements in relation to matters that are subject to investigation, prosecution and litigation, and competent bodies may form joint investigative bodies relating to the handling of organized transnational crime, in the event that an agreement or arrangement regarding joint investigation is not reached may also be carried out on a case-by-case basis, the States Parties involved must ensure that the sovereignty of the State Party whose territory will be used for investigation activities is fully respected.

B. Determination of Jurisdiction Based on the United Nations Convention on the Law of the Sea (UNCLOS) 1982

In UNCLOS also regulates the territorial authority of coastal states in applying their laws, Article 2 UNCLOS explains the status of the territorial sea law, air space above the territorial sea and the layer of land beneath, which reads[17]:

1. The sovereignty of a coastal State, other than its land area and inland waters, and in the case of an archipelagic State with its archipelagic waters, also includes a sea lane bordering it which is called a territorial sea.
2. This sovereignty includes the air space above the sea and the seabed and the subsoil below.
3. Sovereignty over the territorial sea is carried out subject to this Convention and other regulations of international law.

In the explanation of Article 2 it can be understood that coastal states in their territorial waters (inland waters, archipelagic waters and territorial seas) can apply all of their legal regulations in the event of a crime in the

[17] Article 2 *United Nations Convention on the Law of the Sea* (*UNCLOS*) of 1982

jurisdiction of the coastal state, including the application of criminal law against perpetrators of fisheries crimes. But to apply the criminal jurisdiction previously must meet the provisions in Article 27 paragraph (1) of UNCLOS which regulates criminal jurisdiction regarding law enforcement against foreign vessels committing criminal offenses and if it does not meet the provisions in Article 27 paragraph (1) UNCLOS then coastal states cannot enforce their jurisdiction.

The following is the sound of Article 27 of UNCLOS governing Criminal Jurisdiction on Foreign Vessels[18] that Criminal jurisdiction of a coastal State cannot be carried out on a foreign ship crossing the territorial sea to arrest anyone or to conduct an investigation which is related to any crime committed on the ship during such passage, except in the following cases:

a. if the consequences of the crime are felt in the coastal States;
b. if the crime is of a kind that disturbs the peace of the State or territorial sea order;
c. if the local authorities have requested assistance from the ship's captain by the diplomatic representative or consular official of the flag State or
d. if such actions are needed to eliminate illicit trafficking of narcotics or psychotropic substances.

There are several important points for a coastal country to be able to apply its criminal jurisdiction in the territory of the coastal country concerned, which is the result of the crime committed that has a direct impact on the territory of the coastal country, this type of crime can disturb peace and disturb the stability of the security of the coastal state, the application of this criminal jurisdiction can be applied if requested by the local authorities or by the ship captain or diplomatic representative or consular officials of the flag state and the application of this jurisdiction can be applied if it relates to the eradication of drug trafficking crimes or psychotropic material.

The basis for resolving disputes concerning the granting of rights and jurisdiction in the Exclusive Economic Zone in UNCLOS is regulated in Article 59 which reads[19]:

> "In the event that this Convention does not give rights or jurisdiction to a coastal State or to another State in an exclusive economic zone, and a dispute arises between the interests of the coast State and another State or any other State, the dispute must

[18] Article 27 *United Nations Convention on the Law of the Sea* (*UNCLOS*) of 1982
[19] Article 59 *United Nations Convention on the Law of the Sea* (*UNCLOS*) Year 1982

> be settled on the basis of justice and with consideration of all relevant circumstances, taking into account the respective interests involved for the parties as well as for the international community as a whole ".

If in the application of the criminal jurisdiction a dispute occurs between the coastal state and the flag state of the ship or any other State, the process of resolving the dispute must be carried out peacefully, as stated in Article 279 of UNCLOS Concerning the obligation to settle the Dispute peacefully. Mentioned that[20] :

> "States Parties must resolve any dispute between them concerning the interpretation or application of this Convention in a peaceful manner in accordance with Article 2 paragraph 3 of the Charter of the United Nations and, for this purpose, must seek resolution in the manner indicated in Article 33 paragraph 1 of the Charter the".

Coastal countries are not justified to take any steps on a foreign ship crossing the territorial sea to arrest a person or conduct any investigations related to any crime committed before the ship enters the territorial sea, if the ship is on its way from a foreign port, only crossing territorial sea without entering inland waters.

In Article 73 of UNCLOS, there are several important points that explain the authority of coastal states in implementing their jurisdiction, namely[21] :

1. Coast states can exercise their sovereign rights to explore, exploit, preserve and manage the conservation of living natural resources in the Exclusive Economic Zone, and law enforcement.
2. The captured ships and their crew must be released immediately after being given a proper security deposit.
3. Coastal countries may not impose a sentence of deprivation of liberty (Prison), unless there is an agreement governing in advance.
4. In the event of arrest and detention, it must immediately notify the flag state through the appropriate channels.

Based on this information, only coastal countries can apply their jurisdiction in the event of a criminal offense of Fisheries in the Exclusive Economic Zone whether committed by Indonesian Citizens (Citizens) or

[20] Article 279 *United Nations Convention on the Law of the Sea* (*UNCLOS*) Year 1982
[21] Article 73 *United Nations Convention on the Law of the Sea* (*UNCLOS*) Year 1982

Foreign Citizens (Foreigners), explained also that there are no rules prohibiting coastal states to seizing and confiscating vessels resulting from fisheries crimes that occurred in the Indonesian Exclusive Economic Zone, if arrest and detention of perpetrators are committed, coastal states must immediately notify the flag states through diplomacy between the two countries in terms of mutual coordination and cooperation.

Conclusion

Based on the description outlined in the above discussion, conclusions can be drawn from the issues raised related to the Regulation of Fisheries Crimes in the territorial waters of Indonesia based on the Organized Perspective of Transnational Crime and Criminal Jurisdiction Determination based on the United Nations Against Transnational Organized Crime (UNTOC) 2000 which has been ratified through Law Number 5 of 2009, are the Arrangement of Fisheries Crimes in the Indonesian Water Territory from the perspective of organized transnational crime both materially and formally criminal has been regulated in Law Number 31 of 2004 Jo. Law Number 45 of 2009 Concerning Fisheries, Indonesia has ratified the UNTOC Convention through Law Number 5 of 2009 which can be used as a guideline in combating transnational organized crime. This Crime of Fisheries meets the element to be called an organized transnational crime but in its regulation the Fisheries Act currently cannot accommodate all types of Fisheries Crimes. It is also concluded that in terms of determining the Jurisdiction of Fisheries Crimes occurring in the Indonesian Water Territory, the Government of Indonesia has ratified the UNTOC Convention through Law Number 5 of 2009 which serves as a guideline for combating organized transnational crime and UNCLOS Convention through Law Number 17 of 1985, Application of Jurisdiction this becomes important when there is a case relating to another State, this determination serves to determine which Court has the right to hear related to the case and determine whether Indonesian criminal law applies to the criminal act.

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Quote

Environmental degradation, overpopulation, refugees, narcotics, terrorism, world crime movements, and organized crime are worldwide problems that don't stop at a nation’s borders.

Warren Christopher

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