



Policy, Law, Notary and Regulatory Issues (POLRI) is an international journal established by Transpublika Research Center. **POLRI** is an **open access, double peer-reviewed e-journal** which aims to offer an international scientific platform for national as well as cross-border legal research. The materials published include major academic papers dealing critically with various aspects and field of laws as well as shorter papers such as recently published book review and notes on topical issues of law. Furthermore, POLRI also aims to publish new work of the highest calibre across the full range of legal scholarship, which includes but not limited to works in the law and history, legal philosophy, sociology of law, Socio-legal studies, International Law, Environmental Law, Criminal Law, Private Law, Islamic Law, Agrarian Law, Administrative Law, Criminal Procedural Law, Commercial Law, Constitutional Law, Human Rights Law, Civil Procedural Law and Adat Law. All papers submitted to this journal should be written either in English or Indonesian. The goal of **POLRI Journal** is to bring the highest quality research to the widest possible audience. This Journal has **1 volume with 4 issues per year (January, April, July, October)**.

EDITOR IN CHIEF

Edi Ribut Harwanto (Universitas Muhammadiyah Metro, Indonesia)

Managing Editor:

Mulkan Syarif ((AMIK) BSI Jakarta, Indonesia)

EDITORIAL BOARD

Hikmahanto Juwana (University of Indonesia, Indonesia)
Muhammad Islahuddin (Universitas Negeri Malang, Indonesia)
Rocky Prasetyo Jati (Universitas Budi Luhur Jakarta, Indonesia)
Sholikhan (Universitas PGRI Kanjuruhan Malang, Indonesia)

REVIEWERS

Arba (Universitas Mataram, Indonesia)
Benny Djaja (Universitas Tarumanagara, Indonesia)
Damianus Krismantoro (Universitas Atma Jaya, Yogyakarta, Indonesia)
Dewa Gde Rudy (Universitas Udayana, Indonesia)
Dewa Gede Pradnya Yustiawan (Universitas Udayana, Indonesia)
I Wayan Novy Purwanto (Universitas Udayana, Indonesia)
Lowell Bautista (University of Wollongong, Australia)
Melissa Amy Crouch (Law Faculty, University of New South Wales (UNSW), Sydney, Australia)
Mohamad Ismed (Universitas Jayabaya, Indonesia)
M. Martindo Merta (Universitas Sjakyahkirti, Indonesia)
Ramlani Lina Sinaulan (Universitas Jayabaya, Indonesia)
Raphael J. Heffron (University of Dundee, UK, United Kingdom)
Robin Margaret Fraser Warner (University of Wollongong, Australia)
Safinaz Mohd Hussein (Universiti Kebangsaan Malaysia, Malaysia)
Sukirno D. S. (Universitas Negeri Yogyakarta (UNY), Indonesia)
Surya Nita (Universitas Indonesia, Indonesia)
Try Widiyono (Universitas Islam Jakarta, Indonesia)
Zaimah Husin (Universitas Sjakyahkirti, Indonesia)

EDITORIAL STAFF

Wahyu Eko Arifin (Politeknik Negeri Jember)

Editorial Office



Bumi Royal Park Blok A-14 Bumiayu, Kedungkandang, Malang



081-123-1-666



admin@transpublika.co.id



<https://ojs.transpublika.com/index.php/POLRI/index>



CONTENTS

The Eradication of Corruption and The Enforcement of The Law in Indonesia as Seen Through the Lens of Legal Philosophy <i>Dany Try Hutama Hutabarat, Egi Delardi, Ade Irwansyah, Donni Bascara, Bayu Ansori, Faisal Tanjung, Samdoni Jarwal Sinaga, Muhammad Tuah, Rizki Adrian, Agus Budi, Annisya Raya Tanjung, Nurcahaya, Dinda Ayu Mahvira, Vivi Melvita Sari, Ahmad Helmisyam Silitonga</i>	1-8
Analysis of the Implementation of Law in Every Level of Society in Indonesia <i>Dany Try Hutama Hutabarat, Agus Salam, Ahmad Zuwandana, Chairanda Al Azmi, Chandra Ridho Wijaya, Darnita, Ira Tania, Lili Kahirina Azhari Lubis, Muhammad Aldi Prayuda Sitorus, Robiatul Adawiyah, Rizky Sinaga</i>	9-14
<i>Efektifitas Penerapan Tilang Elektronik Terhadap Pelanggaran Lalu Lintas di Wilayah Hukum Polda Metro Jaya</i> <i>Erik Suriadi, Kristiawanto, Santrawan T. Paparang</i>	15-26
Technical Security in Ite Law and Copyrights of Devices and Systems <i>Septian Rizky Dalimunthe, Sri Anisa Pujawati, Akmal Satria Alvin Sitorus</i>	27-36
Legal Certainty Regarding the Imposition of Criminal Extortion Sanctions Involving Community Organizations (Ormas) <i>Heri Susanto, Ramlani Lina Sinaulan, Mohamad Ismed</i>	37-54
Legal Protection of Pornographic Behavior Through Social Media in Indonesia <i>Titus Adhi Sanjaya, Ramlani Lina Sinaulan, Mohamad Ismed</i>	55-72
Pre-Trial: The Suspects' Ultimate Weapon and Correction Tool for Investigators to Be More Professional from The Perspective of Legal Expediency <i>Albertus Luter, Ramlani Lina Sinaulan, Mohamad Ismed</i>	73-84
Legal Protection of Consumer Owner of Flat on Withdrawal of Environmental Management Contributions (IPL) According to Governor Regulation No. 133 of 2019 <i>Arief Setyo Bantolo, Ismail, Mohamad Ismet</i>	85-98
Analyzing The Relationship Between Law and Technology <i>Dany Try Hutama Hutabarat, Muhammad Azhari Efendi, Muhammad Fatwa Str, Nanda Prayoga</i>	99-110
Analysis Of Debtor's Efforts in Settlement or Implementing Credit Obligations During the Non-Natural National Disasters of The Covid-19 Pandemic <i>Artanta Barus, Tofik Yanuar Chandra, Ramlani Lina Sinaulan</i>	111-116
Protection of the Wife as A Victim of Crime in Domestic Violence (Study in Police Resort Blitar) <i>Cindy Tiara Gracia Yoseph, Teguh Suratman, Riski Febria Nurita</i>	117-124

**THE ERADICATION OF CORRUPTION AND THE ENFORCEMENT
OF THE LAW IN INDONESIA AS SEEN THROUGH THE LENS OF
LEGAL PHILOSOPHY**

**Dany Tri Hutama Hutabarat¹, Egi Delardi², Ade Irwansyah³, Donni Bascara⁴, Bayu Ansori⁵,
Faisal Tanjung⁶, Samdoni Jarwal Sinaga⁷, Muhammad Tuah⁸, Rizki Adrian⁹, Agus Budi¹⁰,
Annisya Raya Tanjung¹¹, Nurcahaya¹², Dinda Ayu Mahvira¹³,
Vivi Melvita Sari¹⁴, Ahmad Helmisyam Silitonga¹⁵**

¹⁻¹⁵
Fakultas Hukum, Universitas Asahan
E-mail: ¹⁾ danytrihutamahutabarat@gmail.com

Abstract

Corruption is a product of the attitude of life of a group of people who use money as a standard of truth and as absolute power. Corruption has been going on for a long time, since the times of Ancient Egypt, Babylonia, Rome until the Middle Ages and until now. The purpose of this study is to determine the eradication of corruption and law enforcement in terms of the perspective of legal philosophy as a philosophy of implementing positive law in Indonesia. This study is normative legal research with descriptive method which explains that this legal research is carried out using primary legal materials, secondary legal materials and tertiary legal materials. Philosophy of Law which is the basic foundation of thinking in the application of any applicable legal rules and is considered in many branches of science gets special attention on the enforcement of corruption which should be done in eradicating corruption so that enforcement is not only based on written rules alone in eradicating but the eradication of corruption animates law enforcement in enforcement of corruption, written laws can be regulated, but these rules can be implemented by the implementers so that when the rules apply at the time of a criminal act of corruption, they can be in line with what has been written in the laws and regulations.

Keywords: *Corruption, Law Enforcement, Legal Philosophy*

1. INTRODUCTION

Corruption is a product of the life attitude of a group of people who use money as a standard of truth and as absolute power. Corruption has been going on for a long time, from Ancient Egypt, Babylonia, Rome to the Middle Ages and until now. In essence, corruption is a “social parasite” that destroys the structure of government, and becomes the main obstacle to the running of government and development in general.

One of the most crucial issues to be solved by the Indonesian nation and government is the problem of corruption. This is because the longer the criminal act of corruption in Indonesia, the more difficult it is to overcome. The prevalence of corruption in Indonesia is alleged to have occurred in all development sectors and sectors. Moreover, after the implementation of regional autonomy, based on Law Number 22 of 1999 concerning Regional Government which was renewed by Law Number 32 of 2004, it was alleged that corruption occurred not only at the central level but also at the regional level and even penetrated to the lowest level of government.

Although according to the decision of the Constitutional Court of the Republic of Indonesia, the existence of a Corruption Court which is regulated under Article 53 of Law no. 30 of 2003 is considered unconstitutional and provides an opportunity for lawmakers to form a Law on Courts for Criminal Acts of Corruption in particular, which is increasing, both in terms of quantity or amount of state financial losses as well as in terms of quality, which is increasingly systematic, sophisticated and in scope after it has expanded. in all aspects of society.

Corruption which is one of the Special Crimes as codified in all criminal acts regulated in the Criminal Code (KUHP) as the basis for Article 103 of the Criminal Code that everything regulated in Book I of the Criminal Code applies to the Special Criminal Law. According to Sudarto, the Special Criminal Law is defined as the provisions of the criminal law that regulate the specificity of the subject and his special actions. (*bijzonderlijk faiten*) (Siahaan, 2013).

The problem of corruption is a thing faced by humans that comes from the bad thoughts of humans themselves towards God where humans doubt or do not believe in God's provisions where good destiny and also the concept of fortune that has been arranged for him and his family by God Almighty has been arranged. Corruption is closely related to bad habits, cheating, falsifying and so on. Of course, corruption is a crime that is related between humans and other humans. It is impossible for corruption to stand alone (Bramantyo, 2020).

Corruption in all its forms is an extraordinary crime because it has the potential to lead to hypercrime. As explained by Baudrillard that crime becomes hyper when it transcends reality (common sense, law, culture, morality, etc.), until it develops in such a way as to reach a perfect level. However, corruption as a common enemy has not yet become part of the nation's moral movement. This reality is a big challenge for the realization of good governance in Indonesia (Haryati, 2015).

Another important problem faced by law enforcers in their efforts to eradicating corruption is precisely a commitment to cut the spread of corruption among law enforcement officials themselves, it can even be said that the weak authority of law enforcement in the field of eradicating corruption is more because the apparatus that should enforce the law does not consistently live up to the values that they want to uphold Ahmad Ali said that as long as the dirty broom hasn't been cleaned yet, so any talk of justice is bullshit (*as long as the dirty broom is not cleaned, any talk justice will be empty*) (Ali, 2001).

Based on the description of the background above, the implementation of the corruption law still has not overcome the actions of the perpetrators and law enforcers in eradicating corruption so that the problem to be investigated is how corruption should apply based on legal philosophy and what smart steps should be taken in eradicating corruption. corruption.

2. RESEARCH METHOD

In researching the law which is a scientific activity, which is carried out in a systematic way and using certain thinking, has the aim of studying a special legal phenomenon in accordance with the events that are happening in the field, by looking for further analysis, after the analysis is carried out then examined in depth related to legal facts, and then solve a problem by drawing conclusions. To be able to find the truth that can be accounted for its authenticity, in conducting research using a method that is in accordance with the desired

goal. In essence, a methodology must provide direction on the basis of studying first and then analyzing it in the environment at hand (Soekanto, 2008).

Based on the foregoing, the authors in this study used the following writing methods:

2.1. Types of Research

In conducting the research, the author uses a type of normative legal research method which explains that this legal research is carried out using studies from library materials or secondary data, further explained such as primary legal materials, secondary legal materials and tertiary legal materials. The materials are structured with measurable stages, only then reviewed so that conclusions can be drawn regarding the problem being studied (Soekanto, 2008).

2.2. Nature of Research

According to the field, this research is carried out in a descriptive manner, according to Soerjono Soekanto for descriptive research, namely: researching so that the data obtained are found as accurately as possible from the symptoms that are happening from human activities, as well as explaining the hypothesis, and confirming the old theory, in developing a new theory (Soekanto, 2008).

2.3. Research Approach

Normative legal research that is explained so that it can be structured systematically is carried out in a way so that the laws and regulations used are in accordance with the existing subject matter, so as to anticipate the confusion that is being studied, regarding the subject, object and obligations and rights to an existing legal event.

2.4. Data Types and Data Sources

One of the data used in conducting this research is based on secondary sources (secondary data), which means that the data are not obtained from the field directly, but are obtained from library materials which include reference books, legislation, original legal documents. reports obtained from the literature in accordance with the problem being researched (Soekanto, 2008). In this study, therefore the sources used are:

- a. Primary Legal Material
- b. Secondary Legal Material

Contains legal materials that explain the results obtained from primary legal materials on the results obtained in the explanation of scientific essays, groups of legal experts, and researched reports from print and mass media relating to the Eradication of Corruption and Law Enforcement in Indonesia from the perspective of legal philosophy

- c. Tertiary Law Material

Material that will provide a clue and can clarify a research on primary and secondary law that is described is that it can provide an explanation of the meaning of words and references found in encyclopedias, legal dictionaries and others.

3. RESULT AND DISCUSSION

3.1. The Implementation of The Punishment for The Crime of Corruption Is Based on The Will of The Philosophy of Law as A Basis for Thinking

Law arises from a sense of obligation embedded in the human soul, namely in the human mind and conscience, which behaves in a certain way towards and with respect to the existence of other humans, to create order and order in society in such a way that human dignity and nature are not oppressed (Suryatni, 2018).

Thought in the field of law begins with the study of philosophy which has been changing and is always evolving. The object of study is everything that is done thoroughly and systematically in understanding the law. The issue of justice has received great attention in the study of legal philosophy. According to Aristotle, justice is happiness related to human relations. The law that is formed must provide justice as its goal. Furthermore, Aristotle divides justice into general justice which provides equality for every human/individual and proportional justice based on their rights according to abilities, achievements and so on (Akmal & Mada, 2021).

Punishment provides a definite expression and a genuine acknowledgment of the hatred that arises as a result of a crime, as well as the immorality that underlies it. So criminal law continues the principles that it is morally right to hate criminals, and criminal punishment affirms and justifies those feelings by giving to criminals, punishments that express them. for the violation of common conscience. Therefore, criminal law which is a means of social control and as a political product should be a sublimation of all societal values which are summarized and formulated by legislators and applied by the apparatus in the criminal justice system (Apriani, 2010).

In Article 2 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 the definition of calm corruption has been stated in Article 2 and Article 3 states:

- (1) Any person who unlawfully commits an act of enriching himself or another person in a corporation that can harm the State's finances or the State's economy shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. and with Rp. 200,000,000.00 (two hundred million) and a maximum of 1,000,000,000.00 (one billion).
- (2) In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed.

From the provisions of Article 2 of Law Number 31 of 1999 which has been amended by Law Number 20 of 2001, which mentions State Finance, what is meant by State Finance ?

Article 1 point 1 of Law Number 17 of 2003 concerning State finances states, "State finances are all rights and obligations of the State that can be valued in money, as well as everything both in the form of money and in the form of goods that can be used as State property related to the implementation of rights and the obligation." in the explanation of Law Number 17 of 2003 states, "weakness of legislation in the field of State finances is one of the causes of several forms of irregularities in the management of State finances. In an effort to eliminate these deviations and realize a sustainable fiscal management system in accordance with the basic rules set out in the Constitution and general principles that are

universally applicable in the administration of the State government, it is necessary to have a law that regulates the management of State finances” (Priambodo, 2018).

3.2. The Eradication of Corruption Strategies

3.2.1. How to Fight against Corruption in China

The Chinese government does not indiscriminately fight corruption. last year it convicted about 621,000 people for corruption, including 51 at the ministry or provincial level. The fight to eradicate corruption has been a top priority during President Xi Jinping's administration. After the Chinese Communist Party achieved a remarkable victory against corruption, the president last month said that deep-rooted corruption still needed to be eradicated.

The party's Central Commission for Discipline Inspection on Sunday (13/1/2019) said that this year's action against corruption will be focused on several areas related to people's livelihoods and let people feel greater achievement, greater happiness and greater security. bigger.

They said the crackdown would also be aimed at preventing corrupt officials from interfering with a number of interests. In addition to tackling corruption directly, China will also seek to eliminate bureaucratic bias in the government and correct officials guilty of indifferent behavior while carrying out their duties, the government said.

China also wants to be more involved in the anti-corruption handling of the international community to hunt down suspects who have fled abroad. China managed to bring back 441 fugitives for corruption cases to the country from August to December last year.

3.2.2. How to Fight against Corruption in Hong Kong

The Hong Kong Corruption Eradication Commission or the Hong Kong Independent Commission Against Corruption (ICAC) is said to be the most successful institution in the world to eradicate corruption. Tony Kwok, Deputy Commissioner and Head of Operations for ICAC during 1996-2002, admitted that his institution was persistent in dealing with corruption.

ICAC was founded in 1974, when corruption in Hong Kong was massive. At that time, Tony said, Hong Kong could be the most corrupt city in the world. So massive, in Hong Kong there is a close relationship between law enforcement officers and organized crime syndicates. Call it gambling and drugs which at that time received protection from law enforcement elements.

When ICAC was formed, according to Tony, only a few were optimistic that this institution could bring about change. Most rate it as "Mission Impossible". However, within three years, we were successful in convicting 247 government officials, including 143 police officers. In the latest Millennium Survey, the establishment of ICAC ranks as the 6th most important event in Hong Kong's 150-year history. There are five steps ICAC in eradicating corruption as follows: (KAR, 2015)

1. ICAC is independent and directly responsible to the highest positions in Hong Kong. This, according to Tony, ensures that they are free to intervene when conducting an investigation. Thus, the agency can investigate people or institutions without suspicion and fear.

2. ICAC has strong financial support. Annual budgets can reach US\$90 billion, about US\$15 per capita. Maybe only the ICAC, the corruption eradication commission, has the biggest budget in the world.
3. The ICAC has unusually broad powers to conduct investigations. ICAC is not only able to investigate corruption crimes committed in state and private institutions. However, it can also investigate all criminal acts related to corruption. ICAC has the authority to conduct bank account investigations, can ask witnesses to testify under oath, confiscate the suspect's property originating from a criminal act of corruption, to ban the suspect..
4. ICAC's professionalism was the first to conduct interviews of all the suspects documented in the video. He said, there were at least 120 people who worked with special training first.
5. The fifth factor is what he calls the "three-pointed fork". The three are investigation, prevention, and education. He reminded that education is an important key so that the public can participate in fighting corruption (Febari, 2015).

3.2.3. Smart Solution: Progressive Law Enforcement Needed

Starting from the view that the law is for humans, law enforcement should not only understand the positive law that applies, but how a law enforcer is able to raise values that lead to justice which is only based on a series of words or sentences in the legislation but on real justice.

Law enforcers must prioritize honesty, have empathy and concern for the suffering of the people due to corruption that has occurred so far. Legal interests must be the orientation and ultimate goal of law enforcement in dealing with corruption. Progressive law enforcement is no longer centered on regulations, but on the creativity of law enforcement to actualize the law in the right space and time. Progressive law enforcers can make creative interpretations of existing regulations, without having to wait for regulatory changes. Bad legal regulations do not have to be a barrier to justice for people who are victims of corruption, law enforcers can at any time interpret the regulations in dealing with certain cases.

Why is the focus of attention on law enforcement and not on regulations because the problem of law enforcement is basically a gap between normative law (*das sollen*) and sociological law (*das sein*) or the gap between proper community behavior and actual community behavior. Law enforcement against criminal acts of corruption that has been running so far is still focused on procedural justice which places great emphasis on aspects of regularity and the application of legal formalities only. In line with that, legal engineering has become a pretty strong scent in almost every law enforcement (Mahmud, 2021).

Therefore, the Indonesian government must immediately revise the law on eradicating corruption which must be adapted to the current developments, namely the industrial revolution 4.0. Because the Corruption Eradication Commission must have more authority to eradicate corruption, especially in terms of preventing corruption.

4. CONCLUSION

Philosophy of Law which is the basic foundation of thinking in the application of any applicable legal rules and is considered in many branches of science gets special attention on the enforcement of corruption which should be done in eradicating corruption so that enforcement is not only based on written rules alone in eradicating but the eradication of corruption animates law enforcement in enforcement of corruption, written laws can be

regulated, but these rules can be implemented by the implementers so that when the rules apply at the time of a criminal act of corruption, they can be in line with what has been written in the laws and regulations.

Additionally, steps that should be implemented apart from laws and regulations that apply moral attitudes, love for the homeland, such as the idea of Pancasila and the 1945 Constitution, besides that it is also necessary to imitate law enforcement in countries that are able to handle law enforcement Corruption crime in the sense of being able to properly describe and interpret enforcement in Indonesia as smart steps so that efforts to deal with corruption in Indonesia can be completed and development in Indonesia can be consistent.

REFERENCES

- Akmal, D. U., & Madda, S. M. (2021). Memaknai Hukuman Mati Bagi Koruptor Berdasarkan Filsafat Hukum. *Supremasi Hukum*, 17(02), 40–47.
- Ali, A. (2001). *Keterpurukan Hukum di Indonesia: Penyebab dan Solusi*. Ghalia Indonesia, Jakarta.
- Apriani, L. R. (2010). Penerapan Filsafat Pidanaan Dalam Tindak Pidana Korupsi. *Jurnal Yudisial*, 3(1), 1–14.
- Bramantyo, R. Y. (2020). Perspektif Filsafat Hukum Terhadap Tindak Pidana Korupsi. *Morality: Jurnal Ilmu Hukum*, 6(1), 74–81.
- Febari, R. (2015). *Politik Pemberantasan Korupsi*. Yayasan Pustaka Obor Indonesia.
- Haryati, T. A. (2015). *Korupsi Perspektif Filsafat Etika Aristoteles*. STAIN Pekalongan Press.
- KAR. (2015). *Ini Lima Jurus KPK Hong Kong Sukses Berantas Korupsi Perlu diteladani oleh KPK RI*. HukumOnline.Com. <https://www.hukumonline.com/berita/a/ini-lima-jurus-kpk-hong-kong-sukses-berantas-korupsi-lt54db4fff7d855>
- Mahmud, A. (2021). *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif*. Bumi Aksara.
- Prijambodo, H. S. W. (2018). *Bunga Rampai Hukum dan Filsafat di Indonesia: Sebuah Catatan Pemikiran*. Deepublish.
- Siahaan, M. (2013). *Korupsi: penyakit sosial yang mematikan*. Elex Media Komputindo.
- Soekanto, S. (2008). *Pengantar Penelitian Hukum, Cet. 3, Jakarta: Penerbit Universitas Indonesia*. UI Press.
- Suryatni, L. (2018). Filsafat Pancasila Dan Filsafat Hukum Sebagai Dasar Rule Of Moral. *Jurnal Ilmiah Hukum Dirgantara*, 6(2).

**ANALYSIS OF THE IMPLEMENTATION OF LAW
IN EVERY LEVEL OF SOCIETY IN INDONESIA**

**Dany Try Hutama Hutabarat¹, Agus Salam², Ahmad Zuwandana³, Chairanda Al Azmi⁴,
Chandra Ridho Wijaya⁵, Darnita⁶, Ira Tania⁷, Lili Kahirina Azhari Lubis⁸, Muhammad Aldi
Prayuda Sitorus⁹, Robiatul Adawiyah¹⁰, Rizky Sinaga¹¹**

¹⁻¹¹

Fakultas Hukum Universitas Asahan

Jln. Jendral Ahmad Yani, Kisaran Naga, Asahan, Sumatera Utara

E-mail: ¹⁾ danytryhutamahutabarat@gmail.com

Abstract

Social stratification is a system in the social order that divides individuals into social classes. Finally, the social class will differentiate both the level and the rights and obligations of each individual in the class. The basis and core of a social stratification system is that there is an imbalance in the acquisition of rights and obligations, as well as responsibilities, between each individual and group in a series of social systems. The purpose of this research is to examine how law is applied at every level of society in Indonesia. This article was written using a qualitative technique, and it is designed to provide theoretical and practical usefulness to the community. According to the discussion, a social stratification system is one in which there is a distinction between one class or groups in standardized classes. Furthermore, there is evidence that there is a disparity between class stratification and law enforcement in Indonesia. As a result, law enforcement should be carried out in line with the applicable laws that have been jointly agreed upon in order to avoid creating a new long-term problems.

Keywords: *Social Stratification, Law Implementation, Law Enforcement, Inequalities*

1. INTRODUCTION

Law is both a tool and a function that can be used to bring about peace and tranquillity in a community, and it can bring about benefits that can be felt by people at all levels of society. A tight tie exists between law and society due to the fact that law is derived from culture and may be found in the habits that exist within a society. It is possible to find a variety of facts and events in the community itself that illustrate how the systems that govern the community's daily activity might be organized and developed from one another.

Social interaction is a phenomenon that affects all humans at some point in their evolution as social creatures, and hence cannot be avoided by them. After some time, social interaction will begin to play a role in the establishment of a group system in society, and it will eventually become one of the variables influencing the formation of a group system. In general, people in Indonesia are divided into a number of different categories. First, horizontally, which is referred to as differentiation, followed by vertically, which is referred to as social stratification.

The term stratification comes from the words *strata* and *stratum* which means layers. Therefore, social stratification is often translated as stratification of society (Maunah, 2015). Social stratification is defined as a system that distinguishes between individuals or groups in society, by placing each different social class hierarchically and giving different rights

and obligations (Maunah, 2015). Additionally, this system distinguishes one class or group from another in stratified classes that will subsequently be divided into high-, middle-, and low-class groups (Maunah, 2015).

The fundamentals and essence of a system of social stratification is that each individual and group in a succession of social systems has an imbalance in attaining rights and obligations, as well as responsibilities. Individuals are classified into various classes depending on the qualities of power, privilege, and prestige in a higher hierarchical level based on a specific social system (Robert & Robert, 1998). As a result of current society's unequally constructed power structures and the enormous number of people who create their own identities through social interaction, terms like social stratification, class disparity, and social exclusion are frequently used interchangeably (Arianto, 2010). Because of social inequality coming from a lack of social justice in the process of developing social stratification in society, whether consciously or unconsciously, a law will eventually be created that will apply in society.

Based on classical social theories, many studies have empirically examined its determinants and consequences of social class and inequality (Guo et al., 2018). The field's multidisciplinary knowledge is both diverse and insightful, as well as fragmented and heterogeneous. A detailed map of this increasingly complicated terrain is urgently needed to assist researchers and students in conducting efficient and successful literature reviews. As a result, there are problem formulations at the heart of this paper's discussion, such as: What are the differences in the application of law to the lower, middle, and upper social classes? and How can injustice in the application of law be avoided in every social class in society?

2. RESEARCH METHOD

The writing of this article employs a qualitative approach, which is believed to provide a benefit to the community on both a theoretical and practical level. Meanwhile, the data was collected through previous literature study.

3. RESULT AND DISCUSSION

3.1. Application of Law to the Lower, Middle, and High Social Class

According to the discussions that have taken place, the law is genuinely formulated with the goal of regulating the behavior and acts of every human being and achieving justice, benefit, and certainty in the jurisdiction in which the law is implemented. Additionally, the law gives universal benefits, specifically how to foster community peace and tranquillity that may be felt at all levels of society (Haryanti, 2014).

Law is inextricably linked to humans and all of their actions, including social interaction. In essence, humans are the parties as subjects who create the law, and they are also the ones who may benefit from and use the law in daily life. In Indonesia, several laws still represent uncertainty or have not been able to fully meet the objectives of the law's application (Wignjosoebroto, 2008).

In terms of upholding the law, the law is still on the verge of meeting society's expectations. Where is one of the frequently heard idioms that the law is "blunt upwards but sharp downwards". This is a reflection of the lower social classes' inability to find justice,

while the higher social classes often receive special privileges. Where one might enter this strata or top layer since they possess a number of useful and appreciated characteristics in society (Maunah, 2015). As a result, this serves as further proof that Indonesian law enforcement and socioeconomic stratification may not align.

One facet of law that protects goods and one's legal interests is the law. The issue here is that the law appears to be incapable of protecting the legal rights of those from lower socioeconomic classes. Although persons from lower social classes are frequently associated with people who do not share the same interests as people from higher social classes, the law should defend everyone's social class interests equally. For example, during the Covid-19 Pandemic, someone who plainly avoids or is missing from the obligation to self-quarantine receives a punishment that, upon evaluation, is not in conformity with the punishment that should be received. This is definitely not the same as policing a slew of street vendors who aren't following health regulations. Of course, the fines levied on self-quarantine violators are significantly higher in terms of quantity than those imposed on street vendors. However, in terms of quality, it should be taken into account when judging the quality of the law in applying the law to all socioeconomic classes in society, where the violation committed by the violator is merely a personal mistake, while the street vendor has an economic motivation.

3.2. Prevention of Injustice in the Application of Law in Every Social Class in Society

When dealing with various legal problems that arise throughout the country, it frequently becomes a topic of public debate because judicial rulings are thought to disregard the ideals of justice that should be felt by the community and justice seekers. Until now, the Indonesian legal system has been thought to fall short of properly reflecting true justice values. Justice seems to be a "expensive item" that society cannot afford (Rosaliza, 2017).

In social life, justice is defined as the allocation and preservation of human interests. Humans are known to exist in society in order to safeguard their interests and fulfill their needs, both of which can only be met if humans live side by side in social life (Widowati, 2013).

There are several factors that determine the running of order in a society (Rahardjo, 2010), namely the first structure, the second substance (the substance is composed of substantive rules and rules about how institutions should be have) and the last is legal culture. Based on these factors, the orientation is how the law is applied in society and public awareness of a rule needs to be increased (Haryanti, 2014).

There are two types of law in society: passive and active. The extent to which the law adapts to society demonstrates the law's passive nature. While active law refers to the extent to which the law can influence society's dynamics toward a desired transformation. As a result, the law serves as a tool for social transformation (a tool of social engineering) (Ali, 2002).

According to Effendi et al. (1991) the law will be carried out properly if two legal functions are implemented in people's lives, these functions are:

- a) Its passive function is only to maintain the status quo. This function is called "Means of social control."

- b) Its active function is capable of overhauling the existing order towards a desired state. This function is known as "Law is a tool of social engineering", or the function of law as a tool of social engineering.

Furthermore, as stated by Marcus Tullius Cicero (106-43 SM) "*ubi societas ibi ius*" which means that where there is society there is law. In terms of society, it is always changing and developing (dynamic) while the law functions to control social life through determining what individuals in society should do and what they should not do (Chandra & Widowati, 2006).

Therefore, law enforcement should be carried out in accordance with the applicable laws, which have been mutually agreed upon so as not to cause a new, prolonged problem. The law is enforced, and anyone who violates the sanctions will get strict and coercive. The law is applied indiscriminately, every community, both from the lower middle class and the upper class, must get the same treatment in the eyes of the law. The law is upheld, so that legal values will have a place for the public. In addition, there is a need for both transparency and supervision by the government regarding the operation of the law and the law enforcement process in Indonesia. Indeed, if there is no legal system that meets the needs of the community, a pattern of distrust between the community and legal institutions will develop in Indonesia, which will, of course, have an influence on the country's long-term viability and efficiency of operation.

4. CONCLUSION

The conclusions from the discussion described above are:

1. The social stratification system is a system in which there is a difference between one class or group in stratified classes with later being separated into high, middle, or low class groups.
2. There is a gap between social stratification and law enforcement in Indonesia. Therefore, law enforcement should be carried out in accordance with the applicable laws, which have been mutually agreed upon so as not to cause a new, prolonged problem. The law is enforced, whoever violates the sanctions will get firm and coercive.

REFERENCES

- Ali, A. (2002). *Menguak Tabir Hukum*. PT. Toko Gunung Agung.
- Arianto, H. (2010). Hukum Responsif dan Penegakan Hukum di Indonesia. *Lex Journalica*, 7(2), 18013.
- Chandra, A., & Widowati, C. (2006). *Laporan Penelitian Model Konstruksi Hukum Dalam Yurisprudensi (Studi Kasus Putusan Mahkamah Agung No. 3199K/Pdt/1986)*.
- Effendi, R., Ali, A., & Lolo, P. A. (1991). *Teori Hukum*. Hasanudin University Press.
- Guo, L., Li, S., Lu, R., Yin, L., Gorson-Deruel, A., & King, L. (2018). The research topic landscape in the literature of social class and inequality. *PloS One*, 13(7), e0199510.
- Haryanti, T. (2014). Hukum dan Masyarakat. *Jurnal: Tahkim*.

- Maunah, B. (2015). Stratifikasi Sosial Dan Perjuangan Kelas Dalam Perspektif Sosiologi Pendidikan. *Ta'allum: Jurnal Pendidikan Islam*, 3(1), 19–38.
- Robert, M. Z., & Robert, L. (1998). *Teori Sosiologi Mikro dan Makro Jilid 1*. Jakarta: Rineka Cipta.
- Rosaliza, M. (2017). Lapisan Sosial Masyarakat Perkotaan. *Jurnal Ilmu Budaya*, 13(2), 93–110.
- Widowati, C. (2013). Hukum Sebagai Norma Sosial Memiliki Sifat Mewajibkan. *ADIL: Jurnal Hukum*, 4(1), 150–167.
- Wignjosoebroto, S. (2008). *Hukum dalam masyarakat: perkembangan dan masalah*.

**EFEKTIFITAS PENERAPAN TILANG ELEKTRONIK TERHADAP
PELANGGARAN LALU LINTAS DI WILAYAH HUKUM POLDA
METRO JAYA**

Erik Suriadi Harja¹, Kristiawanto², Santrawan T. Paparang³

^{1,2,3}

Magister Hukum, Universitas Jayabaya

E-mail: Harjaeriksuriadi@gmail.com

Abstrak

Penelitian ini bertujuan untuk mengetahui efektivitas Tilang Elektronik atas pelanggaran lalu lintas di wilayah hukum Polda Metro Jaya. Penelitian berjenis yuridis empiris ini menggunakan pendekatan kasus. Data dikumpulkan dengan teknik penelitian lapangan. Berdasarkan temuan, efektivitas penerapan Tilang elektronik terhadap pelanggaran lalu lintas di wilayah hukum Polda Metro Jaya dinilai belum optimal dalam menanggulangi pelanggaran lalu lintas yang disebabkan oleh kamera ETLE yang dapat mendeteksi jenis pelanggaran tertentu saja. Selain itu, terdapat faktor yang mempengaruhi efektivitas penerapannya, seperti faktor substansi hukum yang belum diatur dalam Peraturan Kapolri, faktor penegak hukum, faktor sarana atau fasilitas, faktor budaya hukum masyarakat, serta faktor alam atau lingkungan.

Kata kunci: Penerapan Tilang Elektronik, Pelanggaran Lalu Lintas, Kamera ETLE

Abstract

For the purpose of this study, the efficiency of Electronic Ticketing for traffic offenses in the metro jaya police jurisdiction is being evaluated. This is an empirical judicial research that takes a case-by-case method. Techniques for collecting data in the field. The results indicate that the efficiency of the deployment of electronic ticketing against traffic offences in the jurisdiction of Polda Metro Jaya in regards of handling traffic offences has not been optimized since the ETLE camera can only recognize specified types of offences. Legal essence, law enforcement, means or facilities, cultural and community law aspects, as well as natural or environmental factors, all have an impact on the success of electronic ticketing.

Keywords: Electronic Tickets Implementation, Traffic Offence, ETLE Camera

1. PENDAHULUAN

Telah terjadi perubahan dramatis dalam cara kita menjalani hidup karena kemajuan ilmu pengetahuan dan teknologi seperti penemuan kendaraan bermotor. Dahulu masyarakat mengandalkan kuda dan kelengkapan seadanya sebagai alat transportasi darat, namun seiring kemajuan ilmu pengetahuan dan teknologi, kendaraan tradisional pun mulai digantikan. Disisi lain, penggunaan sarana transportasi kendaraan bermotor bagi kehidupan masyarakat ini menimbulkan dampak positif maupun negatif.

Lalu lintas yang macet kini diperparah dengan meningkatnya pelanggaran lalu lintas, namun tidak disertai dengan perluasan jalan. Pelanggaran lalu lintas ialah salah satu dari sekian faktor penyebab terjadinya kecelakaan di jalan raya yang dapat mengakibatkan kematian ataupun luka berat. Selain itu, dapat pula menyebabkan kerugian bagi pengendara

dan mereka yang terlibat dalam kecelakaan itu, termasuk hilangnya nyawa dan harta benda, yang merupakan sesuatu yang tidak seorang pun ingin menanggungnya.

Setiap tahun semakin banyak orang-orang yang melanggar peraturan lalu lintas, menurut Polda Metro Jaya, terjadi peningkatan dari 1.324.101 jumlah pelanggaran di 2017, menjadi 1.617.565 pelanggaran terjadi di 2018, dan 1.698.270 di tahun 2019. Berdasarkan laporan tahunan Lalu Lintas Polda Metro Jaya tahun 2017-2019, dimana pada tahun 2018 sebanyak 5.903 kasus kecelakaan telah terjadi dan hal tersebut meningkat pada 2019 lalu dimana 8.877 kecelakaan telah terjadi.

Oleh karena itu, upaya pemberantasan pelanggaran lalu lintas di jalan raya telah dilakukan dengan cara memberi tilang kepada setiap pengemudi kendaraan bermotor yang melakukan pelanggaran lalu lintas sebagaimana dimaksud dalam Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan. Pengemudi kendaraan bermotor yang terkena tilang oleh polisi lalu lintas saat bertugas ataupun selama razia di jalan dapat hadir secara langsung atau diwakilkan di persidangan ataupun membayar denda yang telah ditentukan.

Saat ini tilang kini tidak hanya dilaksanakan oleh polisi lalu lintas di jalan raya, namun kamera CCTV pun kini dapat mendeteksi aktivitas pengendara di jalan raya, sehingga jika pelanggaran lalu lintas terjadi maka CCTV tersebut dapat mengambil foto kendaraan bermotor yang melakukan pelanggaran lalu lintas dan digunakan sebagai barang bukti dalam kasus pelanggaran lalu lintas yang akan dilayangkan di pengadilan, dimana hal ini telah ditentukan dalam Pasal 243 ayat (3) huruf d dan Pasal 272 Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan, serta diatur lebih lanjut dalam Pasal 14 ayat (3), Pasal 23 dan Pasal 28 Peraturan Pemerintah Nomor 80 Tahun 2012 tentang Tata Cara Pemeriksaan Kendaraan Bermotor di Jalan dan Penindakan Pelanggaran Lalu Lintas dan Angkutan Jalan.

Dalam hal pelanggaran dalam lalu lintas, penggunaan tilang elektronik dapat membuat penegakan hukum lebih mudah bagi polisi lalu lintas, namun terdapat kekurangan terkait bukti rekaman CCTV pelanggaran, dimana kendaraan yang bersangkutan akan diidentifikasi berdasarkan Nomor Kendaraan Bermotor. Setelah terjadi pelanggaran, surat konfirmasi dikirimkan kepada pemiliknya sesuai dengan data kendaraan bermotor. Hal ini tentu dapat menimbulkan masalah jika kendaraan telah dipindahkan ke pemilik baru, tetapi identitas pemilik sebelumnya belum diperbarui, atau pelat nomor kendaraan telah digunakan yang tidak sesuai dengan hukum.

Dengan menggunakan peralatan elektronik seperti kamera CCTV terhadap pelanggaran lalu lintas di jalan raya, maka perlu untuk mempelajari seberapa efisien tilang elektronik terhadap pelanggaran lalu lintas di wilayah hukum Polda Metro Jaya, sehingga dapat dipahami cara kerja tilang elektronik. Disamping itu, dapat diketahui apakah pelanggaran lalu lintas yang dilakukan oleh pengendara di jalan raya dapat dikurangi melalui penggunaan tilang elektronik, dan Direktorat Lalu Lintas Polda Metro Jaya dapat menggunakan informasi ini sebagai dasar untuk menerapkan tilang elektronik di jalan raya.

2. TINJAUAN PUSTAKA

2.1. Penegakan Hukum

Penegakan atau “*enforcement*” dalam Black law dictionary dinyatakan sebagai “*the act of putting something such as a law into effect, the execution of a law*”. Sedangkan penegak hukum (*law enforcement officer*) artinya adalah “those whose duty it is to preserve the peace” (Henry, 1998). Lebih lanjut, penegak dijelaskan sebagai yang mendirikan, menegakkan menurut KBBI. Penegak hukum bertanggung jawab untuk menegakkan hukum, yang awalnya hanya mencakup polisi dan jaksa tetapi akhirnya berkembang menjadi pengadilan, pengacara, dan lembaga masyarakat.

Kepolisian, kejaksaan, pengadilan, dan lembaga kemasyarakatan merupakan semua komponen yang dikembangkan oleh negara untuk mewujudkan gagasan hukum yang abstrak tentang keadilan, kepastian, dan kemanfaatan sosial. Terlepas dari kemandirian mereka, tugas dari badan-badan ini adalah sama dimana semuanya bekerja untuk menerapkan konsep-konsep hukum dalam masyarakat (Satjipto, 2009).

Soerjono Soekanto (2007) meyakini bahwa esensi penegakan hukum adalah menyebarluaskan hubungan antara nilai-nilai yang diekspresikan dalam aturan-aturan yang tegas dengan perwujudan dan sikap tindakan sebagai rangkaian nilai-nilai tahap akhir yang dikembangkan untuk menciptakan dan memelihara ketentraman hidup. Inilah yang disebut Soerjono Soekanto sebagai “inti konseptual” dan “makna” penegakan hukum. Sudarto mendefinisikan penegakan hukum sebagai “perhatian dan penegakan”, yang meliputi baik perbuatan melawan hukum yang terjadi sekarang (*onrecht in actu*) maupun perbuatan melawan hukum yang mungkin terjadi di masa yang akan datang (*onrecht in potentie*) (Atmasasmita, 2011).

Lebih lanjut, Romli Atmasasmita (2011) menyebutkan bahwa dalam penegakan hukum terdapat nilai keadilan yang dapat menopang keseimbangan, keselarasan, dan kerukunan antara kepentingan individu ataupun kepentingan masyarakat. Dengan kata lain, aturan hukum tidak hanya sah (*validity*) dalam arti memiliki legalitas, tetapi juga harus memiliki nilai (*value*).

Mengenai unsur-unsur yang mempengaruhi penegakan hukum, Soerjono Soekanto (2007) menyebutkan faktor-faktor berikut, di mana faktor-faktor ini memiliki konotasi netral, oleh karena itu pengaruh baik atau buruk berada dalam aspek-aspek ini, aspek tersebut yaitu:

1. Faktor hukumnya sendiri (undang-undang);
2. Faktor penegak hukum;
3. Faktor sarana atau fasilitas yang mendukung penegakan hukum;
4. Faktor masyarakat; dan
5. Faktorkebudayaan.

2.2. Pelanggaran Lalu Lintas

Pasal 1 Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan mendefinisikan lalu lintas sebagai suatu sistem yang terdiri dari kendaraan, pengemudi, pengguna jalan, dan pelaksananya. Demikian pula dalam Pasal 1 angka 2, lalu lintas dipahami sebagai pergerakan kendaraan dan orang-orang di jalan. Dalam Pasal 1 angka 3 mendefinisikan angkutan jalan sebagai perpindahan orang atau benda dengan kendaraan dalam ruang lalu lintas jalan.

Selain itu, pelanggaran merupakan bagian dari tindak pidana yang didefinisikan sebagai kejahatan oleh hukum pidana. *Mala in se* adalah perbuatan yang dianggap tidak adil karena

melanggar aturan sosial sebelum ditetapkan sebagai kejahatan oleh hukum, sedangkan *mala prohibita* yaitu perbuatan yang ditetapkan oleh undang-undang sebagai kejahatan atau pelanggaran (Hiariej, 2014).

Dalam kejahatan (*rechtdelicten*) terdapat aspek yang menunjukkan tercelanya tidak hanya termasuk dalam hukum, namun juga terdapat dalam masyarakat. Sementara, sifat tercela dari suatu pelanggaran (*wetsdelicten*) berasal dari keberadaannya sebagai perbuatan yang dilarang dalam undang-undang (Chazawi, 2002). Disamping itu, berdasarkan kriteria lainnya bahwa suatu kejahatan adalah kejahatan yang melanggar hak-hak hukum yang dapat membahayakan secara nyata, sedangkan pelanggaran itu adalah delik yang hanya berbahaya secara *in abstracto* hanya apabila perbuatan itu tertuang dalam undang-undang (Andi Hamzah, 2012).

Pelanggaran lalu lintas dianggap sebagai tindakan yang dilakukan oleh setiap orang yang terlibat dalam lalu lintas dan angkutan jalan, yang bertentangan dengan peraturan perundang-undangan lalu lintas yang ada, sebagaimana dimaksud dalam Pasal 274 sampai dengan 309, dan 313 Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan.

2.3. Pengertian dan Tugas Polri di Bidang Lalu Lintas

Istilah "polisi" mengacu pada segala sesuatu yang ada hubungannya dengan kepolisian dan lembaga-lembaga yang mendukungnya, seperti yang didefinisikan oleh Pasal 1 angka 1 UU No. 2 Tahun 2002 tentang Polri. Tugas pokok Polri meliputi: memelihara keamanan dan ketertiban masyarakat, menegakkan hukum dan memberikan perlindungan, pengayoman dan pelayanan kepada masyarakat sebagaimana diatur dalam Pasal 13. Sedangkan tugas pokok dalam lalu lintas diatur dalam Pasal 14 ayat (a) huruf b Undang-Undang Nomor 2 Tahun 2002. Berdasarkan Pasal 15 ayat (2) huruf b dan d, dijelaskan bahwa "Polri sesuai peraturan perundang-undangan lainnya berwenang menyelenggarakan registrasi dan identifikasi kendaraan bermotor, serta memberikan surat izin mengemudi kendaraan bermotor".

Secara khusus Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan memberi wewenang kepada Polri untuk menegakan hukum pelanggaran beserta penyidikan tindak pidana lalu lintas, dimana hal tersebut tertuang dalam Pasal 260 sebagai berikut:

1. Dalam hal penindakan pelanggaran dan penyidikan tindak pidana, Penyidik Polri selain yang diatur di dalam Kitab Undang-Undang Hukum Acara Pidana dan undang-undang tentang Polri, di bidang lalu lintas dan angkutan jalan memiliki kewenangan tertentu (Tabel 1).
2. Pelaksanaan penindakan pelanggaran dan penyidikan tindak pidana sebagaimana dimaksud pada ayat (1) dilakukan sesuai dengan ketentuan peraturan perundang-undangan.

Tabel 1 Kewenangan Polri dalam lalu lintas dan angkutan jalan

Kewenangan

- a. Memberhentikan, melarang, atau menunda pengoperasian dan menyita sementara kendaraan bermotor yang patut diduga melanggar peraturan berlalu lintas atau merupakan alat dan/atau hasil kejahatan;
- b. Melakukan pemeriksaan atas kebenaran keterangan berkaitan dengan penyidikan tindak pidana di bidang lalu lintas dan angkutan jalan;
- c. Meminta keterangan dari pengemudi, pemilik kendaraan bermotor, dan/atau perusahaan angkutan umum;
- d. Melakukan penyitaan terhadap Surat Izin Mengemudi, kendaraan bermotor, muatan, Surat Tanda Nomor Kendaraan Bermotor, Surat Tanda Coba Kendaraan Bermotor, dan/atau tanda lulus uji sebagai barang bukti;
- e. Melakukan penindakan terhadap tindak pidana pelanggaran atau kejahatan lalu lintas menurut ketentuan peraturan perundang-undangan;
- f. Membuat dan menandatangani berita acara pemeriksaan;
- g. Menghentikan penyidikan jika tidak terdapat cukup bukti;
- h. Melakukan penahanan yang berkaitan dengan tindak pidana kejahatan lalu lintas; dan/atau
- i. Melakukan tindakan lain menurut hukum secara bertanggung jawab.

2.4. Pengertian dan Dasar Hukum Tilang Elektronik

Dalam UU No. 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan tidak dijelaskan istilah “tilang atau bukti pelanggaran”. Orang yang mendapatkan tilang pelanggaran lalu lintas dan angkutan jalan harus menunjukkan bukti pelanggaran tertentu dalam format tertentu. Demikian disampaikan pemerintah dalam Pasal 1 angka 4 Peraturan Pemerintah Nomor 80 Tahun 2012 tentang Tata Cara Pemeriksaan Kendaraan Bermotor di Jalan dan Penanganan Pelanggaran Lalu Lintas dan Angkutan Jalan. Menurut Karjadi (2011) Tilang atau bukti lain pelanggaran lalu lintas adalah berfungsi sebagai undangan bagi pelanggar lalu lintas untuk menghadiri sidang di pengadilan, sekaligus tanda polisi telah menyita barang dari pelanggar lalu lintas.

Sementara itu, Tilang elektronik pada Pasal 243 ayat (3) huruf d Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan, secara implisit dinyatakan bahwa penegakan hukum dengan alat elektronik digunakan dalam kegiatan pusat kendali sistem informasi dan komunikasi lalu lintas dan angkutan jalan. Pasal 272 peralatan elektronik dapat digunakan, dimana hasil penggunaan peralatan elektronik tersebut dapat digunakan sebagai alat bukti di pengadilan.

Menurut Peraturan Pemerintah Nomor 80 Tahun 2012 tentang Tata Cara Pemeriksaan Kendaraan Bermotor di Jalan dan Penindakan Pelanggaran Lalu Lintas dan Angkutan Jalan, Pasal 14 ayat (3) disebutkan bahwa “pemeriksaan secara insidental karena tertangkap tangan dilakukan pada saat terjadi pelanggaran yang terlihat secara kasat mata atau tertangkap oleh alat penegakan hukum secara elektronik”. Demikian dengan Pasal 23, bahwa “penindakan pelanggaran lalu lintas dan angkutan jalan didasarkan pada hasil temuan dalam proses pemeriksaan kendaraan bermotor, laporan dan rekaman peralatan elektronik”.

Kemudian dalam Pasal 28 Peraturan Pemerintah Nomor 80 Tahun 2012 tentang Tata Cara Pemeriksaan Kendaraan Bermotor di Jalan dan Penindakan Pelanggaran Lalu Lintas dan

Angkutan Jalan, dijelaskan bahwa “penindakan terhadap pelanggaran lalu lintas dan angkutan jalan yang didasarkan atas hasil rekaman peralatan elektronik merupakan dasar bagi Petugas Polri atau PPNS di bidang lalu lintas untuk menerbitkan surat Tilang yang harus dilampiri dengan bukti rekaman alat penegakan hukum elektronik, dimana surat Tilang tersebut disampaikan kepada pelanggar sebagai pemberitahuan dan panggilan untuk hadir dalam sidang pengadilan”.

Tilang elektronik secara implisit dijelaskan dalam Peraturan Kapolri Nomor 5 Tahun 2012 tentang Registrasi dan Identifikasi Kendaraan Bermotor, Pasal 115 ayat (3) bahwa “pemblokiran STNK dilakukan untuk kepentingan pencegahan pengesahan atau perpanjangan resident kendaraan bermotor dan penegakan hukum pelanggaran lalu lintas,” dan dijelaskan pula dalam Ayat (5) bahwa “permintaan pemblokiran STNK untuk kepentingan yang dimaksud pada ayat (3) diajukan oleh penegak hukum terhadap kendaraan bermotor yang diduga terlibat kecelakaan lalu lintas dan melarikan diri, atau kendaraan bermotor yang berdasarkan data elektronik telah melakukan pelanggaran lalu lintas”.

3. METODE PENELITIAN

Penulisan artikel ini yaitu dengan menggunakan pendekatan kasus dan oleh karena itu penelitian ini merupakan penelitian yuridis empiris (Marzuki, 2013). Penelitian lapang (*field research*) dipergunakan dalam mengumpulkan data primer, yaitu dengan menggunakan prosedur wawancara untuk mengumpulkan informasi tentang pikiran, perasaan, sikap, perilaku, dan aspek lain dari suatu masalah atau masalah hukum yang diselidiki (Soekanto, 2007b). Kemudian data dianalisis secara yuridis-kualitatif atau menelaah hasil penelitian, khususnya data primer yang dikumpulkan langsung dari lapangan untuk memperjelas topik yang diteliti (Ash-Shofa, 2004).

4. HASIL DAN PEMBAHASAN

4.1. Efektivitas Tilang Elektronik

Upaya dalam menindak pelanggaran lalu lintas di wilayah Polda Metro Jaya telah dilakukan dengan menerapkan sistem “*Electronic Traffic Law Enforcement (ETLE)*” adalah sistem penegakan lalu lintas yang menggunakan perangkat elektronik seperti kamera untuk mengidentifikasi berbagai bentuk pelanggaran lalu lintas dan secara otomatis memberikan data kendaraan atau dikenal dengan “*Automatic Number Plate Recognition*”. Kamera E-Police dapat mengidentifikasi segala bentuk pelanggaran marka jalan dan lampu lalu lintas, sementara kamera Check Point dapat mendeteksi pelanggaran plat ganjil genap, pengendara yang tidak mengenakan sabuk pengaman, dan penggunaan gadget oleh pengemudi kendaraan.

Pada tahun 2019 lalu, telah ditempatkan kamera E-Police dengan sistem ETLE yang dapat mendeteksi kendaraan bermotor yang melanggar ketentuan lalu lintas, kamera E-Police ini berjumlah 4 buah dan 8 buah *kamera Check Point* di Jalan Merdeka Selatan (*traffic light* Patung Kuda), Jalan Gajah Mada (*traffic light* Gajah Mada Plaza), *traffic light* Sarinah arah ke Bundaran Hotel Indonesia, dan *traffic light* Sarinah arah ke Monumen Nasional. Sedangkan kamera *Check Point* ditempatkan di Jembatan penyeberangan Orang Kementerian Pariwisata, Jalan Medan Merdeka Selatan (*traffic light* Patung Kuda), *traffic light*

Sarinah arah ke Bundaran Hotel Indonesia, di bawah Jalan Layang Non Tolarah ke Semanggi, di bawah Jalan Layang Non Tol arah ke Bundaran Hotel Indonesia, Jembatan Penyeberangan Orang Kementerian PAN RB, Jembatan Penyeberangan Orang Ratu Plaza, Jembatan Penyeberangan Orang Hotel Sultan.

Adapun beberapa pelanggaran yang di deteksi dalam kamera ETLE seperti pengemudi yang melanggar aturan Alat Pemberi Isyarat Lalu Lintas (APIL) dan lampu lalu lintas (*traffic light*), melanggar aturan atas marka jalan dan aturan mengenai ganjil genap dimana hal ini tertera dalam Undang- Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan, yaitu Pasal 287 ayat (1). Selain itu, terdapat juga pelanggaran atas Pasal 283 tentang “pelanggaran menggunakan ponsel saat berkendara”, Pasal 287 ayat (5) tentang “pelanggaran terhadap batas kecepatan”, Pasal 291 tentang “pelanggaran tidak penggunaan helm bagi pengemudi sepeda motor” dan Pasal 300 tentang “pelanggaran menggunakan jalur khusus *Busway*”.

Dalam hal mekanisme atau prosedur penerapan *Electronic Traffic Law Enforcement (ETLE)* telah dinyatakan dalam Keputusan Kapolda Metro Jaya Nomor: Kep/671/VIII/2019 tanggal 29 Agustus 2019 tentang Standar Operasional Prosedur *Electronic Traffic Law Enforcement (ETLE)* yaitu sebagai berikut:

Tabel 2 Standar Operasional Prosedur *Electronic Traffic Law Enforcement (ETLE)*

No	Tahapan	Prosedur
1	Analisa dan verifikasi	Analisa hasil rekaman kamera ETLE apakah merupakan pelanggaran lalu lintas atau bukan dan verifikasi data kendaraan bermotor dengan database pada <i>Electronic Registration Identification (ERI)</i> ;
2	Pembuatan dan pengiriman surat konfirmasi	Pembuatan surat konfirmasi sesuai dengan data hasil analisa dan verifikasi kemudian dikirimkan ke alamat pemilik kendaraan atau pelanggar lalu lintas melalui jasa pengiriman atau media elektronik seperti email, SMS atau aplikasi messenger;
3	Konfirmasi	Konfirmasi yang dilakukan oleh pemilik kendaraan bermotor atau pelanggar lalu lintas setelah menerima surat konfirmasi yang dilakukan dengan cara mengirim kembali surat konfirmasi atau mendatangi langsung Posko ETLE Subdit Gakkum Ditlantas Polda Metro Jaya atau melakukan konfirmasi secara digital melalui alamat website https://etle-pmj.info sesuai dengan nomor referensi dalam surat konfirmasi;
4	Penindakan	Pemberian sanksi Tilang kepada pemilik kendaraan bermotor atau pelanggar lalu lintas yang telah melakukan konfirmasi yang disertai dengan pengiriman kode Briva ke nomor handphone pemilik atau pelanggar lalu lintas tersebut;
5	Pembayaran denda tilang	Pembayaran dengan Tilang oleh pemilik kendaraan bermotor atau pelanggar lalu lintas setelah menerima kode Briva yang dilakukan melalui M-Banking, ATM atau Teller Bank BRI;
6	Pengajuan blokir	Permohonan blokir STNK oleh Petugas ETLE ke Samsat sesuai domisili kendaraan bermotor apabila pemilik kendaraan bermotor atau pelanggar lalu lintas tidak melakukan konfirmasi dalam jangka waktu paling lama 5 (lima) hari kerja atau tidak melakukan pembayaran denda tilang dalam jangka waktu paling lama 7 (tujuh) hari kerja;
7	Buka blokir	Permohonan blokir STNK oleh Petugas ETLE ke Samsat sesuai domisili kendaraan bermotor apabila pemilik kendaraan bermotor atau pelanggar lalu lintas tidak melakukan konfirmasi dalam jangka waktu paling lama 5 (lima) hari kerja atau tidak melakukan pembayaran denda tilang dalam jangka waktu paling lama 7 (tujuh) hari kerja;

Mengenai hal ini, berdasarkan Laporan Anev ETLE Subditgakkum Ditlantas Polda

Metro Jaya Tahun 2019 bahwa Petugas *ETLE* Subditgakkum Ditlintas Polda Metro Jaya telah menindak pengemudi yang melanggar ketentuan sejak bulan November 2018 - Desember 2019 dimana rincian jenis dan jumlah pelanggarannya dapat dilihat pada tabel berikut.

Tabel 3 Jenis dan jumlah pelanggaran yang terjadi

Jenis Pelanggaran	Jumlah Pelanggaran
Ketentuan Ganjil Genap	6.726
Ketentuan Penggunaan Sabuk Pengaman	23.427
Ketentuan Penggunaan Handphone	1.435
Ketentuan Traffic Light Atau Marka Jalan	33.166
Pelanggaran yang ditindaklanjuti	Jumlah Pelanggar
Melakukan konfirmasi ke Posko <i>ETLE</i>	15.923
Melakukan konfirmasi melalui website	16.179
Membayar denda Tilang melalui Bank BRI	8.990
Membayar denda Tilang di Kejaksaan	4.269
Pelanggar yang telah dikirim ke Pengadilan dan telah mendapatkan Putusan	28.718

Demikian apabila terdapat pelanggar yang sama sekali tidak menyelesaikan prosedur tersebut, maka pemblokiran STNK kendaraan akan dilakukan, dimana rincian tersebut dapat dilihat di tabel berikut.

Tabel 4 Rincian penyelesaian

Rincian penyelesaian	Jumlah Unit
Nopol yang terblokir	23.610
Nopol yang tidak terblokir	272
Permohonan buka blokir	4.677
Nopol yang tidak ditemukan	1.200
Kendaraan yang melakukan pelanggaran kembali	64.98

Bersumber dari hasil penerapan Tilang elektronik dengan system *ETLE* diatas, maka dapat ditarik kesimpulan jika pelanggaran dalam wilayah hukum Polda Mtero Jaya menggunakan sistem *ETLE* dinilai belum optimal, hal ini dikarenakan sistem *ETLE* hanya bisa menangkap pelanggaran tertentu saja seperti ketentuan: ganjil genap, penggunaan sabuk pengaman, penggunaan gadget, dan pelanggaran atas marka jalan. Di samping itu, karena kebijakan tilang elektronik secara khusus tercantum pada Kcputusan Kapolda Metro Jaya saja, sebagai hasilnya sistem ini belum bisa menindak penilangan dan pemblokiran STNK yang asalnya dari luar wilayah hukum Polda Metro Jaya.

Selanjutnya, dalam mengimplementasikan tilang secara elektronik ini tidak bisa diterapkan bagi pengemudi ataupun pemilik kendaran bermotor jika tidak melakukan konfirmasi pelanggaran yang dideteksi oleh kamera *ETLE* dimana penyelesaian bisa dilakukan dengan datang ke Posko *ETLE* langsung atau bisa dilakukan secara online yang nantinya akan ditentukan apakah dikenakan sanksi tilang dan denda tilang sesuai ketetapan yang telah diatur sebelumnya pada UU No. 22 tahun 2009 mengenai Lalu lintas dan

Angkutan Jalan. Namun, terdapat pula kekurangan dalam menindak pelanggaran yang dilakukan oleh kendaraan yang tidak memiliki nomor registrasi yang sama dengan data Samsat yang menyebabkan penindakan tidak dapat dilakukan secara lebih lanjut.

4.2. Tilang Elektronik yang terkendala beberapa faktor

4.2.1. Faktor Substansi Hukum

Substansi hukum perundang-undangan terkait (*ius constitutum*) yang terkait dengan tiket elektronik adalah unsur yang berasal dari peraturan perundang-undangannya sendiri yang merupakan substansi hukum. Tilang secara elektronik tertera dalam UU No. 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan yang mengatur tentang tilang elektronik, yang diatur dalam Pasal 243 ayat (3) dan Pasal 272 yang hanya mengatur tentang alat elektronik sebagai alat bukti di pengadilan, namun tidak membahas mekanisme aplikasi tilang secara elektronik dalam pelanggaran yang terjadi dilalu lintas.

Adapun peraturan yang diterbitkan pemerintah Nomor 80 Tahun 2012 mengenai “Tata Cara Pemeriksaan Kendaraan Bermotor di Jalan dan Penindakan Pelanggaran Lalu Lintas dan Angkutan Jalan”, dimana penggunaan alat bukti elektronik dalam bentuk rekaman yang nantinya dijadikan alat bukti sebagai penegakan hukum di persidangan hanya dijelaskan secara implisit dalam Pasal 14 ayat (3), Pasal 23 dan Pasal 28. Atas hal tersebut, maka bisa dikatakan bahwa pengaturan atas prosedur ataupun mekanisme implementasi Tilang secara elektronik belum diatur secara nyata atas penggunaannya terkait pelanggaran yang terjadi di jalan raya.

Namun, saat ini sistem Tilang secara elektronik baru terdapat di Keputusan Kapolda Metro Jaya Nomor: KEP/671/VIII/2019 tanggal 29 Agustus 2019 tentang Standar Operasional Prosedur *Electronic Traffic Law Enforcement* (ETLE) dimana dalam Peraturan Kapolri belum tertera. Dalam keputusan tersebut mengatur terkait penegakan hukum dengan sistem ETLE yang hanya mengatur di wilayah hukum Polda Metro Jaya. Oleh karena itu, hal ini menyebabkan tidak dapat dilakukannya penindakan bagi pelanggar yang berasal dari luar wilayah hukum Polda Metro Jaya karena tidak ada dasar hukum yang mengaturnya. Menanggapi hal ini, Petugas ETLE Polda Metro Jaya hanya dapat melaporkan pelanggaran lalu lintas tersebut kepada Korlantas Polri guna penindakan lebih lanjut.

4.2.2. Faktor Penegak Hukum

Faktor yang berkaitan dengan aparat penegak hukum yang menjalankan peraturan perundang-undangan yang berlaku, dalam hal ini anggota lalu lintas yang melaksanakan tugas penegakan hukum terhadap pelanggaran lalu lintas dari tahap awal terjadinya pelanggaran lalu lintas atas diterapkannya ETLE, ke tahap konfirmasi, tahap penindakan/pemberian tilang, dan terakhir penyelesaian pelanggaran dengan membayarkan denda tilang pada jangka waktu yang ditentukan yang bisa dibayarkan lewat Bank BRI atau kantor Kejaksaan, hal ini tentunya sesuai dengan UU No. 22 Tahun 2009.

Dalam pelaksanaan menegakan hukum atas sistem *Electronic Traffic Law Enforcement* (ETLE) dibentuk satgas ETLE sesuai Surat Perintah Kapolda Metro Jaya Nomor: Sprin/1856/IX/OPS.4.5/2019 tanggal 11 September 2019. Satgas tersebut yaitu, Petugas *Back office* (Petugas analisis & verifikasi dan Petugas penanggungjawab surat konfirmasi), Petugas Posko ETLE (Petugas Tilang, Admin, dan Yanduan), dan terakhir

yakni Petugas Samsat, dimana tugas dan tanggung jawab yang dilakukan oleh anggota Ditlantas yang bertugas pada Subdit Gakkum dan Subdit Regident bagi anggota yang ditugaskan untuk menangani Electronic Traffic Law Enforcement tersebut merangkap dengan jabatan yang juga diembannya. Hal ini dikarenakan belum ada unit khusus pada Ditlantas Polda Metro Jaya yang secara khusus bertugas dalam Electronic Traffic Law Enforcement, alhasil pelaksanaan tugas belum optimal karena tugas rangkap tersebut.

4.2.3. Faktor Sarana atau Fasilitas

Dalam faktor yang melibatkan sarana dan fasilitas ialah pendukung pelaksanaan atas tugas anggota Ditlantas Polda Metro Jaya yang bertujuan menegakkan hukum dalam sistem Tilang secara elektronik bagi pengemudi yang melanggar aturan lalu lintas lewat *Electronic Traffic Law Enforcement*. Oleh karena itu, sarana seperti kamera *E-Police* yaitu perangkat kamera yang digunakan guna menangkap pelanggaran marka jalan, kamera *Check poin* yaitu perangkat kamera yang bisa menangkap pelanggaran yang melanggar aturan ganjil genap, penggunaan sabuk pengaman dan juga gadget bagi pengemudi mobil, atau juga bisa menangkap pelanggaran pelanggaran yang dilakukan oleh pengemudi motor yang tidak mengenakan helm, menerobos jalur buss ataupun kecepatan yang dilanggar. Maka dapat dikatakan bahwa penindakan pelanggaran diluar ketentuan UU No. 22 tahun 2009 tidak bisa dilakukan karena kamera ETLE tidak bisa mendeteksinya.

Selain itu, komputer, *server ETLE*, aplikasi *ETLE*, *Database Electronic Registration and Identification (ERI)*, printer, jaringan internet, aplikasi *E-Tilang*, kode *Briva*, blanko Tilang, alat tulis kantor serta peralatan komputer juga digunakan dalam menunjang penerapaaan sistem ETLE. Dalam hal fasilitas, *Back office* dan Posko *ETLE* Subditgakkum digunakan sebagai fasilitas pendukung. Terdapat pula faktor lain seperti anggaran yang belum ada secara khusus guna melaksanakan sistem *Electronic Traffic Law Enforcement* yang berarti masih mengandalkan dana oprasional serta dana rutin Ditlantas Polda Metro Jaya.

4.2.4. Faktor Budaya Hukum Masyarakat

Jika ketentuan mengenai tilang elektronik terhadap pelanggaran lalu lintas diterapkan dalam kasus ini, maka faktor budaya hukum masyarakat merupakan faktor yang berkaitan dengan kondisi lingkungan masyarakat tempat penerapannya. Dalam hal ini faktor tersebut berkaitan dengan kondisi masyarakat sebagai pengendara kendaraan bermotor yang berada di bawah wilayah hukum Polda Metro Jaya.

Masyarakat sering tidak melakukan balik nama atas Bukti Tanda Kepemilikan Kendaraan Bermotor (BPKB) dan Surat Tanda Nomor Kendaraan (STNK) setelah proses jual-beli kendaraan bermotor. Hal ini tentu menjadi masalah apabila terjadi pelanggaran yang mana surat konfirmasi akan ditujukan pada pemilik kendaaraan yang tertera dalam Database Electronic Registration and Identification (ERI). Disamping itu, terdapat penggunaan Tanda Nomor Kendaraan Bermotor (TNKB) yang berbeda dengan nomor registrasi kendaraan yang menyebabkan penindakan tidak dapat ditindak lanjuti. Faktor lainnya yakni ketersediaan masyarakat untuk melakukan tindaklanjut atas pelanggaran yang dapat dilakukan secara langsung ke Posko ETLE atau lewat website yang nantinya jika diselesaikan akan dilanjut pada tahap pemberian sanksi tilang.

4.2.5. Faktor Alam atau Lingkungan

Dalam faktor alam, kondisi atas cuaca tempat kamera ETLE beroperasi dapat

berpengaruh dalam kinerjanya. Apabila cuaca hujan dengan intensitas tinggi, maka kamera tidak bisa menangkap pelanggaran yang terjadi di jalan raya. Belum lagi kondisi lain jika terjadi sambaran petir, instalasi atau jaringan yang tergenangi air hujan sehingga perangkat kamera *korsleting*, atau saat server sedang *down* yang disebabkan gangguan alam lainnya menyebabkan kamera tidak terkoneksi.

Faktor lingkungan yakni situasi kamera ETLE beroperasi atau ditempatkan. Kamera ETLE dapat rusak apabila misalnya terdapat tindakan penrusakan sarana oleh massa pengunjung rasa atau oknum tertentu. Kerusakan yang terjadi tersebut tentu menyebabkan kamera tidak lagi berfungsi dengan normal, yang pada akhirnya tidak bisa lagi mendeteksi pelanggaran.

5. KESIMPULAN

Tilang secara elektronik yang dilakukan di wilayah hukum Polres Metro Jaya dinilai belum optimal dalam hal efektivitasnya menindak pelanggaran yang terjadi. Hal ini ditunjukkan dalam indikasi bahwa kamera ETLE tidak dapat mengenali pelanggaran diluar ketentuan UU No. 22 Tahun 2009. Penindakan penegakan hukum juga tidak bisa dilakukan lebih lanjut apabila kendaraan berasal dari Polda lain selain Polda Metro Jaya atau terdapat Tanda Nomor Kendaraan Bermotor yang berbeda dengan nomor registrasi kendaraan bermotor yang tercatat di Samsat. Selain itu, apabila tahapan pelanggaran lalu lintas tidak dijalankan oleh pemilik, maka tilang secara elektronik tidak dapat dilaksanakan.

Efektivitas tilang elektronik di wilayah hukum Polda Metro Jaya dipengaruhi atas beberapa faktor. Dalam faktor substansi hukum, belum ada aturan khusus atas Tilang elektronik dimana hanya dalam Keputusan Kapolda Metro Jaya. Dalam faktor penegak hukum, akibat tidak adanya unit khusus yang bertugas maka penanganan Tilang elektronik masih dirangkap oleh anggota Subdit Gakkum Direktorat Lalu Lintas Polda Metro Jaya. Dalam faktor sarana & fasilitas, fitur kamera ETLE belum mendukung penuh atas segala jenis pelanggaran. Dalam faktor budaya hukum, kurangnya kesadaran masyarakat atas balik nama bukti kepemilikan kendaraan bermotor dan juga penggunaan tanda nomor kendaraan yang belum sesuai. Dalam faktor alam atau lingkungan, kondisi cuaca yang ekstrim dapat menyebabkan kamera tidak bisa digunakan dan lokasi kamera yang rentan akan perusakan oleh oknum tertentu.

Saran

Dari hasil dan pembahasan serta kesimpulan, peneliti menyarankan bahwa:

1. Sebaiknya peraturan mengenai Tilang secara elektronik dapat diatur secara khusus, yang dimana hal ini dapat diusulkan oleh Direktur Lalu Lintas Polda Metro Jaya kepada Mabes Polri. Sejalan dengan hal tersebut, maka diharapkan agar unit khusus Tilang elektronik dapat dibentuk, serta penambahan kamera berbasis ETLE yang mendukung, dan juga alokasi anggaran yang dapat mendukung kinerja pelaksanaan Tilang secara elektronik.
2. Sebaiknya dilakukan sosialisasi hukum oleh Direktorat Lalu Lintas Polda Metro Jaya kepada masyarakat mengenai aturan balik nama bukti kepemilikan kendaraan bermotor, penggunaan Tanda Nomor Kendaraan Bermotor, beserta prosedur dalam

menyelesaikan pelanggaran Tilang elektronik yang tentunya dapat memberi ilmu baru dan kesadaran hukum bagi masyarakat.

DAFTAR PUSTAKA

- Andi Hamzah, J. (2012). *Asas-Asas Hukum Pidana di Indonesia & Perkembangannya*, Jakarta. PT. Sofmedia.
- Ash-Shofa, B. (2004). *Metode Penelitian Hukum*, PT Rineka. Cipta Jakarta.
- Atmasasmita, R. (2011). *Sistem Peradilan Pidana Kontemporer*, cet. Ke-2, Jakarta: Kencana.
- Henry, C. (1998). *Black's Law Dictionary; Seventh Edition*. St. Paulmin West Publicing. Co.
- Hiariej, E. O. S. (2014). *Prinsip-Prinsip Hukum Pidana*. Cahaya Atma Pustaka.
- Karjadi, M. (2011). *kejahatan Pelanggaran dan Kecelakaan*. Bogor, Politeia.
- Marzuki, P. M. (2013). *Penelitian Hukum*. Kencana.
- Satjipto, R. (2009). *Penegakan Hukum suatu tinjauan sosiologis*. Yogyakarta: Genta Publising.
- Soekanto, S. (2007a). *Faktor-faktor yang mempengaruhi penegakan hukum*.
- Soekanto, S. (2007b). *Sosiologi: Suatu Pengantar*. PT Raja Grafindo Persada.

TECHNICAL SECURITY IN ITE LAW AND COPYRIGHTS OF DEVICES AND SYSTEMS

Septian Rizky Dalimunthe^{1*}, Sri Anisa Pujawati², Akmal Satria Alvin Sitorus³

^{1,2,3}

Fakultas Hukum, Universitas Asahan

E-mail: ¹⁾ septianrizky1402@gmail.com, ²⁾ srianisapujawati93@gmail.com,

³⁾ alfinsitorus02102002@gmail.com,

Abstract

Copyright is the creator's or recipient's exclusive right to publish or reproduce his work, or to grant permission to do so, without reducing the restrictions imposed by applicable laws and regulations. This research aims to determine how the legal protection of creators for the use of illegal software is based on the Copyrights Law No. 19 of 2002. The study employs normative law research methods, as well as secondary data obtained through library research. According to the findings, product piracy costs the creator both financially and morally, as well as having an economic impact on the country. Aside from that, using pirated software raises a fatal risk because malware/viruses can easily infiltrate software, opening the way for cyber-attacks. As a consequence, it is recommended that legal proprietary software be used for work, learning, or other software-related activities. If people are unable to obtain legal software due to a lack of resources, they should consider other options, such as open-source software that is available for free. Furthermore, proprietary software (closed) vendors must be able to offer reasonable prices. If a person or company infringes on another's copyright, they could face criminal charges or civil lawsuits.

Keywords: *Intellectual Property Rights, Copyright, Illegal Software, Open-Source Software*

1. INTRODUCTION

The era of globalization that has developed rapidly has been able to bring changes in various fields of human life. Including the development of information and communication technology which plays an important role in development. In other words, globalization has brought about major changes to human life.

It is undeniable that the rapid growth of information technology is one of the main causes of the era of globalization, where this phenomenon is faster than all parties believe. The implementation of the internet, electronic commerce (e-commerce), electronic data exchange, virtual offices, telemedicine, intranets, and other technologies has exceeded the reach of the country. The convergence of computer and telecommunications technology has resulted in a revolution in the field of information systems. Data or information that used to take days to process before being sent to other parts of the world can now be processed in seconds.

Because of the sophistication of computer technology in the twenty-first century, it is very useful for human life. The advantages of computers in terms of speed and accuracy in completing work can reduce the amount of labor, costs, and the possibility of errors, which in turn makes humans more dependent on computers as a result of these advantages.

Information and communication technology is currently leading to things that make it easier for humans to create, develop, and use technology. One of them is the extremely rapid

development of internet media, to the point where the internet's existence is now considered one of the necessities. Information technology is a physical manifestation of humans' desire to find ways to make work easier for them. A technique or method using electronic tools is produced as a result of an action with various studies and experiments to process the information obtained.

Information technology is a term used to describe items of equipment (hardware) and computer programs (software) that enable us to access, store, organize, manipulate, and present information by electronic means, where the current development of computers, both hardware and software, has experienced significant developments where these developments are the demands of the increasingly complex needs of computer users in order to create efficiency and effectiveness in using these technologies. Thus, the rapid advancement of information technology has created the globalization of Intellectual Property Rights. Intellectual Property Rights (IPR) are exclusive rights granted by a law or regulation to a person or group of people for their copyrighted works. The implementation of intellectual property rights itself aims to anticipate the possibility of violating intellectual property rights against other parties, increasing competition and market share in the commercialization of intellectual property (Prajna, 2021),

However, along with the complexity and high competition in the business world, it will tend to have the potential to cause conflicts or disputes by certain parties (Mahfuz, 2020). Therefore, the need to protect goods or services from possible counterfeiting or unfair competition, requires IPR on the product in question (Brassil et al., 1999). Based on Law Number 19 of 2002 concerning Copyright, Article 1 paragraph (1) states that: "Copyright is an exclusive right for the creator or recipient of the right to publish or reproduce his creation or give permission for it without reducing the restrictions according to the current regulation".

Meanwhile, the Computer Program according to Law No. 19 of 2002 concerning Copyright Article 1 paragraph (8) is: "A set of instructions embodied in the form of language, code, scheme, or other form, which when combined with media that can be read by a computer will be able to make the computer work to perform functions or to achieve specific results, including preparation in designing these instructions".

Furthermore, information technology refers to the hardware and software that allow us to use electronic devices to access, store, organize, manipulate, and present data. Through the use of appropriate software, this computer can assist humans in their work. As a direct consequence, the sophistication of computer technology is determined by the software used. As a matter of fact, any information obtained by humans can be processed using information technology to add value, particularly in terms of human benefits (Sumarwiyah & Zamroni, 2017).

In Indonesia, the level of software piracy is very high. According to the Software Alliance or BSA (The Software Alliance) stated that data in 2017 showed that 83% of software in Indonesia was pirated. The report also shows that Indonesia is the highest user of pirated software in the Asia Pacific region (Omaryhara, 2019). The motives behind the use of pirated software are various, ranging from not knowing, expensive license prices, the possibility of a small penalty, getting money from these activities to joining friends or other people doing the same thing.

Taking into consideration to the high level of piracy, it is unquestionably a source of financial and moral loss for its creators. Furthermore, it is detrimental to the Indonesian economy because pirated goods are not subject to sales tax, which is a major source of revenue. The large number of pirated goods not only has a negative impact on the Indonesian economy, but it also results in significant losses for the creators of these goods. In addition to not receiving economic benefits, the creators will be unable to fully appreciate the results of their efforts. This will also have an impact on the creator's proclivity to create in accordance with his or her talents and abilities.

In Indonesia, piracy occurs not only for software products, but also for music (songs), movies (videos), books, electronic goods, branded clothing products (fashion), and others. In this particular instance, the author will only highlight the issue of software piracy. Based on the description contained in the background of the problem above, this study aims to find out how the legal protection for creators for the use of illegal software based on Law Number 19 of 2002 concerning Copyrights is.

2. RESEARCH METHOD

The research uses normative law research methods, which is research that uses secondary data in the form of library research. According to Soekanto (2007), "legal research is carried out by examining library materials or secondary data alone, it can be called normative law research or library research (in addition to sociological or empirical legal research which mainly examines primary data)". Normative legal research which includes:

- a) Research on legal principles.
- b) Research on legal systematics.
- c) Research on the level of synchronization and horizontal.
- d) Comparative law.
- e) Legal history (Soekanto, 2007).

Meanwhile, in this research, the researcher focuses on legal principles, and is supported by various legal materials such as:

- a) Primary legal materials consist of materials that have binding legal force, namely: Law Number 19 of 2002 concerning Copyright.
- b) Secondary legal materials, namely materials that are closely related to primary law, namely: opinions of scholars, and books related to the problem under study
- c) Tertiary legal materials are materials that provide instructions for primary and secondary legal materials, such as dictionaries and encyclopedias (Sunggono, 2007).

3. RESULT AND DISCUSSION

3.1. Definition of Copyright and Copyright Regulations in Indonesia

Based on Article 12 of Law Number 19 of 2002 concerning Copyright, a creation is the result of every work of an author that shows authenticity in the fields of science, art, or literature. Some of the protected works can be books, computer programs, pamphlets, written works, speeches, and other similar works. Based on Article 1 of Law Number 19 of 2002, the Creator is a person or several people who jointly with their inspiration give birth to a

creation based on the ability of the mind, imagination, dexterity, skill or expertise as outlined in a distinctive and personal form.

Copyright was first proposed by St. Moh. Syah in 1951 in Bandung at the cultural congress (which was later accepted by the congress) as a substitute for the term Author Rights which was considered to be less broad in its meaning. The term Author Rights itself is a translation of the Dutch language *Auteursrecht* (Naning, 1997).

Meanwhile, Copyright according to *Auteurswet* 1912 and the Universal Copyright Convention. According to *Anteurswet* 1912 Article 1 states: "Copyright is the sole right of the creator, or the right of the person who gets the right, on his creations in the fields of literature, knowledge and art, to publish and reproduce them keeping in mind the restrictions determined by law (Naning, 1997).

According to the Universal Copyright Convention, which is an important milestone in the field of copyright law, where this law does not create a new copyright law, but in the context of harmonizing the existing national system, on the basis of simplified reciprocal national treatment. In the Universal Copyright Convention these represent contracts, through copyright plans, between groups of countries until then radically opposed to one another (Dubin, 1954).

According to M. Hutauruk there are 2 (two) important elements contained in the definition of Copyright, namely: (Hutauruk, 1997)

- 1) Transferable rights, transferred to other parties.
- 2) Moral rights that under any circumstances and in any way cannot be left from him (announcing his work, setting the title, putting his real name under a pseudonym and maintaining the integrity or integrity of the story).

Hence, every creation of a person or legal entity is protected by law because the creation is attached to Copyright. Every creator or Copyright holder is free to use his Copyright, but the law also stipulates restrictions on the freedom to use Copyright, namely, because the limitations have been determined, the freedom to use Copyright may not violate the restrictions outlined by law (Rosidi, 1984).

3.2. Copyright Holder and Copyright Protection

What is meant by Copyright holder is the creator as the owner of the Copyright or another person who receives the right from the creator, or another person who further receives the rights from the person mentioned above, where this has been confirmed in Article 1 paragraph (4) of the Law. Copyright Law Number 19 of 2002 that the Copyright Holder is the creator as the owner of the Copyright or the party receiving the right from the Author, or another party receiving further rights from the party receiving the right.

However, if it is related to Copyright, then the subject is as referred to in Article 3 of the Copyright Law Copyright is the right holder, namely the creator or person or legal entity who legally obtains the right to it. Namely by way of inheritance, grants, wills, made state property or by agreement, while the object is the object which in this case is Copyright, as an immaterial object.

Furthermore, what is meant by the creator in this case, Articles 5 to 9 of the Copyright Law Number 19 of 2002 provide the following explanation:

- a) *Article 5 (1)*

Unless there is evidence to the contrary, the person who is considered as the creator is the person whose name is registered as the creator according to the provisions of Article 29 or if the creation is registered, the person in or in the creation is called or declared as the creator, or the person who in the announcement something created is announced as the creator.

b) Article 5 (2)

If in an unwritten lecture there is no notification of who is the creator, then the person giving the lecture is considered as the creator.

c) Article 6

If a work consists of several separate parts created by two or more people, the person who is considered the creator is the person who leads and supervises the completion of the entire work, or if there is no such person, the person who collects it without prejudice to the respective Copyrights of part of his creation.

d) Article 7

If a creation that is designed by someone, is realized and carried out by another person under the leadership and supervision of the person who designed it, then the creator is the person who designed the creation.

e) Article 8 (1)

If a work is made in an official relationship with another party in the work environment, then the other party for and in his service the work is done is the copyright holder unless there is another agreement between the two parties, without reducing the rights of the creator as the creator if the use of the work is extended outside official relationship.

f) Article 8 (2)

If a work is made in a working relationship with another party in the work environment, then the party who created the copyrighted work as the creator is the copyright holder, unless otherwise agreed between the two parties.

g) Elucidation of Article 8

What is meant by official relationship is the relationship between civil servants and their agencies, while what is meant by working relationship is the relationship between employees and employers in private institutions.

h) Article 9

If a legal entity announces that a creation originates from it by not naming a person as the creator, then the legal entity is considered as the creator, unless proven otherwise.

Because the definition of copyright infringement is not explicitly explained in Law no. 19 of 2002 concerning Copyright, however, copyright infringement can be explained with the following meanings (Hozumi, 2006): “Copyright infringement refers to actions that violate copyright, such as using copyright, which is the creator's personal right, without permission, and registering copyright by people who are not copyright holders. Stealing other people's property earned through hard work, or taking and using it without permission, is a serious offense. Everyone understands that stealing another person's property is wrong. However, in the case of intangibles such as copyrights, where people do not even tend to feel guilty about stealing them”.

According to J.C.T. Simorangkir, that the term can be used as state property used by the Copyright Law, this means that the transfer of rights to the state is only a possibility

(Simorangkir, 1997). It is not a specialty and for that, several conditions must be met, namely:

- a) In the interest of the state;
- b) With the knowledge of the author;
- c) By Presidential Decree;
- d) On the basis of the consideration of the Copyright Council; and
- e) Copyright holders are rewarded with awards determined by the President.

Furthermore, by making a copyright a work becomes the property of the state after fulfilling all these requirements (Simorangkir, 1997). Likewise, for the Copyright, if the word approval is used, the creator will complicate matters if it turns out that the author does not give consent. Therefore, the law has set certain conditions, for example on the basis of the consideration of the National Copyright Council as the creator's representative.

3.3. Registration System and Term of Copyright Ownership

One of the differences that are considered quite important between *Auteurswet* and Law Number 19 of 2002 is regarding Copyright Registration. *Auteurswet* 1912 does not provide any provisions regarding this Copyright registration. According to Kollwijn as quoted by Widya Pramono, there are 2 (two) types of registration or registration systems, namely constitutive systems and declarative systems. this Copyright registration (Pramono, 1992).

According to Kollwijn as quoted by Widya Pramono, there are 2 (two) types of registration or registration systems, namely constitutive stelsel and declarative stelsel. Constitutive stelsel is the right to a new creation published because of a registration that already has legal force. Stelsel declarative that registration does not issue rights, but only provides an assumption or prejudice that according to the law the person whose creation is registered is the one who has the right to his creation. In the constitutive system, the emphasis is on obtaining the right to a work in its registration, while in the declarative system the emphasis is placed on the notion of being the creator of the registered right, so that other people can prove otherwise.

3.4. Legal Consequences for Using Illegal Software

The legal basis for Intellectual Property Rights in Indonesia is regulated by Copyright Law Number 19 of 2003, this Copyright Law protects, among others, the copyright of computer programs or software, manuals on the use of computer programs or software and books (a type of computer software) or others. If a person or company commits an infringement of another person's copyright, that person or company may be subject to criminal charges or civil lawsuits. Thus, the perpetrator will be charged with Article 72 of Law Number 19 of 2002 concerning Copyright, namely in Paragraphs (1,2,3,4,5,6,7).

3.5. Factors that lead to the spread of illegal software

The following are ways or modes of using software that are often carried out illegally, including:

- a. Hard disk loading

Is a type of software piracy classified as hard disk loading, which is software piracy that is usually carried out by computer sellers who do not have a license for the computers they sell, but the software is installed on computers purchased by customers as a "bonus".

b. Under Licensing

The type of software piracy that is classified as Under Licensing is software piracy which is usually carried out by companies that register licenses for a certain number of times, but in fact the software is installed for a different amount from the license it has (usually installed more than the number of licenses issued) owned by the company.

c. Counterfeiting

The type of software piracy that is classified as counterfeiting is the use of illegal software which is usually carried out by companies making illegal software by falsifying product packaging which is made in such a way that resembles the original product.

d. Mischanneling

The type of software use classified as mischanneling is the use of illegal software which is usually carried out by an institution/institution that sells its products to other institutions/institutions at a relatively cheaper price, with the hope that the institution will get more profit (revenue) from the sale of the software.

e. End User Copying

Types of illegal software use classified as End user copying are the use of software that is usually carried out by a person or institution that has 1 (one) license for a software product, but the software is installed on a number of computers.

f. Internet or BBs

In this type of software use is mostly done by using internet media or Bulletin Boards, a mailing list to sell or disseminate unofficial (pirated) products (Wahyudi, n.d.).

3.6. Strategies to minimize the use of illegal software

Reports from the Business Software Alliance show that there are still many people who use pirated software around the world, including Indonesia. The value of this software piracy even reaches trillions of rupiah. The report states that the circulation of pirated software in Indonesia has reached 1.1 billion United States (US) dollars or the equivalent of Rp. 14.4 trillion. The circulation of pirated software reaches 84 percent of the circulating software (Widiartanto, 2016).

Judging from this data, we can conclude that the level of illegal software piracy is still very high in Indonesia. In fact, the high use of illegal software will gradually kill the creativity of the Indonesian people, because they will only become instant users of proprietary (closed) software products without wanting to tamper with the process.

Utilizing pirated software carries a fatal risk. At least, the Business Software Alliance asserts, pirated software is highly susceptible to infiltration by malicious programs or malware/virus. This is important to realize, especially if the user of pirated software is a company. The reason for this is that infiltrating malware equates to the possibility of cyber-attacks occurring. The effect is unquestionably detrimental, both materially and in terms of company image.

In fact, we can avoid the use of illegal software by switching to the use of open-source software. As stated by Brazilian President Luiz Inacio Lula da Silva where he declared his country to use open-source software in order to save the use of state money (Kompasiana,

2015). Another advantage of using open-source software is that it trains us to become programmers, because it is open-source software, the source code is open and free to modify, and develop. Using Open Office 3 software creates a sense of security for the author, because we get it legally, because this software is free and open and can be used for free. As known, Proprietary (closed) software gets legal protection in Indonesia which according to Copyright Law No. 19 of 2002 Article 30 it is stated that: "Copyrights on Software creations (Computer Programs) get protection for 50 years from the time they were first announced" This means, if we use pirated software within the 50-year protection period, then we can be subject to a criminal act which according to Chapter XIII on Criminal Provisions Article 72: (3) says: "Anyone who intentionally and without rights reproduces the use for commercial purposes of a computer program is punished with imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

As a matter of fact, it is recommended that legal proprietary software be used for work, education, and other fields that require software. However, if several restrictions prevent obtaining legal software, it is recommended to use other alternatives, in this case, free open-source software. Additionally, vendors of proprietary (closed) software must be able to offer affordable prices, particularly in developing countries such as Indonesia, by providing subsidies and licenses for the use of multiple computers, allowing people to purchase legal proprietary software. Licensing the use of multiple computers will almost certainly result in an increase in the sales of proprietary software, particularly in the education, health, and social sectors. Because, as stated in Article 15 of Law No. 19 of 2002, point g, "the creation of backup copies of a computer program by the owner of the computer program (not the copyright holder) for his personal use is not considered a copyright infringement." Consequently, the law retains the right of the original software purchaser to back up the original software for backup purposes, as long as the backup is not for re-commercialization. *Ipsa facto*, if the law allows for this flexibility, it is time for vendors of proprietary software to offer license sales for the use of more than one computer at an affordable price, increasing sales and allowing the general public to purchase it. This strategy is directed solidly at the sectors of education, health, and social services (Kompasiana, 2015).

4. CONCLUSION

Based on the findings, it can be concluded that piracy by a person or company commits an infringement of another person's copyright, so that person or company can be subject to criminal charges or civil lawsuits. As described in CHAPTER XIII Concerning Criminal Provisions Article 72: (3) states: "Whoever intentionally and without rights reproduces the use for commercial purposes of a computer program is sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)".

Product piracy definitely results in material and moral losses for its creators and has a negative effect on the economy of the country. Additionally, using pirated software has a fatal risk in which malware/viruses can easily infiltrate the software, allowing for cyber-attacks to occur. As a necessary consequence, it is recommended to use only legal proprietary software for work, education, and other fields that require software. However, if people encounter difficulties obtaining legal software, it is recommended to consider other options,

such as free open-source software. Meanwhile, vendors of proprietary software (closed) must be able to provide affordable prices.

REFERENCES

- Brassil, J. T., Low, S., & Maxemchuk, N. F. (1999). Copyright protection for the electronic distribution of text documents. *Proceedings of the IEEE*, 87(7), 1181–1196.
- Dubin, J. S. (1954). The universal copyright convention. *California Law Review*, 89–119.
- Hozumi, T. (2006). *Asian Copyright Handbook, Asia Pasific Cultural Centre for UNESCO dan Ikatan Penerbit Indonesia*. Jakarta.
- Hutauruk, M. (1997). *Pengaturan Hak Cipta Nasional*. Jakarta: Erlangga.
- Kompasiana. (2015). Pembajakan Software dan Solusi Mengatasinya. *Kompasiana.Com*.
<https://www.kompasiana.com/aguscandra/54ff1239a333118e4250f8dd/pembajakan-software-dan-solusi-mengatasinya>
- Mahfuz, A. L. (2020). Problematik Hukum Hak atas Kekayaan Intelektual (HAKI) di Indonesia. *Jurnal Kepastian Hukum Dan Keadilan*, 1(2), 47–59.
- Naning, R. (1997). *Perihal Hak Cipta Indonesia, Tinjauan Terhadap Auteursrecht 1912 dan Undang-undang Hak Cipta 1997*. Liberty.
- Omaryhara, G. (2019). *Indonesia Jadi Pengguna Software Bajakan Tertinggi di Asia Pasifik*.
<https://tirto.id/indonesia-jadi-pengguna-software-bajakan-tertinggi-di-asia-pasifik-djSo>
- Praja, F. K. A. P. (2021). Hak atas Kekayaan Intelektual (HaKI). *Duniadosen.Com*.
<https://www.duniadosen.com/hak-atas-kekayaan-intelektual-haki/>
- Pramono, W. (1992). *Tindak Pidana Hak Cipta Analisis dan Penyelesaiannya*. Sinar Grafika, Jakarta.
- Rosidi, A. (1984). *Undang-undang Hak Cipta 1982: pandangan seorang awam*. Penerbit Jambatan.
- Simorangkir, J. C. T. (1997). *Hak Cipta*. Djambatan.
- Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.
- Sumarwiyah, S., & Zamroni, E. (2017). Pemanfaatan Teknologi Informasi (TI) Dalam Layanan Bimbingan Dan Konseling Sebagai Representasi Berkembangnya Budaya Profesional Konselor Dalam Melayani Siswa. *Jurnal Bimbingan Dan Konseling Ar-Rahman*, 2(1).
- Sunggono, B. (2007). *Metodologi Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada.
- Wahyudi, H. M. (n.d.). *Fenomena Pembajakan Software di Indonesia: Antara Kebutuhan dan Pelanggaran Hak Cipta (HKI)* H. Mochamad Wahyudi.
- Widiartanto, Y. H. (2016). 84 Persen “Software” di Indonesia adalah Bajakan. *Kompas.Com*.
<https://tekno.kompas.com/read/2016/07/21/11480047/84.persen.software.di.indonesia.adalah.bajakan>

**LEGAL CERTAINTY REGARDING THE IMPOSITION OF
CRIMINAL EXTORTION SANCTIONS INVOLVING
COMMUNITY ORGANIZATIONS (ORMAS)**

Heri Susanto^{1*}, Ramlani Lina Sinaulan², Mohamad Ismed³

^{1,2,3}

Fakultas Ilmu Hukum, Universitas Jayabaya, Jakarta

E-mail: ¹⁾ heri.ganteng20@gmail.com

Abstract

The purpose of this study is to examine the legal certainty afforded to community organizations that commit extortion, as well as to analyze and propose criminal punishments against community organizations that commit extortion. The method utilized in this study is normative legal research, which is conducted in order to elicit the relevant data for the topic. The data used are secondary data and tertiary legal materials. The data analysis was conducted utilizing a qualitative method of legal analysis. According to the findings of this study, the government must be resolute in enforcing the law against a person who is a member and/or administrator of a community organization and who intentionally and directly or indirectly violates the provisions, including extortion, violence, and disturbing the peace and order. destroying public and social facilities, committing acts of hostility against ethnicity, religion, race, or class; engaging in separatist activities that jeopardize the Unitary State of the Republic of Indonesia's sovereignty; and adhering to, developing, and spreading teachings or understandings contrary to Pancasila. To ensure legal certainty for a person acting in conformity with existing legal provisions, Community Organizations are not an exception; on the contrary, Community Organizations lack legal certainty. Articles of extortion and threats as defined in Article 368 paragraph (1) of the Criminal Code (KUHP) criminal sanctions imposed on individual Ormas who commit the extortion crime specified in Article 368 of the Criminal Code still do not satisfy the community's sense of justice because the threats are only 9 (nine) years in prison, with no fines or other additional penalties to the organization concerned.

Keywords: *Legal Certainty, Criminal Sanctions for Extortion, Community Organizations*

1. INTRODUCTION

Indonesia is a country based on law (*rechtsstaat*) only after the revision to the 1945 Constitution is clearly declared in Article 1 and Article 3. Indonesia is a country based on law only after the amendment to the 1945 Constitution is expressly stated in Article 1 and Article 3. According to D. Mutiaras, the rule of law is as follows:

According to Fadjar, a country whose organization is as thoroughly regulated by law as feasible, so that the powers of the instruments of government are based on the rule of law. People should not act freely in accordance with everything that is against the law. The state of law is one that is controlled by laws rather than people (state that not governed by men, but laws). As a result, in a legal state, the people's rights are fully ensured by the state and against the state, by conforming to and obeying all government regulations and state laws (Fadjar, 2016)

Responding to the concept of a rule of law above, it means that every action of the people and power holders must be based on and based on the law. Law also covers various

fields, namely the existence of criminal law, civil, administrative, state administration, and others. Related to this, Adami Chazawi stated that criminal law is divided into two aspects, one of which is material criminal law which is also called abstract criminal law or law in silence whose main source is the Criminal Code (also referred to as KUHP) (Chazawi, 2018).

The government must ensure the existence of law enforcement and the achievement of legal objectives. In law enforcement there are three elements that are always considered, namely justice, benefit or use (*doelmatigheid*), and legal certainty (Yamin, 1959). Compliance with order is a key necessity for an ordered society; achieving justice is another purpose of law. It must reflect legal clarity in order to promote order and interaction between humans in society (Soekanto, 1979).

There will be peace and order in the community if there is legal certainty since the law serves as the "commander" and the pulse of state and social life, so the law has a strategic and dominant role in law enforcement (Soekanto, 1979), but it does not rule out the possibility that everyone is free to express opinions and gather. This right has become a human right and is stated in the 1945 Constitution Article 28a, namely "Freedom of association and assembly, expressing thoughts orally and in writing and so on are stipulated by law". This freedom is not an arbitrary freedom, there are legal rules that limit it to be done to protect other human rights (Prajudi, 1995). Community Organizations (or also referred to as *Ormas*) are a form of gathering and expressing opinions.

A community organization is a group of people who get together to work together for the betterment of the community and the country as a whole, based on the principles of Pancasila, which is the foundation of the Republic of Indonesia's Unitary State. Community members can participate in national development through this community organization, which serves as a means to attain national goals within the framework of the Unitary State of the Republic of Indonesia, which is beneficial to the community (Eryanto, 2010).

Community Organizations are non-governmental institutions whose existence is indispensable in a democratic country. Community Organization is one of the forums for channeling the opinions and thoughts of members of the community, citizens of the Republic of Indonesia, in increasing their active participation in realizing a just and prosperous society. A community organization is defined by the government as a group of people that work together to achieve similar aims and objectives in order to contribute to the development of the Unitary State of the Republic of Indonesia based on Pancasila. Although Law No. 16 of 2017 on Amendments to Law No. 17 of 2013 on Community Organizations no longer stipulates that the establishment of Pancasila as the sole principle for Community Organizations does not conflict with Pancasila, this still stipulates that the principles present in Community Organizations do not conflict with Pancasila.

Each group has the same goals as the Community Organization in terms of their particular disciplines. In this case, the Community Organization may share one or more of the specific characteristics mentioned in this Article, namely the similarity of aspirations, desires, needs, interests, activities, and objectives to participate in efforts to realize the Unitary State of the Republic of Indonesia's Pancasila-based goals. In fact, although members of Community Organizations frequently commit crimes that disrupt public order and harm the community. The criminal act of Law No. 8 of 1985 concerning Community Organizations, as amended by Law No. 16 of 2017 concerning Amendments to Law No. 17 of 2013 concerning Community Organizations, contains no criminal provisions

or rules specifically regulating ganging, persecution, destruction, extortion, and other criminal acts. Even though, this does not mean that Indonesia's positive law is devoid of criminal provisions or rules.

Conviction is impossible without being found guilty of a crime that is illegal in the eyes of the law. A crime may only be punished based on the strength of the criminal provisions of law that existed before to the act, as stated in Article 1 of the Criminal Code. There will be no crime until the criminal provisions of the Act exist first, as stated in the article's requirements known as "*nullum delictum sine praevia lege poenali*" (Soesilo, 1995).

As a result of the above, a person can be found guilty of criminal negligence or intentional misconduct. Violations/errors are one of the key conditions in addition to the illegality of the act, and must be met in order for a legal person to be sentenced to a criminal offense (Wirajaya & Martana, 2013).

Accountability is founded on errors. Error is the maker's mental state and the inner relationship between the maker's acts and his mental state. If someone makes a mistake, they can be held accountable. The state of the mind of a person who performs an action is generally referred to as the capacity for responsibility, whereas the inner connection between the maker and his actions is purposeful, negligent, and forgiving of excuses (Wirajaya & Martana, 2013).

According to Law Number 16 of 2017, which amends Law Number 17 of 2013 on Community Organizations, the government may impose administrative sanctions ranging from written warnings to the revocation of registered certificates or the revocation of legal entity status until the Community Organization is finally dissolved.

Extortion crimes performed by Community Organizations include the following: Jekson Napitupulu carried out the extortion case in Medan based on the Medan District Court Decision Number: 2424/Pid.B/2019/PN.Mdn was convicted of extortion with violence against the Technical Implementation Unit (UPT) of Padang Sidempuan City and the Technical Implementation Unit (UPT) of Gunung Tua, in violation of Article 368 paragraph (1) of the Criminal Code (KUHP), and sentenced to 4 (four) months in prison.

As illustrated by this case, the birth of diverse mass groups in Indonesia has resulted in a slew of legal polemics waged by members of these organizations, which frequently have a detrimental effect on the broader community. This is diametrically opposed to Indonesia's fundamental ideals, notably those outlined in Pancasila. Until now, specific regulation governing members of mass organizations who commit criminal acts on behalf of the organizations to which they belong is extremely limited, making it difficult to hold members of these organizations accountable, which is a requirement under criminal law, specifically the principle of equality before the law. As a result, law enforcers must closely monitor these actions, even if the mass organizations have legal standing and are legal under the law.

A minimum criminal threat will be applied to non-criminal perpetrators of extortion in the Community Organizations Law, because the above-mentioned prison sentence is being implemented at such a low level that it has no effect on deterring Community Organizations from engaging in such activity (*lex specialist*).

Because of the low level of criminal sanctions against civil society organizations as perpetrators of criminal acts, the application of appropriate sanctions against Community Organizations is accomplished through the use of a combined legal system, which is a combination of cumulative and alternative forms or subsidiaries aimed at providing a deterrent

effect on Community Organizations, and as a result, the sanctions are more severe than they would otherwise be. Prison for a maximum of 8 years and extra sanctions such as compensation, restitution, and revocation of permits for Community Organizations can all be applied, with the latter being revoked and the former blocked.

In this context, unethical members of a Community Organization frequently engage in anarchic behavior in order to extort funds that are not related to their functions and objectives. Such behavior that is contradictory to the good principles ingrained in the public's legal consciousness becomes a legal crime (Utrecht, 1989), because a Community Organization in this scenario has a separate vision and mission, and thus frequently has goals that contradict positive law. Meanwhile, they are unaware that their acts are inconsistent with the aim and function of a Community Organization, as defined in Article 6 of Law No. 16 of 2017 amending Law No. 17 of 2013 on Community Organizations.

As a result of the foregoing context, the purpose of this study is to examine the form of legal certainty for community organizations which engage in the criminal activity of extortion. It also seeks to investigate and formulate criminal sanctions applicable to community organizations engaged in the criminal activity of extortion.

2. THEORETICAL BASIS

2.1. Legal Certainty

A legal certainty is intended to imply that there is certainty because of the law itself; for example, the law determines the existence of a defunct organization, and with the passage of time, a person will obtain or lose legal rights. In other words, the law can provide with certainty that a person who has an expired institution would receive some rights or that a person who has an expired institution will lose certain rights (Kalo, 2007). Legal certainty is a promise that the law will be followed, that persons who are entitled to their rights will be able to exercise those rights, and that rulings will be carried out (Arrasjid, 2008).

2.2. Criminal Sanction

Criminal sanctions are grief or suffering inflicted on someone who has been found guilty of committing an act that is prohibited by law. It is intended that by having criminal sanctions in place, people would refrain from committing crimes in the future (M. Ali, 2015). Criminal sanction is a general understanding, as a sanction that suffers or misery is intentionally inflicted on someone (Andi, 1993).

2.3. Criminal Actors

Perpetrators of criminal acts are those who commit an act which by law (existing regulations) is explicitly referred to as an act that is prohibited and can be punished. Moeljatno (2002) and Roeslan Saleh stated "that criminal liability is defined as a continuation of the objective reproach that exists in the criminal act and subjectively fulfills the requirements to be convicted for the act" (Amrani & Ali, 2015).

2.4. Extortion

The word "extortion" in Indonesian comes from the root word "extortion" which can mean "asking for money or goods by threat or coercion". Extortion as regulated in Chapter

XXIII of the Criminal Code actually consists of two types of criminal acts, namely extortion (*affersing*) and criminal acts of threat (*afdreiging*). Both types of crime have the same nature, namely an act that aims to extort other people.

2.5. Community Organizations (*Ormas*)

Community-organizations, or also known as Ormas, are groups of people who have come together to work toward a common purpose, such as achieving the aims of the Unitary State of the Republic of Indonesia based on Pancasila. These groups form on their own initiative and are entirely self-organized.

2.6. Legal Certainty Theory

The theory of legal certainty was born from the development of the basic value of legal certainty. Legal certainty is "*Scherkeit des Rechts selbst*" (certainty about the law itself) (Farid, 2007). Ronald Dworkin said that: "We live in and by law..., How can the law command when the law books are silent or unclear or ambiguous" (A. Ali, 2009). Hence, in a situation where there are unclear regulations, it will cause the law to not be able to regulate it properly.

Gustav Radbruch conveyed about three basic values (*Grundwerten*), namely: Justice (*Gerechtigkeit*), expediency (*Zweckmaeszigkeit*) and legal certainty (*Rechtssicherheit*), which are not always harmonious with each other, but face each other, conflict and tension (*spannungsverhaeltnis*) (A. Ali, 2009).

Every state administration policy must adhere to the notion of legal certainty, which places a high value on legislation, compliance, and fairness. According to Radbruch, a state of law must maintain the idea of legal certainty in order to produce order or stability (A. Ali, 2009).

2.7. Criminal Theory

There are three main groups of theories to justify the imposition of a criminal, namely: (Prodjodikoro, 2015)

1) Absolute Theory (*Vergeldings Theorien*)

According to Muladi and Barda Nawawi Arief, "crime is an absolute consequence that must exist in retaliation against those who commit crimes; thus, the premise for justifying a crime is the crime's presence or occurrence" (Muladi & Arief, 1984).

2) Relative Theory (*Doel Theorien*)

A crime does not have to be followed by another crime, according to this view. To provide a clearer picture of this relative theory, Muladi and Barda Nawawi Arief stated, "Criminal is not just to take revenge or retaliation to people who have committed a crime but have certain useful purposes, thus this theory is often referred to as Utilitarian Theory, and hence the basis for justifying the existence of a crime according to this theory lies in its purpose, the punishment is not "*quia peccatum est*" (because people make crimes) but "*Ne Peccetur*" (so that people don't commit crimes)." (Muladi & Arief, 1984)

3) Combined Theory (*Verenigings Theorien*)

This theory is a fusion of absolute theory and relative theory, and it brings together the points of retaliation and defense of the legal order of society, which are inextricably linked to one another and cannot be ignored separately. A combined theory is divided into three types based on the emphasis or dominant angle that is used in the fusion of the two theories into a combined theory, which are as follows: a combined theory that emphasizes the element of retaliation, a combined theory that emphasizes the defense of orderly society, and a combined theory that maintains a balance between retaliation and orderly defense of the public.

2.8. Criminal Sanctions

As stated by JE Jonkers, “Criminal sanctions are concerned with the penalty meted out for the crime committed, whereas action sanctions are concerned with the societal consequences of the crime committed” (Jonkers et al., 1987). According to Andi Hamzah, “Criminal sanctions are geared toward the idea of imposition of consequences on those who commit an act, whereas action sanctions are oriented toward the idea of guarding the community” (Hamzah, 1985).

3. RESEARCH METHOD

In science, a research technique is a scientific activity that is focused on specific methods, systems, and thoughts that are intended to explore one or many specific legal phenomena through the analysis of those phenomena (Dimiyati & Wardiono, 2004). In this study, the type of research methodology adopted was a normative juridical approach. The approach technique used in legal research is comprised of 4 (four) ways, which are the statutory approach, conceptual approach, analytical approach, as well as case approach.

The types and sources of secondary data were employed in this investigation. Secondary data is information that has been gathered from or generated from library resources. Secondary data is separated into 3 (three) categories, which are as follows:

- 1) Primary Legal Materials, are binding legal materials. Consist of:
 - a) The Constitution of the Republic of Indonesia Amendment to - IV of 1945.
 - b) Law Number 16 of 2017 Amendments to Law Number 17 of 2013 concerning Community Organizations
- 2) Secondary Legal Materials, are legal materials that provide explanations for primary legal materials. Which consist of:
 - a) Literature that discusses the criminal responsibility of Community Organizations, the application of criminal sanctions for Community Organizations as perpetrators of the crime of extortion and efforts to overcome them.
 - b) Books, research results, scientific journals, papers, documents, articles, internet sources, and other scientific writings that relevant to the topic.
- 3) Tertiary Legal Materials, legal materials that provide instructions or explanations for primary and secondary legal materials, which consist of:
 - a) Bibliography
 - b) Legal Dictionary
 - c) Indonesia Dictionary

- d) Law Encyclopedia
- e) English-Indonesian Dictionary.

When examining the results of this research, the strategy used is to criticize, support, or provide comments, and then come to a conclusion about the results of the research using their own views and the help of a literature review.

4. RESULT AND DISCUSSION

4.1. Legal Certainty of Community Organizations Perpetrators of the Crime of Extortion

Article 1 and Article 3 of the 1945 Constitution explicitly refer to Indonesia as a country based on the new law (*rechtstaat*) after the revision of the 1945 Constitution. Justice, advantage, and usefulness are always taken into account when enforcing the law. In a society where government legislation is followed, these three aspects are essential. The independence of this Republic is inextricably linked to the activity of community groups (or also known as Ormas) (Yamin, 1959).

Society will be more ordered with legal certainty. Legal certainty, as one of law's objectives, can be considered a component of efforts to achieve justice. Legal certainty in its truest sense is the application or enforcement of the law against an action regardless of who commits it. With legal certainty, anyone can forecast the outcome of specific legal actions. Certainty is required to implement the principle of nondiscrimination before the law. Because the law is the "commander" and the pulse of life in the state and society, it plays a strategic and dominant role in law enforcement (Hatta, 2009), but not excludes everyone from exercising their right to free expression and assembly. This right has been elevated to the status of a human right and is enshrined in Article 28E of the 1945 Constitution, which states: "Freedom of association and assembly, expression of opinions verbally and in writing, and shall be enshrined in legislation". This is not an unrestricted right; there are legal constraints on what can be done in order to protect another human right.

According to Law Number 2 of 2017, Community Organizations are a way to gather and communicate thoughts. Ormas are Community Organizations that are founded and developed freely by the community based on common ambitions, wishes, needs, interests, activities, and goals to participate in development in order to accomplish the Republic of Indonesia's Pancasila-based goals. Community organizations, or Ormas, is a phrase used in Indonesia to refer to non-political forms of community-based groups. The original term was "Mass Organizations," which was abbreviated as "Ormas." Since the publication of Permendagri number 33 in 2012, the word "Mass Organization" has been replaced with "Community Organization".

Organizing in the community is a way for people in the community to express their concern and participation in nation building, which takes the form of a variety of community programs and activities, each with its own vision and mission that may include expressing opinions about various government policies as well as offering criticisms and counter-concepts (Kania Winayanti, 2011).

In a democracy, non-governmental organizations such as community organizations are essential. In order to foster a more just and prosperous society, the Republic of Indonesia's

inhabitants turn to community organizations for a conduit for the expression of their ideas and opinions. As defined by the government, Community Organizations are non-profit entities created and run by members of a community to meet common needs and aspirations while also promoting the establishment of the Unitary State of Indonesia based on Pancasila (Amarullah, 1985). Pancasila is no longer the only concept for community organizations in the explanation of Law 17 of 2013, although the values that exist in community organizations do not contradict with Pancasila.

Currently, many Community Organizations have strayed from their roles and functions as organizations committed to Pancasila principles, putting the Government under pressure to carry out law enforcement, including the disbandment, of anyone who is a member or administrator of an Ormas who intentionally and directly or indirectly violates the provisions, including extortion, violence, disturbing the peace and public order, or causing damage to public facilities (Sri, 2019). Thus, the public, through the Government and the DPR, is encouraged to revise Law 17 of 2013 on Community Organizations in order to include criminal sanctions against Community Organizations that commit criminal acts and to enable law enforcement against Community Organizations that commit criminal acts (MD Ali, 1997).

Without legal certainty for Community Organizations, there are no standard provisions in carrying out the functions and roles of Community Organizations in society, which is contradictory to what is required to ensure legal certainty for individuals. Because of this, Gustav Radbruch is correct in claiming that the law's primary goal should be to ensure that the public is protected from harms. Legal certainty is an important part of community life. Lawful certainty refers to the application of life's order, which in its implementation is unaffected by the subjective conditions in people's lives and cannot be altered by them (Susanto, 2014).

Extortion crimes performed by Community Organizations include the following: Jekson Napitupulu carried out the extortion case in Medan based on the Medan District Court Decision Number: 2424/Pid.B/2019/PN.Mdn was convicted of extortion with violence against the Technical Implementation Unit (UPT) of Padang Sidempuan City and the Technical Implementation Unit (UPT) of Gunung Tua, as defined in Article 368 paragraph (1) of the Indonesian Criminal Code (KUHP), and sentenced to 4 (four) months in prison.

As illustrated by this case, the development of diverse mass groups in Indonesia has resulted in a slew of legal polemics committed by members of these organizations, which frequently have a detrimental effect on the broader community. This is diametrically opposed to Indonesia's fundamental ideals, notably those outlined in Pancasila. Lately, specific regulation governing members of mass organizations who commit criminal acts on behalf of the organizations to which they belong is extremely limited, making it difficult to hold members of these organizations accountable, which is a requirement under criminal law, specifically the principle of equality before the law. As a necessity, law enforcers must closely monitor these actions, even if the mass organizations have legal standing and are permitted under the law.

With the implementation of the above-mentioned prison sentence is very low so it cannot provide a deterrent effect on Community Organizations who are perpetrators of the crime of extortion, for that with the Law on Community Organizations it is hoped that it can

include articles regarding Community Organizations who are not criminal by applying threats. minimum punishment as applied to a special law (*lex specialist*).

With the existence of the foregoing issue, the question of legal certainty for CSOs engaged in law enforcement can only be resolved normatively, rather than sociologically. When a rule is drafted and disseminated with confidence because it governs clearly and logically, this is referred to as normative legal certainty. Certainty in the sense that it does not raise questions (many interpretations) and rationality in the sense that it establishes a system of norms with other norms such that they do not clash or produce norm conflicts are two characteristics of a clear and logical statement. Norm conflicts that arise as a result of rule uncertainty can manifest themselves in three ways: norm contestation, norm reduction, as well as norm distortion (Arizone, 2008).

Due to the insufficient criminal sanctions against members of Community Organizations who commit criminal acts that are only regulated by the Criminal Code (KUHP), the Ormas Law has been revised to include criminal sanctions, namely through the implementation of the Ormas Law's legal system combination, which is a combination of cumulative forms with alternatives or substitutes. To have a deterrent impact on community organizations, punishments may include both a maximum sentence of 8 years in prison and extra measures such as compensation, restitution, and dissolution of the community organization.

Gustav Radbruch suggested 4 (four) key propositions on the meaning of legal certainty, namely: - First, that law is positive, in the sense that positive law is legislation. Without a strict rule of law, and with reference to Law No. 16 of 2017 concerning Community Organizations, ormas individuals can act and violate the law at whim, disregarding the strict rule of law or adhering merely to the Criminal Code's rules of law.

- Second, that the law is founded on facts, implying that it is grounded in reality. - Third, as facts must be expressed plainly to minimize ambiguity and to facilitate implementation. - Fourth, positive law should not be readily amended, which means that if Law No. 16 of 2017 on Community Organizations does not regulate rigorously and contains legal loopholes, the Law will be rapidly amended without regard for the impact on society. Gustav Radbruch contended that legal certainty is synonymous with certainty about the law. Legal certainty is an outcome of the law, or more precisely, of legislation. According to Gustav Radbruch, positive laws guiding human interests in society must always be followed, even if they are unjust. Additionally, legal certainty refers to a certain condition (circumstance), provisions, or laws that safeguard the public against acts that violate the law (*Wederrechtelijk*). The legislation must be unambiguous and equitable. Certainly, as a guideline for behavior and justice, since the code of conduct must support a reasonable rule. Simply because a law is just and certain to be applied, it can perform its role. Thus, legal certainty is a normative question (Rato, 2010).

4.2. Application of Criminal Sanctions for Community Organizations as Perpetrators of the Crime of Extortion

Regulations govern every action and program of a community organization in order to achieve the state's aims of community groups acting as role models for the community. As a result of this rule, each member of the mass organization has rights and obligations in carrying out their responsibilities as a good citizen and member of the state. However, many

community organizations operate in violation of the regulations that govern them. There are numerous members of the mass organization in the form of groups that have objectives that differ from the organization's true objectives, and each of them seeks out additional members to accomplish those objectives in the members' own interests.

Community Organizations (“Ormas”) are mentioned in Article 1 point 1 of Law Number 16 of 2017 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations which states:

“Community Organizations, hereinafter referred to as Ormas, are organizations established and formed by the community voluntarily based on common aspirations, desires, needs, interests, activities, and objectives to participate in development in order to achieve the goals of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the State of the Republic of Indonesia. Republic of Indonesia in 1945.”

The purpose of establishing a Community Organization based on Article 5 of the Ormas Law as amended by Constitutional Court Decision Number: 82/PUU-XI/2013, regarding the Review of Law Number 17 of 2013 concerning Community Organizations Against the 1945 Constitution of the Republic of Indonesia explained that the Ormas aims to:

1. Increase community participation and empowerment;
2. Provide services to the community;
3. Maintain religious values and beliefs in God almighty;
4. Preserve and maintain norms, values, morals, ethics, and culture that live in society;
5. Conserving natural resources and the environment;
6. Develop social solidarity, mutual cooperation, and tolerance in social life;
7. Safeguard, maintain, and strengthen the unity and integrity of the nation; and/or
8. Realize the country's goals.

Rights and Obligations that must be obeyed by Community Organizations based on Law Number 16 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations, namely:

1. Community Organizations have the right:
 - a. Organize and manage the organization's household independently and openly;
 - b. Obtain intellectual property rights for the names and symbols of mass organizations in accordance with the provisions of laws and regulations;
 - c. Fight for the ideals and goals of the organization;
 - d. Carry out activities to achieve organizational goals;
 - e. Obtain legal protection against the existence and activities of the organization; and
 - f. Cooperating with the Government, Regional Government, private sector, other mass organizations, and other parties in the context of organizational development and sustainability.
2. Community Organizations have the following obligations:
 - a. Conduct actions in conformity with the organization's objectives;

- b. Maintain the unity and integrity of the nation and the integrity of the Unitary State of the Republic of Indonesia;
- c. Maintain religious, cultural, moral, ethical, and moral norms and provide benefits to society;
- d. Maintain public order and create peace in society;
- e. Perform financial management in a transparent and accountable manner; and
- f. Participate in the achievement of State goals.

Things that are prohibited from being carried out by Ormas are regulated in Article 59 Law Number 16 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations as follows:

1. Organizations are prohibited from:
 - a. Using the same name, emblem, flag, or attributes as the name, emblem, flag, or attributes of a government institution;
 - b. Using without permission the names, symbols, flags of other countries or international institutions/agencies as the names, symbols or flags of mass organizations; and/or
 - c. Using a name, symbol, flag, or graphic sign that has similarities in principle or in its entirety to the name, symbol, flag, or graphic sign of another mass organization or political party.
2. Organizations are prohibited from:
 - a. Receive from or give to any party donations in any form that is contrary to the provisions of laws and regulations; and/or
 - b. Raising funds for political parties.
3. Organizations are prohibited from:
 - a. Performing acts of hostility towards ethnicity, religion, race, or class;
 - b. Doing abuse, blasphemy, or blasphemy against the religion professed in Indonesia;
 - c. Perform acts of violence, disturb public peace and order, or damage public facilities and social facilities; and/or
 - d. Carry out activities that are the duties and authorities of law enforcement in accordance with the provisions of laws and regulations.
4. Organizations are prohibited from:
 - a. Using the name, symbol, flag, or symbol of an organization that has similarities in principle or in its entirety to the name, emblem, flag, or symbol of a separatist movement organization or prohibited organization;
 - b. Carry out separatist activities that threaten the sovereignty of the Unitary State of the Republic of Indonesia; and/or
 - c. Adhering to, developing, and spreading teachings or understandings that are contrary to Pancasila.

Sanctions for mass organizations committing prohibited acts, based on Article 60 of Law Number 16 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations explains that Ormas that violate the obligations of the Ormas as

described above, and/or violate the prohibitions in Article 59 paragraphs (1) and (2) can be sentenced administrative sanctions, in the form of:

1. Written warning;
2. Termination of activities; and/or
3. Revocation of registered certificate or revocation of legal entity status.

Nevertheless, pursuant to Article 60 paragraph (2) of Law No. 16 of 2017 amending Law No. 17 of 2013 concerning Community Organizations, Ormas that violate Article 59 paragraphs (3) and (4) above may face sanctions both administrative and/or criminal. Administrative punishments against violators include the cancellation of a registered certificate or the revocation of legal entity status by the Minister responsible for law and human rights. The revocation of the registered certificate and the legal entity status will result in the disbandment of the mass organization.

Community Organization sanctions that disturb the public are regulated in Article 21 letters c and d of the Ormas Law, namely, violating the obligation to maintain religious, cultural, moral, ethical, and moral values and providing benefits to the community, as well as violating the obligation to maintain public order and create peace in society, those Community Organizations may be subject to administrative sanctions as regulated in Article 61 paragraph (1) jo. in the form of:

1. Written warning;
2. Termination of activities; and/or
3. Revocation of registered certificate or revocation of legal entity status.

Arrangements for the imposition of sanctions against “Organizations that commit acts of violence, disrupt peace and public order, or cause damage to public facilities and social facilities” as defined in Article 59 paragraph (3) c of the Ormas Law, the organization may face administrative sanctions in the form of the Minister of Home Affairs revoking registered certificates for organizations that are not legal entities or revoking legal entity registrations for legal entities.

However there are some members of the mass organization who create groups with objectives that differ from the organization's true objectives, and each seeks out other members to accomplish those objectives in the members' own interests. Thus, members of mass groups engage in anarchic behavior during demonstrations or actions that result in criminal acts such as fatal injury, destruction of the environment, and state losses.

According to Andi Hamzah, punishment or the application of punishment is an understanding general, as a sanction that suffers or is deliberately inflicted on someone. While criminal is a special understanding related to criminal law (Hamzah, 1985). Definition given by Andi Hamzah gives a different understanding between punishment and crime, punishment talks about suffering sanctions while criminal talks about criminal law itself.

Application of criminal sanctions against perpetrators of criminal acts in this case is in the form of sanctions which are consequences, because the elements or characteristics of the criminal are: (Huda, 2008)

1. Criminal in essence is an imposition of suffering or suffering / other unpleasant consequences.

2. The penalty was given with intentionally by a person or entity that has power (by the authorities).
3. Crime that imposed on someone who has committed a crime according to the law.

Members and/or administrators of these Ormas may also be subject to criminal sanctions as regulated in Article 82A paragraph (1) of the following Ormas Law:

“Every person who becomes a member and/or administrator of an Ormas who intentionally and directly or indirectly violates the provisions as referred to in Article 59 paragraph (3) letter c and letter d shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) months. 1 (one) year.”

Paragraph (2) states *“Everyone who becomes a member and/or administrator of Ormas that intentionally and directly or indirectly violate the provisions as referred to in Article 59 paragraph (3) letter a, and letter b, and paragraph (4), shall be sentenced to life imprisonment or a minimum imprisonment of 5 (five) years. and a maximum of 20 (twenty) years.”*

Violation of Article 59 paragraph (3) letter a, and letter b Violation of Article 59 paragraph (3) letter a and letter b is committing and in general, the person who commits the criminal act is a member of the organization and not the community organization. And given criminal sanctions regulated in the Criminal Code in accordance with the actions he did. This is the weakness of the Ormas Law, where the Law does not explain in detail a criminal act that is often carried out by unscrupulous members of the Ormas in the community such as extortion, persecution, beatings, and other criminal acts that are not regulated in the Ormas Law.

The presence of CSOs in Indonesia is still very much needed as mandated in Law Number 16 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Community Organizations. Moreover, in article 5 of the Ormas Law states that “The aims of mass organizations are, among others, to improve and empower the community, to preserve and maintain norms, values, morals, ethics and culture that live in society; maintain and strengthen the unity and integrity of the nation and realize the goals of the state”. Thus, the existence of Community Organizations as government partners in achieving state goals is very much needed. However, sometimes it happens in the community that the existence of mass organizations actually disturbs the community, because of the behavior of unscrupulous organizations who commit criminal acts.

Basically, the Ormas Law states, there are two legal subjects that are regulated, namely organizations and individuals. Ormas as a subject of criminal law who commits a criminal act, can only be threatened with administrative criminal sanctions, for example suspension or revocation of permits. For individual Ormas to extort using violence or coercion, then this action can only be charged with the Criminal Code without any article in the Ormas Law explaining the action. The article on extortion and threats regulated in Article 368 paragraph (1) of the Criminal Code (“KUHP”) which states:

“Anyone who, with the intention of unlawfully benefiting himself or another person, forces a person by force or threat of violence to give something, which wholly or partly belongs to that person or another person, or to make a debt or write off a debt, is threatened because extortion, with a maximum imprisonment of nine years.”

R. Soesilo defines this incident as "violent of blackmail" in his book the Criminal Code (KUHP) and the Comments include Complete Article by Article (Soesilo, 1984). Blackmail is referred to: 1. To coerce other people; 2. To supply commodities that are entirely or partially owned by the individual or another person, or to incur debts or write off receivables; 3. To profit oneself or another by breaching rights; 4. To force someone into using violence or threats of violence. The term "forcing" refers to exerting pressure on someone in order to compel them to act against their will. Forcing others to give up their property is also a form of blackmail. Meanwhile, what is meant by "against the law" is that which is illegal, unjust, or contradictory to the law.

The crime of extortion is a crime committed against another person. Crime is an act or act that is prohibited and can be punished for that act or action by law. This is born because every member of society is a creature who has free will (Arif, 2014).

The criminal sanctions imposed on individual Ormas perpetrators of the crime of extortion contained in Article 368 of the Criminal Code still do not fulfill the sense of justice for the community because the threat is only 9 (nine) years in prison, where the criminal threat only concerns the person without any criminal fines or other additional crimes. involving the organization, therefore in the Ormas Law it must include articles related to Ormas who are perpetrators of the crime of extortion because this often happens in the community.

Up to this point, Indonesia's notion of punishment has remained focused around preventive and counseling perspectives, which are considered more modern, and have affected a number of criminal political policies in the country, including the formulation of criminal penalties in a legislation. This perception changes, however, when legislators have a tendency to always punish someone with a severe sentence and to impose a special minimum sentence for those who break the law's requirements. Punishment is insufficient not just for violators, but also for policymakers (government) performing their official obligations. Sanctions against Ormas Extortion culprits may face imprisonment, fines, administrative sanctions, or compensation. The imposition of these criminal consequences can instill a feeling of collective justice. In terms of defining the criminal punishments applicable to Ormas's extortion, it can be stated as follows in a new article of the Ormas Law:

“Whoever, with the intention of unlawfully benefiting himself or another person, forces a person by force or threat of violence to give something, which wholly or partly belongs to that person or another person, or to make a debt or write off a debt, shall be subject to a criminal sanction. imprisonment for a minimum of 5 (five) years or a maximum of 10 (nine) years and a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) and administrative sanctions.”

The article above is intended to serve as a deterrent to mass organizations that commit extortion, as Barda Nawawi Arief states that crime is essentially only a tool for achieving goals that are out of balance with two primary objectives, namely community protection and protection or development of individual perpetrators of criminal acts. Beginning with this balance, the concept's sentencing guidelines diverge from the notion of a mono-dualistic balance between community and individual interests, objective and subjective elements (Arief, 2010). Additionally, it is stated that sentence terms vary from 2 (two) key tenets of criminal law, namely "the principle of legality" (a social norm) and "the principle of error or

guilt" (which is the principle of humanity). It is also explained that the purpose of punishment is determined as follows:

1. Sentencing aims to:
 - a. Prevent the commission of criminal acts by enforcing legal norms for the protection of society;
 - b. Socialize the convicts by conducting coaching so that they become good and useful people;
 - c. Resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace in society; and
 - d. Release the guilt of the convict.
2. Punishment is not intended to suffer and demean human dignity (Rommelink, 2003).

5. CONCLUSION

Based on the findings of the study, it can be determined that Community Organizations that conduct criminal activities are only susceptible to administrative criminal punishments, such as the blocking or revocation of their permits, and that they are not liable to criminal prosecution. Individual Community Organizations that engage in extortion through violence or coercion can only be tried under the Criminal Code because there is no specific provision in the Community Organizations Law that explains the nature of their actions. Articles of extortion and threats are governed by the Criminal Code's Section 368, which contains several paragraphs. In spite of the fact that the criminal sanctions imposed on individual Community Organizations who are perpetrators of the crime of extortion contained in Article 368 of the Criminal Code still do not fulfill a sense of justice for the community, because the threat is only 9 years in prison, and the criminal threat only concerns the person, without any criminal fines or other additional penalties involving the organization, it is necessary to include articles related to community organizations in the Community Organizations as Law. In terms of identifying the criminal punishments for extortion carried out by community organizations, it is possible to construct a new article in the Community Organizations Law that will address this issue in detail.

REFERENCES

- Ali, A. (2009). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence), termasuk Interpretasi Undang-Undang (Legisprudence)*. Kencana Prenada Media Group, Jakarta. Edisi Pertama, Cetakan Ke-2.
- Ali, M. (2015). *Dasar-dasar hukum pidana*. PT Sinar Grafika, Jakarta.
- Ali, M. D. (1997). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Rajawali Press, Jakarta.
- Amarullah. (1985). *Sejarah Sistem Hukum Nasional*. Gema Insani Press.
- Amrani, H., & Ali, M. (2015). *Sistem Pertanggungjawaban Pidana Perkembangan dan Penerapan*. Jakarta: RajaGrafindo Persada.

- Andi, H. (1993). *Sistem Pidana dan Pemidanaan Indonesia*. Jakarta: Pradnya Paramita, 199.
- Arief, B. N. (2010). *Perbandingan hukum pidana*.
- Arif, M. (2014). Tinjauan Kriminologis Terhadap Kejahatan Perdagangan Anak (Studi Di Wilayah Kota Palu) Tinjauan Kriminologis Terhadap Kejahatan Perdagangan Anak (Studi Di Wilayah Kota Palu). *Jurnal Ilmu Hukum Legal Opinion*, 2(5).
- Arizone, Y. (2008, April 13). *Apa itu Kepastian Hukum?* <http://yancearizona.net/2008/04/13/apa-itu-kepastian-hukum/>
- Arrasjid, C. (2008). *Dasar-dasar Ilmu hukum*. Sinar Grafika, Jakarta.
- Chazawi, A. (2018). *pelajaran hukum pidana 1*. Rajawali Pers, Jakarta.
- Dimiyati, K., & Wardiono, K. (2004). *Metodologi Penelitian Hukum*. In *Fakultas Hukum UMS, Surakarta*. Surakarta: UMS Press.
- Eryanto, N. (2010). *Kebijakan Indonesia (PSHK)*. *Penjelasan Hukum (Restatement) Tentang Klausula Baku*. <http://www.scribd.com/doc/10012426/analisis-singkat-atas-permendagri-38>
- Fadjar, A. M. (2016). *Sejarah, elemen, dan tipe negara hukum*. Setara Press.
- Farid, H. A. (2007). *Hukum Pidana 1*. Sinar Greafika, Jakarta.
- Hamzah, A. (1985). *Pengantar Hukum Acara Pidana*. Jakarta: Ghalia Indonesia.
- Hatta, M. (2009). *Beberapa Masalah Penegakan Hukum Pidana Umum & Pidana Khusus*. Liberty Yogyakarta.
- Huda, C. (2008). *Dari Tiada Pidana Tanpa Kesalahan*. Jakarta: Fajar Interpretama Offset.
- Jonkers, J. E. (1987). *Buku pedoman hukum pidana Hindia Belanda*. Bina Aksara.
- Kalo, S. (2007). *Penegakan Hukum Yang Menjamin Kepastian Hukum Dan Rasa Keadilan Masyarakat Suatu Sumbangan Pemikiran*. *Makalah Disampaikan Pada Pengukuhan Pengurus Tapak Indonesia Koordinator Daerah Sumatera Utara*, Pada Hari Jum'at, 27 April.
- Kania Winayanti, N. (2011). *Dasar Hukum Pendirian dan Pembubaran Ormas (Organisasi Kemasyarakatan)*. Yogyakarta: Pustaka Yustisia.
- Moeljatno, S. H. (2002). *Asas-asas Hukum Pidana*. Rineka Cipta, Jakarta.
- Muladi, & Arief, B. N. (1984). *Teori-teori dan kebijakan Pidana*. Alumni.
- Prajudi, A. (1995). *Hukum Administrasi Negara*. Edisi Revisi Ilmu Administrasi, Ghalia, Jakarta.
- Prodjodikoro, W. (2015). *Asas-asas hukum pidana di Indonesia*.
- Rato, D. (2010). *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. Yogyakarta: Laksbang Pressindo.
- Rommelink, J. (2003). *Hukum pidana [Criminal law]*. Jakarta, Indonesia: PT Gramedia Pustaka Utama.
- Soekanto, S. (1979). *Mengenal Sosiologi Hukum*. Alumni.
- Soesilo, R. (1984). *Kitab Undang-Undang Hukum Pidana Serta Penjelasannya*. Bogor, Politeia.
- Soesilo, R. (1995). *Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentari-Komentarnya Lengkap Pasal Demi Pasal*.
- Sri, P. (2019, May 21). *Sanksi Pidana dalam UU Ormas Konstitusional*. Mahkamah Konstitusi Republik Indonesia, Lembaga Negara Pegawai Konstitusional.

- Susanto, N. A. (2014). Dimensi Aksiologis Dari Putusan Kasus “St.” *Jurnal Yudisial*, 7(3), 213–235.
- Utrecht, E. (1989). Pengantar dalam Hukum Indonesia, disadur dan direvisi oleh Moh. Saleh Djindang, *Cetakan Kesebelas, Jakarta: Sinar Harapan*.
- Wirajaya, A. A. N., & Martana, N. A. (2013). Asas Tiada Pidana Tanpa Kesalahan (Asas Kesalahan) Dalam Hubungannya Dengan Pertanggungjawaban Pidana Korporasi. *Jurnal Fakultas Hukum Univesitas Udayana*.
- Yamin, M. (1959). *Naskah-persiapan Undang-undang Dasar 1945: disiarkan dengan dububuhi tjatatan* (Vol. 3). Jajasan Prapantja.

**LEGAL CERTAINTY OF THE IMPOSITION OF CRIMINAL EXTORTION SANCTIONS
INVOLVING COMMUNITY ORGANIZATIONS (ORMAS)**

Heri Susanto, Ramlani Lina Sinaulan, Mohamad Ismed

**LEGAL PROTECTION OF PORNOGRAPHIC BEHAVIOR
THROUGH SOCIAL MEDIA IN INDONESIA**

Titus Adhi Sanjaya^{1*}, Ramlani Lina Sinaulan², Mohamad Ismed³

^{1,2,3}

Magister Ilmu Hukum, Universitas Jayabaya, Jakarta

E-mail: ¹⁾ titusadhisanjaya@gmail.com

Abstract

This study aims to analyze and find legal protection against pornographic behavior in the context of divergent legal perspectives and the right to work, particularly via social media, as well as legal certainty and protection regarding the application and behavior of action porn and pornographic activities in Indonesia. This study is a descriptive analytic study. This study takes a normative legal approach through the use of the statutory approach and the conceptual approach. Researchers collect legal materials using the following strategies: Literature Studies, that is data collection techniques including the collection of reading materials, such as laws and regulations, as well as documents pertaining to the aforementioned issues. This technique is used to look for concepts, hypotheses, or viewpoints on a subject. The finding reveals that Criminal acts or pornographic crimes committed via mass/social media are prohibited under several laws, including the Criminal Code, Law No. 8 of 1992 concerning film, Law No. 36 of 1999 concerning telecommunications, Law No. 40 of 1999 concerning the press, Law No. 32 of 2002 concerning broadcasting, Law No. 11 of 2008 concerning information and electronic transactions, and Law No. 44 of 2008 concerning pornography. The existing positive criminal law governing pornography is silent on the principles used to define criminal activities and criminal responsibility. This situation frequently results in disagreements and also divergent approaches to the enforcement of criminal law in Indonesia.

Keywords: *Legal Protection, Pornography, Social Media, Pornographic Crimes*

1. INTRODUCTION

While technological advancements might benefit the community, they can also lead to criminal activity. One of the offenses is connected to immoral behavior. Pornography via social media is a criminal defined in Law No. 19 of 2016 amending Law No. 11 of 2008 on Information and Electronic Transactions. The law controls the prohibition of the dissemination of electronic information and/or electronic documents containing immoral content and is found in Book Two, Chapter XIV of the Criminal Code (also referred to as KUHP) pertaining to Crimes Against Morality. Indeed, the Criminal Code does not accept the phrase sexual act; rather, it refers to obscene activities, which are governed under Articles 289 to 296 of the Criminal Code.

The pornography law is silent on how to broadcast, display, or misuse the internet for the purpose of spreading pornography. According to the author, the internet is a communication medium that can be used to distribute pornographic images and films based on the definition of pornography, which indicates that the media or its facilities are “via various types of communication media and/or public performances”. According to the foregoing, anyone who distributes sexual content violates Article 27 paragraph 1 of the Republic of Indonesia's Law No. 19 of 2016 on Information and Electronic Transactions,

which states: “Any Person willfully and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain immoral content” (Mahendra, 2021).

Controversy arose about whether pornography should be governed by law or not, whether it should be included in the criminal domain or not, whether pornography should be considered private or public, and even whether the definition of pornography and its extent should be defined. Another point of contention is whether it is fair to classify pornography as a crime, whether the ingredients have been included in the criminal element, and what the societal consequences will be if pornography is regulated and classified as a crime.

The pro- and anti-pornography legislative movements are squaring off and growing in intensity. Aside from its destructive force and its ability to assault Indonesian culture, ethics, national values and human character, society sees pornography as a major threat to Indonesia's future. On the other hand, the other side sees pornography as a work of art that should be appreciated, some even believe that pornography is an artistic expression with a high value that can be enjoyed by anyone.

Indeed, another viewpoint holds that the state does not need to intervene to control pornography because doing so would generate new problems, as pornography is viewed as a private affair involving persons and their rights. This view is strengthened by the belief that the moral dilemma cannot be resolved or overcome through the enforcement of formal legislation. A more extreme interpretation holds that the pornography prohibition is a means of transforming Indonesia into a Fundamentalist Islamic State (Chirzin, 2006).

Pornography is not outlawed in several nations and is permitted as a business in certain conditions. Pornographic content is only forbidden at the federal level in the United States if it meets the Miller-test obscenity threshold. Child pornography (under the age of 18) is likewise outlawed, with a potential prison sentence of 15–30 years. Additionally, pornographic materials may not be sold to minors under the age of 18. The restrictions in Canada are nearly identical, in that there is a prohibition on the selling of pornographic items to children under the age of 18, but there is no explicit law regulating the dissemination of pornographic products. Pornographic products are likewise forbidden from being imported under obscenity laws. Adult films are exclusively screened after midnight on certain television stations. Adult films are advertised and sold exclusively on Yonge Street in Toronto. Consequently, individuals under the age of 18 are not permitted to appear in pornographic films. Along these, child pornography is illegal.

During the pandemic, word spread that an Indonesian celebrity with the initials RR (32) was earning up to IDR 50,000,000 (Fifty Million Rupiah) each month via the Mango application. Naturally, there are elements of pornography in this case that can ensnare the perpetrators for their crimes. The top selebgram artist, initials RR during the live of the Mango application, is a live star, and she always exposes her nakedness in every action she performs. The perpetrator uses the Mango and Bigo applications under the nickname of "Kuda Poni" aka Bintang Live to earn money or profit on a daily.

Henceforth, the author observe this through the case of Ariel Peterpan/Noah with Cut Tari and Luna Maya. Whereas ariel is liable to criminal sanctions under the Pornography Law's rules, while Cut Tari and Luna Maya are suspects. However, the case against Luna Maya and Cut Tari has not yet proceeded to trial.

The third case that the author intends to discuss is that of artist Gisel Anastasia, who was charged in relation with pornographic recordings that circulated on social media. Unlike the three artists and celebrities mentioned previously, who may attract criminal elements, actor Anjasmara became an issue about 12 years ago, forcing him to engage with the authorities. But what's interesting about the Anjasmara case is that his activities are regarded as a piece of art solely because he works as an actor in the entertainment sector.

Anjasmara Prasetya's and model Izabel Jahja's naked shot in a contemporary art exhibition caused such a controversy. The Islamic Defenders Front (FPI) then reported them to Polda Metro Jaya, along with the team engaged. Both of them are in violation of Criminal Code Article 282 paragraphs 1 and 2, which prohibits broadcasting, exhibiting, and pasting images or objects in public that violate one's sense of decency. Apart from Anjasmara and Isabel, the police examined the event's organizers, although they were not identified as suspects. What's intriguing about this case is that expert witnesses were called in to ensure that they were not exposed to the pornographic piece and were instead evaluated solely on the basis of their professionalism as artists.

From the point of study, an analysis of Islamic law regarding the protection of children from pornography in Article 15 of Law No. 44 of 2008 on Pornography is conducted. Because the purpose of *maqid al-syariah* is to protect the child's benefit, specifically in preserving the *dharuriat al-khamsh*, particularly in the field of religion, with its diverse foundations of problems, this study aims to analyze and find legal protection against pornographic behavior in the context of divergent legal perspectives and the right to work, particularly via social media, as well as legal certainty and protection regarding the application and behavior of action porn and pornographic activities in Indonesia.

2. THEORETICAL BASIS

2.1. Pornography

Pornography has a variety of definitions; the term "pornographic" originates in Greek, specifically *pornographos* (*porne* means prostitute and *graphein* means writing or painting); so, pornography refers to writing or painting about prostitutes or a description of their deeds. Pornography, as defined by Andi Hamzah, is a disclosure in the form of stories about prostitutes or prostitution, or a disclosure in the form of writing or artwork about erotic life, with the intention of eliciting sexual stimulation in those who read or see it.

2.2. Social Media

Social media is an online medium that is used for long-distance communication requirements, the process of interaction between users with one another, as well as the acquisition of information through particular application devices that connect to the internet network. The objective of social media in and of itself is to serve as a means of communication to link individuals across a wide range of locations.

2.3. Criminal Law Policy

According to Marc Ancel, criminal policy (penal policy) is both a science and an art with the ultimate goal of improving the formulation of positive legal rules and providing guidance not only to lawmakers, but also to courts that administer the law and to the executor

of court decisions (Arief, 2008). Further, in the space between the study of criminological factors on the one hand and that of legislative techniques on the other, there is a place for science that observes and investigates legislative phenomena, as well as for a rational art in which scholars and practitioners, criminogen experts and legal scholars can work together not as opposing parties or in conflict with one another, but as co-workers who are bound in a common task, which is primarily to produce a criminal policy that is realistic, humanist, and forward-thinking (progressive) and healthy (Arief, 2008).

2.4. The Application of Criminal Sanctions

The application of criminal sanctions is the application of sanctions or punishments to perpetrators of criminal acts that aim to provide sorrow or suffering to someone who is guilty of committing an act that is prohibited by criminal law, with such sanctions it is hoped that people will not commit a crime (Ali, 2012).

2.5. Criminal Act

Strafbar feit is an act that is prohibited by law or which is threatened by law (Adami, 2002). A criminal act is an act that is prohibited by a prohibition law which is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates certain prohibitions (Hamzah, 2004).

2.6. Criminal Liability

Liability for a criminal conduct is defined as the continuing of objective reproach that exists as a result of the crime and the subjective fulfillment of the requirements to be punished as a result of the act.

2.7. Mass Media

Messages are sent from sources to audiences using communication tools such as newspapers, films, radio, and television. Mass media is a medium utilized in the delivery of messages from sources to audiences (Cangara, 2007).

2.8. Online Media

Information is collected, prepared, stored, and processed through the use of online media. It is also announced, analyzed, and disseminated through the use of online media (Tobing & Tobing, 2012).

2.9. Grand Theory: Legal protection

According to Philipud M Hadjon, legal protection in Dutch is known as *rechtbescherming van de burgers* (Philipus, 1987). Protection means that there is an effort to give rights to the protected party in accordance with the obligations that have been carried out. According to Philipus M. Hadjon, legal protection is protection related to dignity and respect for human rights that exist in legal subjects according to legal provisions from arbitrariness (Philipus, 1987).

2.10. Criminal Liability Theory

According to Van Hamel, criminal liability is a natural state and stage of psychological

maturity that entails three distinct abilities: (a) Understanding the meaning and consequences of one's own actions; (b) Recognizing that one's actions are not justified or prohibited by society; and (c) Determining the ability to act (Adji, 1991). Additionally, the concept of legality serves as the foundation for the existence of a crime, whereas the principle of error serves as the foundation for penalizing the perpetrator. This indicates that the manufacturer or perpetrator of a crime can be punished only if he committed the crime in error. When someone is said to have made a mistake, criminal responsibility is involved.

3. RESEARCH METHOD

This study was conducted in a methodical manner and provided in a descriptive analytic format. This study takes a normative legal approach through the use of the statutory approach and the conceptual approach. Researchers collect legal materials using the following strategies: Literature Studies, that is data collection techniques including the collection of reading materials, such as laws and regulations, as well as documents pertaining to the aforementioned issues. This technique is used to look for concepts, hypotheses, or viewpoints on a subject (Soekanto, 2007).

Analysis of legal materials is carried out with grammatical interpretations to find answers that can be scientifically justified, namely by analyzing the Act regarding pornographic behavior and pornographic behavior through social media which is linked to Law Number 44 of 2008 concerning Pornography, the Criminal Code. Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions.

4. RESULT AND DISCUSSION

4.1. Criminal Liability for Pornography on Social Media

Essentially, the definition of pornography varies from place to place. This differences is attributable to the fact that the people of each region have varying perspectives on what constitutes pornography. The passage of time has also changed people's perceptions of content classified as pornography. If the Criminal Code is seen as a general statute of criminal law, the definition of pornography is omitted entirely. Without a definition of pornography in the Criminal Code, numerous pornographic cases go unprosecuted due to the Criminal Code's multiple interpretations or ambiguity. Thus, with the passage of Law 44 of 2008 on Pornography, the concept of pornography was clarified, as follows: : Article 1 number 1

“Pornography is pictures, sketches, illustrations, photographs, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society.”

Even though the concept of pornography is still broad and abstract, its essence remains the same, namely that something depicting sexuality or sensuality, whether in writing, pictures, or various forms of communication media, can cause anyone who sees it to feel

lust, and that this is in violation of the existing morals in the community because it can harm those morals and degrade human dignity.

One of the government's efforts to prevent pornographic acts that could jeopardize the nation's generation's survival is the promulgation of the Pornography Law, namely the Law of the Republic of Indonesia No. 44 of 2008, with the hope that this law will enable the prevention of pornography to be addressed effectively and, most importantly, that the Act. Pornography is defined by three characteristics: (1) its content comprises obscenity, (2) it involves sexual exploitation, and (3) it violates decency standards. The most fundamental concept of criminal law is responsibility, often known as the principle of no crime without error (*geen straf zonder sculd*), which states that an offender is condemned to a criminal offense if the crime committed can be blamed on him. Criminal responsibility entails holding the creator (legal subject) accountable for the crime committed. As a sense, criminal responsibility is subject to both objective and subjective scrutiny. That is, objectively, the creator did a criminal act (a banned act/against the law that is punishable under applicable legislation), and subjectively, the maker should be reproached or blamed/accountable for the crime he committed in order to earn the right to be punished.

Regarding criminal responsibility for perpetrators who contain pornographic content, so that they can be punished, the perpetrators must fulfill the elements of criminal responsibility, namely: 1) Committing a criminal act/criminal act; 2) able to be responsible; 3) there is an error; 4) there is no excuse for forgiveness.

For people who have websites that present pornographic stories, nude photos, pornographic films, and various other information containing pornography, the perpetrators may be subject to criminal liability in the form of imprisonment and/or fines under the Pornography Law and the ITE Law. Article 4 paragraph (1) of the Pornography Law states:

“Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains: intercourse, including deviant intercourse; sexual violence; masturbating or masturbating; nudity or an impressive display of nudity; genitals; or child pornography.”

The criminal threat for violating the provisions of Article 4 paragraph (1) cannot be called light, in accordance with Article 29 of the Pornography Law, and will be punished with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a minimum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp. 6,000,000,000.00 (six billion rupiah). Whereas in the ITE Law which is a *lex specilis* in cybersex crime, the owner of an Instagram account containing pornographic content may be subject to Article 27 paragraph (1) which states: “Everyone intentionally and without rights distributes and/or transmits and/or makes information accessible. Electronic and/or Electronic Documents that have contents that violate decency”.

In terms of criminal liability, the legal responsibility that must be imposed on the perpetrators of violations of criminal law relates to the basis for imposing criminal sanctions. Judging from the point of view of the occurrence of a prohibited action (required), a person will be responsible for criminalizing these actions if the action is against the law (and there is no nullification of unlawful nature or *rechtvaardigingsgrond* or justification) for that.

Viewed from the point of view of the ability to be responsible, only someone who is “capable of being responsible” can be held accountable for criminalization.

According to Hoffman, the elements of criminal liability are as follows: a. Someone must do something b. The act must be against the law c. The act must cause harm to others d. The act was due to an error that was inflicted on him. Accountability is a form of determining whether a person will be released or convicted of a crime that has occurred, in this case to say that a person has an aspect of criminal responsibility, in that case there are several elements that must be fulfilled to state that someone can be held accountable.

When considering cyber crime in general, it may be divided into two categories: crimes that use information technology as a way of committing the crime and crimes that use technology as the means of committing the crime, the latter of which includes Facebook, Whatsapp, and YouTube. Pornography is defined as a crime in Articles 4 to 14 of Chapter II, and criminal punishments are defined in Articles 29 to 41 of Chapter VII. Article 4 paragraph 1 states that it is unlawful for anyone to produce, make, reproduce, duplicate, distribute, broadcast, import, export, offer, trade, rent, or provide pornography that explicitly contains: intercourse, including deviant intercourse; sexual violence; masturbating or masturbating; nudity or an impressive display of nudity; genitals; or child pornography. According to the article's explanation, it is very obvious that pornographic information is expressly prohibited from being published or generated, including on social media platforms such as Instagram. Articles 282 and 283 of Indonesian criminal law, which is based on the Criminal Code, regulate the issue of pornography. From a historical perspective, it appears as though our Criminal Code was not written to anticipate the internet's current state of development. The Criminal Code was drafted in the late 1950s and early 1960s, far before the internet was formed.

The disparity in time and philosophy between its authors and the current condition of affairs complicates the application of the Criminal Code to cyberporn concerns. In April 2008, the government enacted Law No. 11 of 2008 on Information and Electronic Transactions (hereinafter referred to as ITE Law), which defines criminal offences involving pornography. According to Article 27 paragraph (1) of the ITE Law, illegal acts include purposefully and without authorization disseminating, transmitting, and making accessible Electronic Information and/or Electronic Documents that contain indecent content. The government then governs cyberporn problems more specifically under Law No. 44 of 2008 Concerning Pornography (hereafter referred to as the Pornography Law), Article 4 Paragraph (2), which states that offering pornographic services is forbidden for anyone. Pornographic services encompass all forms of pornographic entertainment offered by individuals or businesses via live shows, cable television, terrestrial television, radio, telephone, internet, and other electronic communications, as well as newspapers, magazines, and other printed publications. Criminal Sanctions for Cyberporn Perpetrators in Pornography Law No. 44 of 2008.

The criminal act of disseminating pornographic material in cyberspace / on the Internet is synonymous with the activity of uploading pornographic material files from one computer network to another via internet intermediaries, as stated in Article 29 of Law No. 44 of 2008: “Every individual who creates, fabricates, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides pornography in violation of Article 4 paragraph 4 paragraphs. (1) shall be sentenced to a minimum of 6 (six) months in jail and a

maximum of 12 (twelve) years in prison, as well as a fine of at least Rp. 250,000,000.00 (two hundred and fifty million rupiah) and no more than Rp. 6,000,000,000.00 (six billion rupiah)". Law Enforcement Officials have the jurisdiction to restrict and destroy the dissemination of pornographic materials in order to enforce the Pornography Act. The Apparatus's authority is affirmed in Article 25 of the Pornography Law, which authorizes investigators to open access to and review computer files, internet networks, optical media, and other types of electronic data storage. The data owner, data store, or electronic service provider is required to submit or open the Investigator's request for electoral data.

As an illustration, the crime of pornography contained in the Criminal Code, Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 44 of 2008 concerning Pornography.

Indonesia's positive legal arrangements are still inadequate or inappropriate when it comes to the current development of pornography on the internet (cyberporn), including: Provision of unclear limits on pornography, authorized parties to take certain actions in dealing with pornography problems, threats of punishments that are too light, unclear parties who are considered appropriate to be responsible for a material categorized as pornography, inconsistent law enforcement. The problems of pornography in positive law in Indonesia are:

1. Provision of unclear limits on pornography

Although several parties have tried to provide a definition of the term pornography, there has not been found a specific formula that can meet the criteria desired by all parties. The articles in the laws and regulations that regulate the issue of pornography only generally explain the problem of pornography in the words "violating decency". Violating this decency is interpreted differently by many groups. This interpretation ranges from an extreme rejection of all forms of pornography, to a very permissive interpretation of pornography.

Restrictions on actions that are categorized as violating decency (*aanstotelijk van de eerbaarheid*) are important, considering that criminal law must be implemented objectively. The objectivity of criminal law enforcement means that the articles contained in the criminal law do not give rise to various interpretations. Meanwhile, the term "violating decency" (*aanstotelijk van de eerbaarheid*) used in the Criminal Code is in fact very relative, depending on space and time and can objectively lead to various interpretations.

From a legal point of view, the Pornography Law is considered to have crossed the line between the public law space and the private legal space. This is reflected in the castration of individual rights of citizens which should be protected by the state itself. The problems regulated by this law should be problems that really threaten the public interest, such as commercialization and sexual exploitation of women and children, irresponsible abuse of pornographic materials, or the use of sexuality materials in public spaces. In addition to the absence of boundaries between public and private legal spaces, the Pornography Law is vague (uncertain) so that it has the potential for multiple interpretations. Article 1 number 1 states: "... to arouse sexual desire". The content of this article is contrary to the principle of *lex certa* where the law must be firm.

One of the differences in interpretation that often arises is whether an image or display is a form of pornography or a form of art and constitutes freedom of expression. This difference in interpretation is often used as an excuse by law enforcement officials to be hesitant in taking action against pornography cases.

2. Which party is authorized to take certain actions in addressing the problem of pornography

Law enforcement officials can actually take immediate action against each agent to the lowest level (who is directly in the field) and withdraw or create distribution channels to the source. However, this was not implemented on the grounds that there was no clear legal instrument providing such authority. The press council itself which functions as social control, before taking certain actions they experience obstacles in categorizing which parties are the press so that against them they have the authority to take any action.

3. Threat of punishment is too light

Criminal threats for pornographic cases (criminal acts of decency) are considered too light. The sanctions imposed only ranged from 9 months to 2 years and 8 months. Whereas in the Criminal Code the fines are only around Rp. 75,000, -. This is suspected as one of the causes of the perpetrators not being deterred and repeating their actions. It can be seen that pornography is a very lucrative illegal business without serious risks. This is different from narcotics crime, the sanctions are very heavy (eg: death penalty, life sentence, 20 years imprisonment). More or less provide a deterrent for anyone who violates it.

As an illustration, criminal acts regarding pornography are contained in the Criminal Code, Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 2002 concerning Broadcasting, Law Number 11 Year 2008 concerning Information and Electronic Transactions, Law Number 44 Year 2008 concerning Pornography has different sanctions.

In Article 21 of Law Number 36 of 1999, according to the legislators, it is not a criminal act, because the sanctions imposed are not criminal sanctions, but administrative sanctions, namely in the form of revocation of permits. Whereas Article 21 of Law Number 36 of 1999 contains matters that are contrary to the public interest, morality, security, or public order. In this case the excess of the act can be dangerous. In addition, according to a criminal expert, Pompe, who is dualistic, defines a criminal act as a violation of the norm, which is committed because of the violator's fault and is threatened with punishment in order to maintain the legal order and save the general welfare. Thus, it should be in Article 21 of Law Number 36 of 1999 concerning Telecommunications, including criminal acts.

There is no discernible ambiguity in the language used in Article 1 paragraph (1) of Law Number 36 of 1999 concerning Telecommunications, which indicates that this law is meant to cover the electronic transmission and reception of information via the internet. When we read the requirements of Article 1 paragraph (1), which deals with the definition of telecommunications, it becomes evident that sending and receiving information electronically via the internet is also included in the term (Sjahdeini, 2009).

In these regulations, the most relevant criminal penalties are those included in Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning

Information and Electronic Transactions and Law Number 44 of 2008 concerning Pornography. In the Criminal Code, the threat of penalty is not suitable, because it is too light.

4. It is unclear which party is considered appropriate to account for crimes categorized as pornography

It is easy to find tabloids without a clear editorial address selling articles or fun photos, of course, it makes it difficult for law enforcement to drag these irresponsible parties. In addition, the question arises whether only the parties who create and distribute the media are held accountable or whether those who are published in the media who consciously pose in such an obscene manner can also be brought to justice. If we are guided by the current positive law of Indonesia, namely the Criminal Code, all of these parties can be held accountable. This is because the regulation of pornography in the Criminal Code is not only a limitation but a complete prohibition. The concept of criminal responsibility in the current Criminal Code tends to be closer to the flow of monism. It is as if the crime includes the objective element of an act that is integrated into the subjective element attached to the perpetrator of the offense. Between the act and the maker are united. Thus, the postulate of adherents of monism, if there is a crime, it is certain that the perpetrator can be punished. The concept of criminal responsibility as such is the focus of criminal law reform in the Criminal Code Bill which will be discussed in the future Criminal Code Bill.

5. Inconsistent law enforcement

Without trying to overlook the controversy of defining or categorizing what is meant by pornography or something that violates decency, law enforcers can genuinely make active efforts in overcoming the problem of pornography. In the Criminal Code, notably Article 282, both the police, the prosecutor's office and the judge can prosecute people who are actually recognized by most members of the public as having transmitted pornography. The activities of the police who regularly perform sweeps in various areas that freely sell VCDs or pornographic publications undoubtedly deserve applause. Unfortunately this behavior looks unsystematic and well-coordinated such that it can happen where a place is clean from pornographic media, but in other areas anyone can simply access it, even underage minors or television shows for adults during prime time. implies that the regulation of the distribution is weak. We can also witness some big cases in the public, such as the case of Ariel Petepan with Cut Tari and Luna Maya. Ariel was punished, but until now Cut Tari and Luna Maya case is still stuck in the police. Another case is the Gisel case, which until now has not been known to what extent the process was even though both of them have been listed as suspects, which is different from the "RR" a celebgram which instantly received the investigation in the process and was detained by the Police.

4.2. Legal Protection Against Pornography Actors

Protection against pornography perpetrators is given not only to perpetrators of pornographic crimes but also to victims that can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. So that the provision of legal protection can be given holistically not only to the perpetrators of pornographic crimes but also to victims or even potential victims.

According to the Big Indonesian Dictionary (KBBI), legal protection is a place of refuge, actions (things and so on) to protect. The linguistic meaning of the word protection has similar elements, namely the element of protecting actions, elements of ways to protect. Thus, the word protects from certain parties by using certain methods.

Furthermore, Fitzgerald explains Salmond's theory of legal protection that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests for the parties. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine how human interests need to be regulated and protected (Sjahdeini, 2009).

In line with Fitzgerald's view, which explains the theory of legal protection from salmond in an effort to integrate and coordinate various interests in society, aspects of legal protection in cross-pornography must also be comprehensively covered. The interested parties must work together to be able to formulate forms of legal protection that are acceptable to the community. Values, culture, interests collaborate with each other to gain community supremacy in order to create an orderly and orderly society.

Pound classifies the interests protected by law into 3 (three) main categories, including public interests, social interests and private interests. In terms of resolving pornography problems, aligning the public interest, the public and the private sector must be protected in a synergy. Freedom of expression, customs, culture are things that sometimes intersect with pornography. So that in order to protect the legal interests above, the formulation of pornography legislation must be able to protect all parties.

Legal protection due to the distribution of pornography on the internet and social media is a problem that needs attention. With regard to morals, at this time we have entered a new era, namely the era of globalization and modernization, with the passage of this new era there have actually been changes in society both in economic, social and cultural terms. These changes are caused by the process of globalization as an unavoidable effect of the development of information technology, so that it can damage a person's morale, especially people who have not been able to filter the correct information. Misuse of mass media to commit crimes such as selling pornographic sites and pornographic actions that can lead to crimes such as rape, sexual harassment. In the form of computer crime, the crime that is closely related to the use of technology based on computers and telecommunications networks, called illegal content is a crime by entering data or information into the internet about something that is not true, unethical and can be considered unlawful or disturbing public order.

The ease of access to pornographic material makes almost no one escape from the dangers of pornography. Legal protection for the wider community from negative access on social media related to pornography is something that cannot be denied in this 4.0 era. Therefore, implementing a criminal law policy is in order to provide legal protection for the community itself. Legal protection from accessing pornography on social media is expected to provide a balance between legal protection for victims and "perpetrators". And it is very important to be able to categorize or have a benchmark for the application of criminal sanctions for so-called perpetrators. Therefore, the measure of pornography perpetrators in taking responsibility (criminal) can be done in a statutory mechanism.

The relationship between the perpetrator and the victim in a crime cannot be separated. Hans von Hentig in "Remark on the Interaction of Perpetrator and Victim" said that victims also have an important role so that criminal acts occur and cause suffering to them. Furthermore, Hentig said, victims can also be the trigger for criminal acts, for example: someone who triggers a fight and he loses the fight, then his opponent is reported on charges of molestation. Meanwhile, according to Benjamin Mendelsohn, the occurrence of criminal acts is not solely caused by the victim himself. Mendelsohn classifies victims based on the degree of error into: First, victims who have no faults at all; Second, the victim because of his negligence or inadvertently placing himself in a state of danger; Third, the victim and the perpetrator have the same degree of guilt, in other words, the victim has a stake in the occurrence of the crime; Fourth, the victim has a greater fault than the perpetrator, in this case similar to what was stated by Hentig; and Fifth, an imaginary victim or victim as the only guilty person or a person pretending to be a victim.

In Indonesia, there is an emerging case regarding cyberpornography, namely the case between Gisella Anastasia (GA) and Michael Yokinobu Defretes (MYD). In early November there was an immoral video circulating on Twitter and was in the spotlight. Many netizens suspect that the female lead in the scene is GA. However, GA did not give a rebuttal and instead admitted that he was lazy to respond to the news about the immoral video which allegedly resembled him. Then on Tuesday, November 17, 2020, GA answered the call from the police. After the examination, GA did not deny that he was called the female actor. At that time, GA was still a witness in the immoral video case. On December 29, 2020 GA was named a suspect, with MYD, who is also a suspect, the Head of Public Relations of the Polda Metro Jaya Kombes Yusri Yunus, said that GA and MYD were named suspects because they recorded adult scenes directly with cellphones that were carried out at a hotel in the Medan area. GA and MYD are subject to Article 4 paragraph 1 in conjunction with Article 29 of Law Number 44 of 2008 concerning pornography.

Article 4 paragraph (1) of the Pornography Law explains that, "Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography which explicitly contains: a) Sexual intercourse, including deviant intercourse; b) Sexual violence; c) Masturbation or masturbation; d) Nudity or an impressive display of nudity; e) genitals; or f) Child pornography." The article is related to criminal provisions with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of Rp. 250,000,000 (two hundred and fifty million rupiah) and a maximum of Rp. 6,000,000,000, - (six billion rupiah). However, The explanation of Article 4 paragraph (1) excludes those who create pornographic content for their own interests. Meanwhile, Article 8 of the Pornography Law prohibits anyone knowingly or with his consent from being the object or model of pornographic content. Everyone who is included in Article 8 of the Pornography Law is given a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 5,000,000,000, - (five billion rupiah). The explanation of the article explicitly states that the provision is intended for perpetrators who are coerced by threats or threats, under the power or pressure of others, persuaded or deceived, or deceived by other people or perpetrators of criminal acts

A criminal act only refers to the prohibition and threat of action with a crime. Whether the person who commits the act is then sentenced to a crime, depends on whether the act

contains an error. Because the principle in criminal law accountability is “not being punished if there is no mistake (*Geen straf zonder schuld; Actus non facit reum nisi mens sis rea*) which means that the assessment of criminal responsibility is aimed at the inner attitude of the perpetrator, not an assessment of his actions”. The exception to the principle of *actus reus* and *mens rea* is only for offenses that are strict liability (absolute responsibility), where in such a crime there is an element of error or *mens rea* does not need to be proven (Sjawie, 2015).

Adherents of the monistic view of strafbaar feit or criminal acti argue that the elements of criminal responsibility concerning the maker of the offense include:(Sjawie, 2015); First, the ability to be responsible, namely being able to truly understand the consequences that are contrary to public order, Second, being able to realize that the act is contrary to public order and being able to determine the will to act. These three abilities are cumulative. This means that only one of the responsible capabilities is not fulfilled, then a person is considered irresponsible (Hiariej, 2013).

In the case of pornographic acts carried out without the knowledge of the creator, the pornographic content is spread so that it can be seen by many people? This is also the case with GA, the recording of sexual activity which was initially only to be kept for themselves, a few years later it was uploaded and spread on several social media. In the case of revenge pornography (privately owned pornographic content distributed without consent) the victim still has a fault in this case being responsible for the spread of the pornographic content, even though the burden of responsibility given is only part of the perpetrator (spreader), because it is something that should be known consequences of his own actions (Sjawie, 2015).

Victims of revenge pornography still have errors in the form of negligence or culpa. There are at least two forms of negligence, namely: *first*, conscious negligence (*bewuste culpa*), the perpetrator assumes that the action taken will not have the prohibited result, but after being implemented it turns out that the assumption is wrong. This form of neglect is also known as culpa lata or other forms of serious negligence. *Second*, unconscious negligence (*onbewuste culpa*), the victim does not at all think that the actions taken will lead to prohibited consequences, also known as culpa levis or light negligence.

In addition, there is also a division of culpa related to the mention of negligence in the formulation of an offense, among others: actual culpa or consequences that are prohibited from arising due to negligence as in Article 188 of the Criminal Code “whoever due to negligence [...]”; and *culpa* does not actually mean committing an act intentionally, but one of its elements is culpation , for example Article 480 of the 1st KUHP “threatened with imprisonment [...] it is known or should be suspected that it was obtained from a crime”. The phrase "it is known" indicates an intentional error, while the phrase "should be suspected" denotes a form of error in the form of negligence. Article 4 paragraph (1) of the Pornography Law states that "Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offer, selling, renting, or providing pornography [...]”. With an explanation: make is not included for its own sake. Article a quo is an article that is suspected of GA and MYD (victims of revenge pornography). The author's assumption is that law enforcement considers that there is an element of negligence on GA and MYD which resulted in their videos being spread to the internet, so there is still responsibility attached to them.

The alleged piece has no evidence of culpa, as can be shown by carefully reading it. To catch GA and MYD, it's crucial to include a culpa aspect in the content. It's important to prevent various interpretations or interpretations that affect legal certainty when defining offenses in criminal law (*lex and*). This is one of the distinguishing characteristics of criminal law. Similarly, under criminal law, comparisons are not permitted since they could lead to new illegal conduct. On this basis, it is not possible to bring a case against the victim of revenge pornography under Article 4 paragraph (1) of the Pornography Law. In addition, the film has been wiped from the victim's electronic devices and is exclusively for personal use.

Similarly to Article 4 paragraph 1, none of the other articles in Chapter II dealing with the ban and limitation of the Pornography Law contain aspects of negligence. In strict terms, the Pornography Law can be used to prosecute only purposeful errors. In the context of pornography as a crime, the term of "creating" must also provide legal protection for those who should be classified as victims or perpetrators. After all, in the situation of the RR celebgram, where the program is designed with an economic purpose in mind, it is subject to criminal snares; nevertheless, in the case of Gisel and others, it cannot be held accountable for criminal offenses.

The same goes to other laws related to pornography such as Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions. At least it must be able to provide legal protection and be able to sort out the categories of perpetrators and victims, so to which legal subjects can be held criminally responsible.

The Draft Criminal Code basically requires "intentional" as a form of criminal responsibility, only in certain cases where the law expressly states that a criminal act can be punished even if it is only done by "negligence".

Adopting the culpability concept, "there is no crime without guilt," as expressed in the Draft Criminal Code is a positive step toward guiding the execution of criminal law. The idea of culpability is highlighted, as is the fact that criminal liability in the form of "omission" will have an effect on the enforcement of criminal actions of corruption only if it is expressly mentioned in the legislation. Articles 2 and 3 of the Anti-Corruption Law, which do not include the word "intentional," shall be interpreted as requiring intentionality. This circumstance is extremely likely to result in the acquittal of multiple corruption suspects due to their effectiveness in establishing the absence of "intentional." This is not to say that punishment is negative, as it was never intended to punish individuals who are not wicked at heart.

The principle of culpability in the Draft Criminal Code has been granted an exception as stated in article 38 of the bill which states: (1) For certain criminal acts, the law can determine that a person can be convicted solely because the elements of the crime have been fulfilled without regard to any errors. (2) If it is determined by law, everyone can be held accountable for criminal acts committed by other people. Strict liability as formulated in Article 38 paragraph (1) and Vicarious Liability as formulated in Article 38 paragraph (2), in their explanations can only be imposed on certain criminal acts which are expressly stated in the law. These two things are not found in corruption,

In this case, it is certain that in the Draft of Criminal Code can at least minimize the problem of criminal liability against perpetrators or victims of pornography. With the

concept of accountability adopted in the Draft of Criminal Code, it can at least provide legal protection to the wider community. Moreover, in the current era, pornography crimes mostly involve the mass media which are in direct contact with the public.

The basis for justification for pornography is used as a criminal act that is subject to criminal sanctions in a law as follows:

1. Theoretically, the criminalization of pornography is justified by moral theory and the principle of harm, as stated by Edwin M. Schurr that to declare a behavior as a crime is because the act is immoral and because the act is detrimental to society or damaging other people (Luthan, 2007). Considering that an act is criminalized because moral considerations alone have a weakness, namely that the intervention of the State is too far on individual freedom, it must be accompanied by an act that is considered a crime because the act is detrimental to the community, according to Greshan M. Sykes (Luthan, 2007). The justification of the moral tori was strengthened by Lord Devlin who stated that general morality has an essential role in maintaining society (Luthan, 2007). The act of pornography is an act that violates the morals of the individual, the morals of the Indonesian people, and also violates the religious norms that are the beliefs of the Indonesian nation. The principle of loss is found in pornographic acts that are destructive to the inner attitude of the Indonesian nation, attacking peace and tranquility in society so that pornographically acts are very detrimental (Chazawi, 2022). The damage caused by pornography is difficult to measure because the damage is both short-term and long-term in terms of mental, intellectual and psychological well-being and human values. Victims of pornography do not know the age and place where pornography can reach, so that is where the victims will fall.
2. Pornography is against National Development. The justification of pornography being included as a criminal act is also justified if it is seen from the criteria for determining whether an act is criminalized both in Sudarto's perspective and the results of the symposium on the reform of the Criminal Law in Semarang in 1980. Sudarto gives signs that before criminalizing an act, national development goals must be considered, viewed from this point of view, pornography is a crime that prevents the Indonesian nation from achieving the national development goals, namely creating a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila (Sudarto, 2007) namely actions that bring material and spiritual losses. Pornography has fulfilled this, namely that people do not want these actions to be in accordance with the beliefs that live in society, both in their religion and culture. The criminalization of pornography, when associated with the results of the symposium on criminal law reform in Semarang in 1986, also fulfilled the criteria, namely that the act was detrimental, brought victims or could bring victims.
3. Pornography is contrary to the direction of Indonesian legal politics. Pornography is included as a pornographic crime justified in terms of the legal politics of the Indonesian nation. The goal of the development of the Indonesian nation is to build the Indonesian nation as a whole, namely physically and mentally (Permana & Rappo, 2007), physically and spiritually, mentally and physically, pornography has clearly damaged the aims and objectives of the Indonesian nation to create a complete human being. Fostering the attitude of self-determination of human beings and the Indonesian people in order to improve the quality of human resources in order to realize physical and

spiritual prosperity that is harmonious, fair and equitable. Inner and outer welfare cannot be separated from all aspects of human life/livelihood, including a sense of security and peace that can be achieved if the public's awareness of obligations and respect for the rights of others has been understood and internalized so that law enforcement and justice based on truth have become a shared need, the needs of all community members.

4. The act of pornography is opposed by all religions adhered to by the Indonesian people and is an act that degrades the dignity and worth of a civilized human being. Religion as one of the sources of law for the Indonesian nation does not justify pornography, so it is natural and the State should take part in maintaining the values that live in society.
5. Pornography is not merely a private moral and not a personal right, but pornography has a wide impact on the formation of the generation of the Indonesian nation and the State has an interest in keeping the next generation healthy physically and spiritually, mentally and spiritually. Pornography has become a public moral because pornography has been in a public space which should be the private area of each person.

The purpose of the pornography law is to become the spirit of the overall regulation as stated in article 3 of the pornography law which reads that this law aims to

- a. Realizing and maintaining an ethical community life order, having a noble personality, upholding the values of the One Godhead, and respecting human dignity and worth.
- b. Respecting, protecting and preserving the artistic and cultural values, customs, and religious rituals of the pluralistic Indonesian society.
- c. Provide guidance and education to the morals and character of the community
- d. Provide legal certainty and protection for citizens from pornography, especially for children and women and
- e. Prevent the development of pornography and the commercialization of sex in society

Points 'a' to 'e' clarify the intent and purpose of the promulgation of the Pornography Law, namely that the Indonesian nation with its great culture and noble values must be protected from attempts to damage and destroy it. pornographic content as described in article 4 which contains: intercourse, including deviant intercourse, sexual violence, masturbation or masturbation, nudity or display that suggests nudity, genitalia and child pornography, all of which are private matters that are not appropriate to be shown or described to others. If the related act is carried out inappropriately, it will clearly cause an uncomfortable atmosphere, and be very destructive in the mental realm and mind of the Indonesian nation.

Therefore, it is vital to strike a balance in terms of pornographic control. Pornography's substance in this case is that while breaking decency is a necessary condition for committing a crime, it can be balanced if it is connected with criminal culpability. In essence, this is related to the occurrence of pornographic activities, which are not always punishable if conducted without malice (*mesrea/schuld*). In practice in Indonesia, which follows the civil law system, it is critical to define the distinction between responsibility and crime so that the criminal law can protect and quantify who the victims should be protected from and who the perpetrators should be sanctioned. Hence the law enforcement officers can understand the

definition of "decency" in pornography in a manner that is consistent with the Indonesian nation's philosophy of life.

5. CONCLUSION

Criminal acts or pornographic crimes committed via mass/social media are prohibited under several laws, including the Criminal Code, Law No. 8 of 1992 concerning film, Law No. 36 of 1999 concerning telecommunications, Law No. 40 of 1999 concerning the press, Law No. 32 of 2002 concerning broadcasting, Law No. 11 of 2008 concerning information and electronic transactions, and Law No. 44 of 2008 concerning pornography. The existing positive criminal law governing pornography is silent on the principles used to define criminal activities and criminal responsibility. This situation frequently results in disagreements and also divergent approaches to the enforcement of criminal law in Indonesia. Although the majority of Dutch criminal legal experts are influenced by a monistic view, which views "responsibility" as a component of a "criminal act." This means that a "crime" in and of itself includes the capacity for responsibility.

The Crime of Pornography posted on Social Media has not yet received an understanding which is basically the concept of pornography, both seen in terms of criminal acts, criminal liability, and punishment. This difference results in assessing whether a material is included in pornography or not being a problem in practice, especially related to the concept of criminal responsibility so that it has not provided legal protection for the public to determine the subject who is the perpetrator and victim of the spread of pornography on social media. related to pornography/moral offenses, the public does not get legal protection, both as perpetrators and victims, where in practice law enforcement related to pornography has various applications. This can be seen in several cases such as the Gisel and Ariel cases where legal experts also have different views on the application of sanctions, in the absence of a separation of criminal acts and criminal liability in the concept of statutory regulations, legal protection does not run optimally to get justice for public.

REFERENCES

- Adami, C. (2002). *Pelajaran Hukum Pidana Bagian 1*. Jakarta, Raja Grafindo Persada.
- Adji, H. (1991). *Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter, Profesi Dokter*.
- Ali, M. (2012). *Dasar-Dasar Hukum Pidana*, Sinar Grafika. Jakarta.
- Arief, B. N. (2008). *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan KUHP Baru*. Kencana, Jakarta, 2011.
- Cangara, H. (2007). *Pengantar Ilmu Komunikasi Edisi Revisi*. Jakarta: Raja Grafindo Persada.
- Chazawi, A. (2022). *Tindak Pidana Pornografi*. Media Nusa Creative (MNC Publishing).
- Chirzin, M. (2006). Pornografi dan Pornoaksi Dalam Perspektif Al-Qur'an. *Musawa Jurnal Studi Gender Dan Islam*, 4(1), 1–22.
- Hamzah, A. (2004). *Asas-asas Hukum Pidana*, Rineka Cipta. Jakarta.
- Hiariej, E. O. S. (2013). Pengembalian Aset Kejahatan. *Jurnal Opinio Juris*, 13, 2–3.

- Luthan, S. (2007). Kebijakan Penal Mengenai Kriminalisasi Di Bidang Keuangan (Studi Terhadap Pengaturan Tindak Pidana dan Sanksi Pidana Dalam Undang-Undang Perbankan, Perpajakan, Pasar Modal, dan Pencucian Uang. *Disertasi Pada Program Doktor. Program Pascasarjana Fakultas Hukum. Universitas Indonesia. Jakarta.*
- Mahendra, R. I. (2021). Bentuk Perlindungan Hukum Korban Tindak Pidana Pornografi. *Indonesian Journal of Criminal Law and Criminology (IJCLC)*, 2(2), 126–134.
- Permana, I. H., & Rappo, M. (2007). *Politik Kriminal*. Universitas Atma Jaya.
- Philipus, M. H. (1987). Perlindungan Hukum Bagi Rakyat Indonesia. *Bina Ilmu, Surabaya*, 25.
- Sjahdeini, S. R. (2009). *Kejahatan dan Tindak Pidana Komputer*.
- Sjawie, H. F. (2015). *Pertanggung Jawaban Pidana Korporasi pada Tindak Pidana Korupsi*, Jakarta: PT. Prenada Media Group.
- Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.
- Sudarto. (2007). *Hukum dan Hukum Pidana*. Cetakan ke -5, Alumni.
- Tobing, R. L., & Tobing, R. L. (2012). *Penelitian hukum tentang efektivitas Undang-Undang nomor 11 tahun 2008 Tentang Informasi dan Transaksi Elektronik*. Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia RI.

**PRE-TRIAL: THE SUSPECTS' ULTIMATE WEAPON AND
CORRECTION TOOL FOR INVESTIGATORS TO BE MORE
PROFESSIONAL FROM THE PERSPECTIVE OF LEGAL
EXPEDIENCY**

Albertus Luter^{1*}, Ramlani Lina Sinaulan², Mohamad Ismed³

^{1,2,3}

Magister Ilmu Hukum, Universitas Jayabaya, Jakarta

E-mail: ¹⁾ albertusluter91@gmail.com

Abstract

This study aims to determine the practice of holding pretrial hearings in Indonesia changed in the aftermath of the 2014 constitutional court ruling 21 / PUU-XII / 2014 as well as legal expediency accrue from pre-trial actions against suspects' determinations, both for the suspect himself and for the suspect. This study is a descriptive qualitative research with the use of normative legal research with primary data collection namely Court Decisions, Legislations which are analyzed using Legislative approaches, Case Approaches and Analytical Approaches. The findings reveal that Pretrial hearings were implemented in Indonesia following the constitutional court's decision Number: 21 /PUU-XII/2014, creating a new legal phenomenon in which suspects flocked to file pretrial legal efforts, which naturally clogged up relevant state institutions such as POLRI, KPK, the Prosecutor's Office as well as the District Court, where pretrial which had previously been viewed as a less popular legal effort, was instantly weakened as if it Advocates defending suspects and on the other hand, related institutions can prepare themselves by enacting a series of regulations requiring increased prudence in determining suspects in order to "survive" the new weapons of suspects known as Pretrial. However, when viewed through the lens of legal expediency, it is a positive thing for investigators because it means that Pretrial can be used as a tool of correction.

Keywords: Implementation of Pretrial Sessions, Constitutional Court Decisions, Legal Expediency of Determining Suspects

1. INTRODUCTION

On April 28, 2015 the Constitutional Court of the Republic of Indonesia read out the decision on case Number: 21/PUU-XII/2014 which was submitted by a person named Bachtiar Abdul Fatah through his team of attorneys, in the decision it was written the job of the applicant as an employee of PT. Chevron Pacific Indonesia, the Constitutional Court institution and the Constitutional Justices themselves took a very long time to decide the case, this can be seen from the data contained in the decision stating that the case was received on 17 February 2014 and registered by the Constitutional Court on 26 February 2014 was then officially accepted by the Registrar of the Constitutional Court on April 1, 2014, thus this decision of the Constitutional Court took more than a year and through this decision the determination of the suspect became the object of pretrial in Indonesian positive law, in which the Constitutional Court ruled that the object Pretrial which is regulated in the provisions of Article 77 letter (a) of the Criminal Procedure Code, namely the validity of the determination of suspects, searches and seizures, which previously were only limited to the

validity of arrest, detention, termination of investigation or termination of prosecution (Pangaribuan et al., 2017).

Since the Constitutional Court officially opened the door for suspects to file pretrial legal remedies in mid-2015, suspects have flocked to relevant state institutions such as the POLRI, KPK, the Prosecutor's Office, and the District Court. Pretrial, which was previously regarded as an unpopular legal remedy, has quickly transformed into the ultimate weapon for advocates defending suspects and on the other hand, related institutions are preparing themselves by making a series of regulations to be more careful in dealing with suspects to determine the suspect in order to be "survived" from the suspects' new weapon (Pretrial).

The following concerns will be covered in this paper: To begin, how has the practice of holding pretrial hearings in Indonesia changed in the aftermath of the 2014 constitutional court ruling 21 / PUU-XII / 2014? Besides that, what legal expediency accrue from pre-trial actions against suspects' determinations, both for the suspect himself and for the suspect?.

2. RESEARCH METHOD

In this paper, the writing uses a descriptive qualitative methodology with the research method used in this paper is normative legal research with primary data collection namely Court Decisions, Legislations which are analyzed using Legislative approaches, Case Approaches and Analytical Approaches.

3. RESULT AND DISCUSSION

3.1. Pretrial Legal Efforts for Suspects in terms of Legal Expediency

The writers obtain various considerations from the Constitutional Court's judges in Decision No. 21/PUU-XII/2014, namely: To begin, Article 1 paragraph (3) of the 1945 Constitution establishes Indonesia as a legal state. In a state of law, the notion of due process of law as an expression of the criminal justice system's respect of human rights is a principle that must be upheld by all parties, particularly law enforcement organizations. Thereby, the state, particularly the government, is obligated to protect, promote, enforce, and fulfill human rights by adopting a balanced stance consistent with applicable legal standards, including during the judicial process, particularly for suspects, defendants, and convicts in defending their rights in a fair way (Herlinda, 2019).

Secondly, law enforcement must adhere to applicable Pancasila and 1945 Constitutional requirements. The law must be enforced in order to create and realize the Unitary State of the Republic of Indonesia's national goals, which are clearly stated in the fourth paragraph of the 1945 Constitution, namely to protect the entire Indonesian nation, to promote the general welfare, to educate the nation's children, and to participate in the establishment of an orderly world ideals of freedom, lasting peace, and social justice. Furthermore, the Criminal Procedure Code's system is accusatur-based, which means that a suspect or a suspect the defendant is positioned as a human being with the same value, dignity, and position before the law. Moreover, the Criminal Procedure Code lacks a check and balance system for investigators' determination of suspects because it does not recognize a mechanism for validating evidence acquisition and does not apply the exclusionary principle

to evidence obtained illegally, as it does in the United States (Choiruddin & Nyoman United Putra Jaya, 2016).

Fifth, the purpose of pre-trial institutions is to serve as a mechanism for monitoring and objecting to the law enforcement process, which is inextricably linked to ensuring the protection of human rights, and thus pre-trial rules were regarded as part of the masterpiece of the Criminal Procedure Code at the time. However, it is discovered along the road that the pre-trial institution cannot function optimally since it is incapable of resolving the pre-trial process's concerns. The court's role in monitoring pre-trial institutions is merely post facto, meaning that it does not end with the institution's inquiry and testing, and the testing is only formal, establishing an objective aspect while leaving the subjective portion unsupervised (Kaligis, 2000).

Sixth, when the Criminal Procedure Code was enacted in 1981, determining the identity of the suspect had not yet become a critical and contentious issue in the Indonesian people's lives. Presently, the method of coercion has evolved or been modified in various ways, one of which is the "stipulation of a suspect by investigators," which is carried out by the state in the form of labeling or assigning the status of a suspect to a person without a clear time limit, forcing the person to accept the status of a suspect without the opportunity to challenge the legality and purity of the purpose of the determination. As a consequence, law enforcement must adhere to the precautionary principle.

Seventh, the pretrial process's objectives are to uphold the law and protect suspects'/defendants' human rights during investigations, investigations, and prosecutions, while taking into account the human rights values set forth in Law No. 39 of 1999 on Human Rights and the protection of human rights established forward by Chapter XA of the 1945 Constitution, due to the possibility of arbitrary actions by investigator (Prasetyo, 2015).

Eighth, if Article 1 point 2 of the Criminal Procedure Code is implemented optimally and effectively, no pretrial institution is necessary. However, the issue is what happens if it is not done properly and optimally. Because establishing a suspect is a step in the investigation process that results in the confiscation of human rights, the investigator should treat the suspect as an object that can be protected through pre-trial law efforts. This is merely to protect a person from the arbitrary actions of investigators that are likely to occur when someone is identified as a suspect; even if an error is discovered throughout the process, there is no other institution capable of examining and deciding save the pretrial institution. The inclusion of the validity of suspects as pretrial institutions ensures that the criminal process treats each suspect as a human being with the same dignity, integrity, and position before the law.

When law enforcement officials' acts violate people' constitutional rights to recognition, protection, and fair legal certainty, as well as their constitutional rights to due process of law, as outlined in Article 28D paragraph (1) and Article 1 paragraph (3) of the 1945 Constitution. Citizens The state has a right to be protected during the course of law enforcement. This is the gap in which citizens may petition the Constitutional Court for a constitutional review.

Based on Article 24C paragraph (1) of the 1945 Constitution, which is confirmed in Article 10 paragraph (1) letters a to d of Law No. 24 of 2003 establishing the Constitutional Court and Law No. 8 of 2011 amending Law No. 24 of 2003 establishing the Constitutional Court. The Constitutional Court was established with two primary responsibilities: to assess the constitutionality of measures that violate the 1945 Constitution. The Constitutional Court

has two primary responsibilities in determining constitutionality: first, to preserve the democratic system's functioning by balancing the legislative, executive, and judicial branches of power. Second, to safeguard individual citizens from state institutions abusing their power in ways that jeopardize their constitutionally granted fundamental rights.

With the submission of a constitutional review, it is clear that the state's role is critical in protecting citizens' constitutional rights to recognition, guarantees, protection, and equitable legal certainty, as well as their constitutional rights to due process of law, as provided for in Article 28D paragraph (1) and Article 1 paragraph (3) of the 1945 Constitution, as well as respect for human rights. According to the author, this is a judicial consideration in the Constitutional Court Decision No. 21/PUU-XII/2014, because the primary element of the rule of law established in the 1945 Constitution is the principle that everyone has human rights, which obligates others, including the state, to respect them. Thus, the state is obligated to protect, enhance, enforce, implement, and respect human rights (Setiadi & SH, 2017), because the presumption of innocence is the bedrock of this concept, which is founded on the concept of individual primacy and the complementary concept of official power limitation, or individuals have the potential to become targets of the state's use of violence (Setiadi & SH, 2017).

The aforementioned notion is intended to rein in and prevent authorities from abusing their power and maximizing their efficiency; in other words, it is intended to safeguard persons who come into direct touch with the criminal process in order to avoid violence and abuse of violence from the state. As a matter of fact, the author believes that including the determination of the suspect as a pretrial object by affirming the principle of due process of law as a manifestation of human rights is appropriate, as the concept of due process of law is based on individuals who may become targets of state abuse of power, particularly law enforcement. As a sense, each operation is critical and should not be overlooked. because the purpose of due process is to safeguard the individual involved in the criminal law enforcement process against governmental aggression and misuse of authority. A person is deemed guilty if his guilt is established in line with applicable procedures and by those having the authority to do so. On the other arm, even if the reality is burdensome, a person cannot be judged culpable if the legal protection offered by the law is not carried out appropriately or in line with applicable rules (Sebayang, 2020).

The inclusion of the suspect as a pretrial object by reaffirming the Criminal Procedure Code's system is an accusatur because the suspect or perpetrator of a crime should not be treated as an object but as a human subject with dignity and worth who has the same standing before the law, namely the right to know and follow each stage of the judicial process, as well as the right to file a rebuttal or argument (file a defense for himself). Notwithstanding of the errors and criminal conduct done, the criminal process must follow the Act's appropriate processes. As can be seen, the Constitutional Court is extremely consistent in carrying out its mandate of protecting and promoting human rights.

The advancement of the pretrial object through the designation of the suspect as the pretrial object also serves as a check in the event of a conflict between individual rights and state power, in this case law enforcement agencies' ability to determine whether someone has been designated as a suspect during the process optimally and correctly in accordance with the Act's regulated processes and stages. Although, if it is not carried out optimally and correctly, and does not follow the processes and stages regulated by the Law, namely the

investigation process to locate and collect evidence (at least 2 (two) pieces of evidence as defined in Article 184 of the Criminal Procedure Code), based on the mandate of the Constitutional Court Decision No. 21/PUU-XII/2014, to bring to light the crime that occurred, locate the suspect, can be submitted to the pretrial institution.

According to Constitutional Court Decision No. 21/PUU-XII/2014, a suspect must be established using 2 (two) pieces of evidence, as specified in Article 184 of the Criminal Procedure Code, namely "witness testimony, expert testimony, correspondence, instructions, and the defendant's testimony" (Deddi Diliyanto & Zainal Asikin, 2018). Examining a pretrial application for the determination of a suspect needs not only the sufficiency of two (two) pieces of evidence, but also the validity of the evidence obtained and its relevance to the matter under consideration (Yuristia, 2016). author believes that this can stimulate the use of three evidentiary factors as standards for determining the validity of questionable determinations, which include:

- 1) Minimum Bewijs, is the minimum amount of evidence so that a person deserves to be designated as a suspect. It is mandatory, investigators must have 2 (two) pieces of evidence before making a suspect determination. Bewijsvoering, is a condition which requires that the investigators legally obtain the 2 (two) pieces of evidence. Not evidence obtained by illegal means (unlawfulllegal evidence), not evidence obtained illegally or tainted evidence, not evidence obtained against the law (exclusionary rules).
- 2) Bewijskracht, is the strength or relevance of the evidence so that it is related to the alleged crime against the case that is being processed.

The inclusion of the determination of the suspect as an object of pretrial with a minimum of 2 (two) pieces of evidence as mandated by the Constitutional Court's decision, the authors see that this will create legal certainty, because the determination of the suspect who is included as an object of pretrial can answer the juridical problems that arise as a result of the unclear sound of the article in KUHAP, with the confirmation from the Constitutional Court in the Constitutional Court Decision No. 21/PUU-XII/2014 on the phrases "initial evidence", "sufficient preliminary evidence", and "sufficient evidence" as specified in Article 1 point 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code must be interpreted at least at least two pieces of evidence contained in Article 184 of the Criminal Procedure Code, because if there is no clarity on the phrases mentioned above, the law will be uncertain and this tends to confuse investigators and it is very possible that the existing confusion can lead to arbitrary actions. With the confirmation of this, it is not impossible to avoid arbitrary actions, especially when determining sufficient preliminary evidence is always used as an entry point for an investigator in determining someone to be a suspect.

Criminal Code (KUHP) itself does not provide an explanation of what is meant by sufficient evidence. The official explanation can only be obtained after the Constitutional Court Decision No. 21/PUU-XII/2014, which interprets that the phrase "sufficient evidence" is at least 2 (two) pieces of evidence contained in Article 184 of the Criminal Procedure Code. For this reason, as a result of not finding 2 (two) pieces of evidence, not only was the suspect not found, but there was also a legal obligation from investigators to issue an Investigation Termination Order (also referred to as SP3).

Determination of a suspect based on 2 (two) pieces of evidence, must also be preceded by an examination of a potential suspect, the goal is to prevent an unreasonable suspicion (adfire prejudice). The suspicion of an investigator who only uses the report of the reporter is very subjective, so in order to make it objective, the investigator is obliged to examine the reported (prospective suspect) first before being designated as a suspect. So that in making a decision, investigators are not in doubt and indecision, whether to determine the suspect and continue the legal process, or make a decision to stop the case (SP3).

The decision to determine the suspect as an object of pretrial through the Constitutional Court Decision No. 21/PUU-XII/2014, it is clear here that after the Constitutional Court's decision the pretrial authority is no longer purely just examining formal (administrative) issues, but has also entered the area of the case material.

Often investigators immediately determine a suspect first without going through the correct investigation process, namely seeking and collecting evidence (at least 2 pieces of evidence contained in Article 184 of the Criminal Procedure Code) in accordance with the mandate of the Constitutional Court Decision No. 21/PUU-XII/2014 in order to make light of the crime, to find the suspect or perpetrator. With the inclusion of the determination of the suspect as an object of pretrial, the function of the pretrial institution will also assess the subjective (individual) element of the determination of the suspect by law enforcement, not just a formal matter (administration) that puts forward an objective element. That way, in dealing with the criminal justice process, individuals can be avoided from arbitrary actions from the state, especially law enforcers in carrying out law enforcement.

The enforcement of material criminal law, which is guarded and framed by the norms of the legislation which is the area of procedural criminal law, can be brought closer to the principles and substance of law enforcement while at the same time upholding justice and useful law enforcement.

If the law in the procedural criminal area no longer functions properly, it is not impossible that the community unit will be disturbed because the community doubts the law and at the same time doubts the institutions and law enforcers because their duties and authorities are not in accordance with what has been regulated in the law. For this reason, the importance of the precautionary principle is increased so that law enforcement can run ideally and correctly, using its authority in accordance with the procedures regulated in the Act. So that the integrated criminal justice system can be implemented properly in accordance with the principle of the rule of law with the principle of due process of law as a manifestation of the protection of human rights and also one of the requirements or characteristics of the rule of law is the protection and promotion of human rights (Teslatu, 2019).

The inclusion of the determination of the suspect as an object of pretrial is seen as a fair decision decided by the Constitutional Court because as a state of law the most important thing is to protect individual interests from arbitrary actions from the state, thereby protecting individual rights in dealing with the criminal justice process, can also realize the protection and promotion of human rights, emphasize more on law enforcers that in carrying out their duties and responsibilities in law enforcement the principle of due process of law must be upheld, the importance of the precautionary principle is further enhanced so that in law enforcement can run ideally and correctly.

3.2. The Role of Investigators in Pretrial Legal Efforts

Pretrial is an effort that can be made by someone who has been designated as a suspect, if the suspect feels that there are formal legal violations related to the process of establishing himself as a suspect, the Pretrial Institution is inspired by the existence of the Habeas Corpus principle in the Anglo Saxon Court system. Habeas Corpus provides fundamental guarantees for the protection of human rights, especially in terms of the rights of independence. Basically, Habeas Corpus is a guarantee and security for personal independence through a simple, direct and open procedure that can be used by anyone. Based on this principle, one can sue an official, through a subpoena,

In Europe such institutions are known, but their function is really to carry out preliminary examinations. Thus, the function of the Judge Commissioner (Rechter Commissaris) in the Netherlands and the Judge d'instruction in France can truly be called Pretrial, because apart from determining the validity of an arrest, detention, confiscation, it also conducts a preliminary examination of a case. In the United States, there is also a Pre Trial institution with 3 process processes which include Arraignment (the allegation is read out before a judge and asked about the attitude, guilty or not) Preliminary Hearing (there is a strong reason the suspect has committed a crime) and Pre Trial Conference (Planning a court hearing), including litigation and evidence rights).

In principle, the function of pretrial is as a means of control over investigators or public prosecutors in the event of abuse of the authority given to them. The opening of the Pretrial faucet for the determination of suspects by the Constitutional Court in 2015 automatically became the suspects' ultimate weapon to formally examine the process of determining the suspect against him, the process was carried out in a trial forum at the District Court where the domicile of the Respondent (Investigator Who Determines the Suspect) was , in his position as the Respondent of course the attitude and behavior of the investigator who was present at the Pretrial hearing is very different from the attitude and behavior of the investigator when he was at the investigation table in front of the suspect, in his position as a Pretrial Respondent, of course, the investigators must prepare answers to the arguments of the application from the Applicant (Suspect) for alleged violations of the formal law to convince the Pretrial Judge that the arguments are not true and the investigation is in accordance with the law of the event, in the Pretrial forum the position between the investigator and the suspect changed positions to The Respondent and the Applicant.

Armed with empirical experience, the author as an advocate considers that the pretrial process for determining suspects can be interpreted as a tool to make open corrections to the investigation process which is very closed in nature regarding whether the investigation process, especially the determination of suspects has been carried out in accordance with procedural law or not, in practice it is difficult to deny that there are still unscrupulous investigators who seem antipathetic to the pretrial legal effort, even some investigators anticipate that the pretrial application be aborted by not attending the first trial to buy time while speeding up the submission of files to the prosecutor so that the case is immediately tried, this problem is actually a classic problem .

Senior advocate OC Kaligis in his book entitled "Pretrial Practices From Time to Time" stated: "As a legal practitioner, I have noted various weaknesses when conducting pretrials. For example, if we apply for a pretrial, the investigator immediately submits it to the public prosecutor, such a case needs the attention of the judge", the experience felt by OC Kaligis

and which was also experienced directly by the author shows that pretrial is not interpreted by investigators as a dialectical process but investigators prioritize their subjectivity and personal ego and then forget their position as law enforcers in the context of pretrial as formal law enforcers.

In general, investigators prioritize the closed principle in conducting investigations, concrete examples are how difficult it is to obtain administrative investigations such as the derivative of the Investigation Report (also referred to as BAP) which is the right of the suspect. Ramlani Lina Sinaulan, SH., MH. MM. from Jayabaya University, Jakarta, in the conclusion of his research entitled "Understanding the Violent Behavior of Police Investigators against Suspects at the Pre-Adjudication Stage (A Study of Normative Legal Studies With a Legal Psychology Approach in the Criminal Justice System)" describes that "almost certainly, a Police Investigator In carrying out its duties and functions, it will never be separated, in fact, it is still stuck with the inquisitoir principle in conducting investigative examinations".

From a psychological point of view, the author provides a hypothesis that it is possible that most investigators are not ready and accustomed to being the respondent who are required to disclose the facts of the investigation which form the basis of the process of determining suspects before a trial which is open to the public and there are still many investigators who are not ready and accustomed to dealing with dialectical processes in pretrial trial forums because the pattern of education received is of course more focused on being investigators who will carry out a series of examinations that are one-way (the investigator examines the reported) and tends to be closed where the climax is the determination of a person to be a suspect, in general investigators are more put forward the principle of closedness in conducting investigations, concrete examples are how difficult it is to obtain administrative investigations such as a derivative of the Investigation Report (BAP) which is the right of the suspect, the closed attitude of this investigator seems to be in line with research from Dr. Ramlani Lina Sinaulan, SH., MH. MM. from Jayabaya University, Jakarta, in the conclusion of his research entitled "Understanding the Violent Behavior of Police Investigators against Suspects at the Pre-Adjudication Stage (Normative Legal Studies Study With a Legal Psychology Approach in the Criminal Justice System)" describes that "almost certainly, a Police Investigator In carrying out its duties and functions, it will never be separated, in fact, it is still stuck with the inquisitoir principle in conducting investigative examinations".

From a practical point of view, the author sees that there is a phenomenon that the Pretrial forum becomes an arena for "law and existence wars" between a suspect and a certain institution. Indonesia has also become a hot topic of discussion by legal practitioners, namely the case of Komjen Pol. Budi Gunawan, whose name was sent to the Indonesian House of Representatives as the sole candidate for the National Police Chief by President Joko Widodo, was later named a suspect by the Corruption Eradication Commission (KPK) related to the alleged corruption in question when he served as Head of the Career Development Bureau of the Deputy for Human Resources of the Indonesian National Police for the period 2003-2003. 2006, where the pretrial application was granted by the Judge through Decision: 04/Pid.Prap/2015/PN.Jkt.Sel, dated February 16, 2015, from the case above it is clear that there is a phenomenon that each party through representatives, both spokespersons and attorneys have a war of opinion through the mass media, according to the

author's own observations, this decision has become a pretrial breakthrough in Indonesia so that it has become phenomenal among legal practitioners and academics, but it is very unfortunate if the pretrial forum is only used as a battlefield for existence, not seeing the purpose of the law itself, especially law expediency.

That in fact the Pretrial legal remedies proposed by the suspects will ultimately provide great legal benefits for the process of improving the formal law, especially the procedural law of the investigators themselves as formal law enforcers, in the Indonesian National Police, for example, based on the author's observations as legal practitioners during their practice. As an advocate, seeing the phenomenon that after the 2015 Constitutional Court decision and the many investigation processes, especially the determination of suspects who were declared invalid by the Pretrial Judge, the Indonesian National Police made adjustments to the internal investigation regulations so that investigators were more careful with concrete examples, for example seen from the National Police Chief Regulation No. 6 of 2019 concerning Criminal Investigations (Pujiantoro, n.d.), which regulates the stages of the process from the Police Report, Investigation Stage and Investigation Stage to Determination of Suspects so that investigators clarify first to the complainant and the reported party before carrying out a more in-depth investigation and investigation process and at this time when we (the public) make a police report the author feels that the process is so difficult to go through to improve the reported case from the investigation stage to the investigation stage, the the reporter and his witnesses must be examined back and forth and then the case can be escalated to the investigation stage, this phenomenon according to the author is the result of the 2015 Constitutional Court decision so that the investigation process becomes better, so in terms of the legal benefits of prosecuting Pretrial ice clearly makes investigators more professional.

Philosophically, we are reminded of Jeremy Bentham's phrase "The greatest good for the greatest number," in the context of Pretrial against the suspected author. The greatest good obtained from Pretrial is the opening of opportunities for the justice-seeking community, which is quite large, to make corrections to law enforcement in the future. Investigators are becoming more cautious and professional in establishing a person as a suspect (Baker, 2002; Drew et al., 2017). This professionalism will undoubtedly result in justice seekers obtaining their human rights as envisioned by the principle of Habeas Corpus. Indeed, Pretrial is a tool for reforming the management of investigations that have appeared closed and creepy to society at large for the last few decades.

Practically speaking, the author's empirical experience indicates the following benefits of a suspect submitting a pretrial effort: A suspect may be cleared of suspicion and released from detention if he is detained and is able to establish through the trial process that the investigator's process of deciding the suspect was improper or violated the applicable procedural law. The suspect has the right to know freely and transparently about the legal foundation and facts of the inquiry that the investigator uses to establish him as a suspect, such as the evidence gathered by investigators, fact witnesses, and the investigative process itself. By understanding the legal framework and facts underlying the investigation that the Investigator uses to establish himself as a suspect, such as the evidence he used and who the fact witnesses and expert witnesses are, the Suspect will undoubtedly be better prepared to face the main trial if the pretrial application is denied, cannot be accepted, or terminated.

As for the investigators themselves, the benefits obtained from the pretrial process

according to the author, include: With the suspect's right to file a pretrial, automatically investigators will be more careful and professional in carrying out their duties, thus investigators will also be avoided from ethical problems that arise. can be processed at the Investigation Supervision (*Wasidik*) or Division of Profession and Security (*Propam*).

Whereas in practice there is often intervention from superior investigators, seniors or external parties who have influence where in practice the term "attention" is known, pretrial can be a tool or answer for investigators to go straight to upholding the law because when a suspect submits a pretrial, the investigation process can be declared invalid by the Pretrial Judge, then what is at stake is the reputation of the institution, automatically the party who wants to intervene will step back regularly and let the investigators enforce the law straightly.

4. CONCLUSION

The implementation of the pretrial trial following the Constitutional Court's decision became very popular among justice seekers, and suspects, through their attorneys, flocked to file efforts Pretrial law to the District Court, and even at this time, Pretrial has become the suspect's ultimate weapon in the face of the determination of the suspect by the investigative agency. The Constitutional Court's decision on the pretrial trial was issued on April 28, 2015. This phenomenon represents the physical manifestation of the Habeas Corpus principle.

The legal expediency that can be gleaned from the Constitutional Court's opening of the Pretrial faucet for suspects is that the more professional investigators are in determining someone to be a suspect, as evidenced by the issuance of various regulations by relevant agencies such as the POLRI and the Prosecutor, which ultimately forces investigators to exercise greater caution in determining someone to be a suspect. The pretrial application benefits the suspect directly and indirectly by reducing the violation of the suspect's human rights, which is frequently referred to as criminalization, and practically, the pretrial application is extremely beneficial to the suspect regardless of whether the application is rejected or not; at the very least, the suspect will know precisely what evidence the investigator has in establishing him as a suspect.

REFERENCES

- Baker, E. (2002). The greatest good to the greatest number. *Cardiology in the Young*, 12(3), 209–210.
- Choiruddin, R. R., & Nyoman Serikat Putra Jaya, S. (2016). Tinjauan Yuridis Penetapan Status Tersangka Sebagai Perluasan Objek Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014. *Diponegoro Law Journal*, 5(2), 1–19.
- Deddi Diliyanto, S. H., & Zainal Asikin, S. H. (2018). Perluasan Wewenang PRaperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21-PUU-XII-2014. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, 3(1), 28–55.
- Drew, B. T., González-Gallegos, J. G., Xiang, C.-L., Kriebel, R., Drummond, C. P., Walked, J. B., & Sytsma, K. J. (2017). Salvia united: The greatest good for the greatest number. *Taxon*, 66(1), 133–145.

- Herlinda, H. (2019). Tinjauan Yuridis Terhadap Kewenangan Hakim Praperadilan Dalam Memustikan Permohonan Praperadilan Dengan Objek Menetapkan Tersangka. *Badamai Law Journal*, 4(1), 164–183.
- Kaligis, O. C. (2000). Praktik Pra peradilan Dari Waktu Ke Waktu. *Otto Cornelis Kaligis & Associates, Jakarta, Tahun*, 109–110.
- Pangaribuan, A. M. A., Mufti, A., & Zikry, I. (2017). Pengantar Hukum Acara Pidana Di Indonesia, Jakarta: PT. *Raja Grafindo*.
- Prasetyo, R. E. (2015). Hukum Acara Pidana. *Bandung: Pustaka Setia*.
- Pujiantoro, B. (n.d.). Manajemen Penyidikan Tindak Pidana Di Lingkungan Kepolisian Daerah Kalimantan Barat Dalam Upaya Penyidikan Tindak Pidana Pertanahan (Analisis Terhadap Peraturan Kapolri Nomor 6 Tahun 2019 Tentang Penyidikan Tindak Pidana). *Jurnal NESTOR Magister Hukum*, 3(3).
- Sebayang, S. (2020). Praperadilan Sebagai Salah Satu Upaya Perlindungan Hak-Hak Tersangka Dalam Pemeriksaan Di Tingkat Penyidikan (Studi Pengadilan Negeri Medan). *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 19(2), 329–383.
- Setiadi, H. E. (2017). *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia*. Prenada Media.
- Teslatu, L. C. M. (2019). Penetapan Tersangka Sebagai Objek Praperadilan Dalam Putusan Mk No. 21/Puu/Xii/2014 Sebagai Pemenuhan HAM Dan Tercapainya Sistem Peradilan Pidana Terpadu. *Jurnal Ilmu Hukum: ALETHEA*, 2(2), 131–144.
- Yuristia, R. (2016). Pengaruh Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Terhadap Pengajuan Praperadilan Mengenai Penetapan Status Ongky Syahrul Ramadhona Sebagai Tersangka. *Verstek*, 4(3).

PRE-TRIAL: THE SUSPECTS' ULTIMATE WEAPON AND CORRECTION TOOL FOR INVESTIGATORS TO BE MORE PROFESSIONAL ...

Albertus Luter, Ramlani Lina Sinaulan, Mohamad Ismed

**LEGAL PROTECTION OF CONSUMER OWNER OF FLAT ON
WITHDRAWAL OF ENVIRONMENTAL MANAGEMENT
CONTRIBUTIONS (IPL) ACCORDING TO GOVERNOR
REGULATION NO. 133 OF 2019**

Arief Setyo Bantolo^{1*}, Ismail², Mohamad Ismet³

^{1,3} Fakultas Ilmu Hukum, Universitas Jayabaya, Jakarta

² Universitas Bung Karno, Jakarta

E-mail: ¹⁾ ariefbantolo@gmail.com, ²⁾ ubkismail@gmail.com

Abstract

This paper discusses the legal protection of consumers of apartment owners for the withdrawal of environmental management fees (IPL) in accordance with Governor Regulation No. 133 of 2019. The approach method used in this legal research is a normative juridical approach which is supported by empirical juridical by detailing the description, namely a research that begins deductively analyzing the articles in the legislation. The construction of flats in Indonesia is based on Law Number 20 of 2011 concerning Flats, the law also requires that if the apartment unit already has occupants or has been occupied, it is required to form an association of flat occupants. This obligation must be carried out by the occupants and by the development organizer, which means that every construction of a flat unit is required to form an Association of Residents of Flats (P3SRS) which is a legal entity. The researcher found the problem that the need for legal protection for residents of apartment units in the field of apartment management, there is a shopping center that was established based on Law Number 20 of 2011 concerning Flats in the form of flats, and the Governor Regulation No. 133 of 2019 which has been established for a long time and formed an apartment unit, but has not yet formed an association that is a legal entity.

Keywords: *Consumer Legal Protection, Withdrawal of Environmental Management Fees (IPL), Flats*

1. INTRODUCTION

The state is responsible for providing everyone's housing needs through housing and regional administration, according to Law Number 20 of 2011. Housing and Settlement Areas Law 1 of 2011 stipulates that planning, development, use, and control activities, as well as institutional development, funding and finance systems, and coordinated and integrated community responsibilities, are all part of the implementation of housing and settlement areas. Residential areas are developed to create a residential environment as well as a location for activities that support planned, comprehensive, integrated, and sustainable livelihoods and future prosperity in accordance with the spatial plan (Jogloabang, 2019)

All of us have the right to be physically and mentally prosperous, to be able to live, and to have a healthy and safe environment in which to do so. One of the attempts to construct Indonesian people as a whole, self-identified, independent, and productive, is the strategic function of the location of residence in shaping the nation's character and personality. The government takes use of this opportunity through several forms of development work.

Development as an ongoing, continuous process involving all facets of the nation is designed to realize the objectives of a free, united, sovereign, just, and wealthy national existence (Nurlinda, 2009). Development is fundamentally an endeavor to achieve the Indonesian nation's national ideal of being advanced, independent, prosperous, just, and based on faith and sincerity toward God Almighty. The significance of development is to safeguard the entire Indonesian country and homeland, to advance public welfare, to educate the nation's youth, and to contribute to the maintenance of a world order founded on independence, eternal peace, and social justice.

In urban areas, where social disintegration and rivalry are common, a different method of ensuring social stability is needed in order to achieve a happy and productive community. Rapid growth and dissemination of information, such as the proliferation of luxury residences and high-rise buildings, highways or freeways (toll roads), and other cultures, have all contributed to a slew of new symptoms that can result in mental confusion in urban residents (Hutagalung, 2007)

According to the Explanation of Law No. 20 of 2011 on Flats (hereinafter referred to as the *RUSUN* Law), the construction of flats aims to achieve habitable and affordable housing, improve the overall performance of space utilization, reduce the area and prevent the emergence of housing and slums, direct urban development, meet social and economic needs, empower stakeholders, and provide legal certainty in the provision.

Flats must be separated on the Unit of Flats, Common Land, Joint Parts, and Common Objects by perpetrators of flat construction. There are Flats Units that are utilized separately and can be owned individually in the ownership of Flats Units, but there is also joint ownership of Common Land, Joint Parts, and Common Objects defined by Proportional Comparison Value (also known as NPP).

This necessitates control of the use and management of joint ownership, which is carried out through the Association of Owners and Tenants of Flats (hereinafter referred to as P3SRS), a legal institution charged with the responsibility of managing the owners' and tenants' shared interests (Hutagalung, 2007)

According to the *RUSUN* Law, it is stated that the owner of the Flats Unit is obliged to form the Association of Owners and Tenants of Flats (P3SRS) which consists of residents, so that the occupants will automatically be directly involved in the use of Shared Land, Shared Parts, and Joint Objects contained therein at the apartment concerned. Therefore, the occupants of the apartment are obliged to form an association of residents who have the duty and authority to manage and maintain the apartment and its environment, and to stipulate regulations regarding the order of occupancy. Resident associations by the *RUSUN* Law are given the position as legal entities with the Articles of Association (AD) and Bylaws (ART), so that they can act externally and internally on behalf of the owner, and with the authority it has, it can create order and peace in the apartment environment. The formation of the P3SRS must be carried out by making a deed ratified by the Regent or Mayor of the Head of the Level II Region, and notably for Special Region of Jakarta ratified by the Governor of the Head of the Level I Region.

Development actors generally become the Management Agency appointed by the Association of Flat Owners and Occupants (P3SRS) for several reasons. The development actors have knowledge in technical and administrative matters of the flats so that they can manage them efficiently. Furthermore, developers tend to be more aware of the problems in

a flat or apartment so that the root of the problem can be more easily found due to the experience they have.

As the manager, this gives rise to the right to withdraw fees in the context of managing a flat or apartment building which is commonly referred to as the Environmental Management Fee (hereinafter referred to as IPL). The nominal IPL costs for apartments can be calculated based on the real needs of the operational, maintenance, and building maintenance costs. In short, IPL is calculated by the formula for the basic IPL rate multiplied by the area of each apartment unit. Before further determining the IPL rate, P3SRS must know what income the apartment is getting. Generally, apartment income is obtained from the rental of space owned by P3SRS, such as ATMs or advertising in commercial areas of the apartment environment, up to the rental of Base Transceiver Station (BTS) stakes.

Having known apartment income, P3SRS is required to detail operational costs, ranging from employee costs, utilities, insurance, electricity, maintenance and so on. All these costs are then accumulated and the difference between the income and expenditure will be charged and divided equally by the area of each unit based on the Proportional Comparison Value (NPP). If the difference between income and expenditure has been calculated, then the expenditure will be charged and divided equally by the area of each unit. The basic IPL rates also vary, referring to the characteristics of the building, the age of the building, and the number of units.

The complexity of calculating the details imposed on the owners and occupants of flats has resulted in many loopholes that can be used by certain individuals to take advantage and rob other people of their rights. Due to the large number of IPL determinations and collections that deviate from what they should have resulted in the owners and residents being burdened with unnecessary amounts. There are many cases of overexploitation of IPL costs by the management agency resulting in the loss of trust of the owner and occupants, in which case the developer doubles as the managing body. Therefore, the RUSUN Law needs its role if problems arise related to flats.

In essence, development actors who build flats are obligated to manage flats before the P3SRS is formed in which the transition period is set no later than 1 (one) year from the first handing over of the flats to the owners. But in fact, the development actors made P3SRS with management members based on the developer employees themselves without any deliberation based on the principle of kinship that included the owners and residents.

The developer is required to hand over the management of joint objects, joint land, and joint shares to P3SRS, but what happens is that the submission is fictitious because the P3SRS formed comes from the developer himself. This resulted in ongoing conflicts so that the owners and occupants of the apartment units initiated rival associations. This has an impact on the dualism of associations in the same flat. Furthermore, the P3SRS considers all management bodies to be "puppets" of developers and takes the decision to manage the IPL which is billed to the P3SRS management itself, as happened to the Mediterania Palace Residence Apartment located in Kemayoran, Jakarta. The entire establishment of the counter-P3SRS through legal procedures, ranging from the formation process to the issuance of a decree from the Governor or Mayor.

By the time the rival P3SRS formed by the owners and residents have gone through a legal process, the old P3SRS should have no legal standing to continue to manage the flat. The old P3SRS are required to submit all management to the new P3SRS with a transition

period of 3 (three) months from the issuance of the Decree by the Governor of Special Region of Jakarta Number 272 of 2019 dated April 23, 2019.

At the Mediterania Palace Residence Kemayoran Apartment, there are two IPL bills to the apartment owners. In the bill submitted to the owner, the IPL becomes an integral part of the bill for water, electricity, and deposit funds. The bill came from the new management P3SRS and the old management P3SRS who had appointed PT. Prima Buana Internusa (PT. PBI) as the managing body. Obviously, this creates confusion among the owners where the IPL should be paid and what the impact will be if one of the IPLs is not paid.

In fact, the owner who did not pay the IPL to the P3SRS formed by the developer was turned off and water access in the unit was turned off. This problem is certainly very crucial because water and electricity are the daily primary needs of the residents of the flats. Furthermore, P3SRS who collect IPL illegally can be held accountable by way of compensation or be subject to administrative sanctions. Matters regarding the claim for compensation between P3SRS and the owner of the apartment have been regulated in the RUSUN Law.

This P3SRS conflict continued until the State Administrative Court. Ikhsan SH as Chairman of the P3SRS formed by the developer filed a lawsuit on June 17, 2019 with case number 125/G/2019 /PTUN.JKT with the defendant the Head of the Public Housing and Settlement Areas Office of the Special Capital Region of Jakarta. The lawsuit contains, among others, to order the defendant to suspend the further implementation of the DKI Jakarta PRKP Office Decree concerning the Registration and Ratification of the Composition of Management and Supervisors of the Association of Owners and Occupants of the Mediterranean Palace Residences Kemayoran Flats, Central Jakarta Administration City for the 2019 - 2022 period Number 272 of 2019 dated 23 April 2019. Furthermore, on November 13, 2019, the judges of the PTUN Central Jakarta assembly decided to reject the application for a delay in the implementation of the dispute object decision.

Based on the foregoing description, expert opinions, and the belief that the law evolves and grows within the community, this study seeks to determine how the legal protection of apartment owners has changed as a result of the issuance of Governor Regulation No. 133 of 2019 regarding the elimination of environmental management fees.

2. THEORETICAL BASIS

2.1. Conceptual Framework

In this study to get the understanding or interpretation in this thesis, the following is an operational definition as a limitation of the object under study:

Consumer legal protection encompasses all of the regulations and laws that govern the rights and obligations of consumers and producers that arise as a result of their efforts to meet their needs, as well as the regulations and laws that govern efforts to ensure the realization of legal protection for consumers' interests.

Consumers' rights are governed by the Consumer Protection Law Number 8 of 1999 concerning Consumer Protection of the Republic of Indonesia, which is based on Article 5 paragraph (1) of the 1945 Constitution, Article 21 paragraph (1), Article 27, and Article 33 of the Republic of Indonesia Constitution.

In multi-story structures that are divided into functionally structured portions horizontal and vertical, flats are units that can be owned and utilized independently, especially in residential areas furnished with common parts, common items, and common land.

2.2. Theoretical framework

2.2.1. Legal Protection Theory

The theory used in this case is the theory of legal protection by Philipus M. Hadjon, in the Dutch legal literature known as "*rechtbescherming van de burgers*." This opinion shows that the word legal protection is a translation of the Dutch language, namely "*rechtbescherming*."

Philipus M. Hadjon categorizes legal protection for the general public into two (2) kinds, which are as follows:

- a) Repressive legal protection entails the presentation of legal provisions as an attempt to avoid acts of law violation. This attempt is accomplished through the establishment of normative legal principles.
- b) Preventive legal protection is intended to keep disputes from arising in the first place, which leads the government to exercise caution when making decisions based on its discretion. It is also the goal of repressive legal protection to resolve disputes, including the settlement of those issues in the judiciary.

As said by Soerjono Soekanto, the purpose of law is to regulate the relationship between the state or society and its citizens, as well as the relationship between fellow citizens of the community, in order to ensure that social life runs smoothly and orderly, and that the relationship between the community and the government results in harmonious legal protection. The interaction between the government and the community has the legal consequence that the law's job is to achieve legal clarity (for the sake of order) and justice in society. Legal certainty needs the establishment of general principles or commonly acknowledged general rules. To foster a safe and peaceful environment in society, the relevant norms must be rigorously enforced and applied.

Moreover, Setiono stated that legal protection is an act or endeavor to safeguard the public against authorities' arbitrary actions that violate the rule of law, to restore order and peace, and to enable individuals to enjoy their inherent dignity as human beings. Thus according Muchsin, legal protection is an activity that aims to safeguard persons by balancing the relationship between principles or rules represented in attitudes and acts that contribute to the establishment of order in the social lives of fellow humans (Ali, 2009).

In CST Kansil's view, legal protection is a form of legal protection that stems from a relationship's legal rights and obligations. Humans as legal subjects own this in this case, as it pertains to their interactions with one another and their surroundings. Humans have the right and obligation to pursue legal action as legal subjects (Kansil, 1991).

3. RESEARCH METHOD

This paper takes a normative juridical perspective. This type of study is frequently referred to as documentary research, and it is used to gather secondary data in the field of

law. The research process entails an examination of legal principles, legal sources, statutory rules, applicable court decisions, and relevant literature.

The research specification employed in this study is descriptive analytical research, which is meant to provide as accurate facts as possible on humans, circumstances, or other symptoms, and to describe simply the status of the problem's object without drawing generally accepted conclusions (Soekanto, 2006). The purpose of this study is to provide an overview or explanation of the state of the problem under consideration, which is the legal protection of flat owners' consumers for the withdrawal of environmental management fees (IPL) in accordance with Governor Regulation No. 133 of 2019 in accordance with Indonesian laws and regulations.

The data analysis approach used in this study is descriptive qualitative, which means that the data were gathered using words, images, and not numbers (Danim, 2002). Where according Bogdan and Taylor, as cited by Lexy J. Moleong, qualitative research is a research process that generates descriptive data from people and observed behavior in the form of written or spoken words (Moleong, 2021).

4. RESULT AND DISCUSSION

4.1. Legal Protection for Flat Owners Upon the issuance of Governor Regulation No. 133 of 2019 Due to Withdrawal of Environmental Management Fees

Indonesia as a state of law, all actions or actions must be based on applicable law. One of the purposes of implementing the law is to obtain legal certainty for the parties. This is based on the theory put forward by Van Kan. Van Kan argues that the purpose of law is to guarantee legal certainty in social interactions. According to Van Apeldoorn, the law has the aim of regulating the order of society in a fair and peaceful manner (Moleong, 2021).

The law should also pay attention to the theory put forward, namely that the law is a means of community renewal (Moleong, 2021)

Indonesia as a state of law must also pay attention to the legal establishment in the form of the 1945 Constitution. Based on the Amendment to the 1945 Constitution Article 28 H:

- a. Having physical and spiritual prosperity, having a home to live in, and having a safe and healthy living environment are all fundamental human rights. Everyone also has the right to receive health care when they need it.
- b. In order to achieve equality and justice, everyone is provided with specific facilities and treatment in order to receive the same possibilities and benefits.
- c. Everybody has the right to social security that permits him or her to reach their full potential as a dignified individual.
- d. Anyone has the right to own private property, and these property rights cannot be taken away from them by anyone without their consent.

Based on the conclusion of the article above, the Indonesian people have rights, including:

- 1) The right to live in physical and spiritual prosperity;
- 2) Right of residence; and
- 3) The right to a good and healthy living environment and the right to health services.

- 4) Fulfillment of these rights was first established with a legal basis, namely the issuance of Law Number 20 of 2011 concerning Flats (UU Flats). This law replaces the previous law, namely Law Number 16 of 1985 concerning Flats and the Implementing Regulation of Law Number 16 of 1985 in the form of Government Regulation (PP) Number 4 of 1988 concerning Flats.
- 5) Flats are a new housing model in Indonesia.

In the past, Indonesia recognized three patterns of urban housing procurement systems, including:

- a) Housing built by the private sector is of good quality, expensive and is intended for high-income residents, especially for Europeans and foreigners.
- b) Housing that is procured for own use, both privately and by business entities. This includes housing for civil servants, private employees, and others.
- c) Village housing. Housing in the village is housing for indigenous people, which account for two-thirds of the existing houses (Sutedi, 2010).

In the event of a sale and purchase of an apartment unit, ownership of the apartment unit must be established prior to the Land Deeds Making Officer (PPAT). Since the transfer of rights is a legal act with a monetary value, the ownership rights to the apartment unit in question are transferred to the buyer when the deed of sale and purchase is signed and finalized by the PPAT (Harsono, 2017).

The establishment of flats based on Law no. 20 of 2011 is the latest regulation that replaces Law no. 16 of 1981. The issuance of Law no. 20 of 2011 was not accompanied by changes to the implementing regulations, including government regulations. The absence of this government regulation allows for different perceptions at the regional level. It is better if changes to the law are accompanied by the establishment of implementing regulations.

The current regulations in the field of flats that apply include:

- 1) Law NO. 20 of 2011 concerning Flats.
- 2) Government Regulation Number 4 of 1988 concerning Flats.
- 3) Decree of the Minister of State for Public Housing Number: 06/KPTS/BKP4N/1995 concerning Guidelines for the Creation of Deed of Establishment, Articles of Association and Bylaws of the Association of Flats Residents.
- 4) Regulation of the Minister of State for Public Housing Number 15/PERMEN/M/2007 concerning the Procedure for the Establishment of the Association of Residents of Simple Owned Flats.
- 5) In addition, the Civil Code (*KUH Perdata*) applies to agreements made.
- 6) Law No. 8 of 1999 regarding Consumer Protection. The construction of flats in Indonesia is built to then be marketed to residents. Marketing is carried out with due observance of other regulations related to the transaction.

The regulations that have been mentioned above include several other regulations relating to land rights, so what needs to be considered is Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, Government Regulation No. 24 of 1997 concerning Land Registration.

Based on their use, flats can then be grouped into:

- a. Residential flats, namely flats that function entirely as a residence.
- b. Non-residential flats, namely flats that entirely function as places of business or social activities.
- c. Mixed flats, which are flats that partly function as a residence and partly function as a place of business (Koeswahyono et al., 2004)

In Indonesia, the construction of flats is governed by the principles set forth in Law Number 20 of 2011 on Flats, which was passed in 2011. The construction of flats in Indonesia was previously governed by Law Number 16 of 1985, and this provision is contained in Article 2 of that law, which only contains three principles, which are as follows:

1. The principle of general welfare,
2. The principles of justice and equity, as well as
3. The principle of harmony and balance in the fairy life.

While Law Number 20 of 2011 respecting Flats contains more principles than Law Number 16 of 1985 concerning Flats, the latter is the more recent law. In Article 2 of the Law No. 20 of 2011 on Flats, there are 13 principles, which are as follows:

1. Welfare principle

The welfare principle is the condition of providing the community's demands for quality housing in order for them to develop and perform their social functions.

2. The principle of justice and equity

When it comes to flats, the concept of justice and equity requires that development outcomes be achieved in such a way that they can be enjoyed proportionally and equally by all people.

3. National principles

The idea of nationality is intended to serve as a foundation for ensuring that the ownership of flats unit is exploited as much as feasible for the benefit of the nation.

4. The principle of affordability and convenience

The premise of affordability and convenience is to lay a foundation so that the results of flat construction can be accessed by people from all walks of life, and to support the establishment of a favorable climate by making it convenient for low-income people.

5. The effectiveness and usefulness

This principle is to lay the groundwork for the implementation of flats by utilizing the potential of land resources, design technology, and the healthy building materials industry, and delivering the most benefit to people's welfare.

6. The principle of independence and togetherness

The principle of independence and togetherness serves as a framework for the implementation of flats based on initiatives, self-help, and community engagement, allowing residents to develop their own trust, abilities, and strengths while also fostering collaboration among stakeholders.

7. Partnership principle

The principle of partnership is to provide a foundation so that the administration of flats is carried out by the government and local governments by involving business actors and the community with the principle of mutual support.

8. The principle of harmony and balance

The principle of harmony and balance is to provide a foundation so that the implementation of flats is carried out by realizing harmony and balance in the pattern of space utilization.

9. The principle of cohesiveness

The principle of integration is to provide a foundation so that flats are organized in an integrated manner in terms of policy and planning, implementation, utilization, and control.

10. Health principles

The principle of health is to provide the basis for the construction of flats to meet healthy housing standards, environmental health requirements, and healthy living behavior.

11. The principle of sustainability and sustainability

The principle of sustainability and sustainability is to provide the basis for flats to be organized by maintaining environmental balance and adapting to needs which continues to increase in line with the rate of population growth and limited land.

12. Principles of safety, comfort, and convenience

The principle of safety, comfort, and convenience is to provide a foundation so that the apartment building meets the safety requirements, namely the ability of the apartment building to support the load, fire safety and lightning hazards; requirements for comfort and movement between spaces, air conditioning, views, vibrations, and noise; as well as requirements for ease of connection to, from, and within buildings, completeness of infrastructure and facilities for flats including facilities and accessibility for persons with disabilities and the elderly.

13. Principles of safety, comfort, and convenience

The principle of safety, comfort, and convenience is to provide a foundation for the management and utilization of flats to ensure that the building, the environment, and the occupants are protected from all disturbances and security threats; order in the conduct of residential and social life; and regularity in the fulfillment of administrative requirements.

The objective of creating flats is also stated in Law Number 20 of 2011, which is concerned with flats. According to Article 3 of the Law on Flats, the construction of flats is intended to:

- 1) In order to ensure the development of livable and cheap flats in an environment that is safe, harmonic, and environmentally sustainable, integrated settlements must be built in order for the community to be resilient on an economic, social, and cultural level.
- 2) Improvements in the efficiency and effectiveness of land and space utilization are being made, as is the provision of green open spaces in urban areas, in order to create the most complete, harmonious, and balanced residential areas possible, while taking into consideration the principles of sustainable development and environmental insight.
- 3) Reducing the area and preventing the occurrence housing area and slums.
- 4) Creating harmonious, balanced, efficient, and productive urban spaces.

- 5) Addressing social and economic demands that benefit inhabitants and the community while maintaining a focus on the goal of providing good housing and settlements, particularly for low-income individuals.
- 6) Empowering stakeholders in the development of flats.
- 7) Assuring adequate and affordable housing, particularly for low-income groups, in a healthy, safe, harmonious, and sustainable environment through an integrated housing and settlement management system.
- 8) Provide legal certainty for those involved in the provision, occupation, management, and ownership of flats.

Every consumer in the UUPK is legally protected. Consumers, as defined in Article 2 UUPK number 2, are anyone who uses goods and/or services provided in the community for their own, their families', other people's, and other living beings' advantage and not for commercial gain.

Consumers in flats are people who buy goods in the form of flats, who buy goods from construction actors/business actors and also residents. Occupants are people who occupy flat units, both as owners and non-owners of the formation of UUPK, namely:

- 1) Boost customer awareness, ability, and independence to protect themselves;
- 2) Enhance consumer dignity by protecting them from negative consequences of purchasing goods and/or services;
- 3) Encourage consumers by allowing them to choose, determine, and assert their consumer rights;
- 4) Developing a consumer protection framework that incorporates components of legal certainty, information disclosure, and information access;
- 5) Increasing business actors' understanding of the critical nature of consumer protection in order to foster an honest and responsible attitude toward business;
- 6) Enhancing the quality of goods and/or services in order to secure the business's continued existence, as well as the health, comfort, security, and safety of consumers.

Consumers in flat units should also be the target of UUPK. This is because residents and owners buy goods or rent goods produced by business actors/development actors. Consumers of flats should also be the goal of UUPK because as consumers, residents and owners do not yet have the awareness and ability to protect themselves. In addition, consumers do not know the laws governing the goods or flats they buy. This ignorance is also exploited by development actors/business actors.

Consumers in UUPK have rights and obligations, namely:

Consumer rights are:

- 1) The right to comfort, security and safety in consuming goods and/or services;
- 2) The right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- 3) The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
- 4) The right to have their opinions and complaints heard on the goods and/or services used;

- 5) The right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- 6) The right to receive consumer guidance and education;
- 7) The right to be treated or served correctly and honestly and not discriminatory;
- 8) The right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;
- 9) the rights regulated in the provisions of the other legislation.

Meanwhile, there are consumer obligations, which are as follows:

- a. Read or obey instructions and procedures for the use or utilization of goods and/or services for security and safety;
- b. Conduct transactions for the purchase of goods and/or services in good faith;
- c. Pay at the agreed exchange rate;
- d. Comply with legal efforts to resolve consumer protection disputes properly.

For consumers of flats, one of the UUPK's provisions, namely the right to accurate, transparent, and honest information about the terms and guarantees of products and/or services, is not applicable. PPPSRS was established in accordance with Law No. 20 of 2011 on Flats. The establishment of PPPSRS is one of the safeguards for flat owners and residents. However, it must be formed in line with the law, meaning that it must be conclusive (legal entity).

Several articles related to PPPSRS are:

Article 59

Paragraph 1: Development actors who build Flats in the transition period prior to the establishment of PPPSRS are required to manage Flats.

Verse 2: The transition period as referred to in paragraph 1 is set at the latest one year after the first handover of the flats unit to the owner.

Article 74

Paragraph 1: Owners are required to form PPPSRS. This means that only the owners are obliged to form PPPSRS, based on the voting rights they have. In the General Meeting for the Establishment of PPPSRS, the owners are entitled to vote in a vote, one name one vote.

Verse 2: PPPSRS as referred to in paragraph 1 consists of voters and residents who get a power of attorney from the owner.

The explanation:

Owner's power to Tenants is limited to occupancy. For example, in terms of determining the number of contributions for security, cleanliness or social welfare. Article 77 (2) In the event that PPPSRS decides something related to the interest of apartment dwelling, each member has the right to cast one vote. Elucidation of Paragraph 2 which means that each member casts one vote is that if the flats unit has been occupied, the owner's vote can be authorized to each flats occupant. If the Flats is not occupied, each Owner's Name has only one voting right even though the respective owner has more than one flats.

If the developer still owns the flats unit which has not been sold, it will automatically act as the owner with one voting right. He can also give voting rights in the voting for the establishment of the PPPSRS and the election of the PPPSRS management, if the Director of the Company attends the meeting. It is also possible for the Company to give a Power of Attorney to another person, and he/she will have one vote in the voting.

According to the law described above, the owners have sufficient legal weapons to form the PPPSRS and elect the PPPSRS management among the owners. So that this is the only establishment of PPPSRS which is legal according to the law. The Director of the development company has the right to vote with one vote and is entitled to be elected as the PPPSRS Manager if he occupies the flats unit. But for other employees, he can only be present as a proxy if he is also inhabited, but does not have voting rights in the voting for the formation of the PPPSRS or the election of the PPPSRS management. But if it does not inhabit at all means that it does not have voting rights as the owner or as the Holder of the Power of Attorney. Those who have the right to choose and be elected are only the Owners who inhabit.

It is very clear that the development actors, although supported by all their employees by law, are not entitled to form PPPSRS or control the seats of the PPPSRS Management. How is it possible to only have one vote in the voting for the establishment of the PPPSRS or the election of the PPPSRS management. In fact, until now, development actors have formed PPPSRS and place their employees as administrators. Obviously, it is a violation of the Law described above. Also, the legally flawed PPPSRS that has been formed has been incorporated into the PPPSRS. The importance of the establishment of PPPSRS so that its formation needs to be encouraged so that it is natural that Law no. 20 of 2011 provides a statement that development actors/business actors provide facilities for the establishment of PPPSRS, and is strengthened by Governor Regulation number 133 of 2019, article 102 C.

Owners and residents are completely unable to form PPPSRS due to limitations and ignorance of applicable laws. Owners and residents need to do more to protect their rights to ownership of flats. Owners and/or occupants of flats have rights and obligations regulated by Government Regulation no. 4 of 1988 concerning Flats. As stated in the article below.

Article 61 PP No. 4 of 1988, Paragraph (1) every occupant has the right to:

- 1) Utilize flats and their environment, including shared parts, shared objects, and shared land in a safe and orderly manner;
- 2) Get protection in accordance with the Articles of Association and Bylaws;
- 3) Elect and be elected as a Member of the Management of the Association of Tenants.

Paragraph (2) each occupant is obliged to:

- 1) Comply and implement the rules of conduct in an apartment and its environment in accordance with the Articles of Association and Bylaws;
- 2) Pay management fees and fire insurance premiums;
- 3) Maintain flats and their environment including shared parts, shared objects, and shared land.

Paragraph (3) each occupant is prohibited from:

- 1) Perform actions that endanger the security, order and safety of other occupants, buildings and their environment;

- 2) Changing the shape and/or adding buildings outside the apartment units owned without obtaining the approval of the association of residents.

In addition to the rights stipulated in the article above, residents who are also members of the Association of Flat Residents also have voting rights. Residents can use this voting right in the activities of the general meeting of members of the residents' association. These voting rights are divided into three (3) categories, namely:

- 1) Occupancy voting rights, namely the voting rights of PPRS members to determine matters relating to order, use of facilities, and the obligation to pay dues for management and fire insurance against joint rights such as joint shares, shared objects and shared land. Each owner of the land right of the apartment unit is represented by one vote.
- 2) Management Voting Rights, namely the voting rights of PPRS members to determine matters relating to the maintenance, repair and development of environmental infrastructure, as well as social facilities, shared shares, shared objects and shared land. Management Voting Rights are calculated based on the proportional comparison value of each apartment unit.
- 3) Ownership Voting Rights, namely the voting rights of PPRS members to determine matters concerning the relationship between fellow occupants of the apartment unit; Election of PP Management; and costs for the apartment unit. Ownership voting rights are calculated based on the proportional comparison value of each apartment unit.

Based on the theory of legal protection developed by CST Kansil, according to the author's understanding of the term, legal protection can be defined as protection supplied by law in a relationship that is tied to the presence of rights and obligations. When it comes to human interactions with one another and their environment, this is something that humans own as legal subjects. The right and obligation to pursue legal action rest with persons as legal subjects (Kansil, 1991).

Legal protection for residents of flats in accordance with Governor Regulation no. 133 of 2019 regarding the withdrawal of contributions for P3SRS wherein article 9 paragraph with separate billing sheets for flats includes water bills, electricity bills and bills of Land and Building Tax (PBB).

In the selection of management according to Article 25A of the Governor's Regulation no. 133 of 2019 that in the event that development actors do not carry out the establishment of a deliberative committee as referred to in Article 25 paragraph (2), then the Office together with the team for the completion of the management of flats belonging to the administrative city level facilitate the formation of working groups from owners who are domiciled and/or working in flats, so that the legal protection of the rights of the owner is in accordance with Pergub regulation No. 133 of 2019.

5. CONCLUSION

The applicable provisions concerning flats are as follows: Law No. 20 of 2011 on Flats, Government Regulation No. 4 of 1988 on Flats, Decree of the State Minister of Public Housing No. 06/KPTS/BKP4N/1995 on Guidelines for Making Establishment Deeds,

Budget on Procedures for Establishing the Association of Residents of Simple Owned Flats, and Gubernatorial Regulation 133 of 2019 on Governance for Establishing the Association of Residents of Simple Owned Flats (P3RS).

The issuance of Governor Regulation No. 133 of 2019 clarifies legal protections for flat management, but there is still abuse at the implementation level, resulting in conflict between the owner and manager. It is hoped that between the manager and the owner of the flow, a better understanding of their respective rights and obligations will prevent mutual harm.

REFERENCES

- Ali, A. (2009). Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence), termasuk Interpretasi Undang-Undang (Legisprudence). *Kencana Prenada Media Group, Jakarta. Edisi Pertama, Cetakan Ke-2.*
- Danim, S. (2002). Menjadi Peneliti Kualitatif Rancangan Metodologi, Presentasi, dan Publikasi Hasil Penelitian untuk Mahasiswa dan Penelitian Pemula Bidang Ilmu Sosial, Pendidikan, dan Humaniora. In *Remaja Rosdakarya, Bandung.* Bandung: pustaka setia.
- Harsono, B. (2017). Berbagai Masalah Hukum Bersangkutan dengan Rumah Susun dan Pemilikan Satuan Rumah Susun. *Jurnal Hukum & Pembangunan, 16(6), 617–629.*
- Hutagalung, A. S. (2007). Kondominium dan Permasalahannya (edisi revisi). *Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia.*
- Jogloabang. (2019, August 3). *UU 1 tahun 2011 tentang Perumahan dan Kawasan Permukiman.* JOGLOABANG. <https://www.jogloabang.com/pustaka/uu-1-2011-perumahan-kawasan-permukiman>
- Kansil, C. S. T. (1991). Pengantar Ilmu Hukum dan Tata Hukum Indonesia, Jakarta: Balai Pustaka, 1986. *Kuntjaraningrat, Metode-Metode Penelitian Masyarakat, Jakarta: Gramedia Pustaka Utama.*
- Koeswahyono, I., Wahyudi, S., & Setyorini, Y. (2004). *Hukum Rumah Susun: Suatu Bekal Pengantar Pemahaman.* Bayumedia.
- Kusumah, M. W. (1981). *Hukum dan hak-hak asasi manusia:[suatu pemahaman kritis].* Penerbit Alumni.
- Moleong, L. J. (2021). *Metodologi penelitian kualitatif.* PT Remaja Rosdakarya.
- Nurlinda, I. (2009). *Prinsip-prinsip pembaruan agraria: Perspektif hukum.* Rajawali Pers.
- s Hutagalung, A. (2007). Dinamika Pengaturan Rumah Susun atau Apartemen. *Jurnal Hukum & Pembangunan, 34(4), 317–330.*
- Soekanto, S. (2006). *Pengantar penelitian hukum.* Penerbit Universitas Indonesia (UI-Press).
- Sutedi, A. (2010). *Hukum rumah susun & apartemen.* Sinar Grafika.

ANALYZING THE RELATIONSHIP BETWEEN LAW AND TECHNOLOGY

**Dany Try Hutama Hutabarat^{1*}, Muhammad Azhari Efendi², Muhammad Fatwa Str³,
Nanda Prayoga⁴**

¹⁻⁴ Fakultas Hukum, Universitas Asahan

E-mail: ¹⁾ danytryhutamahutabarat@gmail.com, ²⁾ arijulsamsung1234@gmail.com,
³⁾ fatwastr13@gmail.com, ⁴⁾ prayogananda001@gmail.com

Abstract

This study aims to find out the relationship between two different field, namely law and information technology, which both aim to improve human welfare. This study employs normative research, which entails evaluating or analyzing secondary data derived from primary, secondary, and tertiary legal materials, which is then assessed descriptively, comparatively, and qualitatively before being encouraged to provide answers to the issues under consideration. Law along with the growth of social life, while information technology exists when the human need for a better life is so important. Thus, the law is needed to control the use of information technology in every side of human life. On the other hand, information technology is needed to help implement the law properly, because of human limitations in collecting and processing so much information. Information technology continues to grow rapidly, expanding into other fields, but this growth is not accompanied by control rules in its application. Generally, in Indonesia laws and regulations regarding the application and use of information technology are slow, and when a law is launched the challenges of legal backwardness are already evident. The legal technology perspective tries to look at things that might be taken into consideration in understanding the possibilities of resolving the lagging laws and regulations compared to the growth of information technology.

Keywords: *Information Technology, Law and Technology, Technological Legal Perspective*

1. INTRODUCTION

Laws are necessary in social life because they aid in the establishment of social order. What exactly is law? Law is defined as a regulation or tradition that is legally recognized as binding and that has been validated by the authorities or the government, according to the Big Indonesian Dictionary (KBBI).

Law can also be interpreted as laws, regulations, and so on to regulate the social life of the community (Hutabarat, Salam, et al., 2022). According to Kelsen, law is a "normative science." The law, according to Kelsen's interpretation, does not strive to describe what must occur, but rather to identify specific norms that must be followed. According to John Austin's definition of law, "Law is the aggregate set of rules established by a man who is politically superior to or sovereign over other men." Thus, this definition describes law as a collection of norms that all people, regardless of their size, must obey (Toppr, n.d.).

Indonesia's legal development, along with population expansion and social development, is currently fairly noticeable. Various types of societal troubles that need and necessitate the law to advance as social regulators in order to create an orderly, advanced, and wealthy society. The emergence of many types of new and special legal products (lex

specialist), for example, Law No. 20 of 2001 concerning the Eradication of Corruption Crimes (KPK), is defined by the evolution of the legal component itself, in terms of legal instruments (Hutabarat, Delardi, et al., 2022). In terms of legal institutions, such as the establishment of independent law enforcement bodies with particular powers, such as the Corruption Eradication Commission, as well as legal apparatus and culture (Koloay, 2016)

Technological advancements during the Fourth Industrial Revolution (Industrie 4.0) have brought about significant changes in everyday life. However, the advancement of technology both poses a threat and causes concern, in addition to providing benefits. In the case of Artificial Intelligence (AI), one of the technologies that is currently being widely used and developed in a variety of scientific areas, one of which is law, would be an example.

General Manager Premium Content of Hukumonline.com, Robert Sidauruk said that technology has an important role to see the workings of law in the world of work. For example, Hukumonline.com has innovated a lot using modern technology used in running the company's wheels. Moreover, Hukumonline.com is a platform that is very concerned with the development of the legal world, starting from news reports, clinics, and data centers for laws and regulations.

Meanwhile, Director of Copyright & Industrial Design at the Ministry of Law and Human Rights, Molan K. Tarigan, said that information technology is growing. In the context of intellectual property rights registration, it is important to record all copyrighted works using information technology media. Further, he said that “even while recording all of our copyrighted works is not a duty, he urged Indonesians to do so, so that the government can better track intellectual property, including natural resources and university intellectual property rights.”

According to Bert-Jap Koops (ed), (2000: 83) in the book *ICT Law and Internationalization. A Survey of Government View*, if in the 1990s only a few people had heard of email and the Internet, then 10 years later these technologies have been institutionalized and known to the public (Koops et al., 2000). While it is still difficult to predict the full extent of this change's impact on society, it is apparent that the world of electronic fast-track has functioned differently in many ways than the world 10 years before. This has ramifications for the law. Numerous words have been coined in relation to law, notably Information and Communication Technology Law (ICT Law) (Fauziah, 2015).

Based on the foregoing background, this study aims to find out the relationship between law and information technology to improve human welfare based on the implementation of law in technology. Hopefully, this study can contribute knowledge to the general public and to the world of education. Besides, this study can add insight and learning materials for the author in the Society course.

2. RESEARCH METHOD

This study employs normative research, which entails evaluating or analyzing secondary data derived from primary, secondary, and tertiary legal materials, which is then assessed descriptively, comparatively, and qualitatively before being encouraged to provide answers to the issues under consideration.

3. RESULT AND DISCUSSION

Legal thought can also be interpreted as laws, regulations, and so on to regulate the social life of the community. In addition, citing the e-Module of the Ministry of Education and Culture of Pancasila and Citizenship Education, here are some legal definitions according to experts.

1) Ernest Utrecht

According to this Dutch legal expert, law is a set of rules that govern life. These regulations can be in the form of orders or prohibitions that regulate the order in a society and must be obeyed by all members of the community (Utrecht, 1958).

2) Prof. Mr. EM Meyers

Meyers defines law as all rules that contain moral considerations. The embodiment of law is reflected in human behavior in society and becomes the guidelines for state authorities in carrying out their duties (Marpaung et al., 2021).

3) Drs. CST Kansil

Kansil asserted that the law has the ability to provide order to human interaction. This is done in order to keep the peace and order in the community (CST Kansil, 2021).

4) R. Soeroso

Soeroso argues, the notion of law is a set of regulations made by the authorities with the aim of regulating the order of people's lives. The characteristics of the law are ordering, prohibiting, and coercing by imposing legal sanctions that are binding on anyone who violates it (Soeroso, 2002).

The interpretation of these experts allows us to infer that the concept of law refers to a rule established by the authorities with the purpose of controlling and compelling humans to establish social order. It will then be possible to impose harsh penalties on those who do not comply with it (Sabat, 2021).

The growth of technology has become inextricably linked to human existence in the modern era. The existence of technology has had a significant impact on society and the surrounding environment over time. There are a multitude of ways in which technology can aid, including contributing in the improvement of the economy.

According to the Big Indonesian Dictionary, the term "technology" refers to the scientific technique used to accomplish practical aims, applied science, or the totality of means used to provide products necessary for human life and wellbeing (Sitoresmi, 2022).

3.1. The Relationship Between Law and Technology

The law is inextricably linked to technology. Information technology has developed into a major industry capable of meeting the economy's most basic demands and utilizing other significant resources. Computer technology has resulted in the development of communication satellites that may be used for a variety of applications, including radio and television broadcasting. Moreover, other types of information dissemination systems have arisen through the use of telephone lines and computer technology to generate video-text, enabling telephone owners to access thousands of pieces of direct information at any time and from any location. The advancement of fiber optics has led in the construction of a cable television system with an almost limitless range. Electronic technology is advancing at a

breakneck pace, resulting in the development of a variety of communication equipment that is relatively inexpensive and small in size, making it accessible to the general public, such as computers, radios, music players, pocket-size televisions, video cameras, and video games, among other items, some of which combine multiple features into one multimedia device in the form of laptops and mobile phones (Forumsejawat, 2010).

The digital age, which is characterized by the widespread use of internet technology, has proven to be “a sword that has two sharp edges” in the realm of intellectual property rights (copyright). First and foremost, the availability of internet technology has enabled an increase in the publication and diffusion of information and knowledge in a wide range of locations around the globe. All humans on this planet have the ability to benefit from information and knowledge. Second, the presence of internet technology has facilitated the growth of a wide range of behaviors that cause harm and have a tendency to violate the law, and this proliferation is continuing to grow in accordance with a developing pattern.

This situation is quite concerning due to the fact that the presence of internet technology has provided additional options for the growth of copyright infringement. The number of copyright infringements in particular categories of creation, such as music and songwriting, is particularly worrisome.

Several experts in the fields of copyright and information technology believe that the issue of copyright infringement cannot be tackled by a single technique during its development. Copyright infringements committed through the use of internet technology will be minimized by joint efforts between a technological (technical) and a legal approach (juridical approach). To better understand the nature of their collaboration, this research will describe and demonstrate how law and technology are now cooperating in the context of copyright protection on the internet, both at the global and national levels (riswandi, 2016).

A review of legal and public studies of science and technology outlines how law as an institution in society interacts and interacts with scientific institutions and technological institutions.

Within society, the scientific system produces institutionalized patterns of conduct. Likewise, technology systems that result in institutionalized behavioral patterns. As a result, scientific institutions interact with and are influenced by legal institutions within society. As a matter of fact, its legal institutions interact with and are influenced by technical institutions. Hence, scientific institutions, as well as technological institutions, play an important role in human life in society.

The review of legal and public studies of science and technology has as its focus the entire real and functional phenomenon that occurs in society as a result of human activities in obtaining, managing, and developing science and technology, as well as the legal and public studies of science and technology that are conducted. Considering that such efforts and actions are carried out by all civilized cultures, the review is intended to be comprehensive in nature.

Today, science has a significant impact on human life and social development, prompting the description of science as a social phenomenon. defines science as a multifaceted human activity that encompasses not just a set of facts or theory, but also a methodology, a practice activity, and a network of habitual patterns and roles that facilitate the acquisition, testing, and development of knowledge.

Besides being an individual accomplishment and a social institution, science, according to Leonard Nash (in his 1963 book *The Nature of Natural Sciences*), both constitutes a social institution and an original discovery about the real world or social institution (genuine discovery of the real world) (Nash, 1963).

The denotation (scope) of science refers to an entity that relates to a specific field of knowledge within a family of knowledge or to science in general in its broadest sense. Scientists highlight the concept of science in research activities, scientific procedures, and knowledge outcomes as a defining attribute of science (scientific connotation).

As the term "science" is defined in this context, it refers to a broadening of the meaning of the term "knowledge of science," so that it encompasses key problems, specific perspectives, or extra qualities associated with the phenomena discussed.

It has been recognized for a long time that technological institutions play a critical role in societal growth, but it has only recently that they have been acknowledged as variables within a societal development model. In the early stages of technological development, institutions are viewed as something static, unchanging, and unaffected by changing social situations. When reaching the second stage, technical institutions are acknowledged to be changing and dynamic, but the changes are regarded as being "independent" of wider societal shifts. Technological institutions are only deemed to have functional interactions with other social variables in society after they have passed through the third stage of development.

Nowadays, there seems to be a trend toward combining, and even unifying, the terms "science and technology." The fusion of the terms "science" and "technology" is intended to unify concepts into a single meaning (Soemitro, 1990).

Information and Communication Technology (ICT) is legally defined in a variety of laws and regulations, but it all refers to the same thing: the convergence of law and technology. Because these regulations were developed in a separate history and momentum but under the same legal regime, namely the Information and Communication Technology regime, they contain various legal difficulties and gaps when considered from a legal perspective. Some of the major topics that frequently come into contact with the community, it turns out that there are still many legal issues that need to be studied more thoroughly from Das Sollen's perspective, such as Cyber Crime, Start-Up business, Indonesian Domain Names, Digital Financial Innovation, openness and public services, and other interrelated aspects (Ulya & Musyarri, 2020).

3.2. The Role of Law in Technology

Law plays a critical role in technology; the development of the age in the era of Globalization, which reflects technology, must be accompanied by law; the Internet, as a technological breakthrough in the twenty-first century, is truly remarkable. The Internet enables humanity to interact freely across borders. This is not the case when communication is conducted physically. Internet technology appears to have influenced changes in human views and behavior. Where humans are aided by technology, there is a tendency for them to act outside the bounds of their human reasonableness. Furthermore, sometimes, through the use of internet technology, individuals become arbitrary with regard to the rights of others, which can be seen as a violation of conventional law.

The use or utilization of diverse information available on the internet is one of the changing human attitudes and behavior. As we all know, there is a variety of information available on the internet. This information is occasionally incorporated in the formulation or qualification of legally protected human thought results. For instance, writing in electronic form, photographs, graphics, trade logos, and domain names are all electronic. In actuality, this type of material is frequently misappropriated by being duplicated, communicated, distributed, and proclaimed with a "claim" as if he owns the information. When these acts eventually lead to instances, it is quite dangerous. As indicated in the preceding post, this is correct. As a consequence, many authors or producers of electronic material in this type are restless and concerned that if these acts are repeated, it would turn off diverse creativity that has been on the internet (Putri, 2013).

Internet users' actions are thus tried to be minimized in various ways or solutions. When it comes to the methods used, one example is the application of conventional law. Where conventional law enforcement attempts to resolve the aforementioned actions. Due to the internet's unique qualities, some of this does work and some of it doesn't. Then, a technological technique is used to solve the problem. The usage of technology has been chosen since it is capable of preventing a variety of harmful acts and deeds. As it turns out, technology itself is not capable of performing its full potential because of the inherent constraints inherent in any human endeavor. In the end, the collaboration model between law and technology was adopted.

The construction of Cyber Law arrangements brought by Telecommunication Law, Media Law and Informatics Law (Telematics) contained in the laws and regulations before the Electronic Information and Transaction Law is rooted in the concept of convergence of Law with Information Technology which gave birth to several terms such as Information Technology Law, Cyber Law (Virtual World Law), and Mayantara Law. Literally, the term was born from the results of activities carried out through a network of computer systems and communication systems. The explanation is explicitly contained in the explanation of the Electronic Information and Transactions Act (Rocky Marbun, 2011).

Convergence of law, which is a defining feature of the Cyber Law regime, is a critical foundation for reconstructing Information and Communication Technology Law. According to Heidegger, the convergence law approach is one that emphasizes the role of technology in the evolution of law. The qualities of technology must be designed according to an ideal formal law in order for technology acting as a tool to optimize its ability to manage society more effectively and efficiently in order to stimulate benefit (Budhijanto, 2014).

Apart from the issues raised in the previous discussion about the implementation of the Law on Information and Communication Technology, the momentum generated by the omnibus law debate over the last few years is also the right momentum for re-codifying the existing laws and regulations governing Information and Communication Technology.

According to Prof. Mahfud MD, there are no technical or legal issues with the execution of the omnibus law because it will essentially result in the birth of new laws and regulations that will amend multiple existing laws and regulations simultaneously (Prabowo, 2020). Omnibus legislation has the potential to successfully reform a number of information and communication technology laws.

The legal and technological collaboration model is intended to provide an effective legal protection system. The function of prevention and prosecution will be stronger and better if

law and technology are collaborated in an action that violates the rights of others on the internet (Riswandi, 2016).

In addition, through the collaboration of law and technology the rights of the violated can be restored as they should be. For example, the right to obtain payment for the use of information that has been made. Internationally, the legal and technological collaboration model is not only seen conceptually, but this has been realized and has become a global agreement. This can be found in the international copyright convention known as the WIPO Internet Treaties, which includes two international conventions, namely; WIPO Copyright Treaty and WIPO Performance and Phonogram Treaty. The provisions referred to are Article 11 WCT which in full reads:

“The provision on technological measures obliges the Contracting Parties to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

Meanwhile, Articles 18 of WPPT which in full reads:

“Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.”

From the two provisions above, it is clear that technical protection is an integral part of international copyright regulation. These technical protection arrangements are intended for effective copyright protection on the internet. There are two obligations arising from the two above, namely:

First, states are obliged to provide adequate legal protection, and effective redress, against circumvention of technological measures, such as conditional access systems and encryption used by copyright holders to protect their work; Second, states are obliged to provide safeguards for technologies that have reliability and integrity in the online marketplace by states that require to prohibit intentional alteration, or deletion of, electronic information, that accompany protected material, and that identify employment, rights owners, and terms and conditions for its use (Nicholson, 2009)

The United States as a country that has implemented the WIPO Internet Treaties, has formulated a technology and legal collaboration model as contained in the provisions of Article 103 of the Digital Millennium Copyright Act (DMCA) 1998 in Chapter 1201 which regulates the obligations of copyright owners in providing adequate and effective security technology (Gov, 1998). Chapter 1202 divides regulations related to security technology into 2 categories, namely: (Gov, 1998) First, actions that prevent unauthorized access to copyrighted works create; and Second, measures to prevent unauthorized copying of copyrighted works. The division of categories of granting security technology is used to ensure that the public will have sustainable capabilities in fair use of copyrighted works.

Furthermore, the 1998 DMCA establishes laws regarding the consequences that can be imposed on parties who destroy information-security equipment. Interference with security technology as defined in Sections 1201-1202 may result in a legal action in Federal Court (Gov, 1998). The United States' initiative to initiate copyright protection on the internet through the technology and legal collaboration model set forth in the 1998 DMCA was followed by a number of other countries, particularly those that have ratified the World Intellectual Property Organization's (WIPO) Internet Treaties (Riswandi, 2016).

This is not an exception in the case of Indonesia. Since the implementation of the provisions of Law No. 19 of 2002 on Copyright, Indonesia, as a country that has ratified WIPO Internet Treaties, has begun to preserve and protect copyright on the internet through a model of technological and legal collaboration. This is in accordance with the terms of Law No. 19 of 2002, Articles 25, 27, and 72. The first and second paragraphs of Article 25 of Law No. 19 of 2002 read “(1) Electronic records including information regarding the Creator's rights management will not be canceled or amended; (2) Any additional provisions made pursuant to paragraph (1) must be controlled by Government Regulation.”

Article 25 paragraphs (1) and (2) of Law no. 19 of 2002 contains norms regarding information management rights of creators. What is meant by information on the management of the rights of the creator based on the explanation of Article 25 of the Copyright Law is information that is attached electronically to a work or appears in connection with an announcement activity that explains about a work, the author and ownership of rights as well as information on terms of use, number or information code. In essence, the information management rights of the creator are technically a security technology whose purpose is to provide information related to copyright ownership and is intended to provide technical protection for copyright ownership of the creator.

Furthermore, Article 27 of Law no. 19 of 2002 states: "Except with the permission of the Author, the means of technological control as a safeguard for the rights of the Creator are not allowed to be tampered with, removed, or rendered non-functional." Elucidation of Article 27 of Law no. 19 of 2002 implicitly states that the means of technological control that are understood include secret codes, passwords, bar codes, serial numbers, description and encryption technologies used to protect works. In full, Article 72 paragraph (7) and (8) of Law no. 19 of 2002 reads: (7) Whoever intentionally and without rights violates Article 25 shall be punished with a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 150.000.000,00 (one hundred and fifty million rupiah).

In its development, when Law no. 19 of 2002 was replaced by Law no. 28 of 2014, the collaboration of technology and law in the provisions of Law no. 28 of 2014 continues to be maintained in the context of copyright protection on the internet. This is stated in Articles 6, 7, 52, 53 and 112 of Law no. 28 of 2014. In the provisions of Articles 6 and 7 of Law no. 28 of 2014 is more focused on technology as copyright protection for moral rights. This assumption can be seen in Article 6 of Law no. 28 of 2014 states: “To protect the moral rights as referred to in Article 5 paragraph (1), the Author may have: a. Copyright management information; and/or b. Copyright electronic information.” Meanwhile, Article 7 paragraphs (1), (2), (3) of Law no. 28 of 2014 states: (1) Copyright management information as referred to in Article 6 letter a includes information on: a. a method or system that can identify the originality of the substance of the Work and its Author; and b. information code and access code. (2) Copyright electronic information as referred to in

Article 6 letter b includes information on: a. a Work, which appears and is attached electronically in connection with the Announcement of Works; b. the name of the creator, his alias or pseudonym; c. Creator as Copyright Holder; d. the period and conditions of use of the Works; e. number; and f. information code. (3) Copyright management information as referred to in paragraph (1) and Copyright electronic information as referred to in paragraph (2) owned by the Author is prohibited from being removed, changed, or damaged.

The technology regulation contained in Article 7 paragraph (3) of Law no. 28 of 2014 was further strengthened by providing criminal sanctions. This is as stated in Article 112 of Law no. 28 of 2014 which reads:

“Any person who unlawfully commits the acts as referred to in Article 7 paragraph (3) and/or Article 52 for Commercial Use, shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).”

However, the existence of this criminal sanction, when referring to the provisions of Article 120 of Law no. 28 of 2014 as a complaint offense, its position has become very weak in protecting technology. In terms of technology used for copyright protection for economic rights, it is stated in Article 52 of Law no. 28 of 2014. In full, Article 52 of Law no. 28 of 2014 states:

Everyone is prohibited from damaging, destroying, eliminating, or making non-functioning technological control facilities used to protect Works or Related Rights products as well as to protect Copyrights or Related Rights, except for the interests of state defense and security, as well as other reasons in accordance with the provisions of laws and regulations. invitation, or agreed otherwise (Riswandi, 2016).

In the explanation of Article 52 of Law no. 28 of 2014 states that technology control means are any technology, device, or component designed to prevent or limit actions that are not permitted by the Author, Copyright Holder, Related Rights owner, and/or those prohibited by laws and regulations. In another context, the norm of technology with the aim of protecting copyright on economic rights is also contained in the provisions of Article 53 paragraphs (1) and (2) of Law no. 28 of 2014 which reads: (1) Works or Related Rights products that use production facilities and/or data storage based on information technology and/or high technology, must comply with the licensing rules and production requirements stipulated by the authorized agency. (2) Further provisions regarding the means of production and/or data storage based on information technology and/or high technology as referred to in paragraph (1) shall be regulated by a Government Regulation.

In the explanation of Article 53 paragraph (1) of Law no. 28 of 2014 it is stated that the means of production and/or data storage based on information technology and/or high technology include optical discs, servers, cloud computing (cloud), secret codes, passwords, barcodes, serial numbers, decryption technology, and encryption used to protect the Works. For the provisions of Article 52 of Law no. 28 of 2014 is not reinforced by criminal sanctions.

However, in this context, Law No. 28 of 2014 aims to preserve technology as a mechanism of copyright protection in addition to being a protected item under Indonesian copyright laws. The provisions of Law No. 28 of 2014 have created an opportunity to damage, destroy, eliminate, or render inoperable technological control facilities that are not classified as copyright infringements for national defense and security, as well as other

reasons in accordance with the provisions of the legislation, or as agreed upon by others, where this is not regulated by Law No. 19 of 2002 (Riswandi, 2016).

4. CONCLUSION

Based on the foregoing discussion, it can be concluded as follows:

The advancement of information technology and telecommunications has resulted in the world being borderless in terms of information pertaining to social, political, economic, defense, and security issues, and many others. This occurs globally in all regions of the world and in any country as a result of the unrestricted creation and diffusion of various types of information brought about by information globalization.

Due to the emergence of an increasingly evolving world of technology, legal relationships in the midst of society are created, giving rise to a variety of crimes and other legal activities that are not yet regulated since the modes of crime employed are new to the legal world. Because of this legal relationship, the world of technology, or cyberspace, is extremely prone to abuse of the law, resulting in the emergence of new crimes. As a response, it is required to develop a new regulatory framework, also known as legal politics, to manage it.

The evolution of law in Indonesia created a range of reactions from a variety of perspectives. This reaction is a result of a variety of causes, both within to law enforcement authorities and external factors. It is law enforcement officers' unprofessionalism that undermines the authority of law in Indonesia, from their arrogance to their involvement in the legal matters they handle. Such law enforcement officer behavior should be eradicated from the Unitary State of the Republic of Indonesia in accordance with Pancasila norms. Fraud of money or property through the use of computer/cyber facilities is considered a crime in the field of information and communication technology. This type of crime can be committed in a matter of seconds without anyone noticing. Embezzlement, and falsification of the provision of information through a computer that harms other parties and benefits oneself also include in cybercrime. Criminal activities sometimes also done by sabotage of computer systems (either terminating data or removing codes that cause damage and loss). Additionally, this criminal crime may take the form of adding or changing programs, information, or media, as well as piracy involving intellectual property rights, copyrights, as well as patents.

REFERENCES

- Budhijanto, D. (2014). *Teori Hukum Konvergensi*. Bandung: PT. Refika Aditama.
- CST Kansil, S. H. (2021). *Kamus Istilah Aneka Hukum*. Pustaka Sinar Harapan.
- Fauziah, A. U. (2015). *Perkembangan Hukum di Indonesia*. http://annisa-umi-fauziah-fisip14.web.unair.ac.id/artikel_detail-138577-SSII-Perkembangan%20Hukum%20di%20Indonesia.html
- Forumsejawat. (2010). *Teknologi Informasi: Permasalahan Dan Pemanfaatannya*. <https://forumsejawat.wordpress.com/2010/10/27/teknologi-informasi-permasalahan-dan-pemanfaatannya/>

- Gov, U. S. (1998). The Digital Millennium Copyright Act of 1998—US Copyright Office Summary. *Dec, 1*, 1–18.
- Hutabarat, D. T. H., Delardi, E., Irwansyah, A., Bascara, D., Ansori, B., & Tanjung, F. (2022). The Eradication Of Corruption And The Enforcement Of The Law In Indonesia As Seen Through The Lens Of Legal Philosophy. *Policy, Law, Notary And Regulatory Issues (POLRI)*, 1(2), 1–8.
- Hutabarat, D. T. H., Salam, A., Zuwandana, A., al Azmi, C., Wijaya, C. R., Darnita, Tania, I., Lubis, L. K. A., Sitorus, M. A. P., Adawiyah, R., & Sinaga, R. (2022). Analysis Of The Implementation Of Law In Every Level Of Society In Indonesia. *Policy, Law, Notary And Regulatory Issues (POLRI)*.
<https://doi.org/https://doi.org/10.55047/polri.v1i2.80>
- Koloay, R. N. S. (2016). Perkembangan Hukum Indonesia Berkenaan Dengan Teknologi Informasi Dan Komunikasi. *Jurnal Hukum Unsrat*, 22(5), 16–27.
<https://media.neliti.com/media/publications/894-ID-perkembangan-hukum-indonesia-berkenaan-dengan-teknologi-informasi-dan-komunikasi.pdf>
- Koops, B.-J., Prins, C., & Hijmans, H. (2000). *ICT law and internationalisation: a survey of government views* (Vol. 10). Kluwer Law International BV.
- Marpaung, D., Bakti, S., & Suhargon, R. (2021). Urgensi Pemahaman Hukum Ekonomi Terhadap Para Generasi Muda. *Community Development Journal: Jurnal Pengabdian Masyarakat*, 2(3), 989–992.
- Nash, L. K. (1963). *The nature of the natural sciences*.
- Nicholson, D. R. (2009). Digital rights management and access to information: a developing country's perspective. *LIBRES: Library and Information Science Research Electronic Journal*, 19(1), 1.
- Prabowo, D. (2020, January 30). *Begini Mekanisme Omnibus Law Gantikan Undang-Undang Lama*. Kompas.Com.
<https://nasional.kompas.com/read/2020/01/31/11511821/begini-mekanisme-omnibus-law-gantikan-undang-undang-lama?page=all>
- Putri, S. (2013). *Estatika dan Hukum dalam Teknologi komunik*.
<http://stephanniputri.blogspot.com/2013/12/landasan-hukum-bidang-informasi-dan.html>
- Riswandi, B. A. (2016). Hukum Dan Teknologi: Model Kolaborasi Hukum Dan Teknologi Dalam Kerangka Perlindungan Hak Cipta Di Internet. *Jurnal Hukum Ius Quia Iustum*, 23(3), 345–367.
- Rocky Marbun, S. H. (2011). *Kiat Jitu Menyelesaikan Kasus Hukum*. Visimedia.
- Sabat, O. (2021, November 5). *Pengertian Hukum Menurut Para Ahli dan Penggolongannya*. DetikEdu. <https://www.detik.com/edu/detikpedia/d-5798560/pengertian-hukum-menurut-para-ahli-dan-penggolongannya>
- Sitoresmi, A. R. (2022). Pengertian Teknologi, Perkembangan, Manfaat, dan Jenisnya yang Wajib Diketahui. *Liputan 6.Com*. <https://hot.liputan6.com/read/4861387/pengertian-teknologi-perkembangan-manfaat-dan-jenisnya-yang-wajib-diketahui>
- Soemitro, R. H. (1990). *Hukum dan Perkembangan Ilmu Pengetahuan dan Teknologi di dalam masyarakat*. 1–35.
- Soeroso, R. (2002). *Pengantar ilmu hukum*.

- Toppr. (n.d.). *Various Definitions of Law*. <https://www.toppr.com/guides/business-law/cs/introduction-to-law/various-definitions-of-law/>
- Ulya, N. U., & Musyarri, F. A. (2020). Omnibus Law Tentang Pengaturan Teknologi Informasi Dan Komunikasi Guna Rekonstruksi Konvergensi Hukum Teknologi. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(1), 53.
- Utrecht, E. (1958). Rangkaian Sari Kuliah Hukum Pidana I. *Universitas Padjadjaran, Bandung*.

**ANALYSIS OF DEBTOR'S EFFORTS IN SETTLEMENT OR
IMPLEMENTING CREDIT OBLIGATIONS DURING THE NON-
NATURAL NATIONAL DISASTERS OF THE COVID-19 PANDEMIC**

Artanta Barus^{1*}, Tofik Yanuar Chandra², Ramlani Lina Sinaulan³

^{1,2,3}

Master of Law, Jayabaya University

E-mail: ^{1*)} artantabarus@yahoo.com

Abstract

Due to Covid-19 pandemic many debtors unable to fulfill their obligations to creditors in a credit agreement. Such conditions rising the opinion and/or use the Covid-19 Pandemic as an excuse for debtor not to fulfill their obligations to creditors in a credit agreement on the grounds of forced circumstances (overmacht). This study aims to find out the debtor's efforts in settlement or implementing credit obligations during the non-natural national disasters of the covid-19 pandemic. The type of research used is normative legal studies, which are conducted through a process of legislation and regulatory evaluation. In terms of technique, scientifically normative legal science disclosure methods are constrained by deductive logic criteria. This study employed normative legal research methods. This method investigates law from an internal juridical standpoint, examining legal norms, legal conceptions, legal principles, and legal doctrines. The technique taken in this research is a legal and conceptual one, with primary and secondary legal material sources. The technique for collecting legal materials is to assess all books relevant to the subject of the research, and then compile them in a quantifiable and systematic manner. The findings highlight that with the prevailing laws and regulations due to the Covid-19 Pandemic, business actors are given legal certainty for business loans made in this case debtors, both individual debtors and business entity debtors, so that the impact of credit risk caused by the Covid-19 pandemic can be overcome properly and does not cause a debate over credit conditions during the Covid-19 Pandemic.

Keywords: *Debtor, Credit Obligation, Non-Natural National Disaster, Covid-19*

1. INTRODUCTION

The debtor is a party that owes another party, normally through obtaining something from the creditor that the debtor agrees to repay over time. Loans may occasionally need collateral or securities provided by and on behalf of the debtor. Nevertheless, if somehow the debtor fails to meet his responsibilities to the creditor within the agreed date, a legal collection action can be initiated, which may include the seizure of the debtor's property in order to compel payment or performance of the debtor's obligations to the creditor.

At the moment, the world and the Unitary State of the Republic of Indonesia in particular are beset by the Covid-19 pandemic, which is a pandemic of a disease or virus that is rapidly spreading throughout the globe, having a significant effect on human lives (Putra & Pradnya, 2022).

Many debtors have the opinion and/or use the Covid-19 Pandemic as an excuse not to fulfill their obligations to creditors in a credit agreement on the grounds of forced circumstances (*overmacht*) which resulted in the debtor being unable to perform his obligations to creditors, especially on April 13, 2020, President of the Republic of Indonesia

has issued Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID 19) as National Disasters.

The author of this case intends to examine the efforts made by debtors to meet their responsibilities as a result of the Covid-19 Pandemic in a credit agreement that is related with relevant rules and regulations in terms of handling a credit agreement during the Covid-19 Pandemic in this instance.

As explained in the background above, the authors formulate the main problem as follows:

1. Can the non-natural national disasters of the Covid-19 pandemic be categorized as coercive circumstances (*overmacht*)?
2. What efforts can be made by debtors to avoid default on creditors in a credit agreement during the Covid-19 Pandemic?

2. RESEARCH METHOD

The type of research used is normative legal studies, which are conducted through a process of legislation and regulatory evaluation. In terms of technique, scientifically normative legal science disclosure methods are constrained by deductive logic criteria (Atmadja & Budiarta, 2018). This study employed normative legal research methods. This method investigates law from an internal juridical standpoint, examining legal norms, legal conceptions, legal principles, and legal doctrines (Diantha & SH, 2016). The technique taken in this research is a legal and conceptual one, with primary and secondary legal material sources. The technique for collecting legal materials is to assess all books relevant to the subject of the research, and then compile them in a quantifiable and systematic manner.

3. RESULT AND DISCUSSION

3.1. Non-Natural National Disasters of The Covid-19 Pandemic as a Coercive Situation (*Overmacht*)

When a clause is included in an agreement or contract regarding the provision of coercive circumstances, it basically regulates a situation that occurs after the occurrence of the agreement or contract and prevents the debtor from carrying out his obligations. If indeed the debtor is unable to carry out his contractual obligation, the debtor cannot be blamed or considered a renegade promise (default), as is also regulated in Article 1244 as well as Article 1245 of the Civil Code (Hutabarat et al., 2022).

In a nutshell, the coercing condition clause in an agreement/contract is designed to protect one of the parties in the agreement/contract from the loss of one of the parties in the agreement/contract due to fire, flood (or other natural disaster), power outage, damage to catalyst, terrorism, nationalization, blockades, embargoes, labor disputes, strikes, and government sanctions.

With the implementation of the Decree of the President of the Republic of Indonesia No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID 19) (Nurudin et al., 2021), the author believes that a number of questions have arisen from debtors who have obligations to creditors under credit

agreement agreements, including whether the situation of the Covid Pandemic falls into the category of coercive circumstances or not.

As long as the Covid-19 Pandemic situation is linked to the coercive circumstance (*overmacht*), there is an overlapping situation, but it must first be established that the actual impact occurs, especially in regard to the debtor itself, the impact in question is whether in a Covid-19 pandemic a debtor is able or not to carry out their obligations to creditors, as this can be seen from the activities of the debtor itself.

As an example, the author uses PT X, a pharmaceutical company based in Jakarta, as a debtor with Bank XYZ, a financial institution, as a creditor; where, under the terms of the credit agreement between the two companies, PT X is required to make credit payments to Bank XYZ as a creditor; and where, during the Covid-19 Pandemic, PT X's business activities are not affected, but PT X reaps above- On the basis of that kind of, it is very clear and based that the state of the Covid-19 Pandemic has a positive impact on the business activities of PT X as a debtor at Bank XYZ, due to the fact that PT X can still carry out its business activities in the state of the Covid-19 Pandemic and is also still able to carry out its business activities.

In contrast to other debtors, PT Z, which is based in Jakarta and is engaged in beauty treatments or services (such as salons, spas, or massage places) and is obligated to make credit payments to Bank XYZ as a creditor under the terms of a credit agreement between PT Z and the Bank XYZ, experienced a significant decrease in sales as a result of the Covid-19 Pandemic. As a direct consequence, PT Z experienced a significant decrease in financial distress conditions.

According to the results of two (2) illustrations of the impact of the Covid-19 Pandemic on the debtor, it is very logical which debtor can use the state of the Covid-19 Pandemic as a basis for the forced state (*overmacht*) on a credit agreement with creditors, but this is not a conclusion of whether the national non-natural disaster of the Covid-19 Pandemic can be classified as a coercive condition (*overmacht*).

As the explanation and illustration that the author has described above, then the next author will analyze related to the impact of the Covid-19 pandemic that occurred in Indonesia which is associated with the Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of the Corona Virus Disease 2019 (COVID-19) (Darwis & Pakpahan, 2021; Subiyanto et al., 2021).

In the Decree of the President of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of the Corona Virus Disease 2019 (COVID 19) in essence, it has been stated that the Covid-19 Pandemic is a non-natural disaster and a national disaster, which does not necessarily mean that the determination of the Covid-19 Pandemic disaster became the basis for an *overmacht* in a credit agreement.

So far, the number of people infected with Covid-19 has increased a lot due to a new variant, namely the Delta Covid-19 variant which triggered a spike in Covid-19 cases so that the Central Government imposed an Emergency Community Activity Restriction (hereinafter referred to as PPKM) (Supriyadi et al., 2022) from 3-20 July 2021 by issuing an Instruction Minister of Home Affairs Number 15 of 2021 concerning the Implementation of Covid-19 Emergency Community Activities in the Java and Bali Regions.

The Emergency PPKM basically regulates the restrictions on community activities, including the division of categories of companies that can carry out their business activities directly at the office (at work as usual) or at home, while the category is divided into 3 (three) sectors, namely essential, critical and non-essential sectors (VOI, 2022). The sectors that are allowed to carry out their business activities from the office are the essential sectors (Finance and banking, capital markets, payment systems, information and communication technology, non-COVID-19 quarantine handling hotels, export-oriented industries) and critical sectors (Energy, Health, Security, Logistics) transportation, Food, beverage and supporting industries, Petrochemicals, Cement, National vital objects, Disaster management, National strategic projects, Construction, and Basic utilities (such as electricity and water) .

Based on the Government's policy, there are types of businesses that do not have an impact on the Emergency PPKM policy and there are several types of businesses that cannot carry out their business activities at all. Where this is the basis of the author's analysis in answering the debtor's question whether non-natural disasters and the national disaster of the Covid-19 pandemic can be used as a basis for an *overmacht* in a credit agreement.

As the author has described above, for debtors who are able to carry out their will or ability (run a business activity) even in a non-natural disaster, the Covid-19 Pandemic, the Covid-19 Pandemic cannot be categorized as a state of coercion (*overmacht*) in an agreement. credit, but for debtors who are unable to carry out a will beyond their capabilities due to the non-natural disaster of the Covid-19 Pandemic, the Covid-19 Pandemic can be categorized as an *overmacht* in a credit agreement.

3.2. Actions that can be taken by debtors to avoid default actions against creditors in a credit agreement in a Covid-19 pandemic situation

With the stipulation of the Covid-19 Pandemic as a national non-natural disaster by the Government, the Government has followed up by issuing a policy of relaxation or debt restructuring for debtors on credit agreements with banking institutions which are directly supervised by the Financial Services Authority, while the policy is stated in the Financial Services Authority Regulation Number 48/POJK.03/2020/2020 concerning Amendments to Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus Disease Spread (Mandiri, 2021).

In essence, the Financial Services Authority Regulation provides an opportunity for debtors affected by the Covid-19 pandemic to be able to relax or restructure debts to debtors (Panin, 2020) on credit agreements with banking institutions with the conditions that the authors conclude are;

1. Debtors who request relaxation or debt restructuring must be able to prove that their business activities are affected by the Covid-19 Pandemic which results in financial distress (Anggarini & Rakhmanita, 2020);
2. Prior to the Covid-19 pandemic, it must be proven that the debtor has not defaulted on his obligations to the creditor as agreed in the credit agreement between the debtor and creditor.

As the authors have described above, the actions that debtors can take to avoid default on creditors in a credit agreement in a Covid-19 pandemic are to carry out payment

obligations to credit agreements for debtors who are not affected by the Covid-19 pandemic and for creditors those who affected by the Covid-19 Pandemic apply for relaxation or debt restructuring of credit agreements to banking institutions as creditors with the conditions determined by POJK Number 48/POJK.03/2020 (Mukti & Fitriana, 2022; Tjoanda et al., 2021).

4. CONCLUSION

With the prevailing laws and regulations due to the Covid-19 Pandemic, business actors are given legal certainty for business loans made in this case debtors, both individual debtors and business entity debtors, so that the impact of credit risk caused by the Covid-19 pandemic can be overcome properly and does not cause a debate over credit conditions during the Covid-19 Pandemic.

Likewise, the government's efforts to restore the business world and communities affected by the Covid-19 pandemic are visible, so it is hoped that there will be cooperation between the business world and the community and the government to carry out economic recovery in the Republic of Indonesia.

REFERENCES

- Anggarini, D. T., & Rakhmanita, A. (2020). Government Policies for Economic Recovery and Handling COVID-19 Virus in Indonesia. *Moneter-Jurnal Akuntansi Dan Keuangan*, 7(2), 140–146.
- Atmadja, I., & Budiarta, I. (2018). *Teori-teori hukum*. Setara Press.
- Darwis, & Pakpahan, K. (2021). Implementation of The Imposition of Restrictions on Emergency Community Activities for Corona Virus Disease (PPKM) In Relation To Positive Law In Indonesia. *International Journal of Business, Economics and Law*, 24(5). <https://www.ijbel.com/wp-content/uploads/2021/09/IJBEL24.ISU-5-842.pdf>
- Diantha, I. M. P., & SH, M. S. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Prenada Media.
- Hutabarat, D. T. H., Delardi, E., Irwansyah, A., Bascara, D., Ansori, B., & Tanjung, F. (2022). The Eradication Of Corruption And The Enforcement Of The Law In Indonesia As Seen Through The Lens Of Legal Philosophy. *Policy, Law, Notary And Regulatory Issues (POLRI)*, 1(2), 1–8.
- Mandiri. (2021). *Enhancing Digital Banking Transformation & Innovation, Annual Report 2021*. <https://bankmandiri.co.id/documents/38265486/0/ANNUAL+REPORT+BANK+MANDIRI-+6+April.pdf/4831c090-026e-4f2d-3148-973584850a48?t=1649216429695>
- Mukti, A. H., & Fitriana. (2022). Implementation Of Credit Restructuring During The Covid-19 Pandemic Period (Case Study On Rural Banks). *International Journal of Engineering Technologies and Management Research*, 9(2), 27–42.
- Nurudin, I. F., Nurudin, A., & Wisnaeni, F. (2021). The Role of Video Conference During Pandemic Times: A Case of General Meeting of Shareholders (GMS) to Reduce the Spread of the Covid-19 Virus. *Management*.

- Panin. (2020). *Sustainable Profit, Annual Report 2020*. <https://www.panin.co.id/doc/cmsupload/documents/ar2020/pab-ar-2020-ojk.pdf>
- Putra, P. A., & Pradnya, Yustiawan. D. G. (2022). Analyzing Trials Through Online Media During the Covid-19 Pandemic in Indonesia. *Policy, Law, Notary and Regulatory Issues (POLRI)*, 1(1), 8–15.
- Subiyanto, A., Triutomo, S., & Aji, L. J. (2021). The COVID-19 pandemic in the perspective of Indonesia's national security. *E3S Web of Conferences*, 331, 01006.
- Supriyadi, A., Alamsah, N., Nurasa, H., & Pancasilawan, R. (2022). Implementation of Law Enforcement and Disciplinary Policies in the Instruction of the Minister of Home Affairs No. 15 of 2021 in Banten. *KnE Social Sciences*, 101–113.
- Tjoanda, M., Hetharie, Y., Pariela, M. V. G., & Sopamena, R. F. (2021). The Outbreak of Covid-19 as an Overmacht Claim in Credit Agreements. *Fiat Justisia: Jurnal Ilmu Hukum*, 15(1), 75–92.
- VOI. (2022). Anies Baswedan Insinuated by Denny Siregar Wrong Inspection Of Essential Companies: Read The Rules, Let The Angry Acting Okay! *VOI*. <https://voi.id/en/berita/64823/anies-baswedan-disindir-denny-siregar-salah-sidak-perusahaan-esensial-baca-aturan-biar-akting-marahnya-oke>

**PROTECTION OF THE WIFE AS A VICTIM OF CRIME IN
DOMESTIC VIOLENCE
(Study in Police Resort Blitar)**

Cindy Tiara Gracia Yoseph^{1*}, Teguh Suratman², Riski Febria Nurita³

^{1,2,3}Faculty of Law, Merdeka University of Malang, Indonesia

E-mail: ¹⁾ cindy.tiara@unmer.ac.id, ²⁾ teguh.suratman@unmer.ac.id,

³⁾ riski.febria@unmer.ac.id

Abstract

Domestic violence is an unlawful act, and if it is specifically regulated by the Criminal Code or a particular law, it can be classified as a criminal offense. This study focuses on the "Protection against Victims of Domestic Violence (Blitar Regency Resort Police Study)." The research problem is formulated as follows: How is the legal protection of victims of domestic violence crimes by the Blitar Resort Police, and what obstacles do they face in providing such legal protection. Empirical research methods were used to collect data, and the research was conducted at the Blitar Resort Police. In-person interviews with the organizational structures in the Blitar Resort Police served as the primary data source. Secondary data sources include Article 351 of the Criminal Code, which defines abuse in physical and verbal forms, and Law No. 23 of 2004 on the Elimination of Domestic Violence. Additionally, legal books, legal journals, legal writings, and the perspectives of jurists were used as tertiary data sources. The data analysis utilized qualitative descriptive techniques, leading to the research findings at the Blitar Resort Police. The legal protection efforts included preventive measures and repressive actions. Preventive efforts involved following up on reports or complaints of domestic violence and conducting awareness campaigns. Repressive efforts included taking legal action against domestic violence perpetrators and providing full legal assistance to domestic violence victims. The main obstacles faced by the Blitar Police were the victims' reluctance to immediately report domestic violence cases to the police and the perpetrators' tendency to escape, which hindered the investigative process.

Keywords: Legal Protection, Domestic Violence, Domestic Violence Elimination Act, Policing, Victims

1. INTRODUCTION

The problem of domestic violence (KDRT) victims in Indonesia is not new. The government has established specific rules for this crime, including the Criminal Code and Statute No. 23 of 2004 on the elimination of domestic violence. Domestic violence is considered a felony criminal offense in Indonesia, a state of law ("*rechtstaat*") with a written constitution defined in Article 1 Paragraph (3) as "the state of Indonesia is a state of law." Consequently, Indonesian citizens are obligated to comply with the rule of law and refrain from behaviors that violate the Constitution.

Domestic violence is a significant issue in society, but many people lack a clear understanding of the forms of violence that occur within families, as victims often hide their experiences due to privacy concerns and shame associated with family disgrace. However, the community also plays a role in reporting domestic violence to the police. It is important to address the specificity of this type of violence, as it predominantly occurs within the homes of the perpetrators and victims.

Women (wives) are often the victims of domestic violence within the household sphere, and this issue is particularly concerning. Domestic violence is often considered a

hidden crime, as both victims and perpetrators tend to keep it concealed from the public or community. Indonesian positive law, or *Ius Constitutum*, recognizes domestic violence against women as a form of violence causing physical, mental, psychological, sexual suffering, or even abandonment within the family or household sphere.

Various factors contribute to acts of domestic violence, such as jealousy between spouses, economic strain, infidelity, parental issues, and differences of opinion. While Statute No. 23 of 2004 on the elimination of domestic violence is crucial for addressing this problem, law enforcement in Indonesia extends beyond this statute to encompass the provisions in the Criminal Code. The law aims to provide criminal sanctions against perpetrators of domestic violence, including violence against both wives and children.

The recent severe domestic violence incident in Blitar, East Java, highlights the urgency of addressing this issue. The incident resulted in the death of a 47-year-old victim, with the perpetrator being the victim's husband. Economic factors and infidelity are cited as some of the main triggers of domestic violence in Blitar Regency, where numerous cases of violence against women and children have been recorded in recent years.

To combat domestic violence effectively, serious law enforcement efforts are needed. This study aims to determine and analyze the legal protection provided to wives as victims of domestic violence by Blitar Resort police. Additionally, the obstacles faced by the police in offering this legal protection will be investigated.

2. RESEARCH METHOD

In this writing, the author employs the method of Empirical Legal Research, which is a legal research approach that relies on legal facts and empirical methods. The sample for this research is gathered directly from perpetrators through interviews, as well as from actual data and facts within the jurisdiction. Empirical research allows for the observation and examination of human actions through physical evidence or archival records.

The approach used in this study is the empirical approach, as described by Soekanto & Mamudji (1986). The empirical approach involves analyzing the law as it manifests in the behavior of the community, aligning with the patterns of social interactions in their lives. In this context, law is viewed as an instrument used by society to achieve specific goals, which can be verified and observed in an empirical manner. This approach emphasizes the practical and tangible aspects of law in society (Mahmud, 2006). The positive regulations utilized in this research are the Criminal Code (KUHP) and Statute No. 23 of 2004 on the elimination of domestic violence.

For this study, the author adopts a descriptive analysis, which offers a concise overview of the problems under investigation and is presented in accordance with the relevant rules, regulations, and applicable laws pertaining to the discussed issues (Bandung et al., n.d.).

3. RESULTS AND DISCUSSION

3.1. Legal Protection of the Wife as A Victim of Domestic Violence in Police Resort Blitar

According to the information in the rules of the law on the elimination of domestic violence, it is explained that there are 4 forms of violence in the household, namely, the first is in accordance with Article 6 which explains that physical violence is an act and action that results in illness or falling ill and serious injury. All acts that are mild to severe actions, whether wearing weapons or signs of using weapons that cause minor injuries to cause the death of someone are included in the category of domestic violence. Examples of actions that are acts of domestic violence are by pinching, biting, burning, hitting, kicking, slapping, injuring, and so on (Aripurnami, 2000)

Furthermore, in the form of psychological violence in accordance with Article 7 of the domestic violence Elimination Act, it is an act that causes fear, causing loss of confidence in oneself, inability to take action, feeling helpless, and causing severe suffering to one's psychology. Examples of such actions are by insulting, berating, threatening, mocking, and so on. Then the next is violence against sexuality described in Article 8A which is an act of forcing to have intimate relations with partners both wives and husbands in the household. Then according to the explanation in Article 8B that sexual violence is an act of coercion to have intimate relations with one party in the family or household that is done with other people for commercial purposes or a specific purpose (Arif, 1993).

The last is a form of violence in the form of neglect in the household regulated in Article 9 paragraph (1) explained that a person is prohibited from abandoning the family in the household environment that a person is legally obliged to finance, care for, maintain the family or household. Article 9 paragraph (2), neglect applies to someone who causes economic dependence by prohibiting one of the wife or husbands to work properly in the home environment or outside the home environment that results in the victim can be controlled by the perpetrator of the neglect (Harkrisnowo, 2000).

After conducting research and special interviews with Ipda Inar who is the head of the women and Children Protection Unit at the Blitar Police Criminal Investigation Unit, it was found that domestic violence that often occurs in the Blitar area is usually domestic violence in the form of physical violence that causes minor injuries in the form of abrasions caused by scratches to severe injuries in the form of bruises, cuts and cuts that leave scars and result in physical disabilities. Furthermore, usually domestic violence that occurs in Blitar occurs due to economic factors in the family.

3.2. Causes of Domestic Violence

The cause of domestic violence is biologically explained that humans do have a selfish nature and desire which is indeed a human condition contained in every human being. Aggressiveness in humans causes someone to commit violence, especially domestic violence. Then the theory of aggression explains that someone who is experiencing frustration usually tends to have an aggressive nature with the reason to vent their anger in a certain condition and circumstances (Luhulima, 2000)

Furthermore, in the theory of control which is when the condition of a person in a state of distress and stress than meet with others and vent their anger to others. According to the results of research and interviews obtained the results that the causes of domestic violence committed by the husband against his wife is usually due to lack of mutual trust between the spouses.

So, if the husband sees something suspicious done by the wife, the husband will abuse his wife without thinking due to the anger of the husband. And the next factor is infidelity that occurs in the household that resulted in the husband doing violence against his wife (Poerwandari, 2000). The Control Theory dominates the incidence of domestic violence in the Blitar area due to married couples who cannot consult about the condition of their homes.

3.3. The Consequences of An Act of Violence

In accordance with several cases of domestic violence in the Blitar area that have been handled by the Blitar Police, clearly the impact that affects the wife at the time of violence committed by her husband is usually in the form of stress, depression, to confusion because they feel depressed. This condition is because the wife has a mental and psychological condition that is weaker than the husband.⁵⁵ even worse is the physical violence that is very clearly visible impact on the condition of the wife as a victim of domestic violence. Wives who are victims of domestic violence are usually afraid to fight the actions done by their husbands because the wife's physical and mental strength is not as strong as the husband. Domestic violence also has a bad impact on the condition of children who could be victims of these acts of violence. The impact usually affects children who are still infants to adolescence. Infant children who receive violence will have a bad impact on their cognitive abilities resulting in difficulty in controlling their emotions (Ali, 1985).

According to the data obtained by the author, the Blitar police who are the recipients of reports of domestic violence actions from victims always seek mediation to resolve the circumstances of the problem. Because the Blitar police assume that divorce is not a way out of family problems. Of the 100% of domestic violence problems in Blitar, only 20% of parties who want the case to proceed to the trial stage and choose to divorce so that one of the parties who committed the crime gets a prison penalty and 80% choose to make peace and promise not to commit domestic violence again. If there is no agreement in the mediation process and choose a divorce, then the impact is related to the struggle for custody of children which is something that is so important.

3.4. Forms of Legal Protection Against the Wife as A Victim of Domestic Violence

Discussing the form of legal protection of the wife as a victim of domestic violence, with preventive efforts and repressive efforts in general can be applied either by the community or the government through law enforcement. For example, in terms of providing protection and supervision against threats that can endanger the condition of victims of domestic violence. As for the provision of medical assistance to victims of domestic violence as well as appropriate legal assistance.

In accordance with the interviews conducted by the authors obtained the results that one of the preventive efforts undertaken by the police Blitar namely by providing knowledge and massive socialization of legal protection against the wife as a victim of domestic violence. That the government has created a Protection Agency for witnesses and victims of domestic violence actions that have the aim of protecting the rights of victims of domestic violence. The form of legal protection owned by the Blitar Police is the protection of women and Children Unit or the so-called PPA Unit formed by the women's police with the aim of providing a service in the form of protection and assistance to women who are victims of violence by obtaining maximum protection.

Law No. 23 of 2004 on the elimination of domestic violence discusses the protection of Human Rights or human rights that seek prevention or so-called preventive efforts and

expand the understanding of domestic violence not only includes forms of violence against the physical, psychological, and sexual, but also the act of abandoning the family is included in the form of violence that can be. Domestic violence has various stages and levels of violence in accordance with the impact of violence received by victims who are also various so that the application of sanctions should be applied with different sanctions in accordance with the acts committed by domestic violence perpetrators. Imprisonment is a problem that becomes pressure on the wife as a victim of domestic violence because the victim still feels economically dependent on the perpetrator who has committed domestic violence so reluctant to report domestic violence cases to the police.

The Criminal Code and the Criminal Procedure Code are still unproven and are considered less able to provide protection to the wife as a victim of domestic violence because the rules are still general and do not consider the conditions and difficulties experienced by the victim in obtaining legal protection, especially against the sex of the victim. The rules in the Criminal Code and the Criminal Procedure Code do not consider patriarchal and feudal cultures and social static differences that create disharmony in the social environment. In this rule, everyone is considered equal to be able and have the power to obtain legal justice. In law 23 of 2004 on the rights of victims of domestic violence is regulated in Article 10, namely by obtaining legal protection, obtaining medical services, social assistance.

3.5. Obstacles faced by the Blitar Resort police in providing legal protection to the wife as a victim of domestic violence

Violence against the wife as a victim of domestic violence is an obstacle that results in a lack of confidence in domestic violence victims. Thus, inhibiting the victim in socializing and disturbing the victim's physical and mental health. Police got obstacles in providing legal protection against the wife as a victim of domestic violence. These obstacles include victims still feel ashamed to complain about domestic violence cases that have been experienced to be reported to the local police and consider domestic violence is a personal problem in the household.

Furthermore, the obstacle is the perpetrators of domestic violence who fled after committing domestic violence so that it becomes an obstacle for the Blitar police in conducting an investigation. The lack of witnesses in the case of domestic violence makes the Blitar police find it difficult to prove the case of domestic violence. The efforts of the Blitar police in providing legal protection to the wife as a victim of domestic violence often find obstacles and obstacles. The obstacles that are often faced by the Blitar police in providing a form of legal protection for victims of domestic violence according to Inar, who is the head of the women and Children Protection Unit at the Blitar Police Criminal Investigation Unit, are:

- 1) The police are still considered to steal private rana other people's domestic affairs.
- 2) A wife who still loves her husband even though he has been abandoned.
- 3) Victims of domestic violence are embarrassed to report domestic violence cases because they will be given a negative stigma that their families are not harmonious
- 4) Victims who still maintain the condition of their families and consider the future condition of their children.
- 5) Do not want to report when domestic violence occurs

Victims who are reluctant to report acts of domestic violence due to fear and feel threatened, fear of not being provided for by their husbands because they are financially dependent on their husbands, then fear of reporting on the grounds of shame for fear of defaming the family. Victims usually do not know about the conditions and circumstances that are happening to them even though they are experiencing violence. The victim does not know the rights that must be obtained in accepting the actions and treatment of domestic violence. Another factor is that the YAG family is reluctant to report violence to the police. People who are also less responsive to domestic violence cases that occur around their environment because they think that family problems should not be interfered with and are a private shutter. The lack of community in understanding the rules regarding domestic violence that has been regulated in law 23 of 2004 on the elimination of domestic violence.

3.6. Obstacles Due to Legal Factors

In its application to Statute 23 of 2004 on the elimination of domestic violence does not explain clearly the juridical understanding of what is called pain, illness, or serious injury, it is very important in determining and proving a type of domestic violence committed by the perpetrator. Therefore, the Blitar police must first analyze the juridical understanding by searching in the Criminal Code and jurisprudence. Domestic violence is a criminal offense that uses a complaint offense, so that domestic violence can be processed further if there is a complaint in advance from witnesses and victims. In addition, in Article 44 paragraph (4) of the domestic violence elimination law, this article makes articles that can weaken complaints about domestic violence because the article profiteering from a complaint offense can be revoked and not continued with the legal process.

3.6.1. Barriers Due to Law Enforcement Factors

Law enforcement officers, namely police, prosecutors, and judges do not care about the existence of domestic violence cases in their jurisdictions by being gender biased, and often use victim blaming and victim participating legal approaches in responding to a case of violence. With this resulted in victims of domestic violence into doubt, worry, to fear to report an act of domestic violence experienced. The fear experienced by the victim also includes the legal process that will be undertaken by the victim. The sense of sensitivity and awareness of gender by law enforcers is still minimal so that the victim feels like an object of domestic violence itself. Integrated Criminal Justice System with Gender justice in handling cases of violence against women is a system that shows a process that is interrelated between agencies or authorities in dealing with domestic violence and access to services that make it easier for victims to reach every legal process. The system requires law enforcers who have a goal of gender justice. In domestic violence this process is sometimes quite difficult. For example, in terms of evidence, the police are difficult to find evidence and witnesses who sometimes do not exist and cases and reports are revoked by the victim himself on the grounds of love and dependence in terms of living. In police agencies, there is often an unpreparedness of the police in handling domestic violence cases. Domestic violence cases should also be handled by female police whose quantity at this time is still quite limited.

3.6.2. Barriers Due to Factors of Facilities and Infrastructure

These barriers include the condition of human resources who have adequate education, skills, organization, and equipment and financial conditions. In this case, the police in

assisting the wife as a victim of domestic violence is still not maximal in providing assistance in litigation to non-litigation. Because this legal assistance is considered very important which aims to restore the victim's self-confidence and heal the victim's trauma

4. CONCLUSION

The research findings and analyses discussed above lead to several significant conclusions regarding the issue of domestic violence and the legal protection of wives as victims in Blitar Regency. Firstly, the Blitar Resort police have taken commendable steps in protecting the rights of wives through a dual approach comprising both preventive and repressive efforts. They promptly respond to reports and complaints related to domestic violence, initiating the legal process to address such cases. Additionally, socialization efforts have been identified as a vital tool in preventing domestic violence, creating awareness within the community to curb such occurrences.

Secondly, it is essential to provide comprehensive legal assistance to the wives who fall victim to domestic violence. By offering necessary support and guidance, the victims can feel empowered to seek help and take action against their abusers. Such legal assistance becomes a crucial aspect of ensuring the overall safety and well-being of the affected individuals.

However, despite these commendable efforts, the Blitar Resort police encounter some obstacles in their pursuit of providing effective legal protection to victims of domestic violence. One major challenge stems from the victims themselves, as some may hesitate to promptly report incidents to the police. This reluctance could be due to fear, shame, or lack of awareness about the available support systems. Addressing this issue necessitates further awareness campaigns to encourage victims to come forward without fear or hesitation.

Another obstacle faced by the police is the swift escape of perpetrators from the scene of the crime. This hampers the police's ability to conduct thorough investigations and apprehend the offenders promptly. Finding solutions to address this issue is vital to ensuring timely justice for the victims and holding the perpetrators accountable for their actions.

In conclusion, to effectively combat domestic violence and protect the rights of wives as victims in Blitar Regency, a comprehensive approach is essential. This approach should include intensified socialization efforts to raise awareness within the community, providing ample legal assistance to the victims, and finding innovative solutions to overcome the obstacles faced by law enforcement agencies. By adopting these measures, Blitar Regency can strive towards creating a safer environment where domestic violence is reduced, and victims are empowered to seek justice and support.

REFERENCES

- Ali, C. (1985). *Responsi Hukum Pidana: Penyertaan dan Gabungan Tindak Pidana*. Bandung: Armico.
- Arif, G. (1993). *Masalah Korban Kejahatan*, Akademika Pressindo. Jakarta.
- Aripurnami, S. (2000). *Kekerasan Terhadap Perempuan, Aspek-aspek Sosial Budaya dan Pasal 5 Konvensi Perempuan, dalam Pemahaman Bentuk-bentuk Tindak Kekerasan terhadap Perempuan dan Alternatif*. penyunting Achie Sudiarti Luhulima, Jakarta: PT. Alumni, Jakarta.

- Bandung, B., Aksara, P. T. B., Press, U., & Diponegoro, U. (n.d.). Hanitijo Soemitro, Roni. 1990. Metodologi Penelitian Hukum Dan Jurimetri. Ghalia Indonesia. Husin, Sanusi. 1999. Penuntun Praktis Penulisan Skripsi. Fakultas Hukum. Universitas Lampung. Komisi Nasional Hak Asasi Manusia. 2002. Lembar Fakta HAM. Komnas HAM.
- Bemmelen, J. M. van. (1984). Hukum Pidana 1. Hukum pidana material bagian umum, terjemahan Hasnan dari Ons strafrecht 1. Het materiele strafrecht algemeen deel. Binacipta, Jakarta.
- Harkrisnowo, H. (2000). Tindakan Kekerasan Terhadap Perempuan dalam Perspektif Sosio-Yuridis. *Jurnal Hukum Ius Quia Iustum*, 7(14), 157–170.
- Luhulima, A. S. (2000). Deklarasi Penghapusan Kekerasan Terhadap Wanita, dalam Pemahaman Bentuk-bentuk Tindak Kekerasan terhadap Perempuan dan Alternatif Pemecahannya, penyunting Achie Sudiarti Luhulima. Jakarta: PT. Alumni.
- Mahmud, M. P. (2006). Penelitian Hukum, Kencana Prenada Media Group. Jakarta.
- Poerwandari, E. K. (2000). Kekerasan terhadap perempuan: tinjauan psikologi feministik. Tapi Omas Ihromi, Sulistyowati Irianto, and A. Sudiarti Luhulima. Bandung: Alumni.
- Soekanto, S., & Mamudji, S. (1986). Metode Penelitian Hukum Normatif. Jakarta: Rajawali, 1–13.
- Soeroso, R. (1993). Pengantar Ilmu Hukum, Cet. Ke-1, Jakarta: Sinar Grafika.
- Widiartana, G. (2009). Viktimologi: perspektif korban dalam penanggulangan kejahatan. Universitas Atma Jaya Yogyakarta.

WRITING GUIDELINES FOR POLRI

Note:

All manuscripts must be submitted via Online Submission at <https://ojs.transpublika.com/index.php/POLRI/about/submissions>, where the author registers as an Author and/or is offered as a Reviewer online. If the author has problems with online submissions, please contact the Editorial Office at the following email: admin@transpublika.co.id or contact Support Contact us via WhatsApp.

Articles submitted should follow the journal template!

Preparation of manuscripts

Authors should carefully prepare their manuscripts in accordance with the following instructions: (1) All manuscripts should be prepared according to the Publication Manual of the American Psychological Association 7th ed. (American Psychological Association [APA], 2010); (2) Manuscripts should be as concise as possible, yet sufficiently detailed to permit adequate communication and critical review; (3) Consult the APA Publication Manual for specific guidelines regarding the format of the manuscript, abstract, citations and references, tables and figures, and other matters of editorial style, and; (4) Tables and figures should be used only when essential.

Submit the manuscript

Before all of you submit the manuscript, please read carefully and following the information: (1) The manuscript was the result of your own works (original – not plagiarism) and never been published in another journal; (2) The article written in *English*. Abstract and Keywords clear written in English; (3) Manuscript file must be digital. We suggest for use software Microsoft Office (2010 or above) with extension document (.rtf, .doc, or .docx). -- hard copy submissions are not accepted, and; (4) Document format style: Manuscript type on A4 Margin Left: 2,54 cm, Top: 2.94 cm, Right: 2,54 cm, Bottom: 2.54 cm, header 0,75cm and footer 1,02 with different odd and event ; one column. Operating system Windows 10, Windows 8.1, Windows 8, Windows 7 Service Pack 1, Windows Server 2016, Windows Server 2012 R2, Windows Server 2012, or Windows Server 2008 R2; for body text use one column; single line spacing -- before = 0 and after = 6; black color font, and; use only one space after each word periods. For specific information about technically information about the manuscript content, see the Submission Preparation Checklist and use the POLRI Template.

The structure of manuscripts

- Research Article (Featured Research/Practitioner Research): (a) Title Page, (b) Authors' Names, Affiliations, and contact, (c) Abstract, (d) Keyword(s), (e) Recommended Cite, (f) Introduction, (g) Method, (h) Results and Discussion, (i) Conclusions, (j) Acknowledgements, and (k) References.
- Article/extensive book reviews/reports review/literature review/conceptual paper: (a) Title Page, (b) Authors' Names, Affiliations, and contact, (c) Abstract, (d) Keyword(s), (e) Recommended Cite, (f) Introduction, (g) Discussion, (h) Conclusions, (i) Acknowledgements, and (j) References.

Title

A title should be the fewest possible words that accurately describe the content of the paper (Center, Bold, 14pt)

Author(s) and Affiliation(s)

Author Name 1*, Author Name 2, Author Name 3 (11 pt)

1 Affiliation1 (11 pt), 2 Affiliation 2 (11 pt)

Abstract

A well-prepared abstract enables the reader to identify the basic content of a document quickly and accurately, to determine its relevance to their interests, and thus to decide whether to read the document in its entirety. The Abstract should be informative and completely self-explanatory, provide a clear statement of the problem, the proposed approach or solution, and point out major findings and conclusions. The Abstract should be 150 to 250 words in length. The abstract should be written in the past tense. Standard nomenclature should be used and abbreviations should be avoided. No literature should be cited. The keyword list provides the opportunity to add keywords, used by the indexing and abstracting services, in addition to those already present in the title. Judicious use of keywords may increase the ease with which interested parties can locate our article (11 pt).

Keywords: Written in English. Choosing appropriate keywords is important, because these are used for indexing purposes. Please select a maximum of 5 words to enable your manuscript to be more easily identified and cited.

Introduction

The introduction is a little different from the short and concise abstract. The reader needs to know the background to your research and, most importantly, why your research is important in this context. What critical question does your research address? Why should the reader be interested?

The purpose of the Introduction is to stimulate the reader's interest and to provide pertinent background information necessary to understand the rest of the paper. You must summarize the problem to be addressed, give background on the subject, discuss previous research on the topic, and explain *exactly* what the paper will address, why, and how. A good thing to avoid is making your introduction into a mini review. There is a huge amount of literature out there, but as a scientist you should be able to pick out the things that are most relevant to your work and explain why. This shows an editor/reviewer/reader that you really understand your area of research and that you can get straight to the most important issues.

Keep your Introduction to be very concise, well structured, and inclusive of all the information needed to follow the development of your findings. Do not over-burden the reader by making the introduction too long. Get to the key parts other paper sooner rather than later.

Be concise and aware of who will be reading your manuscript and make sure the Introduction is directed to that audience. Move from general to specific; from the problem in the real world to the literature to your research. Last, please avoid to make a sub section in Introduction.

Example of novelty statement or the gap analysis statement in the end of Introduction section (after state of the art of previous research survey):

“..... (short summary of background)..... A few researchers focused onThere have been limited studies concerned on Therefore, this research intends to The objectives of this research are”.

Literature Review

In the *Literature Review* section, should demonstrate the author's understanding of the existing literature or theory used, their ability to critically analyze previous research, and their capacity to situate the current study within the broader scholarly discourse.

Method

In the *Method* section, you explain *clearly* how you conducted your research order to: (1) enable readers to evaluate the work performed and (2) permit others to replicate your research. You must describe exactly what you did: what and how experiments were run, what, how much, how often, where, when, and why equipment and materials were used. The main consideration is to ensure that enough detail is provided to verify your findings and to enable the replication of the research. You should maintain a balance between brevity (you cannot describe every technical issue) and completeness (you need to give adequate detail so that readers know what happened).

In the social and behavioral sciences, it is important to always provide sufficient information to allow other researchers to adopt or replicate your methodology. This information is particularly important when a new method has been developed or an innovative use of an existing method is utilized. Last, please avoid to make a sub section in Method.

Results and Discussions

The purpose of the Results and Discussion is to state your findings and make a interpretations and/or opinions, explain the implications of your findings, and make suggestions for future research. Its main function is to answer the questions posed in the Introduction, explain how the results support the answers and, how the answers fit in with existing knowledge on the topic. The Discussion is considered the heart of the paper and usually requires several writing attempts.

The discussion will always connect to the introduction by way of the research questions or hypotheses you posed and the literature you reviewed, but it does not simply repeat or rearrange the introduction; the discussion should always explain how your study has moved the reader's understanding of the research problem forward from where you left them at the end of the introduction.

To make your message clear, the discussion should be kept as short as possible while clearly and fully stating, supporting, explaining, and defending your answers and discussing other important and directly relevant issues. Care must be taken to provide commentary and not a reiteration of the results. Side issues should not be included, as these tend to obscure the message.

It is easy to inflate the interpretation of the results. Be careful that your interpretation of the results does not go beyond what is supported by the data. The data are the data: nothing more, nothing less. Please avoid and make over interpretation of the results, unwarranted speculation, inflating the importance of the findings, tangential issues or over-emphasize the impact of your research.

The following components should be covered in discussion: How do your results relate to the original question or objectives outlined in the Introduction section (what/how)? Do you provide interpretation scientifically for each of your results or findings presented (why)? Are your results consistent with what other investigators have reported (what else)? Or are there any differences?

Work with Graphic:

Figures and tables are the most effective way to present results. Captions should be able to stand alone, such that the figures and tables are understandable without the need to read the entire manuscript. Besides that, the data represented should be easy to interpret.

Last, please avoid to make a sub section in Results and Discussion.

Conclusions

The conclusion is intended to help the reader understand why your research should matter to them after they have finished reading the paper. A conclusion is not merely a summary of the main topics covered or a re-statement of your research problem, but a synthesis of key points. It is important that the conclusion does not leave the question unanswered.

Conclusions should answer the objectives of the research. Tells how your work advances the field from the present state of knowledge. Without clear Conclusions, reviewers and readers will find it difficult to judge the work, and whether or not it merits publication in the journal. Do not repeat the Abstract, or just list experimental results. Provide a clear scientific justification for your work, and indicate possible applications and extensions. You should also suggest future experiments and/or point out those that are underway.

For most essays, one well-developed paragraph is sufficient for a conclusion, although in some cases, a two or three paragraph conclusion may be required. The another of important things about this section is (1) do not rewrite the abstract; (2) statements with “investigated” or “studied” are not conclusions; (3) do not introduce new arguments, evidence, new ideas, or information unrelated to the topic; (4) do not include evidence (quotations, statistics, etc.) that should be in the body of the paper.

Acknowledgments (if any)

Acknowledge anyone who has helped you with the study, including: Researchers who supplied materials, reagents, or computer programs; anyone who helped with the writing or English, or offered critical comments about the content, or anyone who provided technical help. State why people have been acknowledged and ask their permission. Acknowledge sources of funding, including any grant or reference numbers. Please avoid apologize for doing a poor job of presenting the manuscript. Do not acknowledge one of the authors names.

References

References should follow the style detailed in the APA 7th Publication Manual. Make sure that all references mentioned in the text are listed in the reference section and vice versa and that the spelling of author names and years are consistent. Please to not be used footnote or endnote in any format.

Page limitations

The full length of submission manuscript not more than 6000 words, or maximum 20 pages and minimum 5 pages; including references, table and figure (Appendix--Exclude).

Permission requirement

Lengthy quotations (generally 400 cumulative words or more from one source) require written permission from the copyright holder for reproduction. Previously published tables or figures that are used in their entirety, in part, or adapted also require written permission from the copyright holder for reproduction. It is the author’s responsibility to secure such permission, and a copy of the publisher’s written permission must be provided to the Editor immediately upon acceptance for publication